



Ministry of Housing,
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Via email
tim.shields@hackney.gov.uk

Dear Mr Shields,

DIRECTIONS UNDER SECTION 4A OF THE LOCAL GOVERNMENT ACT 1986

1. I am writing to inform you that the Secretary of State has exercised his powers of direction under section 4A of the Local Government Act 1986 (“the 1986 Act”) in relation to the London Borough of Hackney (“the Authority”). The Secretary of State has done this to secure its compliance with the following specified provision of the Code of Recommended Practice on Local Authority Publicity (“the Publicity Code”) issued under section 4 of the 1986 Act on 31 March 2011 having been approved by a resolution of each House of Parliament:

“Where local authorities do commission or publish newsletters, newsheets or similar communications, they should not issue them more frequently than quarterly”¹

2. I enclose a copy of the Directions. This letter below summarises the circumstances in which the Secretary of State has made these Directions and his reasons for this exercise of his powers.
3. To take account of the practical impact of the forthcoming May local elections, the Secretary of State is providing an extended period of time for the Authority to cease fortnightly publication, i.e. 3 September 2018, three months after the local authority elections. This date gives any new administration sufficient time to put in place the necessary arrangements. The direction gives the Council until 21 days after the

¹ From paragraph 28 of the Publicity Code

Authority's first post-election annual meeting (local government elections 3 May 2018) to take any necessary decisions in order that the Authority will be in a position to comply.

The context for the Directions

4. Appropriate use of publicity concerns the frequency, content and appearance of council newsletters, in order to prevent unfair competition with local newspapers. The Government's policy is as far as is practicable creating an environment which is as conducive as possible to the flourishing of independent and politically free local media, which is an essential element of any effectively operating local democracy. It is to further this policy that the Government has adopted measures to limit the frequency of local authority newsheets etc. The balance which, with the approval of Parliament, the Publicity Code strikes is that the newsheets etc. of principal local authorities should be published no more frequently than quarterly.
5. The Secretary of State has carefully considered all the circumstances of this case. As set out below he has concluded that these circumstances do not warrant a departure in this case from the Government's policy in relation to the publication of local authority newsheets. The Authority is failing to comply with the provision of the Publicity Code that relates to frequency, and its non-compliance is significant. The Authority publishes *Hackney Today* on a fortnightly basis (a print run of 108,000 copies, delivered free to every home and business in the borough) with a break in publication over the Christmas and New Year period. There are 24 editions each year, far in excess of the recommended four.
6. The Secretary of State's direction making powers are provided for in the Local Audit and Accountability Act 2014 ("the 2014 Act") which amended the Local Government Act 1986 ("the 1986 Act"). The 2014 Act received Royal Assent on 30 January 2014 and the provisions containing these powers came into force on 30 March 2014, and since that time the Secretary of State has been in dialogue with councils concerning their compliance with the Publicity Code.
7. The Secretary of State has carefully considered all the circumstances of this case. As set out below he has concluded that the Authority should be able to ensure compliance within the specified timeframe, and that it has had ample time to make alternative arrangements for its publicity requirements. The Secretary of State therefore considers it appropriate that it should ensure compliance by 3 September 2018, which provides the Authority with an extended period of time to comply, in light of the forthcoming May local election and purdah.
8. The Secretary of State takes exercising his direction making powers under section 4A of the 1986 Act very seriously, only exercising them when he considers it necessary. He considers it appropriate that it should be the Authority's executive that determines what steps need to

be taken in order to comply with the Directions, and that they should do so in a timely fashion.

Reasons for the Direction to publish *Hackney Today* no more frequently than quarterly

9. *Representation received*: The Authority argue that there is no evidence that *Hackney Today* is competing unfairly with, or damaging, other local media, and there is no evidence that the circulation and revenues of commercial titles have declined faster in areas where councils have produced their own newspapers. The Council also argues that there is no evidence that *Hackney Today* is diverting advertising that would make a material difference to the diversity or circulation of other local media as the public and third sector bodies that account for approximately 90% of *Hackney Today*'s external advertising would not otherwise advertise in local independent press as they are put off by their declining readership and poor circulation. The Council argues in its representation of 8 January 2018 that '*the reality is that there appears to be no evidence whatsoever of local authority newspapers having a material detrimental impact on the local press, whether generally or in this Council's area in particular. At best the Reasons simply consist of unsubstantiated assertions*'.
10. *Secretary of State's position*: The Secretary of State accepts that the impact on the independent press in Hackney may not be easy to assess. He notes, however, that the London Assembly's August 2017 report, '*The fate of local news - read all about it*', stated that "*Local newspapers have, in some cases, been negatively affected by local authorities regularly publishing their own newsletters. While these newsletters have their place, they should not be a substitute for local news. The Government's intervention to clamp down on how frequently these publications are produced will help local newspapers.*"
11. He is of the view that more or wider circulating local newspapers would be available in the borough if the Council did not publish its own newspaper more frequently than quarterly. The reason is that if *Hackney Today* were produced on a quarterly basis, some of the advertising that it currently takes would potentially be available to other local media - he notes that the external advertising income for *Hackney Today* for 2016/17 was £115,000 - and other markets would probably develop for alternative media that would otherwise have been deterred by the existence of a Council newsheet published fortnightly. He does not accept the Council's argument that the public and third sector bodies that account for the vast majority of *Hackney Today*'s external advertising would not otherwise advertise in local independent press to the extent that it would make a material difference. On the contrary, it is evident from examining local independent press available in other London Boroughs that public and third sector bodies already advertise widely in local independent press. The Secretary of State notes that the Founding Editor of the *Hackney Citizen*, a local independent

newspaper, objected, in his open letter of 28 November 2016 to the Mayor, to the Council publishing fortnightly as it competes unfairly with his own newspaper. The Founding Editor regards the selling of advertising as unfair competition and notes that “*The council’s selling of advertising therefore makes the funding of effective government scrutiny more difficult and in so doing has an adverse effect on local democracy and debate.*” The Secretary of State notes the argument the Council makes in its representations of 8 January 2018 that, following the publication of this open letter, the Council decided not to sell advertising space proactively. It also appears that the Founding Editor changed his opinion about the impact the Council newspaper has on local independent newspapers between 2013 and 2016. However, it is clear from articles published on the *Hackney Citizen* website in late 2017 that the Founding Editor still believes that the Council publication is competing unfairly with the local independent press. The Secretary of State also notes that the Council’s own website highlights its publication’s competitive advertising rates, its acceptance of “all sorts of advertisements”, its reach (the largest reach of any local paper in the borough), that discounts are available for bulk purchases of advertising space, and that in their representation of 25 September 2017 the Authority said “*If businesses or other agencies approach us and ask to buy space in Hackney Today, then we will of course oblige.*” The Secretary of State does not agree with the suggestion that, in the absence of a precise evaluation of how much advertising revenue will transfer to the independent sector, he is precluded from making this judgment.

12. *Representation received:* the Authority note in their representation of 8 January 2018 that the explanatory memorandum to the Code promised a post-implementation review of the Code in 3 to 5 years after it came into effect (i.e. at some point between March 2014 and March 2016), with the details of the proposed research and analysis to be developed over the coming months. The Council further notes “*the refusal by CLG to answer our questions on this issue once again indicates that the Secretary of State was not even made aware that his predecessor’s effective promise to Parliament has been broken. We suggest that to proceed with a direction in such circumstances would amount to an abuse of power*”.
13. *Secretary of State’s position:* The Secretary of State does not agree that it would be an abuse of power to make a direction. The intention to review the Code and the proposed research and analysis was the intention of a previous Government. The legal framework remains as per the legislation which has been made by Parliament and the Secretary of State has the power to enforce aspects of the Code where he considers it right and appropriate to do so.
14. *Representation received:* The Authority argue that *Hackney Today* is a cost effective means of communication that delivers value for money for council taxpayers in communicating with all their residents and

publishing statutory advertisements. Reduction to quarterly publication would require the Council to place the great bulk of its statutory advertising in a local commercial newspaper. Combined with the cost of a quarterly magazine and the production of other printed materials to publicise service changes and other information, this would amount to more than it costs to produce *Hackney Today* fortnightly.

15. *Secretary of State's position:* The Secretary of State has noted the estimate of costs that the Authority has provided. However, he considers that the Authority has yet to make a wholly convincing argument as regards value for money, particularly given the availability of effective and efficient non-newsheet methods of communication. The Secretary of State accepts that it could be the case that to publish the bulk of the Authority's statutory notices in the local independent press, publish a quarterly publication and issue other publicity could cost more. The Secretary of State notes that the Authority has, in its 15 December 2016 representations, estimated the increased cost to be approximately £100,000 per year (net cost of fortnightly *Hackney Today* said to be £318,200; net cost of quarterly publication of *Hackney Today* plus increased costs of statutory notices and advertising said to be £421,500), but he is aware that the Authority's total revenue expenditure for 2016/17 was more than £800 million and, in this context, and given the importance of a strong local press, even a potential £100,000 increased cost (which might not in fact occur) would be justified. He has also noted that the majority of local authorities comply with their obligation to publish statutory notices while also complying with the provisions in the Publicity Code on frequency of publication of newsletters, newsheets or similar communications. The Secretary of State's conclusion, however, is that the Authority's representation about cost and coverage does not outweigh the Government's policy of as far as is practicable creating an environment which is as conducive as possible to the flourishing of independent and politically free local media, by limiting the frequency of local authority newsheets. He is not stopping the Authority from disseminating information to their residents. Councils are of course welcome and expected to make use of their other existing communication outlets (e.g. their websites) to publish such information. Every local authority across England is required to publish statutory notices and the vast majority do not use a fortnightly newsletter to do so. Parliament was aware of the requirement for councils to publish statutory notices when it introduced the Code.

16. *Representation received:* The Authority argues that to restrict the Council to quarterly publication of *Hackney Today* would have a negative impact on the Council's ability to communicate effectively with residents, especially those with protected characteristics and those from the most deprived socio-economic groups. In its representations of 29 April 2014, the Authority argued that Hackney is a highly diverse borough which has some of the highest levels of deprivation in the UK

within its communities, and that its level of digital exclusion is higher than average.

17. *Secretary of State's position:* The Secretary of State has considered the particular circumstances of Hackney and recognises that it may be the case that communication with the community, including groups that display protected characteristics, would be more effective via physical publication. However, much of the information in *Hackney Today* could be delivered through a quarterly publication, supported as appropriate with other communication channels. For example, the Secretary of State considers that, in addition to the internet, the Council could use education centres, community centres and libraries as a means to communicate directly with Hackney's diverse population. The Secretary of State's conclusion is that communication by a quarterly publication will continue to effectively reach the community, while following the Government's policy of enabling as far as is practicable an environment which is as conducive as possible to the flourishing of independent and politically free local media, by limiting the frequency of local authority newsheets, and so protecting local democracy. In reaching this view, the Secretary of State has had regard to the Equality Statement and considered the particular circumstances of this authority.
18. *Representation received:* The Authority have argued that comments made by Ministers at the Ministry of Housing, Communities and Local Government are evidence of pre-determination of the issue before representations have been received or considered and/or that the Department is motivated by political considerations rather than by relevant considerations.
19. *Secretary of State's position:* The Secretary of State does not accept the Authority's arguments about bias, pre-determination or irrelevant considerations. The Secretary of State has considered the evidence, including the Authority's representations, with an open mind before coming to a decision on whether to issue a direction. The Secretary of State has not made a public statement about councils' compliance with the Publicity Code and notes that the Authority does not allege that he has done so. The decision to issue a direction has been taken by the Secretary of State alone.
20. *Representation received:* The Authority asks, in their representation of 8 January 2018, if Secretary of State has the power to make a proportionate direction that would be limited to one which restricted the Council to whatever frequency of publication the Secretary of State is prepared to accept from other authorities without making a direction.
21. *Secretary of State's position:* The Secretary of State's powers under the Local Government Act 1986 are clear. He can either require compliance with an aspect of the Code (after considering representations) or he can decide not to do so. It is for the Secretary of

State to judge, on a case-by-case basis, whether it is appropriate and proportionate to require an authority to comply with the frequency requirements in the Code. There is no 'fall-back' provision in the Statute empowering him to require compliance with some other standard of compliance, not mentioned in the Code. In any event, for the reasons set out in this letter, he is satisfied that it is appropriate to impose a direction requiring compliance with the frequency provision in the Code in this case.

22. *Representation received:* The Authority alleges that 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, constitutes unlawful state aid.
23. *Secretary of State's position:* The Secretary of State does not accept the Authority's argument and, in particular, has noted that the majority of local authorities comply with their obligation to publish statutory notices while also complying with the frequency provisions in the Publicity Code.
24. *Representation received:* The Council argue in their representation of 8 January 2018 that the Secretary of State's position in relation to advertising is flawed by logical inconsistency. The Council state that "...the Secretary of State has been positively encouraging local authorities to sell web advertising space" and that "...it is clear that local newspapers, given the decline in print advertising, rely heavily upon the sale of advertising on their websites to maintain their commercial position. There is no rational basis for saying on the one hand that local authorities ought to be active in that market, and yet on the other hand that any sale of advertising space in a local authority printed newsheet is to be deprecated".
25. *Secretary of State's position:* The Secretary of State has always been clear that the purpose of the Publicity Code is to prevent unfair competition with local newspapers, print media. This remains unchanged. The Secretary of State's position is not inconsistent as his reference to web advertising or indeed advertising in the yearly Council Tax bill are completely different mediums and therefore do not compete with regular local newspapers.
26. *Representation received:* The Authority ask in their representation of 8 January 2018 why the Secretary of State has at this stage taken action against only some of the authorities which publish newsheets more frequently than quarterly. The Authority also note in this representation "the effect of the direction is to put the Council into a position where it is being treated differently from other authorities".
27. *Secretary of State's position:* The Secretary of State is currently either taking action against every council who he is aware publishes

fortnightly, or seeking further information from them to inform a decision on whether to take action. These councils are in non-compliance to the most significant extent with the Code's frequency requirements. There is therefore no basis for a complaint of inequitable treatment.

Summary

28. In summary, in determining whether or not it is appropriate to exercise the powers under section 4A of the 1986 Act, the Secretary of State carefully considered the matters at each stage of the decision making process, including reviewing the Authority's various representations along with the analysis contained in the Department's Equality Statement. He has concluded that it is necessary, appropriate and proportionate to impose a Direction.

Publication of representations:

29. This letter, together with all the authority's representations received by the Secretary of State, are on the Government website at www.gov.uk.

Yours sincerely,

Alex Powell
Deputy Director, Local Government Stewardship