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Via email
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Dear Mr Esom,

DIRECTIONS UNDER SECTION 4A OF THE LOCAL GOVERNMENT ACT 1986

1. I am writing to inform you that the Secretary of State has exercised his powers of direction under section 4A of the Local Government Act 1986 (“the 1986 Act”) in relation to the London Borough of Waltham Forest (“the Authority”). The Secretary of State has done this to secure its compliance with the following specified provision of the Code of Recommended Practice on Local Authority Publicity (“the Publicity Code”) issued under section 4 of the 1986 Act on 31 March 2011 having been approved by a resolution of each House of Parliament:

“Where local authorities do commission or publish newsletters, newssheets or similar communications, they should not issue them more frequently than quarterly”¹ ;

2. I enclose a copy of the Directions. This letter below summarises the circumstances in which the Secretary of State has made these Directions and his reasons for this exercise of his powers.
3. To take account of the practical impact of the forthcoming May local elections, the Secretary of State is providing an extended period of time for the Authority to cease fortnightly publication, i.e. 3 September 2018, three months after the local authority elections. This date gives any new administration sufficient time to put in place the necessary arrangements. The direction gives the Council until 21 days after the

¹ From paragraph 28 of the Publicity Code

Authority's first post-election annual meeting (local government elections 3 May 2018) to take any necessary decisions in order that the Authority will be in a position to comply.

The context for the Directions

4. Appropriate use of publicity concerns the frequency, content and appearance of council newsletters, in order to prevent unfair competition with local newspapers. The Government's policy is as far as is practicable creating an environment which is as conducive as possible to the flourishing of independent and politically free local media, which is an essential element of any effectively operating local democracy. It is to further this policy that the Government has adopted measures to limit the frequency of local authority newsheets etc. The balance which, with the approval of Parliament, the Publicity Code strikes is that the newsheets, etc. of principal local authorities should be published no more frequently than quarterly.
5. The Secretary of State has carefully considered all the circumstances of this case. As set out below he has concluded that these circumstances do not warrant a departure in this case from the Government's policy in relation to the publication of local authority newsheets. The Authority is failing to comply with the provision of the Publicity Code that relates to frequency, and its non-compliance is significant. For the years 2014, 2015, 2016 and 2017, the Authority published 23, 23, 22 and 21 editions respectively of *Waltham Forest News*. This is far in excess of the recommended four. As at 5 February 2018, the Council puts the circulation of *Waltham Forest News* at 110,000.
6. The Secretary of State's direction making powers are provided for in the Local Audit and Accountability Act 2014 ("the 2014 Act") which amended the Local Government Act 1986 ("the 1986 Act"). The 2014 Act received Royal Assent on 30 January 2014 and the provisions containing these powers came into force on 30 March 2014, and since that time the Secretary of State has been in dialogue with councils concerning their compliance with the Publicity Code.
7. The Secretary of State has carefully considered all the circumstances of this case. As set out below he has concluded that the Authority should be able to ensure compliance within the specified timeframe, and that it has had ample time to make alternative arrangements for its publicity requirements. The Secretary of State therefore considers it appropriate that it should ensure compliance by 3 September 2018, which provides the Authority with an extended period of time to comply, in light of the forthcoming May local election and purdah.
8. The Secretary of State takes exercising his direction making powers under section 4A of the 1986 Act very seriously, only exercising them when he considers it absolutely necessary. The Secretary of State considers it appropriate that it should be the Authority's executive that

determines what steps need to be taken in order to comply with the Directions, and that they should do so in a timely fashion.

Reasons for the Direction to publish *Waltham Forest News* no more frequently than quarterly

9. *Representation received*: The Authority argue there is no evidence that *Waltham Forest News* has had an impact on local newspapers. The Council argue in their representation of 9 October 2014 that the assertion that it is “*self-evident*” that an environment in which there are local authority newsheets is not as conducive to the flourishing of an independent press as an environment in which there are none is contradicted “*at least in relation to Waltham Forest, by all of the available evidence including circulation figures for the Waltham Forest Guardian. These figures, whilst they show a steady decline over the last decade, do not show any additional decline in readership when the Council’s newspaper increased to 23 times per annum*”. The Authority also argue in their representation of 24 March 2015 that there is “*no causal connection between the decline in Waltham Forest Guardian circulation and the move to fortnightly publication of WFN*” and, in its representation of 9 January 2018, “*the reality is that there appears to be no evidence whatsoever of local authority newspapers having a material detrimental impact on the local press, whether generally or in this Council’s area in particular. At best the Reasons simply consist of unsubstantiated assertions*”. On the matter of advertising, in its representation of 13 October 2017, the Authority stated that its rates are higher than competing local titles and that they purposely refuse any advertising enquiries from estate agents, new home developers and car dealers, these being sectors that are core income areas for local commercial titles. The Authority added that it is “*not overly proactive*” in its advertising approach, instead processing inbound (reactive) enquiries and contacting past advertisers on an ad hoc basis.
10. *Secretary of State’s position*: The Secretary of State accepts that the impact on the independent press in Waltham Forest may not be easy to assess. He notes, however, that the London Assembly’s August 2017 Economy Committee report, ‘*The fate of local news - read all about it!*’, stated that “*Local newspapers have, in some cases, been negatively affected by local authorities regularly publishing their own newsletters. While these newsletters have their place, they should not be a substitute for local news. The Government’s intervention to clamp down on how frequently these publications are produced will help local newspapers.*”
11. He is of the view that more or wider circulating local newspapers would be available in the borough if the Council did not publish its own newspaper more frequently than quarterly. Moreover, his conclusion is that even if the Council newspaper has little or no impact on the local press currently available in the borough, this does not override the Government’s policy of as far as is practicable creating an environment

which is as conducive as possible to the flourishing of independent and politically free local media. This is because if *Waltham Forest News* was produced on a quarterly basis, some of the advertising that it currently takes would potentially be available to other local media - he notes that the total advertising income for *Waltham Forest News* for 2017/18 is budgeted at £516,000, £70,000 of which comes from external advertising - and other markets would probably develop for alternative media that would otherwise have been deterred by the existence of a Council newssheet published fortnightly. The Secretary of State also notes that the then editor of the *Waltham Forest Guardian*, an independent local paper, wrote an article in the *Guardian* newspaper of 28 April 2014 objecting to the Council's fortnightly publication and that "*our own readers have overwhelmingly suggested in letters and online comments that they are firmly against it.*" The Secretary of State does not agree with the suggestion that, in the absence of a precise evaluation of how much advertising revenue will transfer to the independent sector, he is precluded from making this judgment.

12. *Representation received:* the Authority note in their representation of 9 January 2018 that the explanatory memorandum to the Code promised a post-implementation review of the Code in 3 to 5 years after it came into effect (i.e. at some point between March 2014 and March 2016), with the details of the proposed research and analysis to be developed over the coming months. The Council further notes "*the refusal by CLG to answer our questions on this issue once again indicates that the Secretary of State was not even made aware that his predecessor's effective promise to Parliament has been broken. We suggest that to proceed with a direction in such circumstances would amount to an abuse of power*".
13. *Secretary of State's position:* The Secretary of State does not agree that it would be an abuse of power to make a direction. The intention to review the Code and the proposed research and analysis was the intention of a previous Government. The legal framework remains as per the legislation which has been made by Parliament and the Secretary of State has the power to enforce aspects of the Code where he considers it right and appropriate to do so.
14. *Representation received:* The Authority argue that *Waltham Forest News* is a cost effective means of communication that delivers value for money for council taxpayers in communicating with all their residents and publishing statutory advertisements. The Authority provided figures in their 13 October 2017 representation for the costs of producing *Waltham Forest News*. The total expenditure budget for 2017/18 is £370,300. The Council acknowledged in its representation of 29 April 2014 that the cost of producing their fortnightly newspaper is greater than the projected cost of placing statutory notices in the independent press. However, the Council argues that the total cost of issuing a quarterly publication, placing statutory notices in the local

independent press, and producing other publicity such as promotion of council services (which currently features in its fortnightly publication) would exceed the cost of producing a fortnightly paper.

15. *Secretary of State's position:* The Secretary of State has noted the estimate of costs that the Authority provides. However, he considers that the Authority has yet to make a wholly convincing argument as regards value for money, particularly given the availability of effective and efficient non-newsheet methods of communication. The Secretary of State accepts that it could be the case that to publish statutory notices in the local media, produce a quarterly publication and issue other publicity could cost more than production of a fortnightly newspaper. The Secretary of State notes, for example, that in its April 2014 representation the Authority estimated the increased cost to be approximately £2,400 per year (£417,600 for 23 editions of *Waltham Forest News*; £420,000 for four issues along with costs of placing statutory notices), but he is aware that the Authority's total revenue expenditure for 2016/17 was more than £600 million and, in this context, and given the importance of a strong local press, a potential increased cost of this nature (if it did in fact occur) would in his judgment be justified. He also notes that the majority of local authorities comply with their obligation to publish statutory notices while also complying with the provisions in the Publicity Code on frequency of publication of newsletters, newsheets or similar communications. The Secretary of State's conclusion, however, is that the Authority's representation about cost and coverage does not outweigh the Government's policy of as far as is practicable creating an environment which is as conducive as possible to the flourishing of independent and politically free local media, by limiting the frequency of local authority newsheets. He is not stopping the Authority from disseminating information to their residents. Councils are of course welcome and expected to make use of their other existing communication outlets (e.g. their websites) to publish such information. Every local authority across England has to publish statutory notices and the majority do not need to use a fortnightly newsletter through which to publicise them. Parliament was aware of the requirement for councils to publish statutory notices when it introduced the Code.
16. *Representation received:* The Authority argue in their 9 October 2014 representation that *Waltham Forest News* reaches every home and business in the Borough. By comparison, the circulation of the *Waltham Forest Guardian* is less than 5 per cent of the verified circulation of *Waltham Forest News*, and over a third of the distribution is in Chingford, which is the least diverse area. They also argue that the proposed Direction would also leave the Council "*unable to reach its diverse population and inform it of matters of importance*".
17. *Secretary of State's position:* The Secretary of State accepts that *Waltham Forest News* may be welcomed by the community and have some community functions, and that it serves the purpose of

dissemination of information for the benefit and cohesion of the community. However, his conclusion is that this does not override the policy as set out in the Publicity Code of limiting the frequency of Council newssheets, as much of this function could be delivered through a quarterly publication, supported as appropriate with other communication channels such as the Council website, advertisements in the local media, targeted leaflets in Council and local partners' buildings (libraries, children's centres, schools, doctors' surgeries, churches, etc.), social media etc.

18. *Representation received:* The Authority argues in its 29 April 2014 representation that “*the proposed direction would have a significant adverse effect on the Council’s ability to communicate with all groups and, inter-alia, promote good race relations, equality and diversity. It would thus make it harder for the Council to comply with its duties under s149 Equality Act 2010, to when carrying out its functions have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations*”. The Authority also argue in their 9 October 2014 representation that the area has a ‘unique demography which amounts to special circumstances justifying differential treatment’. These circumstances are that the majority of the population is from a non-white UK background, over 25 per cent have English as a second language, the population has a very high turnover internationally and inter-borough, and the diverse population means there are particular issues in the area relating to radicalisation and community cohesion. The council notes the main groups are Asian (21 per cent), Black/Black British (17 per cent) and White Other (15 per cent) of which 9 per cent are East European. The long-term international migration turnover per 1,000 resident population in Waltham Forest is 33.9, which is more than double the national average of 14.1.

19. *Secretary of State’s position:* The Secretary of State recognises that it may be the case that reduction in frequency might make it harder for local authorities to communicate effectively with the community, including groups that have protected characteristics, but such communication would still be relatively easy to achieve. Much of the information in *Waltham Forest News* could be delivered through a quarterly publication, supported as appropriate with other communication channels. For example, the Secretary of State considers that, in addition to the internet, the Council could use education centres, community centres and libraries as a means to communicate directly with Waltham Forest’s diverse population. The majority of local authorities across England are able to communicate effectively with their local community, whilst still complying with the Code’s frequency of publication provision. The Secretary of State’s conclusion is that communication by a quarterly publication will continue to effectively reach the community, while following the Government’s policy of enabling as far as is practicable an environment which is as conducive as possible to the flourishing of independent and

politically free local media, by limiting the frequency of local authority newsheets, and so protecting local democracy. In reaching this view, the Secretary of State has had regard to the Equality Statement and considered the particular circumstances of this authority.

20. *Representation received:* The Authority asks, in their representation of 9 January 2018, if Secretary of State has the power to make a proportionate direction that would be limited to one which restricted the Council to whatever frequency of publication the Secretary of State is prepared to accept from other authorities without making a direction.
21. *Secretary of State's position:* The Secretary of State's powers under the Local Government Act 1986 are clear. He can either require compliance with an aspect of the Code (after considering representations) or he can decide not to do so. It is for the Secretary of State to judge, on a case-by-case basis, whether it is appropriate and proportionate to require an authority to comply with the frequency requirements in the Code. There is no 'fall-back' provision in the Statute empowering him to require compliance with some other standard of compliance, not mentioned in the Code. In any event, for the reasons set out in this letter, he is satisfied that it is appropriate to impose a direction requiring compliance with the frequency provision in the Code in this case.
22. *Representation received:* The Council argue in their representation of 9 January 2018 that the Secretary of State's position in relation to advertising is flawed by logical inconsistency. The Council state that "*...the Secretary of State has been positively encouraging local authorities to sell web advertising space*" and that "*...it is clear that local newspapers, given the decline in print advertising, rely heavily upon the sale of advertising on their websites to maintain their commercial position. There is no rational basis for saying on the one hand that local authorities ought to be active in that market, and yet on the other hand that any sale of advertising space in a local authority printed newsheet is to be deprecated*".
23. *Secretary of State's position:* The Secretary of State has always been clear that the purpose of the Publicity Code is to prevent unfair competition with local newspapers, print media. This remains unchanged. The Secretary of State's position is not inconsistent as his reference to web advertising or indeed advertising in the yearly Council Tax bill are completely different mediums and therefore do not compete with regular local newspapers.
24. *Representation received:* The Authority ask in their representation of 9 January 2018 why the Secretary of State has at this stage taken action against only some of the authorities which publish newsheets more frequently than quarterly. The Authority also note in this representation "*the effect of the direction is to put the Council into a position where it is being treated differently from other authorities*".

25. *Secretary of State's position:* The Secretary of State is currently either taking action against every council who he is aware publishes fortnightly, or seeking further information from them to inform a decision on whether to take action. These councils are in non-compliance to the most significant extent with the Code's frequency requirements. There is therefore no basis for a complaint of inequitable treatment.
26. *Representation received:* The Authority argue in their 9 October 2014 representation that the proposed Direction would be unlawful as it is irrational (or evidence exists but has been withheld so the Council has not been able to make meaningful representations, indicating procedural unfairness). The Authority also argue in their representations of 9 October 2014 and 24 March 2015 that the proposed direction would interfere with residents' rights under Article 10 of the European Convention on Human Rights. The Authority argue in their 24 March 2015 representation that could interfere with the Council's "*common law/constitutional right to freedom of expression*" and that the Press Release of 26 September 2014 indicates the Secretary of State has a closed mind, and that there is a possibility of bias.
27. *Secretary of State's position:* The Secretary of State does not accept the Authority's arguments that making the proposed Direction would be unlawful. If as the Secretary of State believes the direction is rational, fair and necessary, these points do not add anything.
28. Parliament has given the Secretary of State powers to direct authorities to comply with some, or all, of the Publicity Code. Parliament gave the Secretary of State these powers with a clear understanding that the policy of the Government was to protect the independent press from unfair competition. Parliament had previously approved the 2011 Code of Recommended Practice on Local Authority Publicity, which contains the provisions on frequency of publication. The Government's policy was stated in the Coalition Agreement and was the subject of a public consultation '*Protecting the Independent Press from Unfair Competition*' that was undertaken before Parliament considered the direction making provisions in the (then) Local Audit and Accountability Bill. Section 4 of the Local Government Act 1986 is clear that the Secretary of State may issue a code of recommended practice as regards, among other things, the distribution of local authority publicity. Section 4A of the Local Government Act 1986 gives the Secretary of State power to direct authorities to comply with the Code. The Secretary of State does not agree that it would be unlawful and unreasonable to use his power to direct an authority to comply with the provisions in the Publicity Code relating to distribution of publicity, in this case frequency of publication.

29. The Secretary of State considers that it is open to a local authority to effectively communicate as necessary with the public, including those who share a relevant protected characteristic, as listed in s149 of the Equality Act 2010, about the services and other matters that are the responsibility of the council itself.
30. For the reasons set out above the Secretary of State does not accept that it would be irrational or disproportionate for the Direction to be issued. The Direction requires Waltham Forest to act just as the vast majority of local authorities already act. Nor, for the reasons set out in the Equality Statement, is it accepted that it would be incompatible with the public sector equality duty.
31. Finally there can be no question of procedural unfairness. There have been extensive opportunities for the Authority to make representations, and the Authority did indeed make representations. The Secretary of State's consideration in response is as set out above. What he has done is part of a clear policy of Government that Government has held from the Coalition Agreement onwards. The Secretary of State does not accept the Authority's arguments about bias and pre-determination and/or that the Department is motivated by political considerations rather than by relevant considerations. The Secretary of State has considered the evidence, including the Authority's representations, with an open mind before coming to a decision on whether to issue a direction. The Secretary of State has not made a public statement about councils' compliance with the Publicity Code and notes that the Authority does not allege that he has done so. The decision to issue a direction has been taken by the Secretary of State alone.

Summary

32. In summary, in determining whether or not it is appropriate to exercise the powers under section 4A of the 1986 Act, the Secretary of State carefully considered the matters at each stage of the decision making process, including reviewing the Authority's various representations along with the analysis contained in the Department's Equality Statement. He has concluded that it is necessary, appropriate and proportionate to impose a Direction.

Publication of representations:

33. This letter, together with all the authority's representations received by the Secretary of State, are on the Government website at www.gov.uk.

Yours sincerely,

Alex Powell
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