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Mr Paul Rowsell  
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Dear Mr Rowsell

Further to our letter of 20 March 2015, these are the representations of Hackney Council ("the Council") in response to the Secretary of State's further notice of a proposed direction under section 4A of the Local Government Act 1986, dated 10 March 2015.

The Council's general position has already been made clear in its representations of 29 April 2014 and 9 October 2014. The Council continues to rely upon the content of those representations, and will also rely as necessary and relevant upon the factual points made in representations by other authorities, in particular as to what the evidence shows about the impact, or otherwise, of local authority newsheets upon local commercial newspapers.

The "reasoning" now contained in the Secretary of State's notice is essentially formulaic. It does not engage in any meaningful way with the substance of the Council's arguments. Instead, it for the most part simply recites those arguments, says that the Secretary of State does not accept them, and then expresses the "provisional view" that, whatever factual points the Council has made, they do not "override the policy as set out in the Publicity Code".



There is almost nothing in the Secretary of State's reasoning which engages directly with the specific factual circumstances of Hackney, this Council, or *Hackney Today*. Indeed, from what the Council has seen, the Secretary of State's essential reasoning appears to be purely generic in nature, and very much the same has been said to the other authorities which have now received a direction or a further notice.

This approach is not legitimate. Under the 1986 Act as amended, Parliament has deliberately not made compliance with the Code (or any particular provision within it) a mandatory requirement. Rather, it is simply a code of practice to which local authorities must have regard. If the Secretary of State wishes to introduce a general obligation upon authorities, or authorities of a specified description, to comply with the Code or a particular provision of it, then the only permissible way of achieving that is through the making of an order under s 4B, which requires an affirmative resolution of each House of Parliament.

It follows that any approach by the Secretary of State to the giving of directions under s 4A which is not based upon the particular circumstances of the authority concerned, but simply seeks to give effect to a general policy that there should be compliance with the Code, represents the use of the s 4A power for an impermissible purpose. The Council also makes the following additional points.

#### Lack of evidence of impact upon local newspapers

The Secretary of State's notice contains no such evidence, and in effect admits that none exists.

The Secretary of State suggests that it is "possible" that more or wider circulating local newspapers would be available in the borough if there was no Council newspaper. As the Secretary of State himself appears to accept, this is no more than speculation (and nor does the Secretary of State have any power to decree that there should be no Council newspaper at all).

The Secretary of State now also suggests that if *Hackney Today* was produced quarterly, "other markets would potentially develop for alternative media that would otherwise have been deterred". The Council does not know what markets or what media the Secretary of State has in mind, and Mr Rowsell has refused to explain what is meant. The Council is therefore unable to address any representations to this suggestion, and assumes that the Secretary of State will place no reliance upon it when any decision comes to be taken.

Whilst the evidence shows that there has been a decline in the fortunes (in terms of circulation and advertising revenue) of some existing titles, which is clearly due to changing public habits in terms of where they obtain news and other information, and to



the loss of traditional forms of large-scale advertising to online sources, it is also that this has not prevented the existence of flourishing independent, politically free local media in newer forms. Whether one looks at the matter from the perspective of the wider factors which are causing decline for some local commercial newspapers, or from the perspective of the opportunities which evidently exist for new local media to become established, there is simply no evidence of any correlation with the existence or frequency of publication of local authority newsheets generally or *Hackney Today* in particular.

The Council also finds it impossible to understand the Secretary of State's response to the suggestion that there is an inconsistency between his attitude to advertising in a local authority newspaper on the one hand (which is apparently regarded as unfair competition), and on the other hand his encouragement (not denied as a matter of fact) of authorities seeking to sell advertising on their websites and in other formats. If the Secretary of State's view is that the overriding imperative is to prevent anything which might involve any conceivable diversion of advertising revenue from other local media to a local authority, then there is no reason to exclude website advertising, which is likely to compete much more directly than anything in *Hackney Today* with the digital advertising which is now likely to be a mainstay of local commercial media.

In any event, the idea that *Hackney Today* is diverting advertising which would otherwise make a material contribution to the diversity or circulation of other local media is unsupported by any evidence, and is unsustainable when the true facts are examined.

In the financial year 2014/15, 91.32% of the external advertising in *Hackney Today* came from public sector and third sector partners – NHS City & Hackney, education providers, housing associations and charities. They choose to advertise in *Hackney Today* precisely because it offers door to door distribution which serves their particular public purposes, and because its content (public sector service news and community events) fits in with their own messages – for example, the editorial on the health pages is a key factor behind NHS bodies advertising there. By contrast, the declining readership and poor circulation of the *Hackney Gazette* are unattractive to public sector advertisers, who are seeking to reach the maximum number of residents (and not just those in particular income groups, for example). It is simply not realistic to suppose that a material portion of this advertising would find its way into local commercial newspapers if it was no longer placed in the Council's newspaper. *Hackney Today* does not carry classified advertising, or property advertising, and very few job advertisements. It does not undercut the commercial press (its advertising rates are significantly higher than those of the *Hackney Gazette* or *Hackney Citizen*). As we have pointed out before, *Hackney Today* does not seek out private sector advertising precisely because we have no desire to compete with the independent local press. In fact, nearly three-quarters of the private sector advertising revenue of *Hackney Today* is accounted for by the statutory advertisements that must be placed if a business wishes to apply for or change its premises or alcohol



licence. In 2010 the Council increased the cost of these licence notices to ensure that it was not undercutting the *Hackney Gazette*. We also ensure that anyone who places a licence notice in *Hackney Today* is aware that they have the option to place it in the *Gazette* instead. Since the purpose of such notices is to bring the applications in question to wide public attention, it is hard to see why the Secretary of State would favour forcing them into a publication with a substantially lesser circulation. We note that, at a meeting with the managing editor of the *Hackney Gazette* in June 2014, he acknowledged that, even if *Hackney Today* were to cease publication and the *Gazette* were to receive the income from statutory notices, it is highly unlikely that Archant Group would invest in adopting a model of free door-to-door delivery.

If that is indeed the Secretary of State's intention, then (as with statutory notices) it is apparent that the real effect of a direction (and perhaps its intention) will be to create a wholly artificial source of income for local commercial newspapers, and in some cases an effective monopoly. Quite apart from issues of state aid, that has nothing to do with the stated purpose of the quarterly publication provisions of the Code when they were introduced, namely to prevent unfair competition. The Secretary of State has conspicuously failed to explain why, even if *Hackney Today* was competing with local independent media (which, given its content and its advertising policy, it is not), there would be anything unfair about such competition.

### Alternative means of communication

The Secretary of State's notice asserts in several places that much of the function of *Hackney Today* could be delivered by a quarterly publication "supported as appropriate with other communication channels".

This is entirely unrealistic, and is not a conclusion that could sensibly be reached by any Minister having due regard to the public sector equality duty in particular. It is apparent that what is said about this in the equality statement produced by the Secretary of State is largely generic, and makes no attempt at a practical or realistic assessment of how such an approach would actually work (or not) in the context of a borough with Hackney's characteristics – despite the admission that some protected groups will have less ready access to information about public services, if the frequency of *Hackney Today* is reduced to quarterly.

At the moment, Ipsos MORI survey evidence from 2013 suggests that 71% of Hackney residents feel well informed about the Council and its services, 17% higher than the national average, and that 75% of those "informed" residents read *Hackney Today*. The Secretary of State suggests that the loss of this regular channel of communication could be mitigated by measure such as placing information in locations such as children's centres and libraries, as well as using digital means of communication. But the Secretary of State has produced no evidence to show that such information channels are effective,



and Hackney's own research suggests the contrary.

The 2013 Ipsos MORI report states that Hackney's residents who lack internet access are clear in their preference for *Hackney Today* as the primary source of information about the Council. Of this group, 28% say this is how they would prefer to get information, as compared with only 14% who say that they would prefer to receive information through a local library, leisure centre or council-run facility. Quite apart from the cost of paid-for advertising, twice as many of the digitally excluded group identified *Hackney Today* as their preferred source of information as identified the *Hackney Gazette* (and none cited the *Hackney Citizen* in this connection).

The Secretary of State's preferred methods also fundamentally misunderstand the nature of social exclusion. To use children's centres as a method of distributing information, for example, is of no use to those residents who are currently unaware of children's centres and what they can offer to their families. Getting mothers and families from excluded socio-economic groups (many of whom will contain a high proportion of persons drawn from protected groups under the Equality Act) to engage with and use children's centres is one of the biggest challenges faced by children's services professionals in Hackney, and *Hackney Today* is a vital tool for reaching these people. For example, in the last month *Hackney Today* carried a leaflet advertising government-funded free child care places for 2 year olds from deprived households. The Council has struggled to fill its free 2 year old places, precisely because the families who need them are so hard to reach. Hackney's Family Information Service reported a huge increase in enquiries following the leaflet, and described it as "more successful than any other channel we have used, because it goes into everybody's home".

The very nature of its population and high levels of deprivation mean that the Council has a lot of information of this kind to distribute. A quarterly publication would not be sufficient, especially when it comes to advertising the regular events that reach out to protected groups in the borough. As has already been pointed out to the Secretary of State, Hackney Age Concern (for example) is concerned that older people would miss out on regular event listings.

It is, with respect, nonsense to suggest that a fortnightly publication delivered to residents' own homes could be effectively replaced by a pile of leaflets or a poster in a doctors' surgery or a community centre. The Secretary of State has produced no evidence in support of such a proposition, and does not appear to have made any effort to carry out any factual investigation into the issue (whereas the Council carries out regular independent evaluation and research on the effectiveness of its information channels).





Further, this kind of “targeted” material is inevitably a far more expensive means of communicating information. Designing and printing individual leaflets and posters, and distributing them to information points across the borough, costs in the order of £1000 per leaflet. If this means was used to provide as much regular information as is currently provided in *Hackney Today*, the costs would run into tens of thousands of pounds each year. Nor does material “targeted” at, for example, older people do anything to help them to find out about all the services and events which may be of interest but which are not specifically aimed at that group (such as community festivals, or local history lectures), and this adds to marginalisation and social exclusion.

The Secretary of State has also accepted that forcing the Council to publish statutory notices in other local media could (the Council would say, “inevitably would”) cost more and reach fewer people. At a time of acute financial austerity, it is indefensible and irrational to force a local authority into spending more money on a less effective means of communication. Although the Secretary of State has suggested that he is “not convinced” by the Council’s arguments about the costs of alternative means of communication, he has (again through Mr Rowsell) refused to explain why, and therefore the Council is again placed in a position where it cannot address effective representations on the point. The Secretary of State has similarly failed to offer any reasons for rejecting the Council’s arguments as to the time necessary for bringing about an orderly move to quarterly publication.

The Council is aware that the Secretary of State is currently undertaking pilot schemes exploring alternative methods of publishing statutory notices. There can be no good reason, especially given the length and frequency of the Secretary of State’s own delays after each successive previous notice, for issuing a precipitate direction to force the Council into paying large sums for an ineffective means of publication of such notices, before those pilots have been concluded and the results analysed and any resulting changes made. It may very well be that changes in this respect would allow *Hackney Today* to be published less frequently than at present, whilst still regularly enough to meet the communications objectives referred to above.

### Proportionality

Since there is no evidence at all of *Hackney Today* having any material impact upon other local media, to set against the acknowledged detrimental consequences of insisting upon quarterly publication, such insistence must necessarily be disproportionate.

Further, it is clear from the way in which the Secretary of State has proceeded, and from the latest correspondence with Mr Rowsell, that the Secretary of State does not consider it necessary to issue directions to authorities which publish newsheets more than quarterly but less than fortnightly. If that is the case, and the Secretary of State has not seen it necessary to take action against those Councils of whom he is aware that publish





monthly, then it cannot be proportionate to issue a direction to this Council which restricts it to quarterly publication, whilst allowing those others to continue at a monthly frequency.

Equally, if the Secretary of State's concern is with advertising revenue (as now seems to be the case), the proportionate approach would be to impose some appropriately targeted restrictions upon what paid-for advertisements a local authority newspaper could accept. In the case of Hackney, such restriction could be that Hackney Today should only publish paid-for advertisements less frequently than Hackney Gazette.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gifty Edila'.

Gifty Edila  
Corporate Director for Legal, HR and Regulatory Services

