

Governance Directorate

Director of Governance: Daniel Fenwick

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Paul Rowsell
Department for Communities and Local Government
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Bressenden Place
London SW1E 5DU

Ask for: Daniel Fenwick
Our Ref: DFE/RF.62
Your Ref:
Email: daniel.fenwick@walthamforest.gov.uk
Direct line: 020 8496 4295
Direct fax:
Date: 29 September 2014

By email to: paul.rowsell@communities.gsi.gov.uk

Dear Mr Rowsell,

The Local Government Act 1986 **Notice under Section 4A(5)**

Thank you for your letter of 25 September 2014 enclosing a further notice of a proposed direction under section 4A of the Local Government Act 1986.

We assume that the previous notice of a proposed direction given on 16 April 2014 has now been withdrawn. Please confirm in writing that our understanding is correct. Further, we understand that the present notice, unlike the previous notice, only asserts that the Council is in breach of the frequency provisions of the Publicity Code (i.e. paragraph 28) and not of other aspects of the Code including the provisions on cost effectiveness and even-handedness. Please confirm that our understanding is correct.

As you are aware, in our previous written representations, we explained why the Secretary of State's first notice of a proposed direction was both fundamentally misconceived and unlawful. It is very disappointing that the new notice, issued nearly five months after the Secretary of State received our written representations, displays most of the flaws that the first notice exhibited and fails to engage with our detailed representations.

Before we are able to make meaningful representations on the new notice, a number of important matters needed to be clarified.

Firstly, we note that the new notice, in the second paragraph, refers to the Secretary of State having regard to "*other information*" about the Council's publicity. It is impossible to make meaningful representations in response to the notice without knowing what "*other information*" the Secretary of State took into account. Therefore, please detail all such "*other information*" and provide us with copies of such "*other information*."

Secondly, we note that the sole basis for issuing the proposed direction is that the publication of Waltham Forest News ("WFN") more than quarterly is somehow

“damaging to the continuation of local independent media”. However, the Council’s representations of 29 April 2014 explained that in relation to WFN there was absolutely no evidence to suggest that it damaged local independent media (see pages 2-3 of the 29 April 2014 representations). The new notice fails to address the Council’s evidence on this issue or explain whether it is accepted or rejected and, if the latter, the basis for such a rejection. Unless the Secretary of State identifies what he disputes we will proceed on the basis that the Secretary of State accepts the accuracy of all the factual statements made therein.

Further, there is no reference in the new notice to any evidence to support the assertion that WFN is damaging to the continuation of local independent media. If the Secretary of State is of the view that any such evidence exists please provide it to the Council so that we can consider it and make representations on it. In the absence of any such evidence being supplied, the Council will assume that the Secretary of State accepts that no such evidence exists.

Thirdly, we note that the DCLG’s press release of 26 September 2014, asserts that frequent town hall free sheets (like WFN) are *“a waste of taxpayers’ money.”* Given that we understand that the recent notice does not allege a breach of the cost effectiveness principle we are surprised by such an assertion particularly given that it is contradicted by the available evidence. At pages 3-9 of our 29 April 2014 written representations, we set out evidence as to why WFN was cost effective and not a waste of money. The 25 September 2014 notice does not take issue with any of this evidence. Please confirm that the Secretary of State accepts the factual accuracy of the matters set out at page 3-9 of our written representations. If the Secretary of State disputes such matters, please explain the basis for any such disagreement so that the Council can address the Secretary of State’s points in its representations.

Fourthly, the notice also fails to address our argument made in our written representations of 29 April 2014 that a reduction in frequency of WFN to quarterly would, in the unusual circumstances of our borough, undermine the Council’s ability to provide important about accessing services effectively to various groups with protected characteristics. The notice asserts that the Secretary of State is of the view that the Council can communicate effectively with such groups whilst publishing WFN quarterly. Please detail the specific methods that the Secretary of State has in mind together with any analysis of the likely costs of any such methods.

In our written representations dated 29 April 2014, we requested that the Secretary of State provide *“any Equality Impact Assessment carried out prior to issuing the proposed direction”*. As the Secretary of State is no doubt aware, this was a request for information for the purposes of the Freedom of Information Act 2000. As such, the Secretary of State was required to provide the information sought within 20 working days of the request (see sections 1 and 10 FOIA 2000) unless the information is exempt information. We assume that the failure to provide any equality impact assessment within 20 working days or assert that it is exempt information, as required by FOIA, means that no such assessment exists. However, please confirm in writing that our understanding is correct. If it is not correct, please supply the EIA forthwith. Additionally, if any equality impact assessment (or other consideration by the Secretary of State purporting to discharge his duty under section 149 Equality Act 2010) has been carried out since our letter of 29 April 2014 please provide a copy of any documents evidencing such consideration.

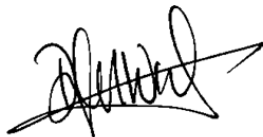
Finally, we note that the Secretary of State also proposes to direct the Council to consider the direction with 14 days and provide written confirmation to the Department for Communities and Local Government of that consideration. Please identify the legal power under which the Secretary of State asserts he is entitled to give such a direction.

Until the Secretary of State has provided the information and documents sought set out above there is no scope for the Council to make properly directed representations on the proposed notice. Once the information sought is provided, the Council will expect a minimum of 14 days to respond to it although, depending on the nature and quantity of the information provided, a longer period of time may well be necessary.

For the avoidance of doubt, we wish to make clear that we are of the view that the new notice is legally flawed, inter alia, because it is irrational, procedurally unfair, contrary to both section 6 of the Human Rights Act 1998 and section 149 Equality Act 2010, an unlawful State aid contrary to EU law and vitiated by bias and/or predetermination.

We look forward to a prompt response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Daniel Fenwick', with a long horizontal stroke extending to the right.

Daniel Fenwick
Director of Governance
London Borough of Waltham Forest

CC Martin Esom, Chief Executive