

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

On 10 March 2015 the then 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 Waltham Forest (“London Borough of Waltham Forest”) 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 Waltham Forest, and having regard to that, information available to him about the London Borough of Waltham Forest’s publicity, and the published Equality Statement, the Secretary of State hereby gives further notice to the London Borough of Waltham Forest of a direction that he proposes to give to the London Borough of Waltham Forest 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 Waltham Forest to comply as soon as practicable and in any event by 31 January 2017 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 Waltham Forest 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 Waltham Forest. 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.

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 Waltham Forest's representations of 29 April 2014, 9 October 2014 and 24 March 2015 and the Equality Statement produced by the Department for Communities and Local Government in order to consider whether by exercising his powers, the objectives in section 149 of the Equality Act 2010 will or might be affected.

The London Borough of Waltham Forest argue in their representations of 29 April 2014, 9 October 2014 and 24 March 2015 that there is no evidence of unfair competition or that the frequent publication of 'Waltham Forest News' damages the local independent media. They also argue that the assertion of unfair competition is contradicted by the available evidence as the readership for the 'Waltham Forest Guardian' did not suffer from an additional decline when the London Borough of Waltham Forest newsheet, 'Waltham Forest News', increased frequency of publication to 23 times per annum.

They also state in their representations of the 9 October 2014 that the policy on advertising in 'Waltham Forest News' has been designed so it does not compete with the 'Waltham Forest Guardian', and the London Borough of Waltham Forest support the local press through the print contract for 'Waltham Forest News', which is with Trinity Mirror. The Secretary of State accepts that the impact on the independent press in Waltham Forest may not be easy to assess. However, his provisional view is that even if the London Borough of Waltham Forest newsheet has little or no impact on the local press currently available in the borough, 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. This is because if 'Waltham Forest News' 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 local authority newsheet published every fortnight.

The London Borough of Waltham Forest argue in their representations of 29 April 2014 that even if there was an impact on the local media, such impact would be negligible, and the proposed Direction would not be a proportionate response, given the additional costs and impact on groups with protected characteristics. The Secretary of State has already accepted that the impact on the independent press in Waltham Forest may not be easy to precisely assess. However, the Secretary of State does not accept the argument from the London Borough of Waltham Forest that making the proposed Direction would not be proportionate. With reference to additional costs, even if there were the case the Secretary of State is not convinced of these arguments, the Secretary of State's 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. 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 Waltham Forest argue in their representation of 29 April 2014 and subsequent representations that it has regard to the Publicity Code, and publishes 'Waltham Forest News' more frequently than quarterly as this is the most cost effective way for it to meet its duties to publish statutory notices and other material, and so fulfil their best value duty and the provision in the Publicity Code regarding value for money. The Secretary of State accepts that it could be the case that to publish statutory notices in the local media could cost more, 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 Waltham Forest argue in their representation of 29 April 2014 and subsequent representations that to publish statutory notices in the 'Waltham Forest Guardian' would amount to state aid. The Secretary of State does not accept this argument and his provisional view is that arguments around state aid are misplaced. 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 without raising state aid issues.

The London Borough of Waltham Forest argue in their representation of 29 April 2014 and subsequent representations that 'Waltham Forest News' is read and valued by residents and means they are informed, and also allows for the promotion of community events and statutory partners. The London Borough of Waltham Forest also argue that there is no other way for it to effectively reach its diverse population and promote community cohesion whilst reducing the risk of radicalisation. The Secretary of State accepts that 'Waltham Forest News' may have some community functions and it 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 London Borough of Waltham Forest website, advertisements in the local press and targeted leaflets in local authority and local partners' buildings (libraries, children's centres, schools, doctors' surgeries, places of worship, etc), social media etc.

The London Borough of Waltham Forest argue in their representation of 29 April 2014 and subsequent representations that their unique circumstances – relating to the demographics of the population and issues around radicalisation and community cohesion – justify a departure from the Publicity Code's recommendations on frequency. They also argue that the proposed Direction would have a disproportionate adverse impact on various groups with protected characteristics, including women, the elderly and the disabled.

The Secretary of State has also considered the contents of the letter of 19 May 2016 from the Leader of the Council, arguing that Waltham Forest News plays a vital role in enabling the London Borough of Waltham Forest to carry out its Prevent duty and promote cohesion 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 'Waltham Forest News' 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 Waltham Forest argue in their representation of 29 April 2014 and subsequent representations that the proposed Direction would be unlawful on the basis of procedural unfairness, irrationality, bias, breach of section 149 of the Equality Act 2010, and breach of section 6 of the Human Rights Act 1998. The London Borough of Waltham Forest argue that it has had regard to their public sector equality duty in increasing the frequency of 'Waltham Forest News' to 23 times per annum, and in deciding not to move to quarterly publication. The Secretary of State does not accept the London Borough of Waltham Forest'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 Waltham Forest's representations of 29 April 2014, 9 October 2014 and 24 March 2015 and the Equality Statement produced by the Department for Communities and Local Government in order to consider whether by exercising his powers, the objectives in section 149 of the Equality Act 2010 will or might be affected. He has considered the implications of the Human Rights Act 1998 and his provisional view is that it is not a material consideration. This is because people would not be denied that right as they will have other ways of getting the information.

Representations of the Secretary of State's proposals

The London Borough of Waltham Forest 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

Alex Powell
A senior civil servant in the Department for
Communities and Local Government
2 December 2016