

THE LOCAL GOVERNMENT ACT 1986 NOTICE UNDER SECTION 4A(5)

On 10 March 2015 the Secretary of State for Communities and Local Government (“the Secretary of State”) gave the local authority known as the Council of the London Borough of Hackney (“London Borough of Hackney”) notice of a direction that he proposed to give to the authority under section 4A of the Local Government Act 1986 (“the 1986 Act”). On 27 March 2015 the London Borough of Hackney was notified in writing that ‘the Secretary of State does not anticipate taking any decisions in the immediate future in relation to your Authority on matters relating to the Publicity Code, and that your Authority should not draw any inferences from this’.

On 19 April 2016 the Secretary of State wrote to the London Borough of Hackney requesting confirmation of their compliance with the Code of Recommended Practice on Local Authority Publicity (“the Publicity Code”). The London Borough of Hackney responded on 18 May offering a meeting to discuss the matter. On 17 August officials from the London Borough of Hackney met with officials from the Department for Communities and Local Government, at which meeting officials from the London Borough of Hackney asserted that the London Borough of Hackney intend to continue fortnightly publication of ‘Hackney Today’.

Having carefully considered the representations received from the London Borough of Hackney to date, and having regard to that, information available to him about the London Borough of Hackney’s publicity, and the enclosed Equality Statement, the Secretary of State hereby gives further notice to the London Borough of Hackney of a direction that he proposes to give to the London Borough of Hackney under section 4A of the 1986 Act. This notice replaces the notice of 10 March 2015.

The Secretary of State proposes to direct the London Borough of Hackney to comply as soon as practicable and in any event by 31 January 2017 with the following specified provision of 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.

The specified provision, which can be found in paragraph 28 of the Publicity Code, is:

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

The Secretary of State also proposes to direct the executive of the London Borough of Hackney to consider the direction within 14 days.

The basis of the Secretary of State’s proposal

Appropriate use of publicity concerns the frequency, content and appearance of council newsletters, in order to prevent unfair competition with local newspapers. The Secretary of State has applied 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, which is an essential element of any effectively operating local democracy.

The Secretary of State has also carefully considered all the circumstances of this case involving the London Borough of Hackney. As set out below, his provisional view is 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. 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.

The London Borough of Hackney has stated in its letter of 18 May 2016, that officials have not made the Secretary of State aware of the previous correspondence in relation to this matter. For the avoidance of doubt the Secretary of State has carefully considered all the representations received from the London Borough of Hackney in relation to this matter to date including the representations made in the meeting of 17 August. His provisional view is 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 London Borough of Hackney argue, in their representation of 9 October 2014, that it is not "self-evident" that the existence of local authority newsheets makes for an environment less conducive to the flourishing of an independent press, with less need or incentive to buy commercial media, and a diversion of advertising revenue. The London Borough of Hackney state in their representation of 9 October 2014 that there is no classified advertising in 'Hackney Today' and argue the Government policy is inconsistent as Councils are encouraged to seek digital advertising on their websites. The Secretary of State disagrees with the London Borough of Hackney. His provisional view is that it is possible that more or wider circulating local newspapers would be available in the borough if there were no Council newspaper. This is because if 'Hackney Today' was produced on a quarterly basis some of the advertising that it currently takes would potentially be available to other local media, and other markets would probably develop for alternative media that would otherwise have been deterred by the existence of a Council newsheet published every fortnight. The Secretary of State does not accept that the Government policy is inconsistent, as the policy intends to create 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.

The London Borough of Hackney argue in their representation of 29 April 2014 that fortnightly publication has important community functions and serves the purpose of dissemination of information for the benefit and cohesion of the community. The Secretary of State accepts that 'Hackney Today' delivers some community functions and disseminates information for the benefit and cohesion of the community. However, his provisional view is that this does not override the policy as set out in the Publicity Code of limiting the frequency of Council newsheets, 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, places of worship, etc.), social media etc.

The London Borough of Hackney argue in their representation of 9 October 2014 that the Secretary of State has not engaged with the evidence and has not acted rationally as he has assumed that 'Hackney Today' has an adverse effect on the commercial press when the evidence does not support this. The Secretary of State does not accept the Council's arguments that he has not acted rationally or that he has not engaged with the evidence. In determining whether or not it is appropriate to consider exercising the power under section 4A of the 1986 Act, the Secretary of State has carefully considered the evidence at each stage of the decision making process, and will continue to do so going forward as appropriate. The Secretary of State accepts that the impact on the independent press in Hackney may not be easy to assess. However, his provisional view is that this does not override the policy as set out in the Publicity Code of limiting the frequency of Council newsheets, 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, places of worship, etc.), social media etc.

The London Borough of Hackney argue in their representation of 9 October 2014, that even if there were an impact on the independent press it would be minimal and so it would not justify the adverse consequences of publishing 'Hackney Today' on a quarterly basis, which they include as additional public expenditure of £100,000 per year and greater difficulty in providing information to those who need it, including those subject to digital exclusion and protected groups for the purposes of the Equality Act 2010. The London Borough of Hackney calculate in their representation of 29 April 2014 that it would cost £185,000 to produce, print and distribute a quarterly publication, £196,500 to publish statutory notices in the 'Hackney Gazette' and £40,000 to design, print and distribute four A4 leaflets to every home in Hackney. Even if the "adverse consequences" were as the London Borough of Hackney describe, and the Secretary of State is not convinced of these arguments, the Secretary of State's provisional view is that this does not override the Publicity Code'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. This is because the flourishing of an independent and politically free local media is an essential component of any local democracy. The Secretary of State recognises that it may be the case that communication with the community, including groups that display protected characteristics, would be more effective via a physical publication. However, much of the information in 'Hackney Today' could be delivered through a quarterly publication, supported as appropriate with other communication channels. The Secretary of State's provisional view is that communication by a quarterly publication will continue to effectively reach the community, while following the Publicity Code'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 careful regard to the potential equalities impact of what is proposed (see enclosed Equality Statement).

The London Borough of Hackney argue in their representation of 9 October 2014, that the Secretary of State could not rationally conclude that any negative effect on the independent press was greater than the positive impact of the revenue derived from printing 'Hackney Today'. The Secretary of State does not accept the Council's arguments that he has not acted in a rational manner. Whilst the Secretary of State accepts that the impact on the independent press in Hackney may not be easy to assess, his provisional view is that this does not override the policy as set out in the Publicity Code 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.

The London Borough of Hackney argue in their representation of 9 October 2014 that a direction would not be proportionate as there is no basis for saying that to do so would make any non-negligible contribution to the aim of fostering an independent press. The Secretary of State does not accept the Council's arguments that a direction would not be proportionate, as his provisional view remains that it is possible that more or wider circulating local newspapers would be available in the borough if there were no Council newspaper. This is because if 'Hackney Today' was produced on a quarterly basis some of the advertising that it currently takes would probably be available to other local media, and other markets would probably develop for alternative media that would have otherwise been deterred by the existence of a Council newsheet published every fortnight.

The London Borough of Hackney argue in their representation of 29 April 2014 that to prevent the Council from publishing Hackney Today with the frequency that it would otherwise judge appropriate amounts to an interference with the Article 10 rights of those who would otherwise receive the publication, and that with the cost and limited circulation of print alternatives, and the extent to which Hackney Today carries information which those print alternatives do not, and levels of digital exclusion within the borough, this interference is significant, and it is certainly unjustified. The Secretary of State's provisional view is that the London Borough of Hackney has not produced a convincing argument that such persons would be denied such information, given the alternatives to fortnightly publication, such as 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, places of worship, etc.), social media etc.

The London Borough of Hackney argue in their representation of 9 October 2014 that the "great majority" of local authorities publishing no more than quarterly is not justification for a direction because: authorities may be publishing quarterly even though they do not think it is the best way to proceed; the Secretary of State has not identified all of those authorities publishing newsheets more frequently than quarterly; and the circumstances in areas are not all the same which is why Parliament approved a Code that was not mandatory. The London Borough of Hackney cite in their representations of 9 October 2014 in particular the local factors: the state of the local media; the smaller circulation of alternative media; levels of internet exclusion; diverse population; dense population; and high levels of people feeling informed about their Council, despite high levels of deprivation. The

Secretary of State has considered the particular circumstances of Hackney in coming to his provisional view that communication by a quarterly publication will continue to effectively reach the community, while following the Publicity Code'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 careful regard to the potential equalities impact of what is proposed (see enclosed Equality Statement).

The London Borough of Hackney argue in their representation of 9 October 2014 that to publish the high volume of statutory notices that are required in Hackney in other newspapers would cost more and reach fewer households, which is irrational and indefensible and the Secretary of State has not taken account of a relevant consideration. The Secretary of State has considered the particular circumstances of Hackney and accepts that it could be the case that to publish statutory notices in the local media could cost more and reach fewer households, but his provisional view is that this does not outweigh the Publicity Code'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, and so protecting local democracy.

The London Borough of Hackney argue in their representation of 29 April 2014 that to publish the statutory notices in a local newspaper would be unlawful because of the implications regarding State Aid. The Secretary of State does not accept this argument, and in particular has noted 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 London Borough of Hackney argue in their representation of 9 October 2014 that to reduce publication to quarterly would have an adverse impact upon a number of groups with protected characteristics as it would greatly hamper their ability to get regular, timely information about services and local opportunities to those who most need it (public sector equality duty). The Secretary of State has considered the particular circumstances of Hackney in coming to his provisional view that communication by a quarterly publication will continue to effectively reach the community, while following the Publicity Code'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 careful regard to the potential equalities impact of what is proposed (see enclosed Equality Statement).

The London Borough of Hackney argue in their representation of 29 April 2016 that the Secretary of State's assessment of the impact of his provisional decision on his public sector equality duty is flawed as the particular circumstances of Hackney mean that alternative means of communicating will be less effective. They also argue he has ignored the particular circumstances of Hackney by referring to quarterly publication elsewhere; and any disadvantage could not be outweighed by the overriding policy of supporting the local media when there is no evidence that

moving to quarterly publication will have a tangible impact on the local media. Furthermore, the London Borough of Hackney argue in their representation of 9 October 2014 that the lack of an equality impact assessment is a failure on the part of the Secretary of State to consider the issues properly. The Secretary of State has considered the particular circumstances of Hackney and recognises that it may be the case that communication with the community, including groups that display protected characteristics, would be more effective via a physical publication. However, much of the information in 'Hackney Today' could be delivered through a quarterly publication, supported as appropriate with other communication channels. The Secretary of State's provisional view is that communication by a quarterly publication will continue to effectively reach the community, while following the Publicity Code'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 careful regard to the potential equalities impact of what is proposed (see enclosed Equality Statement). As before, the Secretary of State's provisional view remains that it is possible that more or wider circulating local newspapers would be available in the borough if there were no Council newspaper. This is because if 'Hackney Today' was produced on a quarterly basis some of the advertising that it currently takes would probably be available to other local media, and other markets would probably develop for alternative media that would otherwise have been deterred by the existence of a Council newsheet published every fortnight.

The London Borough of Hackney argue in their representation of 29 April 2014 and 9 October 2014 that for reasons connected with the employment of staff any direction ought not to take effect until six months after it was given. The Secretary of State does not accept these arguments or consider that the Council has provided enough evidence to justify their assertions regarding the employment of staff.

The London Borough of Hackney argue in their representation of 9 October 2014 that the proposed direction would be unlawful as there is no power under section 4A(3) of the 1986 Act for the Secretary of State to direct that the Council should consider any direction given in any particular manner or at or within any particular time. The Secretary of State does not accept the Council's arguments that making the proposed Direction would be unlawful. The power under section 4A(3) of the 1986 Act allows the Secretary of State to make a direction that specifies the steps that an Authority that is given it must take to comply with it and the time within such an Authority must comply with it.

The London Borough of Hackney argue in their representation of 29 April 2014 that the Secretary of State demonstrated bias and predetermination in the nature of his announcement. The Secretary of State does not accept the Council's arguments. In determining whether or not it is appropriate to exercise the power under section 4A of the 1986 Act, the Secretary of State has carefully considered the matters at each stage of the decision making process.

Representations of the Secretary of State's proposals

The London Borough of Hackney may make written representations to the Secretary of State about the proposed direction within the period of 14 days beginning with the

date of this notice. Representations received by the Department may be subject to a request under the Freedom of Information Act 2000. Under the Freedom of Information Act 2000, there is a statutory Code of Practice with which public authorities must comply and we cannot give an assurance of confidentiality in all circumstances.

Any representations should be sent to the Department for Communities and Local Government at ConductCode@communities.gsi.gov.uk.

Signed by authority of the Secretary of State

A POWELL

A senior civil servant in the Department for
Communities and Local Government

2 December 2016