

SUBMISSION TO SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT, CONCERNING THE CODE OF PRACTICE ON LOCAL AUTHORITY PUBLICITY

Introduction

This document contains the representations of Hackney Council in response to the notice of a proposed direction under section 4A of the Local Government Act 1986 that was given on 16 April 2014 on behalf of the Secretary of State for Communities and Local Government. The proposed direction would require the Council “to comply by no later than 1 May 2014 with [paragraph 28] of the Recommended Code of Practice on Local Authority publicity.

It appears from the Secretary of State’s further letter of 22 April 2014 that the reason why he is minded to give a direction is that Hackney Council “publishes a news sheet at a frequency greater than that referred to in paragraph 28 of the Code”.

In these representations, the following expressions are used:

“The Council” – Hackney Council

“CLG” – the Department for Communities and Local Government

“The Code” - the Recommended Code of Practice on Local Authority Publicity

“Hackney Today” – the newspaper produced by the Council

“The Gazette” – the Hackney Gazette, a weekly newspaper published by the Archant Group

“The Citizen” – the Hackney Citizen, a monthly newspaper published by Citizen Media Limited

Since 2001, the Council has produced Hackney Today as a fortnightly newspaper. It is a tabloid format publication that provides information about Council and other public services in the borough, as well as providing space for community news, and a free listings service for community events. It is free, and is distributed door to door, to approximately 97,000 homes and businesses across the borough (with a further 20,000 copies placed in libraries and other locations). Hackney Today is published fortnightly (in fact 24 times a year) because that enables the Council to publish most of its own statutory notices.

In 2011, the Government brought in new guidance, in the form of the current Code, which advised councils against publishing a newsletter or newspaper more than four times a year. The Council took note of this guidance,

reviewed its practice, and concluded that, as a fortnightly paper was the most cost-effective way of getting information out to residents, and reached the highest number of people, it would continue to publish Hackney Today fortnightly. In 2012 the District Auditor accepted that the Council had properly complied with its obligation to have regard to the Code, and so by implication that the Council had good reasons for departing from the Code when it reached its conclusions about value for money and its decision to continue fortnightly publication. The Auditor specifically noted that he had seen no information or evidence which contradicted the Council's analysis that its approach offered value for money by costing less and reaching more households.

The Secretary of State has stated that the aim of the frequency restriction in the amended Code was to protect local independent newspapers from unfair competition, and to protect local taxpayers from wasted council resources. For the reasons explained below, the Council contends that there is no evidence to support any suggestion that Hackney Today is damaging the independent local press. It also contends that publishing Hackney Today fortnightly saves money for the local taxpayer. In addition to this, a regular door-to-door publication allows the Council to get vital service information to everyone in Hackney's diverse communities, amongst which there are higher than average levels of digital exclusion.

The Council believes that it conforms to every aspect of the Code, except for the restriction on frequency of Council publications. The Council notes that, whereas CLG has suggested in some other cases in which notices have been given that council newspapers are not objective or not even-handed, no such suggestion has been made in relation to Hackney Today.

For the reasons explained below, the Council contends that restricting Hackney Today to quarterly publication would serve no legitimate purpose, and would in fact be contrary to the public interest. These arguments are advanced in the first instance simply as a matter of policy, but at the end of these representations the Council explains why to make the proposed direction would be unlawful on a number of grounds. It also explains why it would be wrong for the present Secretary of State to make any decision about this matter, in circumstances in which his public comments show bias and predetermination of the issue on his part.

Unfair competition with local newspapers?

The sharp decline in circulations and revenues across the newspaper industry has been well-documented and has affected national and local titles alike. There is no evidence to show that commercial titles in areas where councils have produced their own newspapers have declined faster.

When the Code was amended in 2011, the Communities and Local Government Select Committee concluded that there was "very scant" evidence to sustain any claim that council publications had contributed

significantly to a decline in sales or advertising revenues of local newspapers, and that the Newspaper Society had been “evasive” when asked to produce such evidence. The Committee’s concern was with the use of council publications to promote local politicians or parties, which is not suggested to be an issue with Hackney Today. The Committee suggested that, whilst it thought that a quarterly publication would usually¹ be sufficient to meet an authority’s needs, a much stronger evidence base would be required to justify the inclusion of any restriction on more frequent publication in the Code. It recommended, as another committee had done in the previous Parliament, that the Secretary of State should commission an independent review to assess competition in the local media market and quantify the impact of council publications on commercial entities operating in their locality. The Secretary of State did not undertake any such review, and nor (so far as the Council is aware) did he provide any further evidence, and he still has not done so, despite being frequently challenged to do so. The LGA and London Councils are now in the process of commissioning a piece of academic research to look at the state of local media and how citizens receive public service information, which will consider the impact of council newspapers. It is understood that the findings should be available in the autumn. Having failed to commission or otherwise identify any relevant evidence himself, it would seem sensible for the Secretary of State to await that research before taking any precipitate action.

In Hackney specifically, the circulation of the Gazette fell from 12,827 in 2001 to 7,593 in 2009 (the last year of audited circulation, since the Gazette ceased to have an official audited ABC circulation figure after its circulation fell below 10,000). The neighbouring Islington Gazette experienced an even sharper decline from 15,919 in 2001 to 6,797 in 2009, despite the fact that Islington Council has never produced a regular newspaper. The Hackney Gazette ultimately merged with the Islington Gazette in 2012. More recently, Joint Industry Committee for Regional Press Research figures show that the Gazette now sells, or gives away in bulk drops, only 3,889 copies per week in Hackney. The ABC figures show that the circulation of the Gazette has been in steady decline ever since 1990, when the audited figures began. The decline was indeed somewhat greater in the 1990-2001 period before Hackney Today began publication (a drop of 43.6%), than in the remainder of the period to 2009 (a further drop of 37.17%).

There is also no evidence to show that in areas where councils have ceased production of their own newspapers, this has revived the fortunes of local independent titles. Hammersmith and Fulham Council (“LBHF”) decided to comply with the Code in 2011, and ceased production of their own H&F News, transferring their advertising revenue to the local free Trinity Mirror title, Fulham and Hammersmith Chronicle. The circulation of the Chronicle plummeted from 81,254 in 2011 to 45,490 in 2013, despite the removal of the

¹ This comment needs to be read alongside the Committee’s acknowledgment that land use intensity in some (especially urban) areas meant that their councils had to publish a higher than average number of statutory notices, and that this was a common rationale for publication more than quarterly. See further below.

council title and the addition of a significant new income stream. It has just been announced that the decline is terminal; despite a lucrative six-year advertising deal with LBHF, Trinity Mirror is closing the Fulham and Hammersmith Chronicle, leaving the council with nowhere to advertise its statutory notices. DCLG's advice to them has been to place statutory advertising in the Evening Standard, a paper whose availability outside Zone 1 is sporadic, and which also charges around £23,000 per page for advertising (rate card price) compared to around £7,000 in a local weekly.

Hackney Today does not resemble an independent title or masquerade as one. It is clearly marked as being produced by the Council and only contains information about Council and other public services, schools, and community and voluntary groups. It also features stories that foster civic pride and promote Hackney's local economy. It does not contain hard news, sports reporting, classified advertising, TV listings or any of the inappropriate content that may have appeared in other council publications in the past.

Hackney Today offsets some of its cost to the Council by selling advertising space. It does not proactively target the advertisers of the local press or undercut them. Its page rate is significantly higher than any local commercial title, which reflects its much greater reach. The majority of its advertising revenue comes from public and voluntary sector partners, who choose to use Hackney Today because it reaches every home in the borough. These partners value Hackney Today highly because it enables them to get vital information to local residents in a cost effective way.

The Secretary of State's argument regarding unfair competition is not only unfounded but self-contradictory. On the one hand he accuses councils of providing unfair competition to local independent newspapers by selling advertising space in council publications, yet in a DCLG document (*50 Ways to Save*, December 2012), he actively encourages councils to 'Earn More from Private Advertising', praising councils that are selling advertising space on their websites. Given that digital advertising is the fastest growing income stream for newspapers both locally and nationally, this would certainly seem to be encroaching on their territory. Some councils are proactively selling web advertising to local businesses in direct competition with the local media (Hammersmith and Fulham Council's website is a good example of this), yet there is nothing in the Code to censure or restrict this practice. Councils are encouraged by the Secretary of State to compete with the local newspaper industry by selling space on websites and payslips, whilst berated for doing so in a print publication.

Far from undermining the local newspaper industry, council newspapers provide it with important financial support. Hackney Today and other council papers have been printed by Trinity Mirror, the UK's largest publisher of local newspapers, for the past four years, and continue to be so, in a jointly procured contract worth at least £1 million a year to Trinity Mirror. The most that can be said is that the ability to place statutory notices in Hackney Today means that the Council does not have to subsidise the local press out of

public funds by purchasing unwanted advertising – but that certainly does not amount to unfair competition.

Despite the decline in circulation of the Gazette, Hackney Council has never been under as much scrutiny as it is today, from a strong and diverse local media sector. In the financial year 2013/14, Hackney Council received 928 press enquiries, 640 of which were from 40 local and regional media outlets, including the Hackney Gazette, the Citizen, The Evening Standard, BBC London, blogs such as Loving Dalston and the Hackney Hive, and a variety of ethnic media titles serving Turkish, Jewish, and Black African/Caribbean communities.

As well as the Gazette, Hackney has a relatively new monthly newspaper, the Citizen, which appears to go from strength to strength. It is a free paper which claims an estimated readership of 30,000. The Citizen method of distribution is by hand in the first week of every month at markets, train stations, and events and also in cafes, shops, businesses and libraries (although the data on which this is based are not known). It does not rely on public sector income, and holds Hackney Council to account with great vigour, having been shortlisted for several national newspaper awards. Its editor has publicly stated that it does not regard Hackney Today as a competitor and that it does not undermine his income. In addition to this, and London's robust regional media, there are a whole range of local news websites and citizen journalists ensuring that the Council receives proper and independent scrutiny.

Inappropriate content?

The Secretary of State has often referred to council publications as 'Pravdas'. This is inflammatory political rhetoric which has no application to Hackney Today. Apart from listing contact details for councillors, Hackney Today does not promote or even mention any political party and neither does it give undue promotion or prominence to any elected members. Where it reports on matters relating to central or local government policy, it does so with a view to providing impartial and balanced community information. It is unnecessary to elaborate upon this, since the Secretary of State has not suggested that any alleged lack of objectivity or even-handedness, or any other issues of this nature, arise in the case of Hackney Today and have caused him to be minded to issue this direction.

What Hackney Today does carry is a significant amount of material that would not otherwise feature in local newspapers. Particularly since it merged with the Islington Gazette, the Gazette has limited space for news from public service providers, especially when that consists of straight information without a clear "news angle". The Citizen sees itself as having an investigative remit, and again has limited space for straight public service information. Local public and voluntary sector bodies know that they can get their information into Hackney Today far more easily than other titles.

Hackney Today thus covers numerous stories that are not considered “hard” news by the mainstream media. This includes news from the Council, local businesses and charities, third sector and community organisations, health providers and schools. It also includes a 4 page free events listing section which includes events ranging from club nights to jumble sales. It is obvious that the value of this community facility would be much reduced if Hackney Today was only published quarterly.

When CLG consulted on the proposed new Code in 2010, numbers of local organisations (as well as local residents) responded giving their support for the continued publication of Hackney Today on a more than quarterly basis, essentially for the reasons set out above. It is surprising that the Secretary of State has not referred to this material in his letter of 22 April 2014. The organisations concerned included Hackney City Farm, Headway East London (a brain injury charity), the Institute of International Visual Arts, St Mary’s Secret Garden, Inspire (education business partnership), the Geffrye Museum, and Age Concern Hackney. The last of these organisations commented:

“Our concern on this matter is that the single biggest difficulty confronting tens of thousands of older people in our area in accessing services provided by both statutory and voluntary sectors is timely information. Older people need to be aware that services exist and how to get them. They need to know events concerning them are taking place and when and where they can find them. By far the most effective way of communicating such information is in a single and universally provided information source delivered to the door . . . We know that many older people who attend events we organise find out about them from the free listings provided in the fortnightly Council information paper. A paper appearing only quarterly could not possibly do justice to the wide and varied programme of community events and services in which the Council and voluntary and community sector organisations like ourselves are involved. We also seek publicity from our local paid for title, the Hackney Gazette, but in fairness to this paper, it would be quite impossible for it to provide a fraction of the information available in Hackney Today. . . . The role of a local information service from the Council in hard copy delivered to the door is particularly important when less than 5% of our clients have web access . . .”

It is not clear to us why the Secretary of State should wish to disadvantage Age Concern Hackney, and their elderly clients, or other local community groups and service users.

Waste of resources?

Brandon Lewis MP, the Parliamentary Under-Secretary of State for Communities and Local Government wrote to Hackney’s Mayor Jules Pipe on 25 March 2014. He said, ‘I can see no reason for any Council not to comply with the Code. Non-compliance would, I believe, invariably involve an unacceptable waste of tax-payers money and Council resources.’ In the case

of Hackney, the Minister's assertion is incorrect and unfounded. To comply with the Code and reduce Hackney Today's frequency to quarterly would in fact lead to the Council spending more on advertising and publicity than it currently does.

For the reasons set out below, which include high levels of digital exclusion, the fact that some material is not published by local commercial media, and the much smaller circulation of alternative local newspapers, it remains important for the Council to produce its own newspaper. The Code of course recognises the legitimacy of doing so, and the Secretary of State has not suggested that there is anything wrong with council newspapers in principle. It is then in fact cheaper for the Council to publish fortnightly instead of only four times a year. The reason for this lies with statutory advertising requirements.

There are currently numerous statutory provisions which require the Council to publish notices in a newspaper circulating in the area to which the notice relates, or have a similar effect by requiring publication by means other than website alone.

At the moment, the Council publishes the bulk of these statutory notices in Hackney Today, making internal recharges to the relevant departments (there are some which still need to be published in the Gazette instead or as well, because of a statutory requirement for publication in two consecutive weeks). The greatest volume of notices are accounted for by planning applications and proposed traffic and parking regulation measures. The CLG Select Committee report already mentioned records the estimate of the LGA that councils were then spending around £67.85 million per annum on statutory notices, including around £40 million per annum on planning notices. The nature of Hackney is such that it has to publish a relatively high number of notices. In the 2009/10 financial year, 1509 statutory notices were placed in Hackney Today. A precise count has not been repeated for subsequent years, but the approximate volume of statutory notices has not diminished.

If the Council only published Hackney Today quarterly, it would cease to be a practical option for the placing of most statutory advertising, even assuming that a quarterly publication would count as a "newspaper" at all (as to which the legal position is unclear). The timescales within which planning applications are required to be determined, for example, would not normally be consistent with waiting several weeks before publication.

The Council would therefore have to place the great bulk of its statutory advertising in a local commercial newspaper, which would cost significant amounts of money. That combined with the cost of a quarterly magazine would be more than it costs to produce Hackney Today fortnightly. This is explained as follows.

The Council pays for the printing and distribution of Hackney Today, as well as the staff to produce it, and additional costs such as photography, stationery

and staff training. Those costs are partially offset by external advertising revenue as set out in the table below.

Year	Cost	External income	Net cost to the Council
2010/11	£514,880	£174,957	£339,923
2011/12	£503,010	£170,105	£332,905
2012/13	£530,648	£149,238	£381,410
2013/14 (forecast)	£507,264	£137,555	£369,709

So on average, over the last four financial years, Hackney Today has cost the Council £355,987 per year.

Based on printing and distribution quotes from our existing suppliers, we calculate that the cost of producing a magazine format publication every quarter instead, with sufficient pagination to carry service information from the Council and its partners, and one member of editorial staff, would be approximately £185,000 per annum.

The Council would then have to place its statutory advertising in another title. In practice this would mean the Gazette, because the Citizen is a monthly publication, which would be insufficiently frequent for most notices. We asked the Gazette for a quote for three pages of statutory advertising each week for a year. At the rate they quoted us, over a year this would cost the Council £176,525. We would also need to employ a part time member of staff to co-ordinate all statutory notices for publication in the Hackney Gazette, to liaise between council departments and the Gazette, check all notices for accuracy etc. These duties are currently covered within the existing Hackney Today staffing structure. This part-time post, including on-costs such as pension and NI costs would be about £20,000 per annum, bringing the cost of publishing statutory notices in the Gazette up to approx £196,500.

Hackney Today goes to 97,000 homes and businesses across the borough (with a further 20,000 copies in GPs surgeries, council offices, libraries etc), with a verified distribution rate of around 97%. The Gazette sells fewer than 4,000 copies per week, and of course not everyone wants to pay for it. So by using Hackney Today to publish statutory advertising and other public service information, Hackney Council can ensure this information reaches almost everyone who lives here.

Not only does this represent intrinsically better value for money (since the whole purpose of advertising such information must be to bring it to the attention of as wide a range of local people as possible), it also means that there would be further costs to the Council if it published Hackney Today only quarterly. The Council would then inevitably need to produce a good deal

more by way of leaflets and other printed materials to publicise service changes and other information, particularly as it takes on additional functions such as public health. This would further push up the costs of reducing frequency. For example the cost of designing, printing and distributing just one A4 leaflet to every home in Hackney would cost around £10,000.

So just four of these leaflets each year to communicate vital information about services such as waste, parks and leisure, youth activities etc. would cost £40,000 and this is a conservative estimate of what an average upper-tier authority would produce. Also, Council departments would need to take out other, non-statutory advertising and produce brochures for other services to replace content currently contained within Hackney Today (for example the annual Summer's Guide to Youth Activities).

Therefore the estimated total costs to the Council that would result from complying with the Code are as follows:

	Estimated Cost
Cost of placing statutory notices in Hackney Gazette	£196,500
Cost of producing quarterly Hackney Today	£185,000
Cost of leaflets re provision of vital services (at least 4 per year)	£40,000
Cost of providing other information (e.g. Summer Guide to Youth Activities, Public Health information, advertising public events)	£40,000
Total alternative costs	£461,000

So it can be seen that producing Hackney Today on a quarterly basis would be more than £100,000 a year more expensive than the average annual costs incurred through the current fortnightly publication. Certainly it cannot sensibly be suggested that it would lead to any significant savings that would compensate for the reduced circulation of advertisements that had to be placed in the Gazette instead.

	Fortnightly Hackney Today	Quarterly Hackney Today
Cost	Average £355,987	c. £461,000 including cost of statutory advertising in the Hackney Gazette, plus additional leaflets and advertising.
Reach	Hackney Today is delivered to 97,000 homes and businesses 24 times a year. Statutory notices are	Hackney Today would be delivered to 97,000 homes and businesses four times a year. The Hackney Gazette

	included in Hackney Today, giving all residents access to them.	sells around 4,000 copies per week. Residents would have to buy it at 70p to view statutory notices.
What we get for our money	<p>24 publications a year into every home.</p> <p>The Council includes all its service information in Hackney Today, including changes to waste collection and recycling, health information, the annual summer youth activities guide, regular information on how to access services, and advertising for all its campaigns (for example foster carers and adoption recruitment). The Council produces very little additional printed material for door to door distribution and rarely advertises in other publications.</p>	<p>4 publications a year into every home.</p> <p>The Council would need to produce and distribute additional leaflets and other printed material as well as quarterly publications to communicate service changes and vital information. The Council would also need to buy additional advertising space in other publications, which would add to the cost.</p>

The above calculations assume that the cost of placing statutory notices in the Gazette would indeed be in line with the quote that they have provided to us. But that is certainly not a safe assumption. Hackney Today not only provides value for money for the Council, but importantly, it enables us to control our costs on advertising and communications. If Hackney Today's frequency were reduced, and we were forced to advertise in the Gazette, it would essentially be a monopoly situation and the Gazette would be free to charge us as much as it wanted, as there is no other sufficiently frequent local title to provide competition. The quote they have provided to us for a year's contract represents more than an 80% discount on their rate card and there would be nothing to stop them increasing this level of charges. We are aware that a neighbouring borough, Newham, does choose to place its statutory notices in an Archant newspaper rather than in its own publication, and we understand that it pays materially more than the figure quoted to us. Indeed, we believe that it used to be a widespread practice for local papers to charge more for public notices than for other forms of advertising, and that this was one of the reasons which led to council newspapers being established. Some of the

2013 consultation responses indicate that this may still be happening in some areas. If, as has happened in Hammersmith and Fulham, the local newspaper closes down, Hackney could be forced into an even more expensive solution, such as a regional title like the Evening Standard, which may not even offer widespread availability in Hackney.

At the root of many of these problems lies the statutory requirement for publication of notices in a hard copy newspaper. If these statutory requirements did not exist, the use which the Council would then be making of Hackney Today would not call for fortnightly publication. As Hackney Council has repeatedly told Ministers (see for example the Mayor's letter to the Secretary of State of 28 January 2013), if they remove the legal requirement to publish these notices in a newspaper and allow the Council to do it online and through libraries and community centres, then the Council will reduce the frequency of Hackney Today. The Council would carry out planning, consultation and costings to determine what publication intervals then reflected the community needs discussed in these representations, but it would certainly be no more than monthly.

The reality is that the combined effect of current statutory notice requirements and limiting Hackney Today to quarterly publication would be to force the Council to subsidise the Gazette out of public money with unwanted paid-for advertising.

Indeed, the position of some newspaper publishers and their representative bodies appears to be wholly cynical, and to be designed simply to maintain and maximise this subsidy. On the one hand, they have argued that the requirement for newspaper publication of statutory notices should continue to exist, ostensibly on the grounds that this will maximise public awareness of such notices. On the other hand, they have sought to use the frequency provisions of the Code to prevent councils publishing such notices in their own newspapers, even where (as in the case of Hackney) that would demonstrably lead to much wider circulation of them.

In the face of the calls which there have been for legislative reform (for example, the CLG Select Committee recommended that the publication requirements should be reviewed), the Government's present position is unclear. On 20 February 2013 the Minister (Brandon Lewis MP) wrote to Hackney's Mayor saying that he could not give a timeframe for legislating further or for changing the statutory notice requirements, and saying that these were matters which needed "to be considered carefully". In July 2013 it was reported in the press that the Secretary of State had told a group of Conservative councillors that the present requirements would end within two years. However, it is unclear whether this was an accurate report, whether it represents the Government's official position, or whether thinking has changed since. We note that the Newspaper Society has recently referred to the policy of ending the requirement of newspaper publication as having been abandoned, although again we do not know the provenance of this assertion.

We would invite the Secretary of State to set out the Government's position clearly in response to these representations. Are there firm proposals for reform, and (if so) what will the nature of those reforms be, and when will they be made? If the intention is to reform the current law, then the question of whether any direction is appropriate should be deferred until that has been done, and the Council has reviewed the publication frequency of Hackney Today as a result. If there is no such intention, then the Secretary of State should say so, and it will become clear that limiting an authority such as this Council to quarterly publication cannot be justified.

The importance of Hackney Today as a print publication with wide distribution

The Council urges the Secretary of State to bear in mind that the relevant circumstances of all local authorities are not the same.

Like all councils, Hackney Council is doing more and more business on-line, but there are still many people in Hackney who do not have regular internet access – a substantially higher proportion of the population than nationally. Those tend to be the people who need services most.

According to an Ipsos MORI survey undertaken by the Council in 2013, nearly 17% of Hackney residents overall do not have access to the internet. Only 35% of Hackney's over 65s have internet access compared to 59% nationally. 45% of our disabled residents have no internet access and 32% of people claiming benefits.

The MORI survey also showed that 81% of residents recognise Hackney Today, of whom 74% read it, and 73% trust the information it contains. For 38% of all residents, it is their most commonly used source of information about Council services.

If the Council were to publish Hackney Today only quarterly, or not at all, we strongly believe that this would not only lead to higher overall costs to the Council by necessitating more paid-for advertising and more frequent ad hoc publications of information, but would also be to the detriment of our residents. Currently, 71% of residents feel well-informed about Council services. This is 16% above MORI's recorded national average, and given the borough's levels of digital exclusion is testament to the effectiveness of Hackney's print publications. We would resist any move that could potentially damage that high level of performance, especially if it would cost us more money.

There is an important point here, not only about the desirability of effective communication with local residents generally, but also about equality and cohesion, and compliance with the public sector equality duty.

Hackney is a highly diverse borough which, despite significant growth within the local economy, has some of the highest levels of deprivation in the UK

within its communities. The Code states that council publicity must have regard to equality and diversity, and a fundamental part of that is ensuring equal access to information. We have one of the highest percentages of social housing within the UK, unemployment rates well above average national and London levels, huge health inequalities, and very high levels of health problems such as mental health, obesity and under-immunisation, with more than 40% of children living in poverty. This very challenging demographic places high demands on public services. These disadvantaged individuals and families are the people who are most in need of information, and are also the people least likely to be able to pay for it, whether that is by buying a newspaper or through a web-enabled phone or broadband subscription.

As previously stated, Hackney's MORI research showed higher than average levels of digital exclusion in the borough, with 1 in 6 adults (17%) having no access to the internet. The MORI data further reveals that among those who are digitally excluded (17%), the elderly (65% aged 65+ - as compared to 40% nationally), and Charedi Orthodox Jewish (58%) communities are disproportionately represented. We should explain that the Charedi community is Hackney's biggest single ethnic/cultural minority group, making up 10% of the population (around 25,000 people). The community in general do not use the internet at home, as it is not considered suitable for religious households (the Union of Orthodox Hebrew Congregations has only recently authorised its use for business purposes). Although supervised internet access in a public place would, as we understand it, increasingly be accepted, internet usage within the community, especially amongst women, remains very low.

These groups of people identified as digitally excluded are more likely to access information about the local area and Council services through Hackney Today. 48% of the over 55s in Hackney cite Hackney Today as their primary source of information, 46% of Black Caribbean residents, and 44% of those residents who have lived in Hackney for more than 10 years.

Previous research revealed that there is a strong link between digital and social exclusion. The Annual Population Survey reported that respondents who had never used the internet in London were more likely to be older, disabled, on low incomes, in lower skilled employment and with lower qualification levels.

There has been significant change in Hackney over the last 10 to 15 years, turning Hackney into a desirable place to live and do business in London. However, Hackney continues to see high levels of unemployment as a percentage of the working age population and some local residents continue to face considerable economic hardship. Recent polling shows that 90% of Hackney residents feel that people from different backgrounds get on well together, but there is a risk that the relatively rapid economic growth and change in the local area could alienate some local people and affect cohesion. The MORI research carried out after the 2011 riots flagged the importance of addressing socio-economic polarisation and of encouraging people to engage outside of their sub communities. Hackney Today positively

reflects the borough's diversity, promotes community cohesion and regularly promotes opportunities for jobs, apprenticeships and training. As already noted, it contains material to which it is unlikely that other local newspapers would give the same coverage, including material which is particularly relevant and important to groups with protected characteristics under the Equality Act – for example, information about events and activity programmes aimed at older people and disabled people; information relevant to social care for disabled people; information about pregnancy and maternity services in the borough; coverage of events and festivals particularly relevant to members of particular ethnic groups; news, events and interviews relevant to Hackney's many religious groups; and coverage of events such as LGBT history month and the first Hackney Pride march against homophobic hate crime. Other examples were included in the Council's response dated 2 May 2013 to the most recent consultation.

Restriction to quarterly publication would greatly hamper our ability to get regular, timely information about services and local opportunities to those who most need it, and have a disproportionately negative impact on older people, disabled people and those from disadvantaged groups. We have set out above the very pertinent comments previously made by Age Concern Hackney about the situation of older people in the borough, which could in large measure be applied to other groups as well.

Conclusion

These representations have shown beyond doubt that strict compliance with the aspect of the Code relating to frequency of publication would force the Council to spend more money than it currently does on advertising and communications, chiefly because of the outmoded requirement to publish statutory notices in a local newspaper, and that this would also be less effective expenditure in terms of the number of people reached. There would also be adverse implications for the quality of communication and for social cohesion and equality.

We calculate the additional expenditure to be at least £100,000 per year, on the basis of conservative estimates of alternative advertising rates and of the Council's need to communicate information to its residents between quarterly publications.

At a time when Hackney has to save up to £60 million from its budget over two years, we consider this to be entirely unreasonable, especially when the first principle of the Code itself is that local authority publicity must be cost-effective.

Hackney Council is not one that takes its fiduciary duty to council taxpayers lightly. It has a strong track record of strong financial management and of providing value for money for local taxpayers and is the only local authority in the country to have frozen its council tax for nine consecutive years. Hackney is a high performing local authority, with 74% of residents expressing satisfaction with Council services and 89% satisfied with the area in which

they live. This is not a council that requires intervention of any kind from central government to prevent irresponsible expenditure.

Nor is there any basis in evidence for any suggestion that Hackney Today as currently published is competing unfairly with or damaging other local media. On the contrary, the effect of forcing Hackney Today to publish no more than quarterly would be to distort the market by compelling the Council to subsidise one particular local newspaper by paying for unwanted and unnecessary advertising of statutory notices.

The conclusion to be drawn is that it would be wrong for any direction to be made in relation to the Council.

The form of any direction

If the Council's representations, that no direction should be made, are accepted, then this issue does not arise.

However, there are two points to be made about the form of direction proposed in the notice. The first is that the draft direction contemplates that compliance would be required by no later than 1 May 2014. Apart from the fact that this would hardly be consistent with proper consideration of the representations made by the Council, and no doubt by other authorities, it would be unreasonable to expect the Council to secure immediate compliance. Reduction of the frequency of publication of Hackney Today to quarterly would require consideration of the position of its four salaried staff, and almost certainly some level of redundancies. Such a reduction should not have to be implemented without a proper notice period, which would allow for consultation with affected staff, the giving of notice of termination of employment where appropriate (most of the staff concerned are entitled to 3 months' notice), and indeed for notice of reduced requirements to be given to printers and distributors. In circumstances in which Hackney Today has been published for some 13 years, and there is no suggestion that there is any special urgency about the situation, any direction ought not to take effect until 6 months after it is given.

The second point is that the proposed direction is expressed as a direction to comply with paragraph 28 of the Code. However, that paragraph contains three sentences, only the second of which is relevant to the sole concern which the Secretary of State has expressed, namely that Hackney Today is published more than quarterly. The gratuitous inclusion of other aspects of the Code within a direction cannot be justified. This is of practical concern because, although the Council believes itself to be complying with the other parts of paragraph 28, their imprecise nature is of concern. They are drafted in a manner which may well have been appropriate to a code of recommended practice to be taken into account, but is not appropriate to a direction with which there is an absolute duty to comply.

If the Secretary of State does not accept this latter point, and makes a direction to comply with the whole of paragraph 28, we would invite him at the same time to explain:

- Exactly what is meant in the first sentence by communications “which seek to emulate commercial newspapers in style or content”.
- Exactly what is meant in the third sentence by “information . . . about the business, services and amenities of the council or other local service providers”. Would this prevent the Council from including in Hackney Today, for example, any or all of the following – details of how to access cheaper energy deals; information about social events held by local community groups; trading standards or crime prevention warnings; fire safety information; items reporting on events relevant to particular ethnic or religious groups; information about welfare reform changes; features celebrating the achievements of young people in education; or an article encouraging young people to become apprentices or to apply for university?

The lawfulness of a direction

In the preceding representations, the Council has sought to persuade the Secretary of State that to give a direction in Hackney’s case would serve no useful purpose and would indeed be counter-productive. That should follow simply as a matter of policy. However, there are a number of reasons why the Council contends that to give the proposed direction would in fact be unlawful.

State aid

Under Article 107 of the Treaty on the Functioning of the European Union, it is *prima facie* unlawful for a member state to grant aid through state resources in any form whatsoever, if that distorts or threatens to distort competition and affects trade between member states.

As these representations have pointed out, the effect of maintaining the requirement for the publication of statutory notices in a newspaper, whilst at the same time making it impossible for a local authority to fulfil that obligation by publication of its own newspaper at an appropriate frequency, is to force the authority to purchase advertising from another local newspaper, usually one published by a commercial undertaking. In circumstances in which the authority would otherwise choose to publish the notices itself, this means that the authority is compelled to make an unwanted and unnecessary purchase of advertising space from that undertaking. The purchase is not a normal commercial transaction. The fact that the authority is in no position to negotiate effectively about the price simply compounds the problem.

It is well established that the purchase of goods or services by a public authority, even if it takes place at market prices, may amount to a form of state aid if the authority did not in fact need the goods or services concerned:

see e.g. T-116/01 *P&O European Ferries (Vizcaya) SA* [2003] 3 CMLR 14, and the authorities discussed there.

This analysis applies here. The Council has no genuine commercial need to purchase space from the Hackney Gazette for the advertising of statutory notices on a large scale. The fact that the aid results from a combination of legislative provisions and ministerial decisions, and the consequences that follow from them, does not matter: see e.g. T-226/09 *BT Pension Scheme Trustees Ltd* (16 September 2013).

It is apparent that this subsidy from public funds must give the recipient undertaking, here Archant Limited, an advantage over its competitors in the print and online media. The threshold both for a threatened distortion of competition and for an effect on inter-state trade is of course a low one. In the time available for the making of these representations, the Council has not been able to carry out full research into the extent to which there are cross-border interests in the relevant sectors, but it seems highly probable that these interests exist at a number of levels. Indeed, we note that Archant advertise their international interests, including events and digital media focussed on the French property market.

Lack of a rational basis for the direction, improper policy etc

On 17 April 2014, after being served with notice of the proposed direction, the Council asked to be informed by the Secretary of State of the reasons why he was minded to give that direction. The response dated 22 April 2014 from CLG referred to three specific matters. If there is anything else in the Secretary of State's mind, the Council has not been made aware of it, and so has not had the opportunity to address it through representations.

The first two matters are the Secretary of State's policy as set out in a letter to councils dated 25 March 2014, and the fact that the Council publishes Hackney Today at a frequency greater than that referred to in paragraph 28 of the Code.

The letter of 25 March expresses the policy, or intended approach, of the Secretary of State as follows:

"Where . . . the Secretary of State considers that there is some evidence of non-compliance since the Publicity Code was issued in March 2011, and there is no current unambiguous evidence available to him that the non-compliance has ceased and that there is no risk of future non-compliance, he will be minded to give a direction to the authority concerned. That direction would take such form as he considers appropriate in order to end the non-compliance or remove the risk of any future non-compliance."

The effect of this approach is to treat it as axiomatic that a direction should follow from any (continuing) non-compliance with the letter of the Code, as does the Minister's letter to the Mayor of the same date. But that is not a correct approach to the 1986 Act. Parliament has not legislated for a

mandatory duty to comply with the Code, but rather for the Code to constitute “recommended” practice, and for local authorities to have regard to its provisions. This necessarily contemplates that there may be some circumstances in which it is legitimate or appropriate for a particular authority to depart from its terms. Section 4B allows an order to be made which imposes a duty on authorities to comply with the Code or specified provisions of it, but no such order has been made to date. It therefore follows that the Secretary of State’s discretionary power to make a direction under section 4A cannot be exercised simply on the basis of non-compliance with the Code, but should only be exercised where the authority has not put forward a satisfactory justification for such non-compliance, and where a direction is necessary to serve the purposes for which these powers were conferred and for which the Code was made.

It is clear that the purpose for which the guidance on frequency of publication was introduced into the 2011 Code was to prevent unfair competition with local newspapers. For the reasons set out in these representations, there is no such unfair competition in the case of Hackney Today. The Secretary of State does not appear to have formed any view that there is, and (if he has) he has not disclosed that view or the basis for it to the Council so as to allow it to make representations. It would also be irrational, in the light of the matters set out above, to conclude that the Council had not put forward proper reasons for departing from the Code, or that a direction was justified. Nor does it appear that the Secretary of State has carried out any of the factual inquiries to be expected of a reasonable decision-maker before coming to the conclusion that there is any such unfair competition.

The third matter mentioned in the letter of 22 April 2014 is “the responses received to the 2013 consultation ‘Protecting the Independent Press from Unfair Competition’”. The letter attached all those responses, but without identifying any responses said to be relevant to the Council’s case. This is entirely unsatisfactory. There are a very large number of responses, and the Council has no idea which ones the Secretary of State has considered to be relevant to its case. Likewise, many of the responses take positions which are diametrically opposed to each other, or express what might be thought in some cases to be rather extreme views, and the Council has no idea what it is in them that the Secretary of State is minded to accept and what to reject, or why. This makes it impossible to address representations to whatever is in the Secretary of State’s mind, and is procedurally unfair.

There are three things that can, however, be said about these consultation responses. The first is that, so far as we can see, and leaving aside the Council’s own response, there is nothing in them about this Council at all (apart from one passing reference to the undisputed fact that Hackney Today is published fortnightly). Unlike in the case of some other authorities, it does not appear that anyone was motivated to send in a response that was critical of the Council’s approach. In circumstances in which the Secretary of State has certainly not given a notice to all authorities that publish more than quarterly, it is therefore hard to see what basis this provides for the intention to issue us with a direction. It is perhaps particularly notable that Archant

London, the publishers of the Hackney Gazette, submitted a response that was explicitly critical of two other authorities, but said nothing at all about this Council.

Secondly, although the consultation specifically invited respondents to submit evidence of the implications of non-compliance with the Code for competition in local media, it is striking how virtually nothing in the responses could be said to represent such evidence. At best, there are a few vague and unsupported assertions, mainly by newspaper interests and those associated with them. By contrast, many of the other responses (not limited to those from local authorities – see for example the comments by the NUJ) contain specific facts and arguments supporting the proposition that there is no unfair competition having an adverse effect on local newspapers.

Thirdly, the majority of the responses come from local authorities, and are striking in their virtually uniform opposition to the Secretary of State's approach; regardless of political complexion and regardless of whether the authority in question is itself currently complying with all aspects of the Code.

Proportionality

For all the reasons already given, restricting Hackney Today to quarterly publication would certainly not represent a proportionate measure designed to serve a legitimate objective, especially in view of the absence of evidence to which attention has previously been drawn by the CLG Select Committee and many others.

However, the Secretary of State is indeed obliged to act proportionately in this respect. It is unlawful for the Secretary of State to act in a way which is incompatible with a Convention right. Article 10 of the ECHR protects the right to freedom of expression. Although the Council itself, as a public authority, does not enjoy Convention rights, the right to freedom of expression includes the freedom to receive information, without interference by public authority.

To prevent the Council from publishing Hackney Today with the frequency that it would otherwise judge appropriate therefore amounts to an interference with the Article 10 rights of those who would otherwise receive the publication. In view of the points made above about the cost and limited circulation of print alternatives, the extent to which Hackney Today carries information which they do not, and levels of digital exclusion within the borough, this interference is significant, and it is certainly unjustified.

Article 11 of the Charter of Fundamental Rights of the European Union is also relevant here, as is article 19 of the ICCPR.

Public sector equality duty

For the reasons given above, to restrict the Council to quarterly publication of Hackney Today will have significant implications for the ability of several

groups with protected characteristics within the borough to access information, including the information that they need to access services effectively. We have to date seen nothing to suggest that the Secretary of State has considered these issues properly or at all, or carried out any satisfactory assessment of the implications of the proposed direction. Again, the limited time allowed for making these representations has meant that they cannot themselves contain a full analysis of the relevant issues.

Bias

Finally, we regret that it is necessary to say that we do not think that the present Secretary of State can take a decision on this matter without the appearance of bias or indeed actual bias. The particular form of bias in question is that of predetermination. The Secretary of State has made speeches and issued press releases which have been both couched in wholly intemperate language and expressed in a way that indicates that the Secretary of State has made up his mind about the very issues on which he should be listening to representations. We have in mind his speech to the Society of Editors in April 2013, and CLG's press release of 17 April 2014 (including what was said by Mr John Pratt when sending out that press release). There may well be other examples as well. The reality of the situation is further evidenced by Mr Lewis's letter of 25 March 2014, and by the proposed implementation date of 1 May 2014 in the draft direction.

As we understand it, it would be possible for the function of taking a decision on this matter to be transferred to some other Secretary of State, and if the making of a direction is to be further considered at all at this stage, that is what should happen.

Summary

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.

The Council hopes that the Secretary of State will now be persuaded that a direction would be inappropriate. If a direction is made, however, the Council would expect the Secretary of State to provide it with a reasoned decision explaining why he has rejected the points made in these representations.