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From: James Holden [REDACTED]
Sent: 03 May 2013 16:49
To: [REDACTED]
Subject: Waltham Forest Consultation Response
Attachments: Publicity Code Consultation WF Response.doc
[REDACTED]

Please find attached a response from Waltham Forest Council to the publicity code consultation.

Thanks,

James

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16/05/2013

Response form

Publicity Code Consultation 2013

About you

i) Your details

Name:	James Holden
Position (if applicable)	Public Affairs Officer
Name of Organisation (if applicable)	Waltham Forest Council
Address:	Waltham Forest Town Hall Forest Road London E17 4JF
e mail:	[REDACTED]
Telephone Number:	

ii) Are the views expressed on this consultation an official's response from the organisation you represent or your own personal views?

Organisational response

☒

Personal views

☐

iii) Please tick the box which best describes you or your organisation:

District council	
Metropolitan district council	
London borough council	X
Unitary authority/county council/county borough council	
Parish council	
Membership organisation	
Newspaper proprietor	
Newspaper staff	
Business	
Councillor	
Member of the public	
Other	

(please comment):	
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Introduction

The Publicity Code for Local Authorities provides guidelines on a number of forms of communication, spanning publication of local authority newspapers, advertising and the employment of support for the purposes of lobbying. We consider that the current arrangements for the Code allow councils, working with their local communities, to exercise their judgement how to best meet the seven principles underpinning the Code and strongly believe that this arrangement should continue.

Local authorities have statutory powers to inform residents and others and many have decided that publishing a newspaper is the most effective means of discharging these powers and meeting related duties of public consultation, publish notices, and meet their equalities duty. In Waltham Forest, this decision was lawfully and rationally made and fulfils the duty of best value.

If the proposals set out in the consultation were to be adopted it would mean stepping away from the principles of localism that the Government rightly champions. Giving the powers proposed to the Secretary of State alone will unreasonably restrain our ability to fulfil statutory duties and meet our responsibilities to the residents we serve. It will also give unparalleled rights of intervention and control to central government, moving them away from democratically elected local authorities in an unprecedented way.

Questions:

1. *Views on the proposed legislation are invited, and in particular do consultees see the proposals as fully delivering the commitment to give greater force to the Publicity Code by putting compliance on a statutory basis?*

a) Improper Purpose:

The proposed power to order compliance is being used for a purpose that the Publicity Code was not enacted to protect, namely purported unfair competition. The consultation is explicit in stating this purpose:

The origin of this new Publicity Code is the Coalition Agreement, 'Our Programme for Government', commitment for the government to "impose tougher rules to stop unfair competition by local authority newspapers" and the general election manifestoes of both Coalition parties. Such unfair

competition, funded by the local taxpayer, can prove damaging to the continued sustainability of local, independent, commercial newspapers that are an important element of effective local democracy.

The Plan indicates the intention to introduce legislation providing the Secretary of State with a power to make a direction requiring compliance with some or all of the Publicity Code's recommendations to protect local commercial newspapers from unfair competition from municipal publications.

The Publicity Code is issued under s.4 of the Local Government Act 1986. The express purpose of that Act, as stated in section 2, was solely to restrain party political publicity. This was also made clear from the parliamentary debates on the introduction of these provisions of the Act.

The 1986 Act did not seek to introduce a Publicity Code to address competition of local authority publication with the independent press. At no point, does either the debate or statute state that a purpose of the Act was to regulate competition. Competition is an entirely separate legal issue, governed by its own statutory regime and it is entirely inappropriate to use the Publicity Code as a means of regulating competition, particularly if there is no evidence of party political publicity.

Local authorities have clear powers to issue publicity, including the general power of competence under section 1 of the Localism Act, brought into force by the Secretary of State for Communities and Local Government.

b) Lack of Proportionality

The proposed legislation is disproportionate both in terms of alleged problem and the breadth of the powers given to the Secretary of State.

There is little or no evidence base for the proposal beyond anecdotal references that are not substantiated. The full extent of the evidence base is at paragraph 8:

8. Where local authorities comply with the recommendations of the Publicity Code, local taxpayers can be confident that any of their money spent by their council on publicity is being used appropriately; and local independent newspapers - important contributors to sustaining a vibrant local democracy - will not be at risk through unfair, taxpayer funded, competition. Whilst the majority of local authorities comply fully with the Publicity Code's recommendations, it is a matter of concern to the government that there are still cases where this is not so - for example, continuing cases where there

are weekly publications of council newspapers, or concerns about the political character of a council's publicity. Local taxpayers and electors should be able to be confident that the statutory framework for local government provides an effective safeguard against any council using taxpayers' money inappropriately or acting in a manner potentially damaging to others - the independent press - who have important roles in a democratic society.

The reality is very different, and we do not believe that there is any evidence that the publication of council newspapers impacts on local media competition. This view is supported by the Communities and Local Government Select Committee, whose 2011 report *Proposed Code of Recommended Practice on Local Authority Publicity* stated that: "there is little hard evidence to support the view of the commercial newspaper industry that council publications are, to any significant extent, competing unfairly with independent newspapers at present".

The House of Lords Communication Committee report into "The future of investigative journalism" found a decline in newspapers as a source of local news. Combined sales data for local newspapers does not appear to be easily available, but the same report showed a marked decline in sales of regional and national papers as well as magazines. It would not be unreasonable to assume that local newspapers are in a similar state of decline, regardless of any impact made by local authority newspapers.

The powers being granted to the Secretary of State are profoundly undemocratic, and their exercise would not be subject to parliamentary scrutiny. The powers will cover all Council publicity, which, under the 1986 Act, has a very broad definition including public meetings, leaflets, websites as well as newsletters and newspapers. The consultation does not propose any restriction on the powers being granted to the Secretary of State.

There is no objective justification for such a limit on local authorities' lawful exercise of their powers and duties.

c) The current law provides sufficient and proportionate control of party political publicity

The 1986 Act (via section 2 and the Publicity Code) and common law clearly restrain the publication of party political material. Enforcement exists through judicial review and declarations of unlawful expenditure by the district auditor. The former can include the power to injunct the publication of unlawful materials while the latter and the separate publication of accounts for publicity provide any interested party with a simple and cheap means of examining and

challenging expenditure. As stated, competition law exists to restrain unlawful competition; not the 1986 Act.

- d) The proposals fetter local authorities' ability to deliver statutory services and meet statutory duties

As stated, local authorities have express powers to publicise their services and policies to residents and other stakeholders. Councils also have duties to:

- Inform and consult with residents about its policies and plans under various legislation.
- To publish statutory notices e.g. in planning and licensing.
- To provide access to information about Council, executive and committee meetings

Councils are also under a duty:

- To achieve best value in the discharge of these services, seeking to find the most efficient, effective and economic means of delivering services.
- To have "due regard" to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

For this authority, the publication of an apolitical bi-weekly newspaper, Waltham Forest News (WFN) has proven over six years as the most effective means of meeting these duties whilst staying with the provisions of the Publicity Code other than frequency of publication. We are confident, that for Waltham Forest, the facts demonstrate the validity of our position:

- The annual cost per household is £1.23 (though of course it is free to all residents).
- The cost of delivering a single leaflet to every house in the borough to inform them of services would be at least £5,000.
- With particular reference to statutory notices, the purpose of such notices is to ensure that applications and decisions that may affect local people and businesses are communicated to as many of the

affected groups as possible. In the past, the most efficient – if indeed the only – means of doing this was via a local private newspaper. Advances in technology and media mean this is no longer the case. With the use of WFN and our website, we are able to guarantee delivery to 96,843 households – 98% of households in the borough (the local newspaper reaches less than 6%). It is very difficult to see how this is not an improvement on the previous position and a clear fulfilment of the purpose of statutory notices to let people know about proposals that affect them.

- Waltham Forest News has a greater reach across all sections of our population than the local newspaper. Were the publication of WFN to be stopped, we would be concerned about the impact that this would have on our ability to reach residents from BME backgrounds; younger residents; and residents from lower-socio economic groups. These groups are currently more likely to read WFN than the local newspaper.
- The content of WFN is significantly different from the local newspaper. We use it to explain service changes and make residents aware of consultations that will help us make savings. This role is even more important given the changes to the benefit system and the additional responsibilities that Government has passed onto local authorities including public health. We provide a free listings service for community groups but do not include sports coverage, entertainment reporting or classified adverts, which is the staple content of a private local newspaper.
- We use WFN to mobilise the support of residents for campaigns that will secure a better deal for residents. In recent years this has included the retention of a Post Office, an increase in police numbers, and the banning of an EDL march last autumn. All campaigns had cross party and cross community support.
- Waltham Forest News is a form of communication that is valued by our residents. Data from our May 2012 Residents Insight Survey shows that 73 per cent of residents had read WFN in the past six months and of those that read it some 81 per cent found it useful (an increase of 9 per cent on March 2011). Among those who feel informed about the services and benefits the council offers over half (51%) have read Waltham Forest News and only 29% have read the local newspaper.

2. *If there is alternative to the power of direction, how will this meet the aim of improved enforcement of the code?*

These means exist already as stated above. In our view, if there were a genuine problem with unfair competition or party political propaganda, then there would be more complaints and more findings against local authorities. The Office of Fair Trading has previously indicated that they would investigate complaints brought against council publications by local newspapers, providing redress for unfair competition.

3. *This consultation invites evidence of the circumstances where the code was not met and the implications of this on competition in local media*

Please see our comments above that there is little or no evidence that such a problem exists or that there is any link to the decline in the local newspaper industry.

Additional Comments

We are disappointed that the decision was made to open the consultation for just four weeks as it reduces the opportunities for residents to respond and provide feedback about how they want to receive information from their local authorities.

The consultation also does seek to assess the impact that arbitrary enforcement of the Publicity Code will have on local community groups and in particular groups from ethnic minorities. Waltham Forest News provides a free listings service for community events and runs features on community groups who would otherwise struggle to find publicity.

We are also disappointed that DCLG has chosen to phrase the consultation in such a way that it appears to signpost respondents towards a particular outcome rather than approaching the issue with an open mind to determine what forms of communication meet the needs of local residents.

Conclusion

In our view, the proposals will have the unintended but inevitable consequences of increasing costs to residents, reducing engagement in local

democracy and information about vital services, and providing a taxpayer's subsidy to failing private newspapers.

As stated above, WFN allows the Council to avoid unnecessary expenditure on statutory notices whilst reaching far more people than the borough's only private newspaper, the Waltham Forest Guardian. The Guardian has a current circulation of 5,600 with the majority being in the northern third of the borough. Whilst this may assist the finances of this company, it will not protect the public purse or fulfil the purpose of statutory notices and it is reasonable to assume will reduce local participation in Council meetings, consultations and engagement activities.

In Waltham Forest, as stated, there is only one ABC verified alternative. Preventing the publication of WFN would effectively create a monopoly on the publication of statutory notices by requiring the Council to place statutory notices in this local newspaper. They would be able to set its own prices to the detriment of the local taxpayer and in practice be receiving a state subsidy for providing a far inferior service in reaching local residents.

Until the Government changes the law on the publication of statutory notices to allow for electronic publication, this perverse monopoly will remain in Waltham Forest.