

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

On 25 September 2014 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 Newham (“London Borough of Newham”) notice of a direction that he proposed to give to the authority under section 4A of the Local Government Act 1986 (“the 1986 Act”).

Having carefully considered the representations received from the London Borough of Newham, and having regard to that, information available to him about the London Borough of Newham’s publicity, and the enclosed Equality Statement, the Secretary of State hereby gives further notice to the London Borough of Newham of a direction that he proposes to give to the London Borough of Newham under section 4A of the 1986 Act. This notice replaces the notice of 25 September 2014.

The Secretary of State proposes to direct the London Borough of Newham to comply as soon as practicable and in any event by 30 April 2015 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.

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

“Where local authorities do commission or publish newsletters, newsheets 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 Newham 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 Newham. 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 Newham argue there is no evidence of unfair competition or that the frequent publication of the ‘Newham Mag’ damages the local independent media. The London Borough of Newham argue that the ‘Newham Mag’ is published

in magazine format to distinguish it from local newspapers and provides custom to local printers and distributors. They also say that it is used by other public sector bodies to disseminate information and avoids competition with the local press as it does not accept high value advertising (property for example) or even advertising of Council jobs. The London Borough of Newham explain that the 'Newham Mag' is published and distributed by local businesses, and that in the last seven years the London Borough of Newham has spent over £1.2m placing statutory notices and recruitment adverts in the local press. The Secretary of State accepts that the impact on the independent press in Newham 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 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, targeted leaflets in Council and local partners' buildings (libraries, children's centres, schools, doctors' surgeries, churches, etc.), social media etc. In addition, if the 'Newham Mag' 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 could have developed for alternative media that would otherwise have been deterred by the existence of a Council newssheet published every fortnight.

The London Borough of Newham argue that with a print run of 107k, delivered to 98k households as well as libraries, leisure centres and other high footfall centres, the 'Newham Mag' is intended to increase public information about Council services. The London Borough of Newham argue that the paid for circulation of the 'Newham Recorder' is below 5,000. The London Borough of Newham argue that to publish the 'Newham Mag' quarterly would not be cost effective and publishing statutory notices in the Newham Recorder would only reach part of the population. The Secretary of State has carefully considered the argument 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 newssheets, and so protecting local democracy. 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, newssheets or similar communications.

The London Borough of Newham argue that they are the most diverse local authority area in England and also one of the most deprived local authority areas in England, with a high level of population churn, which is an important reason for frequent publication. The London Borough of Newham argue that a fortnightly magazine, making effective use of pictures to assist the 40% of the population of Newham that do not have English as their first language, is appropriate in their circumstances, including that information placed on the London Borough of Newham's web site is much less likely to reach the "digitally excluded". The Secretary of State has carefully considered the circumstances of this case involving the London Borough of Newham and reviewed the London Borough of Newham's representations of 29 April and 10 October 2014 and 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 newssheets. 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 the 'Newham Mag' 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 newssheets, 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 the enclosed published Equality Statement).

The London Borough of Newham argue that they have calculated that to run equivalent paid-for advertising in the local newspaper would cost the council approximately an additional £420,000 per annum and that any financial saving incurred by publishing the 'Newham Mag' less frequently would be offset by the cost of disseminating information by other means. Even if this were to be the case, 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 newssheets. This is because the flourishing of an independent and politically free local media is an essential component of any local democracy.

The London Borough of Newham argue that the Secretary of State has not had regard to the format and content of the 'Newham Mag'. The Secretary of State does not accept the Council's arguments as he has had regard to both the format and content of the 'Newham Mag'. The Secretary of State carefully considered the matters at each stage of the decision making process, including reviewing the Borough of Newham's representations of 29 April and 10 October 2014.

The London Borough of Newham argue that they have not had the opportunity to carry out a formal equality impact assessment due to the lack of information provided by the Department for Communities and Local Government. The Secretary of State does not accept the Council's arguments and considers that he provided all information necessary at each stage of the process.

The London Borough of Newham argue that making the direction would be unlawful on the basis of procedural unfairness, pre-determination, lack of rationale, lack of factual disclosure, the Secretary of State's position being defective and unlawful because it is a blanket policy, applied to all local authorities regardless of their circumstances, the public sector equality duty, lack of evidence on the impact of council newsletters on the independent press and the terms of the legislation. The Secretary of State does not accept the Council's arguments that making the proposed Direction would be unlawful. In determining whether or not it is appropriate to exercise the power 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 London Borough of Newham's representations of 29 April and 10 October 2014 and producing an Equality Statement in order to establish

whether by exercising his powers, the objectives in section 149 of the Equality Act 2010 will or might be affected.

Representations of the Secretary of State's proposals

The London Borough of Newham may make written representations to the Secretary of State about the proposed direction within the period of 14 days beginning with the day on which this notice is given to it. Representations received by the Department may be subject to a request under the Freedom of Information Act 2000. Under the Freedom of Information Act, 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

P ROWSELL

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

10 March 2015