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Subject: PUBLICITY CODE CONSULTATION 2013 - SUBMISSION FROM JOHN BROWN FCIPR
PUBLICITY CODE CONSULTATION 2013

CONSULTATION PAPER: PROTECTING THE INDEPENDENT PRESS FROM UNFAIR COMPETITION (DCLG, April 2013)

SUBMISSION BY JOHN BROWN FCIPR

1. I have over 35 years experience of local government public relations and the media, holding senior posts in both television (as a senior producer for current affairs and political programming) and in councils (as heads of public relations and marketing). I am currently co-authoring a new textbook on local government public relations, due out in July this year ['PR and Communications in Local Government and Public Services' by John Brown, Pat Gaudin and Wendy Moran; Kogan Page]. I am a fellow of the Chartered Institute of Public Relations and a member of the National Union of Journalists. This is a personal submission. It should not be treated as confidential.

2. The current consultation is flawed; it fails to meet the basic consultation principles for government departments and other public bodies set out by the Coalition Government (*Consultation Principles*, Cabinet Office, 17 June 2012), namely:-

a) The "objectives should be clear". The consultation is headed 'Protecting the independent free press from unfair competition', but that disguises the impact of the proposals in the consultation. The proposals go much wider than Paragraph 28 of the 2011 Publicity Code (style, frequency and content of council newspapers and magazines) which the consultation proposes should be made statutory to protect local newspapers. But the consultation proposes, through new legislation, making the entire current Recommended Code statutory/mandatory and giving new powers to the Secretary of State to direct any council or councils on any aspect of the Code, effectively allowing him/her to intervene in any council publicity matter in the Code and intervene on any publicity a council decides to issue on-line and off-line. This has implications well beyond the stated objectives of the consultation.

b) Evidence, clarity on key issues and sufficient information 'should be made available to enable stakeholders to enable them to make informed comments'. The government's consultation provides no evidence or information on the specifics, that council publications are a threat to a free press or, more critically, why the current Recommended Code should be made statutory.

Surprisingly there is no statistics or information on recent reported breaches of the Recommended Code or, more pertinently, illegalities by councils failing to adhere to the law (on publicity of a party political nature) in Part 2 of the Local Government Act 1986 (as amended).

c) Length of consultation. For a 'new and contentious policy' (which this is) the Cabinet Office principles recommend that 'full 12 weeks may still be appropriate'. A 4-week consultation period is therefore derisory. [In Wales, the Welsh Government is honouring the Cabinet Office principles in their current consultation on revising the 2001 Publicity Code, with a 12-week period of consultation. The Welsh government propose retaining a revised Recommended Code, and have no plans to make it statutory]

d) Consultation exercises 'should not generally be launched during local or national election periods' unless there are 'exceptional circumstances'. The consultation period was from 8th April – 6th May 2011. This consultation was launched during and ended only a day or so after the county and unitary council and two mayoral elections in England. This is a clear breach of the consultation principles; and there are, as far as I am aware, no exceptional reasons apart from a hasty completion before the Queen's Speech to Parliament.

3. I support a vibrant and independent press, but I challenge the main premise of the consultation that council newspapers and magazines are a threat to the independent press through unfair competition. There is no hard evidence, apart from assertions by the newspapers' publishers and government ministers to support this claim. In fact, the Communities and Local Government Select Committee when considering the new recommended Code in January 2011 came to the conclusion that the evidence was "very scant" and "there is no evidence of a widespread problem of unfair competition on this basis". In the current consultation on a revised Publicity Code for Wales, the Welsh Government "does not share the view that local authority newspapers are responsible for the demise of local newspapers"

4. Local weekly, bi-weekly, daily and evening paid-for or free commercial or independent newspapers are in decline: this is as a result of a fast changing media landscape and changing public habits on news consumption, with competition from television, radio and most recently the internet, with the growth of hyperlocal sites. Fewer people are reading newspapers, more and more relying on the web and the social media for information. The government's introduction of 65 local TV stations, seed-funded in part by the BBC licence in the next year or so is certain to impact adversely on the independent press (locals newspaper(s)) in one single local TV area more than all the 350 or so council newspapers and magazines regularly published across the UK.

5. A local commercial or independent press depends on advertising and sales to maintain its journalism and publication. Councils and both central and devolved governments have been significant advertisers in the press and the increasing loss of that advertising revenue in the last few years has been at the root of the newspaper publishers' argument about council newspapers. Over the last half century or more, the independent press benefited considerably from council and government advertising – particularly public

notices and recruitment. The newspapers set the rate-card, and sought premium rates through classifying both categories; it meant that public notices which could appear anywhere in the paper (run-of-paper, the cheapest rate) were forced by the publishers to be classified into a 'public notices' section, paying a premium on the cheapest rate of up to 60%. In the past, local newspapers were the only way a council could communicate with its residents; that has all changed and so has the advertising model local newspapers depended on. Local newspaper circulations are declining and there are many other media channels – local radio, regional ITV and soon local TV, and hyperlocal websites some run by local newspaper groups – for councils and government to take advertising. But council advertising, particularly recruitment advertising has declined dramatically as there are fewer council jobs and many of the jobs available are directly posted in government job centres, and on council or jobs websites, at low or minimal cost, rather than in the local press. New government and council procurement regimes to get best value for tax-payers money have reduced flexibility and necessitated many council advertising contracts going out to tender, with competing local newspaper groups bidding for one local contract. Public notice advertising (the requirement in legislation that often dates back to the 1930's that certain notices, with specific wording, have to be in one 'paid newspaper that serves the area' or 'a newspaper that serves the area') is currently under challenge by many councils as the least cost-effective way of advising the public. Approximately £70 million a year is still spent by councils on 'public notices' in local newspapers (LGIU report, 2012). A government conscious of local tax-payers money has to consider whether this spend is value-for-money and the statutory requirements for a newspaper advertisement are still relevant today. The four or five councils who still continue (against the recommended practice in the Code) to publish a council newspaper weekly or fortnightly are able to include their statutory public notices – this they claim is not only cost-effective and cheaper but the notices go to all the area's homes and have a much wider circulation than that of the local newspaper.

6. Council newspapers (and later council magazines) started appearing in the late 1960s and 1970s because local newspapers, in the main, were not covering council matters or services as fully as councils felt they should be. Council publications were seen as, and still are, a cost-effective way of communicating direct to local residents and the local business community a lot of key information about the council, the services it provided, the decisions it had taken, its budget and performance, as well as listing what's on in the council's local libraries, museums, parks, and contact details of councillors and their local surgeries. Through their newspapers and magazines, councils were able to communicate directly with their local community – most of the information included was not in the local press and never likely to be, unless councils took paid-for advertising. The content of the council newspaper or magazine is substantially different to that offered by the 'independent local press' weekly or daily; its focus is on the council functions, services and functions, albeit packaged in a readily accessible format.

7. The format of a council newspaper or magazine was modelled on what was on offer and successful in the marketplace. Newspaper publishers, certainly in the past, encouraged councils and other public bodies to adopt the tabloid newspaper format (and later the magazine) as the most effective and cost-effective way of getting information across. At least two local newspaper groups had a public sector division which actively canvassed across the UK to print and design newspapers and magazines on contract for councils and other public bodies. Other local newspaper groups worked with councils,

and still do, to produce their separate newspaper or magazine or publish a council supplement within the commercially paid-for or free independent publication.

8. The consultation paper rightly says that local independent newspapers are 'important contributors to sustaining a vibrant local democracy'. But in today's digital world, they are not the only contributors – there are increasingly more and more hyperlocal sites, some run by the local newspapers, radio and TV stations, others run by individuals or community groups, there are active bloggers locally, all who equally make a contribution to democratic debate about local issues. To rely on local newspapers (and their web pages) to meet or fill what the Commons Media Select Committee said in 2010 was the 'scrutiny gap' would be folly. Many local newspapers don't even send reporters to cover council meetings; they rely on following up council reports on line, information from councillors and the public and council press releases for their stories. Councils publications, whatever the frequency or style, add to rather than distract from public scrutiny. For a vibrant local democracy in this new digital era we need a free press in the widest sense, but also democratically elected councils and other public bodies with the freedom from state control or regulation to openly explain their services, policies and priorities both on-line and off-line. Council newspapers, magazines and council websites are a critical element in providing information and explanation, much of which is not available elsewhere. It is for the local publics – the council taxpayers or business ratepayers – to weigh up this information along with all the other information available about their local council and council services. The public know what is a council newspaper or magazine, and what is not.

9. There is confusion in the consultation about two very separate issues, namely (1) the alleged issue of council publications causing unfair competition to the independent press and (2) the 'political character of a council's publicity'. There is no or 'very scant' evidence to support the former; in fact, as I have argued, council publications (and websites) have an important and different role to play in informing and explaining to the public about council services, policies and priorities and as such contribute to local democracy. On the latter, the political or party political character of a council's publicity: democratically elected councils are 'political', they are elected with policies and priorities and like national governments have a right to explain these council-approved policies to the local community. To avoid publicity of a 'political character' by either local or national government is disingenuous. But Part 2 of the 1986 Act (amended in 1988) is explicit that 'a local authority shall not publish any material which in whole or in part appears to be designed to affect public support for a political party': here the determination is party political, with capital 'P's. It is the illegal 'party political' use of publicity, underlined in legislation, that should be the focus of any action.

10. Paragraph 28 of the 2011 is perhaps the most contentious paragraph in the 2011 Publicity Code. It is the most prescriptive, stating explicitly that councils "should not emulate commercial newspapers in style or content" and that they should "not issue them more than quarterly". It is illogical to allow parish councils to publish their newspaper or newsletter monthly, while county, borough or unitary councils (with responsibilities for statutory and many more local services) are restricted to quarterly. The stipulations in Paragraph 28 are at present "recommended practice" – certainly they are not best practice and fly in the face of the principles of localism. Locally elected

councils should be allowed to decide the way and frequency for communicating with their residents; they should be allowed the freedom to give good reasons or a business case for deviating from the recommended practice in this paragraph of the Code. The focus of the consultation is the 'independent free press' -- namely local newspapers -- but Paragraph 28 includes 'websites' and similar prescriptions that councils 'should not incur expenditure... on any website or similar communications which seek to emulate commercial newspapers in style or content'. Given the importance of websites for councils and for local newspapers and other local media, with all looking at advertising revenue and both seen as 'trusted sites' for local people to obtain information, I fear the government-council battleground for statutory regulation on publicity will move from the printed to the digital world. That is also why I'm against any move to make the Code mandatory.

11. Under the guise of "protecting the independent press", this consultation goes much wider than the specific issues in Paragraph 28. It proposes legislation to make the current recommended code statutory and to give powers to the Secretary of State to intervene and direct a council, a group of councils or all councils on council publicity or any matter in the 35-paragraph 2011 Code. This is unnecessarily draconian and has Orwellian undertones, more suited to a totalitarian state. It goes well-beyond the proposal in the Coalition Agreement. It is quite wrong for a democratically elected UK government to impose new legislation (beyond that set in the 1986 Act regarding party political publicity) to direct a democratically elected local council on the way it communicates to its local residents and business community.

12. There is little actual information -- much hearsay -- on actual breaches of the the 1986 Act on council publicity. As far as I am aware there have only been two recent reported and investigated breaches of the Publicity Code -- namely breaches identified by the Scottish Public Standards Commissioner against Glasgow City Council in 2011 and by Ofcom against the London Borough of Tower Hamlets in 2013. The Glasgow case was based on the 1988 Code, but publicity fell foul of the 1986 Act on party political publicity. The Tower Hamlets case breached the Communications Act 2003 and consequently the 2011 Publicity Code (paragraph 6) which prohibits 'political advertising', the interpretation of political in broadcasting legislation is wider than that in the 1986 Local Government Act.

13. The consultation seeks views (under 'questions') if there is an alternative to the proposed 'power of direction' and 'improved enforcement of the Code'. There should be no power of direction by the Secretary of State. I am of the view that the Code should remain as a Code of Recommended Practice, and should not be statutorily imposed. That remains the case in Scotland and Wales; there is no similar Code in Northern Ireland. However, I do believe that there should be a clearer, formal and publicised process for dealing with alleged breaches not of the Code per se, but of Part 2 the 1986 Act, particularly Paragraph 2 'Prohibition of Political Publicity'. This is missing from the 1986 legislation. The focus should be on the 1986 Act legislative party political restrictions on publicity - to avoid a lot of subjective complaints. One option worth considering could be initially through the council's Monitoring Officer. He/She in the first instance would consider any complaint referring to a breach of the 1986 Act (as amended) in regard to party political publicity. He would investigate and report to the council on whether or not there has been a breach. But he would also be able to take

internal action immediately if there is a breach or perceived breach and seek to minimise any costs to the council, because of illegality. If a breach was found, the Monitoring Officer should also have to establish any costs to the council (staff, print, web etc) incurred. The Monitoring Officer would report back to the complainant with details of actions taken, and any costs incurred. Additionally the Monitoring Officer should formally report any breach to the Council's external auditors, if costs were involved and make available as part of the Council's Publication Scheme any report(s) on breaches of the 1986 Act. If recommended by the Auditor, any illegal costs could be recovered by the local authority from person or persons responsible for the breach. If the complainant is dissatisfied with the Monitoring Officer's findings and the council's actions, he/she could take up the matter formally with the Local Government Ombudsman.

14. In summary:

1. This consultation is seriously flawed and should be re-run according to the Cabinet Office Consultation Principles, with its intention or proposals clearly stated in the title and sufficient information and evidence provided to allow councils directly affected and other stakeholders make informed comments on what is being recommended. Any new consultation should not be run during an election period and should last around 12 weeks.

2. There is no evidence available to show that the publication of council newspapers or magazines have or are impacting on the commercial viability of the independent local press. As explained above, other factors in a changing media and procurement landscape have affected viability.

3. Council newspapers or magazines (and websites) complement, rather than compete with the independent press (and its websites) and make a cost-effective and important contribution to informing the public about council services, functions, policies and priorities. Paragraph 28 of the Code may offer "recommended practice", but that practice is not necessarily good or best practice for some or all local councils in determining the style and frequency of their publications for local residents and businesses.

4. The current, and any future, Publicity Code should continue to be a recommended code (as in Scotland and Wales) – advising councils of recommended practice on publicity. Councils should be able to decide how best and in what way they should communicate with their residents, business community and other stakeholders. Councils should be able to vary from the recommended practice in the Publicity Code if there is a good value-for-money business or communications case, but must adhere to the law, particularly reference to legislation in paragraphs 5 - 9 inclusive in the 2011 Code, specifically the 1986 Act which bans any publicity which is 'party political' and the Communications Act 2006 which interprets for any broadcasting a wider interpretation of 'political'.

5. The Secretary of State should look at current evidence on any recorded breaches by local authorities of Part 2.1986 Act (party political publicity) and

establish a clear procedure for dealing with any such breaches. There is no case for any new legislation to make the 2011 Publicity Code (or any future Code) mandatory on local authorities or to give new powers to the Secretary of State to direct councils on publicity matters. Such a step is disproportionate and unnecessarily draconian. It traduces localism.

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5th May 2013

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