

Local Government Association (LGA) response to DCLG consultation on “Protecting the independent press from unfair competition” 2013

3 May 2013

1. Introduction

- 1.1 The Local Government Association (LGA) is the national voice of local government. We work with councils in England and Wales to support, promote and improve local government.
- 1.2 The LGA is a voluntary membership body and our 412 member authorities cover every part of England and Wales. Together they represent more than 50 million people and spend around £113 billion a year on local services (25 per cent of the total public expenditure). They include county councils, metropolitan district councils, English unitary authorities, London boroughs and shire district councils, along with fire authorities, police authorities, national park authorities and passenger transport authorities.

2 Executive summary

- 2.1 There is no evidence that council publications are competing unfairly with local newspapers and therefore no reason for the existing code to be put into primary legislation.
- 2.2 Before the Government changes the status of the current code it should set out the evidence for this decision. An independent review should be undertaken to establish what, if any, impact council publications have on local newspapers.
- 2.3 Contrary to the premise of the consultation, councils actually support the commercial newspaper industry by paying them £26 million a year to publish statutory notices. When you take into account total spend, including general advertising, councils are subsidising the commercial newspaper industry by nearly £44 million per year. Furthermore, 15 per cent of councils have print or distribution contracts with their local newspaper.
- 2.4 Current legislation, which imposes a duty on local authorities to have regard to the Publicity Code i.e. Section 4(1) of the Local Government Act 1986 as amended, allows for the Secretary of State to bring proceedings against a council if he has evidence that they have breached the code. So far the Secretary of State has not used these existing powers against any council.
- 2.5 The proposal to introduce legislation providing the Secretary of State with a power of direction requiring compliance with some or all of the Code of Recommended Practice on Local Authority Publicity is a serious threat to local democracy and will inhibit elected councillors from representing their residents.

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- 2.6 The proposals in the code relating to lobbying activity are vague and could result in councils being prevented from raising legitimate concerns with parliamentarians and central government on behalf of their residents.
- 2.7 Current legislation which requires councils to publish statutory and other notices in local newspapers should be repealed at the earliest opportunity. They do not represent value for money and are a monopoly. 84 per cent of councils say that there are more cost-effective ways to publish notices.
- 2.8 The majority of councils produce newsletters because they are the most cost effective way of reaching a high proportion of residents. 79 per cent of council publications reach 90 per cent or more of the local population. Just one per cent of local newspapers reach 90 per cent or more.
- 2.9 We would ask for a meeting with the Department for Communities and Local Government officials to consider all of the above issues.

3.0 The consultation

- 3.1 On 8 April 2013, the Department for Communities and Local Government (DCLG) issued a consultation on proposals “to protect the independent press from unfair competition by introducing legislation providing the Secretary of State with powers to make directions requiring one or more local authorities to comply with some or all of the Code of Recommended Practice on Local Authority Publicity’s (“the Publicity Code’s”) recommendations.” This paper comprises a response to the consultation by the LGA, the representative body for councils in England and Wales.
- 3.2 We believe the premise of the consultation and the process is flawed and makes assumptions that there currently exists unfair competition. No evidence has been presented to support the case that council publications are ‘competing unfairly’ with the independent press other than the views held by the representative body for the newspaper industry and seemingly, the Secretary of State. Indeed, the Communities and Local Government Select Committee endorsed this view in 2011 stating “*We found 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*”.¹
- 3.3 Furthermore, we believe the focus of the consultation is too narrow. It does not consider the wider issue of public notices and the legal requirement for councils to advertise these in local newspapers. This is inextricably linked to the issue of council publications.
- 3.4 The proposals contain elements which have no links to the newspaper industry whatsoever. Specifically, **paragraph 26** which seeks to restrict the way that councils can retain the services of lobbyists. If the intention of the consultation is to address a perceived view about council publications, these matters should be considered separately.

¹ House of Commons Communities and Local Government Committee Report: Proposed Code of Recommended Practice on Local Authority Publicity – Published 27 January 2011

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- 3.5 We are also seriously concerned at the timing of the consultation (only four weeks and during the county council election period) which has not considered the capacity of those being consulted nor their ability to meet and discuss their response. This is contrary to the Cabinet Office Consultation Principles² which state “*Consultation exercises should not generally be launched during local or national election periods. If there are exceptional circumstances where launching a consultation is considered absolutely essential (for example, for safeguarding public health) departments should seek advice from the Propriety and Ethics Team in the Cabinet Office.*” The subject matter of this consultation cannot reasonably be classified as falling within the exceptional circumstances category.
- 3.6 In addition, comments made by the Secretary of State for Communities and Local Government during the period of formal consultation suggest pre-determination of its outcome. He stated: “*I can say to you today that we will be introducing an anti-Pravda law in the very next Parliament. This will close down those apparatchik printing presses powered by taxpayer pennies. It will muffle those hardcore of council rebels flouting the rules despite the public concern.*”³ This statement indicates a decision has already been made to proceed with the proposals without giving genuine consideration to the outcome of any consultation.

4.0 Our response

- 4.1 Although it is right and proper to have publicity codes for local government and that councils should have due regard for such guidance, the LGA, on behalf of councils, strongly opposes the proposal to enshrine the existing Publicity Code in primary legislation. This is unnecessary and completely disproportionate, running contrary to the Government’s professed commitment to local decision-making and to reducing regulation and red tape.⁴
- 4.2 The proposal represents a very considerable extension of direct central government control over local authorities and goes beyond the expressed purpose of dealing with competition with the free press, fair or otherwise. The DCLG’s priorities are set out in its Structural Reform Plan⁵, paragraph 4.3 of which states: “*Develop options to free local government from central control, including guidance, rules and funding mechanisms imposed by central departments.*” It is therefore directly contrary to the Department’s expressed objective of localism to seek a statutory power to enforce guidance.

² <https://www.gov.uk/government/publications/consultation-principles-guidance>

³Speech to Society of Editors by the Secretary of State for Communities and Local Government:16 April 2013

⁴ Reducing Regulation Made Simple: Less regulation, better regulation and regulation as a last resort – HM Government December 2010

⁵ DCLG Structural Reform Plan: Published 8 July 2010

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- 4.3 We agree that publicly funded publicity must be objective, balanced and factually accurate. Councils have a duty to provide information and to explain and justify the policies and actions they take. Local authorities use publicity for a wide range of purposes, ranging from statutory advertisements and notices on planning applications and road traffic orders, non-statutory and statutory consultations, through to job advertisements and information about Bank Holiday opening hours of recycling facilities, as well as general public interest campaigns such as fostering and adoption, home insulation and Green Deal, and now on public health matters.
- 4.4 We consider this to be a vital element of a functioning democracy. Without this communication the kind of public engagement envisaged by the Coalition Government to build social capital would not be possible and executive councillors could not explain the actions that they have taken on behalf of their electorate.
- 4.5 If enacted, the Codes will hamper councils in their ability to communicate effectively and in a timely manner with their residents. Restrictions would be placed on how they communicate with their residents, the frequency and manner of that communication and their ability to raise questions and objections about national matters which could have a local impact.
- 4.6 This will result in a less informed public and impact on citizens' engagement in the democratic process and comes at a time when there is an increasing need for engagement as citizens require good quality, regular and accurate information about the services they receive and engagement in the decisions that affect them. The current changes in policy areas such as public health and welfare reform require a great deal of explanation and regular communications activity.
- 4.7 Voter turnout for the past three general elections were 65 per cent, 61 per cent and 59 per cent respectively – compared to voter turnout of 84 per cent in 1950 and consistently high turnouts in the high 70 per cent during the 1960s and 1970s. Turnout for local elections is even worse - generally in the low to mid 30 per cent⁶. If we are to respond to the disconnection of the public with civic society then local government needs to engage people not just on explaining service provision but also involving them in decision making and policy formation.
- 4.8 The power of direction places too much power in the hands of one ministerial office-holder and could be open to political abuse, leading to the politicisation of local government communications by central government.
- 4.9 It is not within the spirit of local democracy to have the threat of individual interference by a Secretary of State in both the content and manner in which locally elected politicians are able to communicate with their residents. Once the power of direction has been granted, its exercise is not subject to approval or disapproval by Parliament, but may be exercised by the Secretary of State without any restriction or constraint.

⁶ The New Civic Settlement: outlining a new politics of civic association – Phillip Blond, Director, Respublica

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- 4.10 The Communities and Local Government Select Committee examined this issue in 2011 and found “little hard evidence”⁷ that councils were competing unfairly with newspapers. Furthermore, the Government has not been able to support its new proposals with any evidence.
- 4.11 If the Government is to proceed with these proposals, we call on them to commission an independent review as soon as possible to support the case made in the consultation.
- 4.12 There is no current evidence to support these proposals and bringing forward legislation would be a serious waste of Parliamentary time.
- 5.0 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?**
- 5.1 In recent years, there have been fundamental changes in how people access information and communicate; a new financial reality in which government operates and a changing role for local government.
- 5.2 We believe that councils need to be free to innovate and take full advantage of the freedoms and flexibilities to continue delivering quality front line public services in extremely challenging times. If we are to deliver the kind of civic involvement envisaged by the Government to help meet these challenges we must engage local communities and help provide them with, in the words of the Prime Minister, the ‘power and information they need to come together, solve the problems they face and build the Britain they want’⁸. Local government publicity and communication has an important part to play in achieving this, working with our local communities and providing them with a national voice.
- 5.3 It is also right, now more than ever, that public money should be spent appropriately. Councils have demonstrated that they are the most efficient part of the public sector and this includes taking appropriate decisions at a local level on the methods and frequency of communicating the changing circumstances of public services to their residents. In addition, if councils have a local mandate to support residents on issues which may affect them, they must be allowed to do so unfettered by national government interference.

⁷ House of Commons Communities and Local Government Committee Report: Proposed Code of Recommended Practice on Local Authority Publicity – Published 27 January 2011

⁸ www.cabinetoffice.gov.uk/media/407789/building-big-society.pdf

6.0 Council publications

- 6.1 We fully support an independent local press whose job it is to hold local bodies to account. We believe that a thriving local media built on quality journalism is good for local democracy. Councils want to see a successful and vibrant local media, including local broadcast media such as radio. It is essential for local democracy that journalists scrutinise the workings of councils and help hold elected representatives to account. Councils have long supported and been challenged by local media in its robust contribution to the political process. Local newspapers have also been valuable conduits for information about council services and work in partnership with public bodies to campaign on issues relevant to their local communities.
- 6.2 The numbers of free weekly local and regional titles and newspaper circulation have been in decline for some time⁹ and the traditional model of a weekly local newspaper has been superseded by the growth of the internet, social media and citizen journalism. In many areas, the local newspaper reaches less than five per cent of the population¹⁰ and many individuals have more followers on Twitter than those who read a local newspaper. This is not the fault of council publications. The business model adopted by the local newspaper industry, which is largely owned by national or indeed international newspaper groups, has stripped much local reporting out. This means that 'local' reporters are often based outside of the local area they report on and it is now a rarity rather than the norm for reporters to attend council meetings to report on council business. This does not constitute in any way 'a holding to account of public bodies' by local newspapers.
- 6.3 Councils will continue to support the presence of an active and investigative local media, but we cannot escape the reality that many newspapers have cut the number of journalists they employ, reducing their presence in communities, and not attending council meetings. We believe it is legitimate, during a time when many local newspapers are not providing coverage of the democratic process, for councils to communicate directly with residents about decisions and services.
- 6.4 There are numerous examples of local authorities supporting their local papers. The LGA has found that 15%¹¹ of councils have contracts with their local paper to print and distribute their residents' newsletter and many have worked in partnership with their local media and indeed sponsored local campaigns. Many councils provide photographs for local newspapers, free-of-charge to help reduce cost pressures and others provide 'induction training' for new journalists who may not be familiar with local government.

⁹ House of Lords – The future of Investigative Journalism – Communications Committee 31 January 2012

¹⁰ LGA research into council publications: April 2013

¹¹ LGA research into council publications: April 2013

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- 6.5 Work has also been undertaken to support the new 'remote working' model in the local newspaper industry by exploring the audio and video recording of important council meetings so that journalists can listen or view the business of the council without having to attend in person. Some have even provided office accommodation. Councils are working hard to find ways to support the industry and ironically, the proposals could have an adverse effect on local newspapers.
- 6.6 One example from our research highlights a pilot project in which the council pays the local newspaper to print and distribute eight editions a year of their residents' newsletter. Under the proposals, the council would be forced to reduce that number to four a year, with the consequential effect of reducing the income to the local newspaper by 50 per cent.¹²
- 6.7 The Publicity Code provides no explanation for the limitation to quarterly publication. The reality is that much of the information which local authorities publish is date-specific and is required to be published promptly. It is little use to publish Bank Holiday opening hours two months before the Bank Holiday. It would delay local consultation with residents on issues of local importance such as the determination of planning applications or the introduction of road safety measures because the authority could only publish once a quarter, or to cease to discharge a function because of an additional three months' delay in advertising and filling a vacancy.
- 6.8 Currently 78 per cent of councils produce a residents' newsletter with ten per cent publishing more frequently than quarterly¹³. By placing a limit on the frequency of council publications, local authorities would be inhibited from communicating with their residents on matters of local importance. So, for example, if a special edition of a council publication were required, taking the yearly quota above the specified four editions, a council would be prevented in law from communicating with their residents. In addition, councils could be restricted from explaining any time-restricted issue which could have a significant impact on their lives and/or well-being of the local area.
- 6.9 81 per cent of councils say that if the frequency were reduced it would cost local taxpayers more as they would have to produce more leaflets and undertake more direct mailings¹⁴.
- 6.10 This is not a position any council would want to find itself in. One authority told the LGA: "The cost of publishing additional documents and distributing them separately - to plug the gaps left by reducing from six to four editions per year - would be significant. Equally, the cost of advertising in enough local newspapers to reach the entire population would also be significant."

¹² LGA research into council publications: April 2013

¹³ LGA research into council publications: April 2013

¹⁴ LGA research into council publications: April 2013

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- 6.11 In many areas, there is only one local newspaper - effectively a local monopoly - and in the absence of a council publication, it is the only means by which the local authority can secure the publication of statutory notices and other public interest material. Advertising space is expensive and authorities have a duty to ensure that they use the most cost-effective means of disseminating essential public information.
- 6.12 Further, the most popular commercial newspapers only reach a proportion of local households, whereas most local authority newspapers are directly delivered to the majority of households. A local authority could rightly be criticised if it were failing to secure cost-effectiveness in the discharge of their functions, by paying high advertising rates to commercial newspapers which only reach a proportion of households.
- 6.13 It is our view that councils should be permitted to take local decisions about the frequency of residents' newsletters based on local evidence as to what is appropriate. Councils provide around 800 different services, but independent research by Ipsos Mori showed that two-thirds of the public know nothing or next to nothing about local government¹⁵. In addition, evidence shows that voter turnout in local elections remains low. This is a fundamentally unhealthy situation in a modern democracy. Against this background, one of the ways councils have tried to rectify this disconnect is through producing a regular residents' newsletter. This approach provides value for money for local taxpayers in that it reduces the plethora of leaflets, brochures and booklets that might otherwise be required, something that residents themselves do not favour.
- 6.14 In the small number of cases where councils currently produce more than four editions a year, most have undertaken scrupulous assessments of the cost versus the value to their residents. In many cases, this has involved reporting to the council's Cabinet for a formal decision and endorsement by the district auditor.
- 6.15 As local public services are increasingly taking a 'place-based' approach to the delivery of services, local communications activity is mirroring that approach. The Government has strongly endorsed this approach to the delivery of local public services.¹⁶ Residents' newsletters are also used by public sector partners (police, health and fire services) to engage with local residents. This provides additional value for money for the public sector. A restriction on how often they can appear could subsequently mean other public bodies also having to spend more money on other forms of communication.

¹⁵ IpsosMori – The Business Case for the Reputation Project 2005

¹⁶ Foreword by the Prime Minister to Local Public Service Transformation: A Guide to Whole Place Community Budgets. March 2013

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- 6.16 One response we received from a fire and rescue service states: “We regularly use the magazines produced by district and unitary councils to get over important safety messages to the general community and vulnerable people in particular. They are a way of guaranteeing getting our message through every door and the evidence shows that they are widely read by some of the more vulnerable elderly groups who we need to target with home fire safety information.”¹⁷
- 6.17 This is amplified for voluntary organisations and community groups which also have access to many council publications, allowing them space, free-of-charge to engage in activities such as promoting events, fundraising activities, calls for volunteers and so on. A legal requirement to move this content to a local newspaper would incur costs and may restrict their ability to communicate directly with local residents.
- 6.18 It has been suggested by the newspaper lobby that council newsletters have been competitors with the local media for advertising revenue. The most recent research does not suggest this is the case. Around a third of local authority publications (34 per cent) do not carry any advertising at all, and one fifth (20 per cent) of councils reported that adverts made up less than 10 per cent of overall content.¹⁸
- 6.19 Local authority publications provide information about how to access services and inform residents about how their council tax is being spent. A typical newsletter will include content such as opening times for popular services like libraries, information about activities provided by the council like activities for children and young people, details about consultations with residents around issues such as road closures, and useful contact numbers. This is content that local newspapers would not carry.
- 6.20 We agree that councils ‘should not publish newsletters, newsheets or similar communications which seek to emulate commercial newspapers in style or content’. Indeed, as set out in the Codes, we believe that council publications should be clearly marked as such. However, we do not believe that the proposal to restrict the frequency of council publications to once a quarter under law will do anything to help local newspapers. In some cases, it could have the opposite effect as the local newspaper is the printer and distributor of the council publication.
- 6.21 Both local and national newspapers and their editors and proprietors can have their own political and commercial agendas. Their coverage of local and national issues, and the information which they provide to their readers, can reflect those agendas and be based on business models which do not provide for sufficient coverage of local issues. This may mean local newspapers will not always provide local residents with sufficient information to take a balanced and informed decision on critical local issues.
- 6.22 We note the Audit Commission report¹⁹ from January 2010 found that total spending by councils on public communication in 2008-09 was £257m,

¹⁷ LGA research into council publications: April 2013

¹⁸ LGA survey of local authority newsletters/magazine: May 2009

¹⁹ <http://archive.audit->

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one third of one per cent of overall spend, and that this had fallen both in absolute terms and as a proportion of all spending.

7.0 Public notices

7.1 We believe that any consultation on the relationship between council publications and local newspapers must include the issue of statutory public notices as the two issues are inextricably linked.

7.2 Councils are spending more than £26m a year on public notices. If you add on how much they spend with local newspapers on general advertising, they are subsidising the local newspaper industry to the tune of nearly £44m a year²⁰.

7.3 We have serious concerns that despite a lack of evidence, the Government appears determined to support the newspaper industry in ways which are not afforded to any other sector. The continued statutory requirement on councils to place all public notices in local newspapers is in effect, a monopoly. Indeed, in many areas, there is only one local newspaper and so councils have no choice about where to advertise public notices.

7.4 In addition, our research shows that 42 per cent of councils are charged more by local newspapers to publish public notices than for other general advertising²¹ and the costs are continuing to rise. The individual costs of publishing a notice can be upwards of three times that for a general advert, reaching more than £20 per column cm in some publications.²²

7.5 This is clearly anti-competitive as in many local authority areas there is only one local newspaper and therefore no other choice. In effect, this is a monopoly. Councils are helping to artificially prop up the local newspaper industry in a way which is not afforded to any other private business. This raises serious concerns about unfair competition in our view, the consultation should address these issues in tandem with the wider issue of council publications.

7.6 The statutory requirements date back to 1972, when local and weekly newspapers and radio were popular sources of local information. The last 36 years have seen vast changes in technology and shifts in consumer preferences. This requirement remains in force despite evidence to show that the public's news and information consumption habits have changed (a move on-line and to mobile digital technology) and the circulation of local newspapers is falling.

7.7 The Killian Pretty review of planning applications in 2008 recommended that local planning authorities should "no longer be required to publish notices in newspapers."²³

commission.gov.uk/auditcommission/sitecollectiondocuments/Downloads/20100122publicityappendix.pdf

²⁰ LGA research into council publications: April 2013

²¹ LGA research into council publications: April 2013

²² Public Notices: The Case for Radical Reform – Local Government Information Unit 11 September 2012

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7.8 Local government spends a substantial amount of money on advertising in local newspapers. Add on the costs of staff time in the preparation of public notices and liaison with local newspapers, this could increase significantly. This does not represent best use of taxpayers' money. The Codes are very clear in this respect. **Paragraph 26** states '*The purchase of advertising space should not be used as a method of subsidising voluntary, public or commercial organisations*'. The continued mandatory requirement for councils to place public notices in local newspapers breaches the terms of the Code as they clearly subsidise the local newspaper industry.

7.9 In addition to the amount spent on statutory notices, councils place other advertisements, principally for events and campaigns such as the recruitment of foster carers and school governors, in the local media. As local and central government are making extremely tough decisions about the service levels they can commit to, it is indefensible that councils remain obligated to advertise planning notices in this way. We would therefore like the immediate lifting of this outdated obligation.

8.0 Supporting residents and local communities

8.1 Local government has a duty to be strong advocates for their residents and central government should be scrutinized when policy is seen as unjust or has perverse consequences for local people. We believe this is an essential element of making better policy.

8.2 The proposals will prevent local government engaging in open discourse and challenge on and to central government policy. This cannot be right and proper in a modern, democratic society.

8.3 It is important that locally elected politicians are able to speak on behalf of their residents on national issues which may have a local impact. The proposals seek to stifle any local campaigning activity '*designed to influence public officials, Members of Parliament, political parties or the Government to take a particular view on any issue*'. (**Paragraph 26** of the Codes).

8.4 In many cases where a national policy could impact on local communities, councils obtain a full council decision, with cross-party support, for lobbying activity to be undertaken. The Codes are not clear in regards to the scope of limiting such activity and could undermine local democratic decisions based on the well-being of local communities.

8.5 This is clearly at odds with the localism agenda and removes any opportunity for councils to influence national policy and decision-making on behalf of their residents.

8.6 We disagree that councils 'should not incur any expenditure in retaining the services of private specialists, contractors or consultants'. All

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authorities should demonstrate that the use of external providers passes a value for money test.

- 8.7 Bringing in expertise to work on a specific project, for example to campaign for local transport improvements – can result in significant economic benefits for an area, and is often cheaper than employing staff directly.
- 8.8 Furthermore, the wording of this part of the Code could see variations in interpretation that would range from a ban on employing public affairs consultants to preventing councillors and council officers writing letters to MPs. Enshrining this part of the Code in primary legislation could result in a number of test cases to determine clarity of the exact definition of this activity.
- 8.9 Preventing councils from engaging with central government, either with parliamentarians or those in Whitehall, could have a serious impact on the democratic process. This would take away a key channel for residents to raise objections with centrally driven policy. It would also seriously weaken the ability of central government to make and implement policy.
- 8.10 For example during the recent progression of the Growth and Infrastructure Bill through parliament many councils wrote to their MPs urging them to address proposals on permitted development. The proposals would have removed the right of neighbours to have a say over single story home extensions between four and eight metres. If the Code had been mandatory the Secretary of State for Communities and Local Government, who was driving the Bill through parliament, would have been able to prevent these councils interacting with their MPs over this issue. This is a clear conflict of interest and goes against the very nature of the democratic process and the principles of localism.
- 8.11 It would therefore be inappropriate to extend any power of direction to provisions of the current Publicity Code where the justification for those provisions is unclear, even within guidance.
- 9.0 If there is alternative to the power of direction, how will this meet the aim of improved enforcement of the Code?**
- 9.1 The purpose of guidance, rather than legislative proscription, in the Local Government Act 1988 and in approving the Code, was to allow for local discretion. The Government has not provided any evidence to demonstrate the Codes as they currently stand are not working. Indeed, we are not aware of any examples of any council being found not to have had due regard for the Codes in their current form.

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9.2 When Parliament enacted section 4 (1) of the Local Government Act 1986 and the amendments to it made by section 27 of the Local Government Act 1988, it recognised that decisions on effective local authority publicity had to be taken locally, and that it was therefore appropriate to issue guidance, to which an authority must have regard in a local context, but not appropriate to incorporate the provisions covered by the Code into statute, with all the rigidity that entails. The duty to have regard to the Code would require local authorities to take appropriate steps, including legal advice to satisfy themselves that their publicity activities take into account the requirements of the Code. If at any point the Secretary of State is satisfied that a local authority has not had regard to the Code in breach of the law then it is opened to him to take legal proceedings. So far no such actions have been taken. It is therefore not clear why the Secretary of State sees the need for new statutory provisions regarding the Code.

9.3 The current Publicity Code was drafted and approved by Parliament on the basis that it was not directly enforceable, but was to be taken into consideration by individual local authorities when taking local decisions on what publicity is appropriate and effective in their locality. It was never drafted so as to be legally enforceable, either directly or by direction, and in many areas it is insufficiently specific to support such enforcement. Where an authority has simply disregarded the current Publicity Code, it is open to local citizens to seek redress, either through the ballot box at the next local elections, or by judicial review if they can evidence that the authority's decision was inconsistent with any regard to the Publicity Code.

9.4 Accordingly, we believe the Codes should remain in place in the non-statutory current form.

10.0 This consultation invites evidence of the circumstances where the Code was not met and the implications of this on competition in local media

10.1 There is no evidence that in circumstances where the code has not been met this has had a negative impact on local media. During the consultation for the original codes in 2011, the Communities and Local Government Select Committee concluded "*We found 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*". Furthermore, respected media commentator and Professor of Journalism at City University, Roy Greenslade confirmed "*To be absolutely frank about it, there is no data*" to confirm or refute whether local authority publications are competing with the traditional independent press.²⁴

10.2 Local newspapers are under commercial pressures due to the changing media consumption habits of citizens. The proliferation of 24-hour broadcast, internet and social media channels has meant that the traditional local newspaper business model is outdated. It is simply untrue

²⁴ House of Commons Communities and Local Government Committee Report: Proposed Code of Recommended Practice on Local Authority Publicity – Published 27 January 2011

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to suggest that these pressures can be attributed to a small number of council publications.

- 10.3 Paradoxically, there are examples of councils publishing more frequently than quarterly having a positive impact on the local newspaper as they print and/or distribute the residents' publication.
- 10.4 There are similar ambiguities in relation to campaigning activity in that a number of councils have and indeed have had regard to the Codes and taken the decision to support the view of residents. Examples include proposed changes in planning laws, airport and rail expansion.
- 10.5 Those councils involved can demonstrate a mandate from the majority of residents in all cases.

11.0 Conclusion

- 11.1 The proposals are a worrying development in that they will enshrine in law legal interference in local matters by central government.
- 11.2 Local decision-making is at the heart of local democracy and locally elected councillors should be free to act as advocates for their communities in any way that may be required to support them.
- 11.3 Placing the ultimate decision-making powers in the hands of a Secretary of State is both heavy handed and contrary to the localist agenda.
- 11.4 There is no evidence to demonstrate that council publications are impacting unfairly on local newspapers. This was the view of the Communities and Local Government Select Committee in 2011 and remains the case now. Councils should be able to decide, with their residents, what is the most appropriate format and frequency for communicating and engagement.
- 11.5 The continued subsidy of local newspapers by councils through the enforcement of publishing statutory notices in local newspapers is of more concern and should be addressed urgently.
- 11.6 The proposed power of direction extends beyond the expressed purpose of preventing unfair competition with the free press, and extends to all parts of the current or any future guidance, including those parts for which the justification is unclear, even within guidance. Once the power of direction has been granted, its exercise is not subject to approval or disapproval by Parliament, but may be exercised by the Secretary of State without any restriction or constraint.
- 11.7 If the Codes are given statutory force, councils will be severely hampered in their ability to communicate with and represent their residents – the main purpose for which they are elected.

END