



Department for  
Communities and  
Local Government

# Protecting the Independent Press from Unfair Competition

Government response to the consultation

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# Introduction

1. On the 8 April the Government issued a consultation document on proposals to protect the independent press from unfair competition by introducing legislation providing the Secretary of State with powers to make directions requiring one or more local authorities to comply with some or all of the Code of Recommended Practice on Local Authority Publicity's (the "Publicity Code's") recommendations. The consultation ended on 6 May 2013. This document sets out the Government's response to that consultation.

## The context

2. Section 4 of the Local Government Act 1986 provides that the Secretary of State may issue codes of recommended practice on local authority publicity. That section also provides that local authorities must have regard to any such code that is applicable to them when taking decisions on publicity.
3. On 31 March 2011 the Secretary of State issued a new Publicity Code<sup>1</sup>. This Code replaced earlier Publicity Codes that were applicable to local authorities in England. It was issued after both Houses of Parliament had approved a draft of the new Code, this draft being prepared following a public consultation initiated in September 2010, and reflecting recommendations of the Communities and Local Government Select Committee's Inquiry into the Publicity Code undertaken during the first Session of this Parliament.
4. The new Publicity Code applies to all local authorities in England specified in section 6 of the 1986 Act, and to other authorities in England which have that provision applied to them by other legislation. These local and other authorities include county and district councils in England, London Borough councils, parish and town councils, national parks authorities, the Broads Authority, and the Manchester Combined Authority.
5. The origin of this new Publicity Code is the Coalition Agreement, Our Programme for Government, commitment for the Government to "impose tougher rules to stop unfair competition by local authority newspapers" and the general election manifestoes of both Coalition parties. Such unfair competition, funded by the local taxpayer, can prove damaging to the continued sustainability of local, independent, commercial newspapers that are an important element of effective local democracy.
6. The new Publicity Code therefore, includes specific guidance about the frequency, content and appearance of local authority newspapers, including recommending that principal local authorities limit the publication of any newspaper to once a quarter and parish and town councils limit their news letters etc. to once a month.

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<sup>1</sup> Communities and Local Government Circular 01/2011: Code of Recommended Practice on Local Authority Publicity, issued 31 March 2011:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5670/1878324.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5670/1878324.pdf)

The new Code also represented a major reshaping of the earlier Codes, for clarity grouping the guidance under seven principles. These principles are that local authority publicity should be lawful, cost effective, objective, even-handed, appropriate, have regard to equality and diversity, and be issued with care during periods of heightened sensitivity.

7. The majority of local authorities comply fully with the Publicity Code's recommendations. It is, however, a matter of concern to the Government that there are still cases where this is not so – for example, continuing cases where there are weekly publications of council newspapers, or concerns about the political character of a council's publicity. Local taxpayers and electors should be able to be confident that the statutory framework for local government provides an effective safeguard against any council using taxpayers' money inappropriately or acting in a manner potentially damaging to others – the independent press – who have important roles in a democratic society.
8. Accordingly, in the Structural Reform Plan for the Department for Communities and Local Government<sup>2</sup>, the Government included a commitment to give greater force to the Publicity Code by putting compliance on a statutory basis by providing the Secretary of State with a power to make a direction requiring compliance with some or all of the Publicity Code's recommendations. In this way local commercial newspapers would be protected from unfair competition from municipal publications. The Plan indicates the intention to introduce legislation in May 2013.

## The consultation

9. In April 2013 a consultation document<sup>3</sup> was issued setting out in some detail the approach the Secretary of State intended to take with the legislation and seeking views on the following three questions:
  - **views on the proposed legislation are invited, and in particular do consultees see the proposals as fully delivering the commitment to give greater force to the Publicity Code by putting compliance on a statutory basis?**
  - **if there is alternative to the power of direction, how will this meet the aim of improved enforcement of the code?**
  - **this consultation invites evidence of the circumstances where the code was not met and the implications of this on competition in local media**

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<sup>2</sup> Business Plan 2012 to 2015, Department for Communities and Local Government, 31 May 2012:  
<https://www.gov.uk/government/publications/dclg-business-plan-2012-to-2015>

<sup>3</sup> Protecting the Independent Press from Unfair Competition: Consultation, 8 April 2013:  
<https://www.gov.uk/government/consultations/protecting-the-independent-press-from-unfair-competition>

10. The document explained that the Local Government Association and the National Association of Local Councils were being consulted on the three questions, and that the attention of all principal councils in England, the Newspaper Society and local newspapers were being drawn to the consultation. The document, which was available on the Government's web site, also made clear that it was open to all to make representations on the proposals, which would be carefully considered.
11. The Local Government Association and the National Association of Local Councils both responded to the consultation. Responses were also received from the Newspaper Society, from two local newspapers, 68 principal councils and from 46 others including journalists, councillors, and members of the public.
12. A wide range of views were expressed in response to the consultation. There was strong support for the proposals from some who considered that action was urgently needed to protect the independent local press and to ensure that councils do not use taxpayers' money for publications of a political character. Others, on the other hand, considered the proposals were unnecessary and could inhibit the ability of local authorities to communicate.

## The Government's response to the consultation

**Question 1: views on the proposed legislation are invited, and in particular do consultees see the proposals as fully delivering the commitment to give greater force to the Publicity Code by putting compliance on a statutory basis?**

13. Having carefully considered the responses to the consultation, the Government remains satisfied that its proposed approach is appropriate, proportionate, and will deliver fully the commitments that it has given to put compliance with the Code's recommendations on a statutory basis. This will both enable local newspapers to be protected from unfair competition, and ensure that in future effective action can be taken should any council be considering publicity that is of a political or tendentious character.
14. The Government notes the strongly divergent views of respondents. It does not accept the views of the Local Government Association, and others with similar views, that not only is the direction based approach to the legislation wrong, putting too much power in the hands of one ministerial office holder, but also the very commitment to put the Code on a statutory basis is unnecessary and completely disproportionate. The Government believes that arguments that putting compliance with the Code on a statutory basis is a threat to local democracy and will inhibit elected councillors from representing their residents are simply wrong.
15. First, by far the majority of councils already follow the recommendations of the Code and there are no suggestions that in their areas local democracy is under threat or that elected councillors are unable to represent their residents. Secondly, the Code's recommendations have been debated and approved by both Houses of Parliament, and whilst a range of views on the Code's provisions were expressed during those debates, their whole tenor was that if the Code's provisions were

approved councils would follow them. Any future direction requiring compliance will be enforcing provisions that Parliament has approved. Thirdly, the importance of protecting the independent local press from unfair competition cannot be overstated: as Lord Justice Leveson commented, much of this press is under enormous pressure and its demise would be a huge setback for communities.

16. In short, the Government believes that its proposed legislation on the Code will reinforce genuine localism – empowering local people and communities - by helping maintain that independent local press which has a unique role in ensuring the accountability and transparency of councils and other local public bodies. In its Mid-Term Review the Government restated its commitment to put counties, cities, towns, villages, neighbourhoods and citizens in the control of their own affairs; accountability is a central part of that process, and a sustainable independent local press is an integral part of such accountability.
17. Accordingly, the Government welcomes the support of the Newspaper Society for its proposed legislation on the Code. The Government notes with concern the information provided in that Society's response to the consultation about the regular – weekly or fortnightly - publications of a number of councils and their overt competition for advertising revenues which the Society see as siphoning off the primary source of revenue which enables independent local journalism to hold authorities to account on behalf of local people. In the Society's view this causes real damage to local newspapers, and should be stopped as a matter of urgency. The Government, as has Lord Justice Levenson, recognises there is substance to the case that the local press is under pressure, and hence confirms its commitment to put compliance with the Code's recommendations on a statutory basis and remains satisfied that its approach to the proposed legislation is right.
18. The Government also notes the concerns of certain respondents, for example the Taxpayers' Alliance, about the overt political or tendentious character of some councils' publicity. These concerns include those about some council newspapers which it is suggested are blatant political propaganda and clearly not an appropriate use of taxpayers' funds. By putting the Code on a statutory basis these matters will be able to be effectively addressed, particularly as the proposed direction making power can be used to require compliance with all or any of the Code's recommendations, not just those about council newspaper publications.

**Question 2: if there is alternative to the power of direction, how will this meet the aim of improved enforcement of the code?**

19. The Government considers that the consultation exercise has not revealed any effective alternative to the power of direction for improving the enforcement of the Code. Some consultees, particularly the Newspaper Society and others connected with the newspaper industry, strongly support the proposed approach, seeing no alternative. In contrast, the Local Government Association and most respondents from that sector suggest that the Code should remain in its present non-statutory form, and refer to the fact that if an authority simply disregards the Code it is open to citizens to seek redress either through the ballot box or by judicial review. In the Government's view, experience to date, where some councils continue to to

disregard the Code's recommendations on the publication of council newspapers, is a clear demonstration that currently enforcement is simply inadequate.

**Question 3: this consultation invites evidence of the circumstances where the code was not met and the implications of this on competition in local media**

20. In its response the Newspaper Society draws attention to a number of examples of where councils are not complying with the Code's recommendations; to examples of external advertising being published in council newspapers; and to examples of councils having policies for soliciting advertisements which otherwise have been placed in local newspapers. In the Society's view, council newspapers continue to compete with independent local newspapers for private and public sector advertising, which is the lifeblood of independent local newspapers. Given the financial fragility of much of the local press, which Lord Justice Leveson accepted as a reality, the Newspaper Society considers that the case has clearly been made that the unfair competition from council newspapers causes real damage to local newspapers.
21. Those opposed to the proposed approach and to the commitment to put compliance with the Publicity Code on to a statutory basis suggest, as does for example the Local Government Association, that there is no evidence that in the circumstances where the code has not been met this has had a negative impact on local media. Whilst accepting that local newspapers are under commercial pressure, it is suggested that this is due to a variety of developments changing the reading habits of the public. In the Government's view, these arguments do not address the simple fact that if revenues are siphoned off from a fragile industry by taxpayer-backed competition, this necessarily puts the continuation of that industry at risk, in the case of local newspapers an industry vital to a healthy local democracy.
22. In short, the Government is clear that the information and representations which it has received from this consultation reinforces its views that action to address non-compliance with the Code is fully justified. That there are currently relatively few cases of such non-compliance does not argue that it should be ignored. If left unaddressed there is the risk that these practices, damaging to the independent local press, could become more widespread, particularly as many in the sector would appear from the consultation not to accept just how damaging to the independent local media these practices can be.