



Department for Communities and Local Government

Mr John Comber
Chief Executive
The Royal Borough of Greenwich
Woolwich Town Hall
Wellington Street
Woolwich
London
SE18 6PW

Via email
chief.executive@royalgreenwich.gov.uk

3 March 2015

Dear Mr Comber,

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 Council of the Royal Borough of Greenwich (“the Authority”) 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. The Authority is also directed to comply from 31 March 2015, and for the executive of the Authority within 14 days to take the necessary decisions to be able to achieve compliance from 31 March 2015 onwards.

3. 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.

¹ From paragraph 28 of the Publicity Code.
Paul Rowsell
Deputy Director - Democracy
Department for Communities and Local Government
NE Quadrant, 2nd Floor, Fry Block
2 Marsham Street
London SW1P 4DF

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. The Authority publishes 'Greenwich Time' on a weekly basis with a break in publication over the Christmas and New Year period. There are 50 editions each year, far in excess of the recommended four.

6. The Secretary of State gained these direction making powers in the Local Audit and Accountability Act 2014 ("the 2014 Act"), containing amendments to 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. 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 31 March 2015, having had a year in which to consider its position.

7. The Secretary of State takes his direction making powers under section 4A of the 1986 Act very seriously, only exercising them when he considers it absolutely necessary, and 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. The Authority has not provided any representations in response to this aspect of the Direction.

The Directions

Direction in relation to publishing 'Greenwich Time' no more frequently than quarterly

8. *Representation received:* The Authority argue there is no evidence that 'Greenwich Time' has had an impact on local newspapers, and cite a "strong local newspaper market, with two well-established local papers, several community newspapers and a new Greenwich Town Mercury". The Authority point out that the advertising policy of 'Greenwich Time' is designed to prevent competition with the local press.

9. *Secretary of State's position:* The Secretary of State accepts that the impact on the independent press in Greenwich may not be easy to assess. He notes, however, that of the two "well-established local papers" the Authority itself states that "Neither serves more than around 30% of the borough's households", and, whilst he accepts that the Authority dispute this point, 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 on a quarterly basis.

10. 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 'Greenwich Time' 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 weekly.

11. *Representation received:* The Authority argue that as they are not well served by local newspapers in terms of coverage of the whole borough, the frequent publication of 'Greenwich Time' is necessary to allow the Authority to communicate with all their residents, particularly in terms of promoting community cohesion, supporting local businesses, helping deliver the Government's localism agenda and advertising job opportunities and choice based lettings. They add that 'Greenwich Time' is welcomed as a weekly publication by residents, community representatives, charities, and particularly by business for the favourable advertising rates that it offers.

12. It is noted that the Authority, in their representation of 10 February 2015, argue that "The Secretary of State has misunderstood the Council's previous representations. The Council did not say that 'the borough is not well served by local newspapers'". However, the Authority simultaneously makes clear in its representations that neither of the two "well established local newspapers" serve more than 30% of the borough's households, points out that their distribution areas fail to "entirely cover" certain wards in the borough, and that "Neither of the other main newspapers is understood to deliver to new and developing communities". Accordingly, the Secretary of state maintains that he understands this to mean that the Authority has made representation that the borough is not well served by local newspapers in the sense described above.

13. *Secretary of State's position:* The Secretary of State accepts that 'Greenwich Time' 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 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, churches, etc.), social media etc. The Secretary of State further considers that it is not appropriate for council tax payers to effectively subsidise the advertising of local businesses in 'Greenwich Time'. The Secretary of State also notes that in the recent tendering exercise one of the local newspapers stated that it could deliver to 95 per cent of the borough, albeit at an increased cost. With reference to the recent tendering exercise, the Secretary of State would like to make clear, for the

avoidance of doubt, that outsourcing the publication of a weekly newsletter to a third party and paying for “engaging local editorial content which helps to positively inform local residents about the measures that their neighbours and local service providers are undertaking to make the borough a great place to live, work, learn and visit”, would, in his view, represent an action that was contrary to this Direction. Furthermore, such an action could compromise the independent and politically free local media that is an essential component of any local democracy.

14. *Representation received:* The Authority argue that ‘Greenwich Time’ 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, referring to the Authority’s duty to make arrangements to secure best value under section 3 of the Local Government Act 1999. The Authority have advertised a contract for publishing statutory notices, choice based lettings, employment opportunities and other services, and the lowest tender is for £714,036, which represents an increased cost of £249,083, which would represent an increased council tax of £2.31 per annum per household, based on 108,000 council tax properties. The Authority argues that if it were to continue publishing ‘Greenwich Time’ only on a quarterly basis, the increased costs would be considerably more. It also argues that to suggest supplementing a quarterly publication with leaflets, at much greater cost, is not realistic given the financial pressures facing the Authority.

15. *Secretary of State’s position:* The Secretary of State has noted the revised estimate of additional costs that the Authority provides. However, with the limited information presented 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 could cost more and reach fewer households. The Secretary of State has also 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 Secretary of State’s conclusion is that the Authority’s representation about cost and coverage 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, by limiting the frequency of local authority newsheets.

16. *Representation received:* The Authority has referred to its powers as amended by section 4 of the 1986 Act and argues ‘Greenwich Time’ is a useful way for the Authority to comply with their public sector equality duty in providing information concerning local services (including health and community services and significant London events), and it uses ‘Greenwich Time’ to influence the attitudes of local people in relation to health, crime, community cohesion etc. The Authority further argues that as ‘Greenwich Time’ is delivered to the whole borough, it allows the Authority to communicate with those communities that do not receive local newspapers, including in particular residents from black and minority ethnic backgrounds and more deprived areas, and so fulfil its public sector equality duty, including in respect of advancing equality of opportunity and fostering good relations between persons who share a relevant protected characteristic and persons who do not share it.

17. *Secretary of State's position:* The Secretary of State recognises that it may be the case that communication with the community, including groups that have protected characteristics, could be achieved via a physical publication. However, much of the information in 'Greenwich Time' could be delivered through a quarterly publication, supported as appropriate with other communication channels. 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.

18. *Representation received:* The Authority argue that making the proposed direction would be unlawful on various grounds, including ultra vires; that the Secretary of State has failed to take into account the Authority's duty of best value; or the statutory function of providing information under section 142 of the Local Government Act 1972; that the direction would be irrational; that it is procedurally unfair; that it would contravene the public sector equality duty; and that it would be vitiated by bias and predetermination.

19. *Secretary of State's position:* The Secretary of State does not accept the Authority's arguments that making the proposed Direction would be unlawful.

20. 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 a code issued under section 4. The Secretary of State does not agree that it would not be lawful and reasonable 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.

21. The Secretary of State does not accept the argument that the direction is somehow contrary to best value. The best value duty as stated in section 3 of the Local Government Act 1999 is that "A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness". It is a duty on the local authority and not on anyone else. It provides no limitation on how the Secretary of State exercises such functions as he has. The duty itself is about how a local authority exercises its functions. Namely, how a local authority exercises the powers and duties it has. The effect of the direction is to impose a new duty on the local authority, in other words, to give that local authority a new function. The best value duty, rather than in some way limiting the functions of the local authority can be given, comes into play by providing how the local authority must exercise its new function. So in conclusion, there is no possibility

of the Direction giving a function to the local authority that is incompatible with the best value duty, rather best value duty requires the local authority to decide how to exercise the duty the Direction gives it.

22. As to section 142 of the Local Government Act 1972, nothing in the Direction is incompatible with the local authority's exercise of its powers under section 142 of the Local Government Act 1972. Compliance with the Direction, as indeed compliance with the best value duty, may shape how the local authority exercises the discretions it has under section 142, and in practice provides the local authority with the opportunity of exercising its section 142 powers in the way in which the vast majority of local authorities in practice exercise the discretions they have.

23. For the reasons set out above the Secretary of State does not accept that it would be irrational for the Direction to be issued. The Direction would mean that Greenwich would have 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.

24. Finally there can be no question of procedural unfairness. There have been extensive opportunities for the Authority to make representations, all of which have been carefully considered. 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. What is more, comments about political propaganda and town hall Pravda's is not evidence of predetermination (and did not and was not said to apply to the circumstances of this particular Authority) but merely robust rhetoric about the general issues, as is customary in political debate.

25. 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 representations of 29 April 2014, 9 October 2014 and 10 February 2015, 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.

Direction in relation to compliance by 31 March

26. *Representation received:* The Authority argue they would not be able to comply with the Direction as it is highly unlikely that arrangements with a preferred bidder would be up and running by 31 March. They believe that a publicity provider would expect a three month lead in period before the start of a contract.

27. *Secretary of State's position:* The Secretary of State does not accept the Authority's arguments that they would not be able to comply with the Direction within the specified timeframe. Whilst he accepts that procurement processes may delay the appointment of a preferred bidder, this should not preclude necessary action in the short term to secure the placement of statutory notices within the local press. Furthermore, given the Secretary of State has spent the best part of the last 12 months in dialogue with the Authority concerning their compliance with the Publicity Code, he considers they have had ample time to make alternative arrangements. Moreover, the Authority explained in its 9 October 2014 representation that it was tendering a contract for the publication of its statutory notices, choice based lettings, employment opportunities and other services.

28. The results of that tendering process are included in the Authority's representation of 10 February 2015. The Secretary of State considers that this indicates that the Authority is planning to pursue a process of continuing to publish a council newssheet on a weekly basis. This being the case, the Secretary of State considers it reasonable to direct compliance by 31 March 2015.

Direction in relation to the executive of the Authority deciding how to implement the Direction within 14 days

29. *No representations were received:* The Authority did not offer any representations on this aspect of the Direction.

Publication of representations:

30. 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,

Paul Rowsell