Local Government Association

Environment and Housing Board
18 September 2012

Item 4b

Letter from the LGA Chief Executive

Municipal Journal article "waste strategy thrown into confusion"

Dear Chief Executive,

It has been brought to my attention that an article printed in the Municipal Journal (MJ) on 23 August 2012 contains a number of factual inaccuracies and misleading statements. It appears to be intended to influence the behaviour of councils in advance of the outcome of a judicial review between UK Recyclate and others (claimants) and Defra and the Welsh ministers (defendants) with regard to the Waste (England and Wales) Regulations 2011.

What is at issue in the judicial review is whether the English and Welsh Regulations on collecting recycling are unlawful, and should be amended to require every council to impose separate source collection on householders. Changing the collection approach in this way would have significant cost implications for many councils.

As you will know, it is unusual for parties to litigation to run their arguments outside the courtroom while the case is still ongoing. The MJ article therefore appears to be an attempt by the claimants to stir up local authority concern before the case even gets to a hearing, and suggests that they are arguing from a position of weakness.

The Government has recently amended the Regulations in order to make the law clear and put the position beyond any doubt. Those Regulations continue to allow for co-mingled collection where appropriate for local circumstances. They are the law of the land unless a court says otherwise.

The LGA believes that councils and the Government should act in line with the existing law, and with the decision of the court when it is made, rather than being influenced by arguments made by one of the litigants with a commercial agenda.

The following are examples of some of these factual inaccuracies and misleading statements in the MJ article:

- The statement that the "judicial review concluded that the Waste (England and Wales) Regulations 2011 failed to comply with European law" is factually incorrect. The judicial review has not been concluded. In fact there has been no hearing so far, and the court has made no findings in the case. The litigation has been inactive for some time because a six-month adjournment was granted to Defra and the Welsh ministers to redraft and consult on the amended Regulations, which were only laid on 19 July 2012.

- The statement that "in April, during the consultation process, we were forced to challenge the amended regulations because we believed they still failed to comply with European law" is misleading. The claimants responded to the consultation along with other stakeholders. They did not legally challenge the draft regulations set out in the consultation.

- The assertion that "Defra and the Welsh ministers have been put on notice that the further-amended regulations are still not compliant" is misleading. This simply means that ministers have received a letter from the claimants objecting to the amended Regulations. The court has not considered those Regulations. In fact, because the Regulations were amended, the claimants now require the permission of the court to amend their grounds of claim in order to

continue their challenge. They do not yet have that permission, and have not yet applied for it.

I appreciate that you may wish to be more active in resolving this situation. The LGA is a party to the case and if you would like to follow events more closely and contribute, should the need arise, to developing evidence further; please do put an officer in contact with Abigail.burridge@local.gov.uk.

I hope this information has been useful in helping you draw your own conclusions about how to respond to the arguments made in the article in advance of the case being decided by a court.

Yours sincerely