

## ROYAL BOROUGH OF GREENWICH

Written representations to the Secretary of State in response to a Notice given under Section 4A(5) Local Government Act 1986 about a proposed Direction

### Background

1 On 29 January 2015, the Secretary of State gave Notice under section 4A(5) Local Government Act 1986 of a proposed direction to require the Council to comply no later than 31 March 2015 with a provision of the Recommended Code of Practice on Local Authority Publicity, namely that local authority publications should not be issued more frequently than quarterly. The Secretary of State also proposes to direct the Council's executive to consider the direction within 14 days.

2 The Notice superseded previous Notices of 16 April and 25 September 2014.

3 These are the Council's representations in response. They should be considered in conjunction with the representations made to the superseded Notices.

### Summary

4 It would be irrational for the Secretary of State to make the proposed direction.

5 There is no evidence that publishing Greenwich Time (GT) on a weekly basis damages the local media and the Secretary of State has produced no evidence that it does, despite being requested to do so. He has misunderstood the Council's previous representations when he states 'Greenwich itself states that the borough is not well served by local newspapers'.

6 Producing GT on a weekly basis delivers value for money for council taxpayers in communicating with its residents and publishing statutory advertisements. The evidence from the Council's recent tendering of its statutory and other advertising is that the Authority's advertising costs for the last full financial year would have increased by £226,084, or 46.3%, on a like for like basis. Should the Council cease to publish GT and externalise its statutory and other advertising, it would incur total increased annual costs of £249,083, as detailed in paragraph 19. Should the Council continue to publish GT on a quarterly basis, the increased costs would be considerably more. This is at a time when the Council is facing increased pressures on its finances and is facing a projected cash reduction of £43m in revenue support grant in the three years to 2018/19.

7 Greenwich Time is the only local newspaper which is distributed borough wide, playing a key role in promoting community cohesion, supporting local businesses and helping deliver the government's localism agenda. Restricting its publication to quarterly would have significant implications for the ability of groups with protected characteristics to access information, including the information that they need to access services effectively. It is unrealistic to suggest supplementing a quarterly publication with leaflets, at much greater cost, when the Council is facing a projected cash reduction of £43m in revenue support grant in the three years to 2018/19.

8 The policy which supports the principle in the Code of the appropriate use of publicity – namely to prevent unfair competition with local newspapers - is ultra vires the statutory authorisation for the Code in section 4 Local Government Act 1986.

9 The Secretary of State is acting irrationally, and fettering his discretion, in putting the policy and principle above the Code's other principles, and in particular the principle of cost effectiveness, especially when this principle has a statutory basis in the Council's duty to make arrangements to secure best value and the Council's fiduciary duty to council taxpayers to use its financial and other resources prudently.

10 The Secretary of State has demonstrated a lack of even handedness and objectivity and has predetermined a decision to issue a Direction.

### **History**

11 The Secretary of State is reminded of the reasons for the Council in 2008 deciding to start and subsequently to continue publishing GT on a weekly basis, having regard to the then Code and the 2011 Code. Its reasons were:

- To minimise the cost for local taxpayers of placing statutory adverts in a weekly newspaper;
- to allow the Council to inform and consult with local residents through borough wide coverage, which also allowed it to comply with its public sector equality duty towards groups who share protected characteristics; and
- As one of the few authorities which manages its own housing stock, to advertise properties under its choice based letting scheme.

### **Damaging local media**

12 The Secretary of State notes the Council's view that there is no evidence that GT has had an impact on local newspapers. This is supported by the Communities and Local Government Select Committee finding that "there is little hard evidence to support the view of the commercial newspaper industry that council publications are, to any significant extent, competing unfairly with independent newspapers". The Secretary of State was unable to produce any evidence to the Committee and still has not done so. His view that it is possible that more local newspapers would be available in the borough if there were no Council newspaper is speculative.

13 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'. The Council in fact said that GT has not prevented a strong local newspaper market, with two well-established local papers, several community newspapers and a new Greenwich Town Mercury. However no local newspapers cover more than a small geographic area of the borough. This is not because GT exists. It is because local newspapers, and in particular the News Shopper and Mercury, base their distribution on strictly defined marketing demographics. They are not distributed on Council estates as this is not their advertisers' target audience. However the people who live in those areas are often the very people that the Council particularly wants to reach with job advertisements and

choice based lettings. So far as advertising is concerned, the two main local newspapers target regional advertisers, whereas GT provides advertising space and a marketing service for local companies.

14 This is evidenced by the Council's recent tendering of its statutory and other advertising. One local newspaper stated that it was unable to distribute to more than 52% of the borough. Another stated that while it could deliver to 95% of the borough, in accordance with the specification and the current rates achieved by GT, the rates it quoted for achieving this coverage would have increased the Council's advertising costs by around £275,000 during the last full financial year, or by around 56%.

15 There is no evidence, and therefore no rational basis upon which the Secretary of State could conclude, that the weekly publication of GT is having an adverse impact on the local media.

### Value for money

16 The Secretary of State says that he is not convinced by the Council's arguments that publishing statutory and other notices in GT was overwhelmingly more cost effective than using the local press to do so, and that not having to publish standalone leaflets has generated substantial savings.

17 The Council advised the Secretary of State in its previous representation that, as a contingency measure, it was in the process of advertising a contract for publishing statutory notices, choice based lettings, employment opportunities and other services.

18 The process is described in the Annex and the tender results are summarised below.

	<b>Greenwich Time</b>	<b>Bidder A</b>	<b>Bidder B</b>	<b>Bidder C</b>
	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>
Actual cost of internal adverts placed in 2013/14	487,952			
Comparative costs of advertising based upon pricing schedules submitted	N/A	714,036	738,860	763,845
Notes		Based upon a 10% reduction offered on any expenditure above £400,000.	Bidder offered two rates for front right hand pages. This figure was calculated using the lower price.	Bidder did not provide a price for job adverts on a front right hand page and so this cost is not included above.

19 The gross cost of publishing GT in 2013/14 was £802,324, which includes contractor, print and distribution costs. Income received from external advertising of £212,371 means the net cost was £589,953.

(a) Should the Council cease to publish GT and place its statutory and other advertising with Bidder A, it would incur increased annual costs of £124,083 (£714,036 less £589,953), plus the cost of a contract manager of (say) £25,000, plus the cost of publishing standalone leaflets of (say) £100,000, a total annual cost of £249,083. This would be a cost of £747,249 over the three year contract term, and if extended for another two years another £498,166.

(b) Should the Council continue to publish GT on a quarterly basis, the increased costs would be considerably more.

20 Should the Council cease to publish GT and place its statutory and other advertising with Bidder A, the increased annual cost of £249,083 would represent an increased council tax of £2.31 per annum per household, based on 108,000 council tax properties.

21 The Secretary of State says that even if this were to be the case (that publishing statutory and other notices in GT is overwhelmingly more cost effective than using the local press to do so, and that not having to publish standalone leaflets has generated substantial savings) this does not override the Code's policy of, so far as it practicable, creating an environment which is as conducive as possible to the flourishing of an independent local media.

22 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. Nevertheless he believes this does not outweigh the Code's policy as stated above.

23 The Secretary of State is acting irrationally, and fettering his discretion, in putting the policy behind just one of the Publicity Code's seven principles above its other principles, and in particular the principle of cost effectiveness. The Secretary of State fails to take into account the Council's statutory duty under section 3 Local Government Act 1999 to make arrangements to secure best value in the way in which its functions are exercised, including its functions to provide information under section 142 Local Government Act 1972. The Secretary of State fails to take into account the Council's fiduciary duty to council taxpayers to use its financial and other resources prudently.

#### Statutory notices

24 The Secretary of State is reminded that Norman Baker, Minister of State at the Home Office, made the Anti-social behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014. These do not require Orders to be published in local newspapers but instead require them to be published on the authority's website.

25 If the Secretary of State followed his colleague's example and removed the requirement to publish statutory notices in local newspapers, the need to publish GT on a weekly basis could be re-examined and thus the Council would make considerable savings for its taxpayers.

#### **Equality and diversity**

26 The Council welcomes the fact that the Secretary of State has, albeit belatedly, produced an equality statement in order to establish whether, by exercising his powers, the objectives in section 149 Equality Act 2010 will or might be affected.

27 Section 149 requires the Council to have due regard to the need to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. This includes having due regard to the need to encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low, and to tackle prejudice and promote understanding.

28 The Secretary of State is reminded that paragraphs 31 and 32 of the Code allows the Council to use publicity to influence “(in accordance with the relevant law and in a way which they consider positive) the attitudes of local people or public behaviour in relation to matters of health, safety, crime prevention, race relations, equality, diversity and community issues.”

29 The equality statement produced by the Secretary of State uniformly states that leaflets and targeted communications, such as information provided by Council services and by voluntary and other public sector organisations, would mitigate the adverse impact of ceasing to publish a weekly newspaper.

30 The equality statement fails to consider whether the Council would be able to absorb the increased cost of producing leaflets and targeted communications at a time when it is having to identify efficiency measures to deal with a projected cash reduction of £43m in the three years to 2018/19, and whether as a result those leaflets would be produced. The Council’s printing costs on items other than GT fell from £498,045 in 2007/8 to £259,168 in 2013/14, in no small part due to the decision to produce GT on a weekly basis and negate the need for stand-alone leaflets and similar publications. GT is the cheapest and most effective offline promotion that the Council can deliver. Standalone leaflets are the most expensive and least strategic form of communication, as a separate distribution system would need to be created for each one.

### **Conclusions**

31 The Council repeats its previous submissions. It fully supports an independent local press and believes it is essential for local democracy that journalists scrutinise the workings of councils and help hold elected representatives to account. However, the numbers of free weekly local and regional titles and newspaper circulations have been in decline for some time and local newspapers rarely send reporters to council meetings. Instead they are reported by local bloggers, in so far as they are reported, and those reports are by their nature partisan.

32 It is legitimate for councils to communicate directly with residents about decisions and services – local newspaper groups do not have the same obligation to do so.

33 The Council accepts that it publishes GT more frequently than the Code recommends but believes this departure from the guidance is for good reasons. The Council considers that the weekly publication of GT:

- plays a key role in promoting community cohesion in our borough over recent years – providing reassurance to our local community
- is invaluable in relaying information about large events in London, as shown during the London 2012 Games and around the London Marathon - playing a valuable role in

minimising disruption and ensuring local residents and visitors to the borough had a largely positive impression of the events

- helps to support newspaper groups – Trinity Mirror, one of the UK’s largest publishers of local newspapers, secured an annual print contract worth around £250,000 which is under threat if the Council is directed to cease publication of GT
- helps to support local businesses
- helps to deliver the government’s localism agenda - promoting community services and activities and signposting residents to local services
- helps to reduce the number void properties in the borough by publishing Choice Based Lettings on a weekly basis to every household in the borough
- helped achieved the highest number of households signing up to the Big London Energy Switch of any London Borough, and customer feedback told us the majority of respondents signed up to our scheme after reading about it in GT
- allows our residents the best possible access to information about local health services and local activities in the most cost effective manner to improve the health, well-being and lives of the people of the borough
- has delivered savings of around £1.5m since the paper was produced on a weekly basis based on the projected increased costs of £249,083 per annum applied to the past 6 years , which has been returned to local taxpayers in the form of consecutive council tax freezes.
- ensures communication with otherwise hard to reach groups, helping to deliver the Council’s public sector equality duty.

34 In deciding to continue to publish GT on a weekly basis, the Council has balanced these factors and the principles contained in the Code against the impact of reducing publication to 4 times per year. The evidence is that this would not deliver value for money because it would increase unit costs, require the Council to publish the same service information by other means than a universal newspaper at increased cost and require the Council to publish statutory notices in publications that only reach a part of its population and who are unrepresentative of the local population as a whole

#### **The lawfulness of a direction**

35 If the Secretary of State rejects the Council’s representations and makes the proposed Direction, the Council believes that any such direction would be unlawful for the following reasons.

#### Procedural unfairness

36 The Secretary of State has sought representations from the Council on whether to make a direction. To enable the Council to effectively respond, the Secretary of State is required to provide the factual basis that has led him to consider making a direction and the evidence that may be said to support it – namely damage to independent newspapers and the local media in particular. The Secretary of State has failed to provide the necessary information and/or evidence. In particular, neither the proposed direction nor the correspondence from DCLG details in any useful way the basis for the proposed direction. The Council will if necessary contend that the Notice is defective and void on these grounds, and the approach taken is certainly procedurally unfair. If there is really nothing more to the Secretary of State’s thinking than has already been disclosed, then any decision

taken on this basis would certainly be irrational and flawed by a failure to acquaint himself properly with the facts.

#### Irrationality

37 Any direction would, in light of the representations set out above be irrational. In particular:

(a) such a direction would require the Council to spend more money on publicity than it currently does on GT. Given that one of the stated concerns of the Secretary of State is waste of taxpayers' money, a decision to issue a direction which would have the consequence of wasting taxpayer's money would be irrational, and would amount to illegitimate state aid to the undertakings concerned;

(b) there is no credible evidence to support the concern that the publication of GT damages independent newspapers and the local media in particular. Issuing a direction for the purpose of protecting such newspapers would be irrational;

(c) requiring the Council to publish GT no more than quarterly would breach the Secretary of State's duties under s149 Equality Act 2010, and would be contrary to s3 Local Government Act 1999.

(d) the direction would be contrary to the responsibilities and priorities set out on the DCLG website, namely:

- supporting local government by giving them the power to act for their community - without interference from central government
- ensuring Council Tax payers get value for money and making their local council accountable to them.

(e) the Secretary of State is running pilot schemes for publishing statutory notices and to pre-empt this process by requiring the Council by 31 March to publish statutory notices in the local media would be irrational and disproportionate.

#### Ultra vires

38 The Secretary of State's approach does not represent a legitimate approach to the exercise of discretion in the light of the structure of the statutory provisions of the Local Government Act 1986 and the purposes for which the Code was introduced. If the policy supporting the principle in the Publicity Code of the appropriate use of publicity is, as stated in paragraph 2.8 of the Explanatory Memorandum, to prevent unfair competition with local newspapers, that is ultra vires the statutory authorisation for the Code in section 4 Local Government Act 1986. The purpose of that Act is stated in section 2, namely to restrain party political publicity.

#### Public sector equality duty

39 Restricting the Council to quarterly publication of GT will have very significant implications for the ability of various groups who share protected characteristics (including, but not limited to, race, religion, disability and sex) within the borough to access information, including the information

that they need to access services effectively. Further, as detailed above, restricting the Council to quarterly publication of GT will also damage its ability to assist persons in those groups to participate in public life or in any other activity in which participation by such persons is disproportionately low, and to tackle prejudice and promote understanding. There is little evidence that the Secretary of State has had due regard to this issue prior to deciding to issue a proposed direction.

40 It appears that the Secretary of State has not assessed the impact on members of groups who share protected characteristics who would otherwise have obtained information through GT and would be less able to do so as a result of the proposed direction. In such circumstances, any direction will be unlawful.

#### Bias and predetermination

41 The Council has already commented in its letter of 29 April 2014 on the Government's press release of 17 April, which said:

It is scandalous that bloggers have been handcuffed from tweeting from Council meetings, while propaganda on the rates drives the free press out of business. Only Putin would be proud of a record like that.

42 The Council believes that the lack of even handedness and objectivity shown by the Secretary of State in making this and other statements means that he is disqualified from deciding whether to issue a direction on the grounds of actual and/or apparent bias.

43 The Council notes that the Secretary of State's media officers, in promoting the press release, stated:

"Greenwich Hackney Newham Waltham Forest News and Tower Hamlets' have been written to today. Letters will go live on gov.uk shortly. They now have a fortnight to explain/act before Pickles will issue directions using Local Audit and Accountability powers that will compel them to stop".

44 This makes it clear that the Secretary of State has predetermined the matter and will not properly consider the representations made. This view is reinforced by the Secretary of State's routine dismissals of the Council's previous representations as set out in his current Notice. He in all cases states that even if it were the case (that the representation is valid) this does not override the Code's policy of creating an environment which is as conducive as possible to the flourishing of an independent local media.

#### **Timing**

45 Were the Secretary of State minded to make a direction, it is highly unlikely that arrangements with a preferred bidder under the Council's procurement process would be up and running by 31 March. The provider would expect to be given a three month lead in period before the start of a contract, in particular in this case to establish print and distribution contracts and engage contractors.

For the reasons set out above, the Secretary of State should not give the proposed direction, and it would not be lawful for him to do so. If he does give a direction, he should give reasons for rejecting the points made in these representations.

9 February 2015

## Annex

- 1 An OJEU contract notice was published on 24 October 2014.
- 2 The documentation stated that the Council was seeking a suitable potential supplier who could exclusively host statutory notices and non-exclusively host other Council advertising in a borough wide, weekly publication. It stated that the Council would consider new start-up businesses or SMEs.
- 3 The documentation stated that the Council could not guarantee a minimum or maximum volume of statutory notices and other advertising, but estimated the annual contract value at £400,000.
- 4 The contract required a weekly newspaper to be distributed door to door to at least 95% of the borough's households according to ABC standard audited deliveries. Door to door deliveries should be supplemented with copies available from pick up bins in hard to reach areas in order to ensure equality of access to information.
- 5 The weekly newspaper should be accessible on line in a digital format and available in alternative formats e.g. large print and as a 'Talking Newspaper' where requested.
- 6 Potential bidders were requested to provide a pricing schedule which reflected that the Council may wish to stipulate that the adverts should be treated as a priority and placed on a right hand page between pages 3 and 11, or as a non-priority and placed anywhere else in the paper.
- 7 Seven expressions of interest were received and four tenders were received. One tender was non-compliant as it was unable to deliver a weekly newspaper to 95% of local households. The Council offered the bidder two opportunities to comply with the specification but it stated that it was unable to do so.
- 8 Tenders were evaluated on the basis of the most economically advantageous to the Council by reference to the following criteria:

Price	50%
Capability to deliver the service (quality)	50%
split into	
Service Delivery	15%
Distribution	30%
Capacity	5%