

## Governance Directorate

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Date: 29 April 2014

Dear Mr Rowsell,

### **Written Representations made in respect of Notice of Statutory Direction under Section 4A(5) of the Local Government Act 1986**

#### **Introduction and summary**

This document sets out the London Borough of Waltham Forest's ("the Council") representations in response to the Secretary of State's notice of a proposed direction under section 4A of the Local Government Act 1986 that was given on 16 April 2014. The proposed direction would require the Council to comply by no later than 1 May 2014 with all of the provisions of the Recommended Code of Practice on Local Authority Publicity.

In summary, the Council submits that the Secretary of State should not make the proposed direction. The Council complies with every aspect of the Code of Practice other than the requirement not to publish newspapers more frequently than quarterly. The Department for Communities and Local Government ("DCLG") has not referred to any evidence that supports an allegation that the Council is not complying with the remainder of the Code. The Council has had careful regard to the provisions of the Code as to frequency but has decided to publish its free newspaper ("Waltham Forest News" ("WFN")) 23 times a year because it is the most cost effective way for the Council to meet its various duties to publish statutory notices and other appropriate publicity. Such an approach is consistent with, inter alia, the Council's fiduciary duty to taxpayers to use its resources efficiently and its duties under section 149 Equality Act 2010. Requiring the Council to limit the publication of WFN to quarterly would

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serve no legitimate purpose at the present time: there is no evidence that WFN damages local newspapers. However, if the DCLG relieved the Council of its obligation to publish statutory notices in newspapers, the Council would reduce the frequency of WFN.

Further, not only is there no factual basis for making the direction but such a direction would clearly be unlawful for a number of reasons including irrationality, procedural unfairness, unlawful state aid and bias/predetermination.

### **The reasons why a direction should not be made**

The Council submits that there is no reason why the direction should be made. None of the correspondence from the DCLG has clearly stated the reason why the DCLG thinks that a direction may be appropriate. However, a press release issued by DCLG suggested that in relation to the Council the reason for the direction was frequency and even-handedness. The Council, in a letter dated 23 April 2014, sought clarification of the reasons for the direction and what information it was based upon. Unfortunately, DCLG in its response of 25 April 2014, failed to provide such clarification or information. It simply asserted that the information it based its decision upon was its policy, the previous consultation responses and the fact that the Secretary of State is aware that "your Council publishes a fortnightly newspaper, and that this has given rise to concerns about costs and wasting residents' money and about the impact this fortnightly publication has had on the local independent press." It is unclear whether the reference to wasting residents' money is a reference to "cost effectiveness" which was not referred to in the press release as a reason for issuing the proposed notice.

Below the Council addresses the issue of competition with the local independent press together with the various matters detailed in the Code of Practice.

#### *Unfair competition with local newspapers*

The Council understands that the asserted reason for the Code of Practice and the direction is that Council publications, including WFN, create unfair competition with local newspapers. The Council is unaware of any credible evidence to support this assertion generally or in relation to WFN and the main relevant local newspaper the Waltham Forest Guardian.

In relation to the general assertion, the current Code of Practice was amended in 2011. At the time of this amendment, the Communities and Local Government Select Committee concluded that there was no evidence to support the Secretary of State's assertion that council publications had had a negative impact on the local independent press. The Committee in effect asked the Secretary of State to provide evidence before amending the Code. The Secretary of State was unable to produce any evidence at the time and still has not done so despite numerous requests.

In relation to the particular situation in the Council's area, we attach a spreadsheet and associated graph of the Waltham Forest Guardian's ABC verified circulation from December 2002 – December 2013 (**Appendix 1**). The picture that this shows is of a steady, regular decline in readership of around 1000 readers per annum. We have highlighted when the Council started to increase frequency of publication to 23 times per annum from mid-2007 (first as Waltham Forest Magazine and then from 2009 as Waltham Forest News). You will see there is no additional decline in readership associated with that change.

I understand that there is no evidence to suggest that where councils have ceased to produce their own newspapers this has revived the fortunes of local newspapers. In 2011, Hammersmith and Fulham ceased to publish H & F news transferring their advertising revenue to the local free Trinity Mirror title, Fulham and Hammersmith Chronicle. Notwithstanding this, the Chronicle's circulation fell from 81,254 in 2011 to 45,490 in 2013, and we understand it is about to cease publication.

In such circumstances, there is no basis upon which the Secretary of State could rationally conclude that the fortnightly publication of WFN was having an impact on the local independent press. So far as we can make out from DCLG's letter of 25 April 2014, the Secretary of State's present belief that there is such an impact is based upon one brief consultation response from a (possibly retired) journalist, who asserts that the business model of the (then) Walthamstow Guardian has been "destroyed by the deliberate activities of a hostile local authority". With respect to their author, these comments are palpable nonsense in the light of the evidence set out in these representations. They certainly provide no sensible evidential basis for a statutory direction, and it is remarkable that the Secretary of State, apparently without doing anything to verify them, should single out comments of this nature as the basis upon which he proposes to act. It may be noted in passing that no such assertion appears to have been made in consultation by the publishers of the Waltham Forest Guardian.

### *Cost effectiveness*

Neither the proposed direction nor the more informative press release suggest that the Council is in breach of the principle of cost effectiveness. This is clearly correct as the publication of WFN is cost effective.

The Code requires the Council to be able to confirm that consideration has been given to value for money in relation to all publicity, including the consideration of alternatives. The Council are confident, having considered the matter carefully, that the publication of WFN provides value for money and is the best available means of meeting its statutory duty under s.3 of the Local Government Act 1999 to achieve best value in the provision of its services.

By providing near universal coverage of households in the borough, WFN provides the most effective way of communicating with all residents. The newspaper allows Council, other public sector partners and community groups to communicate with Waltham Forest's 258,200 residents. It reduces and, in places, eliminates the need for other publicity, such as leaflets and flyers about services and events. WFN has an ABC (industry standard) verified free letterbox delivery of 97,479 copies to residents and 4,000 copies to businesses.

The Code requires consideration of alternatives before spending money on publicity. In this borough, the only other newspaper which covers Waltham Forest and has an ABC verified rating is the Waltham Forest Guardian (another small newspaper, the Yellow Advertiser, has no such rating and has not had since 2000. Its self-declared circulation is 14,000).

The Waltham Forest Guardian (the Guardian) is a paid-for title which has a circulation of 4,802 (less than 5% of WFN's verified circulation). Further, over a third of the Guardian's distribution is in Chingford, the most affluent area in the borough. Chingford (which comprises approximately 26% of the population) is also the least diverse area (see Equality and Diversity below). Thus, it is clear that switching from WFN to the Guardian would have a disproportionate impact on various groups with protected characteristics.

On any reasonable view, there is no comparison in terms of the coverage. WFN's quality and effectiveness can also be demonstrated by the fact that it won the Chartered Institute of Public Relations Local Public Service Publication of the Year in 2013. The Judges said:

*With an editorial team of just one, Waltham Forest Council succeeded in publishing a fortnightly tabloid newspaper that not only looks professional and appealing but its regarded by residents as genuinely informative and useful to them in their engagement with the council. This strong resident focused publication aims to put a call to action within every story and regularly uses extensive cover wraps and centre page pull outs to highlight stories of particular interest and importance to its readership. For example, the campaigns against racism and gang violence. In 2012 it rose to the occasion to reflect Waltham Forest's status as a host borough for the Olympic Games by increasing the newspaper's frequency from fortnightly to weekly during the six weeks surrounding the games. Added to all that, Waltham Forest is totally self-funded by advertising sales*

This demonstrates external recognition of WFN's value to Waltham Forest and its residents.

The Council accepts that the mass coverage of WFN would be of limited value unless it can demonstrate that it is an effective means of informing residents about Council and partner services and events. Data collected from the June-July 2013 wave of our Residents Insight Survey shows that three in four residents (74%) have read Waltham Forest News within the last six months.

- The majority of the residents who have read WFN (85%) find the newspaper useful (up from 72% in March 2011 and from 81% in May 2012).

- Three in four readers (75%) feel that it tells them what they need to know about the Council and its services (up from 65% in March 2011).
- Residents who read Waltham Forest News are significantly more likely to feel informed about the services and benefits the Council provides (71%), compared to those who do not read the paper (41%).

(Data from June-July 2013 Resident Insight Survey).

The Council accepts there is a cost to producing WFN but believes that this provides value for money. Value for money must be assessed in context. A key factor for Waltham Forest in deciding to publish 23 times per year is the outdated legislative framework that requires local authorities to publish the vast majority of statutory notices (for planning, highways and other functions) in a newspaper circulating in its local area, in our case Waltham Forest.

Without WFN, this creates an inevitable and considerable cost in paying for advertising space in an ineffective monopoly provider, the Waltham Forest Guardian. As a paid for newspaper with a circulation of just under 5,000, the Guardian reaches 2% of the borough's population and its readership is the self-selecting generally more affluent group of those who choose to buy the newspaper. The contrast with WFN's penetration could not be starker.

In terms of cost, a statutory direction would force the Council to spend taxpayers' money on statutory notices in the Waltham Forest Guardian newspaper as a monopoly supplier in the borough.

It is difficult to estimate the precise cost the Council and taxpayers would incur for this. In part, this is due to the fact that the Guardian has refused to give us a rate card or an estimation of their charges for public notice. In no other circumstances would the Council procure services from a provider who refused to provide full transparency on their prices in advance.

We have therefore compared the costs from 2006 when the Council last paid for statutory notices in the Guardian compared to current (i.e. 2014) prices in WFN.

Overall, in January to October 2006, the Council spend £236,000 on advertising space in the Guardian, the vast majority for statutory notices. We cite three actual examples from 2006 below with their comparative WFN costs below.

Notice	Guardian Cost 2006 (actual)	WFN cost (2014)
Traffic Calming notice 22 June 2006, 25cm x 5 columns	£3020.16	£1061.65

Planning Notice 3 August 2006, 18cm x 6 columns	£1022.21	£466.95
Dog Control Order, 18 May 2006, 34cm x 6 columns	£1443.30	£297.15

The difference is apparent. It is also highly unlikely that the Guardian's rates have dropped to this degree in the past 8 years. They are likely to have gone up at least by inflation. The effect of the proposed statutory direction would be for the Council to be forced to pay these rates or, indeed, whatever rates the Guardian sets.

The overall costs will of course vary with the number and size of notices but it is not unreasonable for the Council to have to budget for £250,000 per annum on statutory notices. Moreover, as stated, as a monopoly provider, there would also be no check on the Guardian's ability to set its own prices for statutory notices to subsidise its falling sales.

The Council considers that in Waltham Forest the effect of a Statutory Direction would place it in direct breach of paragraph 13 of the Code, which states: *The purchase of advertising space should not be used as a method of subsidising voluntary, public or **commercial organisations*** (our emphasis). It is also likely to give rise to illegal state aid (see below). The Council does not consider that the Evening Standard is a realistic alternative as this would increase the estimated costs. The Evening Standard costs on average £18,000 plus VAT per page to advertise. In some editions, the Council has three to four pages of public notices. The Standard is simply not a viable or cost effective alternative.

The truth of the matter is that the answer to saving taxpayers' money in local authority publicity – a goal we all share – is in the hands of the Secretary of State. If the requirement to publish statutory notices in printed newspapers was removed to allow them to be published on its website, Waltham Forest would be able to stop publishing WFN fortnightly. The rationale for the Secretary of State's reluctance to take this simple step is unclear when at the same time, and with our full support, he is embracing digital communication to open up Council meetings and decisions to scrutiny via filming, blogging and internet publication.

The Council would be very likely to be in breach of its general duty to achieve best value by purchasing services from an ineffective provider with no competition.

The Council accepts that publishing WFN 23 times per year creates a cost to the Council that exceeds the cost of statutory notices. The cost including design, printing, distribution and staffing for 23 editions in 2013/14 was £417,600. However, statutory notices are not the only publicity that the Council needs to issue. In such circumstances, the Council is confident that if the direction is made, the Council will be required to spend more than £417,600 on publicity.

The Council has been provided with quotes for the design, printing and distribution of a quarterly publication. These quotes – which, we are confident, are competitive - indicate a cost of £42,942 per issue or £171,770 per annum. Under a change to quarterly publication, we would then have to pay at least £250,000 per annum to publish statutory notices leading to an overall cost of approximately £420,000 of ratepayer's money whilst publishing 19 fewer editions.

Moreover, fortnightly production of WFN provides economies of scale to the whole of the Council's publicity that would be lost by a reduction to quarterly publication as such publicity is necessary. Examples over the past 2 years when the Code has been in force would include:

- The Council's schools holidays activities programme which are advertised via pull outs in Waltham Forest News at least five times per year. These include childcare and activities for families, children and young people and often run to sixteen pages. Without timeous publications these would revert to being leaflets, printed and distributed at a far higher cost.
- Regular campaigns are run in Waltham Forest News to promote the Council's weekly waste and recycling services. These promote recycling, remind residents of their waste collection days, prompt residents to use our free bulky waste service and notify holiday changes throughout the year. Without timeous publications these would revert to being leaflets, printed and distributed at a far higher cost.
- Free Christmas dinners for 1000 senior citizens are only advertised in WFN and are regularly oversubscribed within a few days of publication. Our latest insight survey showed that 44% of over 65's knew about the dinners; which could only have been from WFN.
- Waltham Forest's Adult Learning Service promote their back to work, vocational and development courses regularly throughout the year in pull outs in Waltham Forest News. Without timeous publications these would revert to being leaflets, printed and distributed at a far higher cost.

These publicity costs are currently absorbed into WFN but would now need to be produced separately at greater unit cost. The cost to design, print and distribute a simple A4 leaflet would cost approximately £7,725 as opposed to £1,250 for a full page advert in Waltham Forest News.

It is difficult to estimate at this point how many additional leaflets and other publications would be required but we reasonably believe that the overall costs of leaflets, public notices and quarterly publications would exceed the current cost of Waltham Forest News.

We have shared contracts with four other authorities for the printing and distribution of Waltham Forest News and are confident we get the best possible deal. We also have the smallest staff of any borough who run a regular

newspaper and all of the paper's costs are paid for by advertising which means that services which have no need to communicate do not make a fixed contribution to the paper.

The proposed direction takes no account of the financial impact on the Council (and therefore council taxpayers) of prohibiting the current frequency of publication of WFN.

Further, the proposed direction provides no means for the Council to negotiate variation or early termination of contracts, creating unnecessary cost to the public purse.

It is worth noting that a local newspaper group, Trinity Mirror, print Waltham Forest News. They hold a joint contract with Waltham Forest and three other boroughs worth £4 million over 4 years. Thus, the direction would have an adverse impact on local newspaper groups and local newspapers.

Based on the figures above, WFN costs approximately £1.42 per resident per annum. No alternative method of communications, particularly local newspapers, offers such value for money considering Waltham Forest News's circulation reaches every home and business and it is able to publicise a wide range of Council and community issues.

Over time, we are looking to move to digital communication for our publicity but full digital by default is a number of years away. The current proposed direction provides no means of transition and does not address the equality issues we have identified below.

The benefits of publicity are not limited to the Council. Waltham Forest News offers free promotion of community events and statutory partners which it is reasonable to believe otherwise would not exist at all or to the same level. Every edition includes free publicity to community groups:

- A two page "*What's On*" spread
- A full page community focus on one of the four neighbourhoods (Leytonstone, Leyton, Chingford and Walthamstow) featuring one in-depth article and three news in brief items on clubs/groups in the area.

There are regular features on other public sector agencies, including the Police (e.g. detailed coverage following the 2011 riots) and the latest edition's front page features promotion of a London Fire Brigade campaign.

Following receipt of the Secretary of State's notice we asked our database of over 100 community organisations for their comments on reducing the frequency of WFN publication. Our request and responses to date are attached at **Appendix 2** and clearly demonstrate, in our view, the loss to the community if the proposed direction is imposed.



You will note that our request was open-minded in referring to the Secretary of State's press release and not simply seeking supportive comments.

We believe that this provides additional value for money to the public purse and promotes localism.

### *Objectivity*

The Council considers that it is in compliance with this principle and the Notice does not state otherwise.

We have reviewed WFN since the introduction of the 2011 Code and can see no evidence that, taken as a whole, the publication does not meet the expected standards.

The Code expressly allows councils to set out their views and reasons for holding those views but we also ensure that reporting is "*balanced and factually accurate*". We are confident that WFN complies with this.

The Council considers also that its campaigns comply with the requirements of paragraph 16 of the Code: *Local authorities should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy.*

Our campaigns have been directly linked to research into residents' priorities for the borough, not party politics. The Council's priorities were developed via our Residents Insight Programme. This programme involves qualitative and quantitative research about the views and needs of local residents. The quantitative research is run by BMG Research and centred upon interviews with 500 residents, who are demographically and geographically representative of the borough. The priorities were then agreed following a mass conversation with residents in 2012 in which 1500 residents participated. This consultation was communicated to residents via Waltham Forest News.

Any review of WFN since 2011 will demonstrate that advertising is clearly marked as such and the other provisions in Paragraph 17 and 18 are not in issue.

We also consider that the principle of objectivity is closely linked to "even-handedness" and that the fact that WFN is objective is also evidence that it is "even-handed".

### *Even-handedness*

The press release, but not the Notice or the DCLG correspondence, alleges that the Council is in breach of this principle of the Code. However, the DCLG has refused, in its letter of 25 April 2014, to give any proper explanation of the purported evidential basis for this assertion. We consider this to be an extremely regrettable and irresponsible approach which increases our concerns

as to whether this decision is being taken with an open mind. Certainly it has deprived us of the opportunity to address specifically in these representations any alleged evidence of specific breaches of the Code.

We are confident, however, that any serious examination of WFN demonstrates even-handedness within the meaning of the Code.

As to WFN, we do not consider the provisions with regard to blogs and third party publicity to be relevant (paragraphs 22 to 25).

The two remaining provisions are paragraphs 19 and 20, set out below:

*19. Where local authority publicity addresses matters of political controversy it should seek to present the different positions in relation to the issue in question in a fair manner.*

*20. Other than in the circumstances described in paragraph 34 of this code, it is acceptable for local authorities to publicise the work done by individual members of the authority, and to present the views of those individuals on local issues. This might be appropriate, for example, when one councillor has been the "face" of a particular campaign. If views expressed by or attributed to individual councillors do not reflect the views of the local authority itself, such publicity should make this fact clear.*

The Council does publicise the work of individual councillors but within clear limits relating to their areas of responsibilities. For example, executive members will lead publicity in their area. Also, ward councillors (of whichever party) are invited to publicity events in their wards. The Council complies fully with the requirements of paragraph 34 relating to election "purdah". A copy of this year's advice to managers on this issue is available on request. Therefore the publicity of councillors is within the remit of the Code.

WFN does address matters of concern to residents and relating to policies but in an even-handed way. Our recent handling of a formal consultation on the selective licensing of private sector rented properties is an example of even-handed presentation. The result of this publicity is that we have received over 1500 consultation responses, which the Council is now considering. This consultation was almost exclusively communicated to residents via Waltham Forest News.

We also refer you to the contents of our consultation response which sets out examples of publicity issued in WFN that demonstrates compliance with the objectivity and even-handedness principles.

We have attached a selection of articles and features from the last 4 years of WFN, which can be categorised as follows:

1. **Even-handedness:** articles including Government ministers (including Theresa May, James Brokenshire and Bob Neill); local MPs including Iain Duncan-Smith; and a number of stories featuring Boris Johnson as Mayor of London. These articles show clear objectivity in reporting of government ministers and decisions. These are of course outweighed by articles featuring

the Council's Labour administration but this is clearly permitted by paragraph 20 of the Code. Whilst WFN ensures there is cross-party coverage where justified by the facts, it is mindful that s.2 of the 1986 Act applies to all political parties, irrespective of whether that party is in the Council's administration or not **(Appendix 3)**.

2. **"Negative" articles:** WFN has not shied away from addressing two of the Council's major cuts over the past administration, Library closures and the closure of customer service shops. Finally, WFN features a "vox pop" of local residents on a topical local issue. The views expressed are the residents' own and regularly feature criticism of the Council e.g. *The Council should do more about...* WFN also does not shy away from featuring topics that are negative such as the borough's gang problem, crime or anti-social behaviour. **(Appendix 4)**
3. **Campaigns:** details of recent campaigns focussed on WFN publicity. It is clear from the subject matter the campaigns are non-controversial, e.g. William Morris Gallery (which was subsequently Museum of the Year 2013), adoption, breakfast clubs, recycling and the aim of each campaign is stated clearly as to inform, not to persuade. **(Appendix 5)**

These real examples counter with actual evidence the unsubstantiated consultation response (news staff 2) relied on by the Secretary of State to justify the proposed Notice. We also enclose a letter from Boris Johnson praising the Council's campaign against the EDL marches in 2012, a campaign led in WFN **(Appendix 6)**.

Whilst Waltham Forest will not shy away from controversial matters – because they are important to our residents – the truth is that the vast majority of the content of WFN is non-controversial and provides information on Council services, public and voluntary sector activities, achievement of our residents and "What's On" style information. There is no pretence to cover current affairs or otherwise parody a commercial newspaper. Therefore, any serious consideration of even-handedness should place into context the balance of volume of "controversial" and non-controversial items.

DCLG's letters of 22 and 25 April 2014 refer to the responses to the DCLG 2013 consultation as forming part (apparently a significant part) of the supposed evidence base upon which the decision to issue a proposed direction was based. The Council have considered this feedback. There appear to be two such consultation responses from individuals only one of which touches on the issue of even-handedness (a third response, from an organisation, simply repeats what are evidently the same comments from one of these individuals). This response (which is hardly from an unbiased source, as its title News Staff 2 indicates) is nothing more than assertion unsupported by any evidence. Further, it is not factually accurate. WFN does, as detailed elsewhere in these representations, address unpopular subjects. It also includes criticism of the Council from residents.

In summary, we cannot see any evidence to justify the proposed Notice and consider that WFN complies with the Code in respect of even-handedness.

### *Equality and diversity*

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."*

Taking into account the demography of Waltham Forest and the priorities of its residents, the Council considers WFN is a very useful tool in meeting these provisions of the Code and that the frequency of publication helps to ensure that "hard to reach" groups receive information about Council, public sector and voluntary sector activities.

The Secretary of State will know that Waltham Forest is a very diverse borough. In terms of ethnicity, a majority of the population is from a non-White UK background. The main ethnic groups are Asian (21%); Black / Black British (17%) and White Other (15%) of which 9% are East European. For 26% of the population, English is a second language. Approximately 6% of the borough describes themselves as disabled and there is an equal split of men and women.

There are also demographic challenges faced by Waltham Forest in delivering its services. Waltham Forest has particular challenges in relation to the mobility and diversity of its population.

The borough's population increased by 18% between 2001 and 2011; higher than the London average of 14%.<sup>1</sup> In relation to population churn, the long-term international migration turnover (sum of in and out-migration) per 1,000 resident population in Waltham Forest (33.9), more than double the national average (14.1). The volume of people moving in or out of the borough from other parts of the UK (124.1 per 1,000 residents in 2012) is significantly higher than the average internal migration turnover in London (55.2) and the national average (3.9). The number of National Insurance Number (NINo) registrations to adult overseas nationals entering the UK has consistently been higher in Waltham Forest than across London (in 2012, it was 54.1 compared to 36.9 per 1,000 resident population aged 16 to 64).<sup>2</sup>

This makes communication with residents particularly difficult. Mobile and diverse communities are likely to have few ties to a local area. The importance

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<sup>1</sup> Source - Census

<sup>2</sup> Source: ONS Local Migration indicators

of placing plain English crystal marked Council information directly through people's doors is heightened in such a population.

Waltham Forest was assigned Prevent priority status following the Trans-Atlantic airline bomb plot in 2006, and continues to be one of London's priority areas as assessed through police intelligence and risk mapping. The Council work closely with the Office for Security and Counter Terrorism (OSCT) to engage with statutory and community partners to manage and mitigate some of this risk, particularly through targeted work with vulnerable individuals and institutions.

Waltham Forest News is actively used to promote community cohesion and responsible citizenship and we see the paper as crucial to our efforts to ensure the area continues to enjoy good community relations.

Waltham Forest News has been used to ensure that community cohesion is maintained, often in difficult circumstances. When the far-right group the English Defence League (EDL) proposed to march through Waltham Forest twice in two months, we used the paper to alleviate tensions within the borough as well as calling on residents to stay away from counter-protests. Through the paper we were able to promote positive messages about the borough as we outlined alternative ways in which the community could come together to demonstrate their unity.

We know as well that the paper reaches a more representative section of our community than the local paid for title. The paper is particularly effective at reaching residents from black, minority and ethnic (BME) backgrounds in comparison to other local commercial newspapers.

More than half of those aged 16-29 have read WFN during the last six months (57%), while in all other age groups the proportion of reading WFN is at least four in five.

BAME residents are more likely to think that WFN is useful (87% compared to 84% of White residents). They are also more likely to agree that WFN tells them what they need to know about the Council and its services (80% compared 72%).

To ensure accessibility for those with English as a second language or with poor reading skills, WFN has been awarded the Plain English Campaign Crystal Mark for five years running. We also send a braille or tape version to blind and partially sighted residents.

The proposed direction would have a significant adverse effect on the Council's ability to communicate with all groups and, inter alia, promote good race relations, equality and diversity. It would thus make it harder for the Council to comply with its duties under section 149 Equality Act 2010, to when carrying

out its functions have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations.

### *Appropriate use of publicity*

The Council does not consider it is in breach of any aspect of this Principle except for frequency of publication at paragraph 28. Neither the proposed Notice nor the correspondence from the DCLG suggests otherwise.

The Council addressed the issue of appropriate use of publicity in its consultation response but to summarise:

- Paragraphs 26 and 27 of the Code are not relevant.
- Paragraph 29 of the Code is addressed above under equality and diversity.
- Any serious examination of WFN would show that it is clearly branded as the local authority's publication throughout and does not pretend to be a commercial newspaper as set out in paragraph 30.

### *Lawfulness*

We do not consider that there is any issue under this principle and the Notice and correspondence from the DCLG do not suggest otherwise. The Council has clear powers to publish its own newspaper to its residents not least under s.1 of the Localism Act 2011. There has been no suggestion that the Council is in breach of any of the provisions in paragraphs 5 to 9 of the Code.

As stated above, the Council has never received a formal complaint about the lawfulness of WFN.

### *Conclusions*

The Council accepts that it breaches the Code's provision on frequency of publication (but no other provision of the Code) but as detailed above this departure from the guidance is for good reason. The Council maintains that any rational consideration of WFN demonstrates that it delivers:

- Effective communication with 98,000 households in the borough by means of a single medium avoiding the additional costs and confusion and inefficiency of multiple publications, leaflets etc.
- Cost effectiveness by the most efficient use of taxpayers' money that the Council is forced by outdated legislation to spend on publishing statutory notices in a printed newspaper.
- Delivering effective communication in the views of residents – as evidenced by the research cited above.

- Ensures communication with otherwise hard to reach groups, helping to deliver the Council's public sector equality duty.

In reaching its position of publishing WFN 23 times per year, the Council has balanced these factors against the impact of reducing publication to 4 times per year. The evidence above is that this would not deliver value for money by increasing unit costs; requiring the Council to publish the same service information by other means than a universal newspaper at increased cost; and requiring the Council to publish statutory notices in a publication that is only bought by 2% of the population (who are unrepresentative of the local population) with no control over costs.

It achieves these aims and ensures that the content of WFN is objective and even-handed. There is no coherent evidential basis to suggest otherwise; DCLG has not pointed to any evidence (as opposed to inaccurate assertion) notwithstanding the Council's request to do so.

There is therefore no good reason to make any direction at all. There is certainly no good reason to make the direction proposed, which would place the Council under a mandatory obligation, with immediate effect, to comply strictly with the entirety of the Code. The Secretary of State has provided no proper explanation of why such a direction is contemplated. DCLG's letter of 25 April 2014 merely states that "there are concerns about more than merely the frequency of publication". That is no reason to make a whole Code direction, not qualified in terms of any specific steps that are or are not to be taken, in circumstances where (so far as the Council is aware) no concerns have been expressed which relate to anything other than the frequency of publication of Waltham Forest News. In circumstances where the suggestion is that Waltham Forest News has infringed particular paragraphs of the Code, any direction ought to be couched accordingly.

This is particularly important because the Code was drafted simply as guidance to local authorities, and much of it therefore simply makes recommendations in rather imprecise terms wholly inappropriate to what the Secretary of State is now proposing in effect to turn into a mandatory statutory duty: see for example paragraph 29. Indeed, there are many provisions of the Code which might in certain circumstances be thought to point in different directions (for example, paragraphs 13 and 28). It is wrong in principle for the Secretary of State to place the Council under obligations which are wholly unclear and even conflicting.

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

If the Secretary of State accepts the Council's representations and decides not to make a direction no issue will arise as to the lawfulness of the direction. However, if the Secretary of State rejects such representations and makes the proposed Direction, the Council is clear that any such direction would be unlawful for the following reasons.

### *Procedural Unfairness*

The Secretary of State has sought representations from the Council on whether or not to make a direction. To enable the Council to effectively make such representations, the Secretary of State is required to provide, at least in summary, the factual basis that has led him to consider making a direction and the evidence that may be said to support it. 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 detail 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.

The Secretary of State refers enigmatically to "*the circumstances of your Council to the extent he is aware of them*". This is wholly inadequate: the Council is entitled to know the grounds of the Secretary of State's decision.

### *Irrationality*

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

- i) such a direction would require the Council to spend more money on publicity than it currently does on WFN. 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;
- ii) there is no credible evidence to support the concern that the publication of WFN damages independent newspapers. Issuing a direction purported for the purpose of protecting such newspapers would therefore be irrational;
- iii) requiring the Council to publish WFN no more than quarterly would place the Council at risk of breaching various statutory duties including s 149 Equality Act 2010 and s 3 of the Local Government Act 1999.

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 and the purposes for which the Code was introduced.



### *Tameside/Failure to properly inform*

Prior to taking any decision, the Secretary of State is not only required to direct himself properly as to the nature and scope of his decision-making function, but it is also required to take reasonable steps to acquaint himself with the relevant information to enable it properly to perform the relevant function, see *R v Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014, HL. In breach of this obligation, the Secretary of State failed to inform himself of relevant information prior to issuing a proposed direction. In particular, he failed to inform himself whether or not there was any rational basis for deciding that WFN was not complying with the even-handedness provisions of the Code (which from the DCLG press release appears to be his conclusion). For the avoidance of doubt, the Council contends that one sentence in one representation about WFN unsupported by any evidence is not an adequate factual basis for such a conclusion.

### *Article 10 ECHR/Proportionality*

The Council's residents have an Article 10 ECHR right, inter alia, to receive Information on matters of public concern including the Council's activities and services, see eg *Open Door Counselling and Dublin Well Woman v Ireland* (1992) 15 EHRR 244. WFN currently provides residents with such information. A direction requiring the Council to only publish WFN quarterly would interfere with such a right both by itself and read with Article 14 ECHR (as the interference would have a disproportionate impact on certain protected groups). Such an interference would not be proportionate to a legitimate aim particularly given the lack of evidence that WFN damages local newspapers or that it is poor value for money.

### *Unlawful State aid*

The point is made above that a direction would force the Council to spend very substantial sums on advertising in a local newspaper owned by a private undertaking, in a way which is neither commercially desired nor commercially justifiable. This must certainly amount to unlawful state aid.

### *Public Sector equality duty*

As detailed above, restricting the Council to quarterly publication of WFN will have very significant implications for the ability of various groups with 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 WFN will also damage its ability to promote equality of opportunity and foster good relations. There is no evidence that the Secretary of State has had due regard to this issue prior to deciding to issue a proposed direction; the Council requests that the Secretary of State provide any Equality Impact Assessment carried out prior to issuing the proposed direction.

At present it appears that the Secretary of State has not assessed the impact on members of relevant groups who would otherwise have obtained information through Waltham Forest News and would be less able to do so as a result of the proposed direction. The very limited time available for making these representations has certainly not allowed us to make good this deficiency in the Secretary of State's analysis, even if it was the Council's job to do so. In such circumstances, any direction will be unlawful.

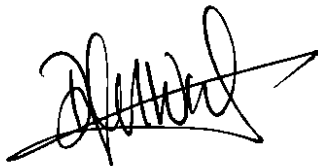
### *Bias*

The Council is of the view that in light of the Secretary of State's recent conduct and, in particular, various statements made by the Secretary of State about "Town Hall Pravdas" and "propaganda on the rates [which] drives the free press out of business. Only Putin would be proud of a record like that" the Secretary of State is disqualified from deciding whether to issue a direction on the grounds of actual and/or apparent bias.

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.

Please do not hesitate to contact me if you require further information or clarification of the points we have made.

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