

A critique of the report issued by PwC entitled 'Best Value Inspection of the London Borough of Tower Hamlets', dated 16th October 2014

1. Given the wide-ranging implications of a decision to intervene, the Council would expect such intervention to be entirely based on accurate and balanced reporting. The extent to which the report fails to meet these criteria (and as such fails to support the Secretary of State's proposed directions) remains of significant concern to the Council. The Council's main concerns are summarised below.

A. Major weaknesses in sampling methodology

2. As part of its fact checking response the Council identified major weaknesses in PwC's approach to sampling and the development of lines of enquiry. PwC have failed to address these methodological weaknesses. However an attempt has been made to disguise the weakness of the approach by changing the description of the sampling methodology from one directed principally by third party intelligence (as set out to the Council in the PwC fact checking document) to one now presented as more broadly justified.
3. The Factual Extracts issued by PwC stated that the decisions associated with sampling and review were not driven by the essential Best Value review criterion of ensuring a representative sample, but instead were largely driven by third party information and other prior knowledge in relation to specific transactions. The result is that the PwC report has in large focused on unrepresentative samples, which do not provide a balanced overview of the Council's Best Value performance or capacity to improve.
4. Whilst the Council appreciates that PwC wanted to look at particular grants or decisions identified in complaints that had been provided to them, given the extended period covered by the inspection (from October 2010) it would have been appropriate also for PwC to ensure that it properly sampled other grants and decisions within equivalent categories. Without doing so, PwC's attempt to conclude a failure of best value as a result of more general procedural weaknesses is flawed.
5. The risk of drawing unsound strategic conclusions was further compounded by instances where sampling has been carried out in very low numbers. For example, in relation to the Mainstream Grants Programme the total sample is 20 out of 431 applications. This equates to 1.8 grant files per MSG funding stream against which to make conclusions specific to the grant making function as a whole. Any strategic conclusion based on this sample size is inherently unsound and this was pointed out to PwC by the Council at the fact checking stage.

6. In relation to publicity, the report fails entirely to set out a clear sampling methodology. The sampling appears to be reduced to a check of timesheets for three temporary staff alongside a review of OFCOM rulings.
7. In relation to property, the report fails to consider relevant legislation in the context of testing and sampling of leases and lettings. In particular, s123 of the Local Government Act 1972 directs local authorities to achieve 'best consideration' in the disposal and leasing of property. PwC's testing had been carried out against internal Council processes and procedures and has failed to take account of or test against this legislation.
8. None of the methodology statements set out how the sampling would inform conclusions about actual performance measured against the capacity for continuous improvement as one would expect in a Best Value inspection.

B. Test of compliance with the best value duty against PwC definition

9. In section 1 of the report, PwC sets out its understanding of the Best Value duty and what it considers constitutes a failure to comply with that duty. The following extracts from paragraph 1.25 in the report are the criteria PwC consider relevant in determining whether a failure to comply with the Best Value duty has occurred.
 - “The absence or the frequent or wholesale failure or circumvention of one or more controls is clearly no longer an isolated matter, and might constitute a failure to make the “arrangements” referred to in the 1999 Act and therefore to comply with the best value duty.”
 - “Likewise, the absence or failure of processes and controls which result in the inability of an organisation to determine whether or not it is achieving economy, efficiency and effectiveness in a particular area would seem logically not to be conducive to continuous improvement or therefore to the fulfilment of the best value duty.”
 - “Furthermore, errors, irregularities or fraud which indicate the existence of more widespread governance failings will have implications beyond the immediate instance. Errors, irregularities or fraud in which those charged with governance are implicated, whether by direct involvement, consent or connivance, will also tend to raise more fundamental questions about the integrity of governance and the fulfilment of the best value duty.”
10. Furthermore, PwC identifies in the same paragraph that failures need to be “regular or endemic as well as material in value and/or their wider

implications” in order to constitute a potential failure to meet the Best Value duty. The report’s findings do not clearly and consistently meet the criteria for failure as set out by PwC itself.

11. In respect of property the inspection fieldwork undertaken by PwC lasted 5 months. However it was only in three out of 185 property transactions that PwC concluded that there had been procedural failings. Even in these three limited instances PwC’s own evaluation was that there was no more than a minimal financial impact.
12. PwC’s conclusion specific to processes and controls as they relate to property more widely is further flawed by its refusal to acknowledge or account for the ‘best consideration’ duty as set out by section 123 of the Local Government Act 1972. PwC also fails to demonstrate how the findings made in the three cases cited in the report had implications beyond the ‘immediate instance’ to suggest wider failings. The circumstances in each were demonstrably unique.
13. In relation of publicity, PwC has failed to demonstrate ‘endemic or regular failure of material value or implication’ as required by its own criteria. Findings of alleged failure to comply with the Best Value duty are reduced to a lack of detail on timesheets of three temporary staff. At worst this indicated a failure of record keeping specific to three posts over four years. It is not evidence of an endemic or wider systemic failure or of a magnitude that have implications beyond the immediate instance or raise fundamental questions of a magnitude that justifies the conclusion of a failure in the best value duty
14. In any event, and in response to Ofcom Bulletin 222 the Council has updated and strengthened its Communications Protocol. This clearly demonstrates the Council’s willingness and ability to review and improve its approach to matters. No further incident of such a nature has occurred demonstrating that controls are robust and the issue was an isolated rather than endemic or regular. These matters are not referred to by PwC.
15. In respect of procurement the Council notes that PwC concludes that the Council meets its Best Value obligations.

C. Failure to properly acknowledge evidence demonstrating that the Council is meeting its Best Value duty

16. During the inspection period and the subsequent fact checking stage the Council provided PwC with a wealth of information concerning the evolution of its processes and procedures over the four year period covered by the inspection.
17. The report does not refer to this evidence provided by the Council to demonstrate the systems and processes it has put in place to support

continuous improvement. Examples of the evidence provided include the Youth Service Improvement Programme, revised requisition templates addressing compliance issues with procurement below tender levels, clearly articulated needs assessments and geographical analysis in relation to MSG (see below for further details). These omissions are not explained. A report that sought to draw strategic conclusions about the Council's ability to improve should have made reference to these matters.

18. The report neither recognises nor makes reference to the role of the Council's own audit and scrutiny processes in driving continuous improvement by failing to review the outcomes and learning resulting from them. Comment is limited to repeated quotation of the recommendations and the most critical parts of the Council's own findings. The report does not identify the actions taken by the Council to improve systems and processes in response to internal audit findings and there is no attempt to compare the arrangements adopted by the Council with the arrangements in other similar local authorities (essential if seeking to justify intervention by exception). As part of the Council's fact checking response PwC was directed to relevant evidence and documents which had been provided to them during the inspection, and which supported the Council's ability to achieve progressive improvement through effective use of internal scrutiny and audit processes. PwC has failed to identify the significance of this or draw upon it in its final report.
19. Overall, the inspection report does not assess the extent of improvement that has already taken place, or the Council's existing capacity to secure improvement (for example, through learning from internal audit reports).

D. The extent of the evidence base

20. It is clearly important to understand how heavily PwC have chosen to rely upon uncorroborated statements from a limited number of individuals to support wider conclusions about the Council. During the fact checking process the Council asked PwC to ensure that it was clear throughout the report whether the sources relied on in the report were broad or narrowly based. The Council also asked PwC to make clear in the report what corroborating evidence had been identified to verify the allegations referred to in the report.
21. PwC did not do these things. It is not clear from the final version of the report whether (and if so to what extent) multiple allegations have come from the same person. There is no reason why this could not have been done while at the same time allowing PwC to preserve any confidence they believe existed. Thus allegations cited by PwC remain untested; they are stated without any evaluation of their validity. This gives a false impression. Moreover, the focus on concerns raised by

only a small number of persons would have the consequence that any findings contained in the report would lack objectivity.

E. Failure to correct or remove significant factual inaccuracies or unsubstantiated allegations

22. During the fact checking process, the Council noted that there was no evidence in the factual extracts to substantiate a number of statements. The Council provided PwC with evidence that demonstrated that the statements were factually incorrect or unsubstantiated.

23. Where such evidence was provided by the Council or secured by PwC itself, the Council is concerned that rather than removing inaccurate or unsubstantiated statements from the report, PwC chose to include them. Notwithstanding that PwC might legitimately wish to demonstrate that they have taken in to consideration two or more opposing positions in the text of the report in such circumstances a conclusion is necessary. Any allegation that has not been substantiated should normally not be included in a factually based Best Value inspection report upon which the Secretary of State may be basing significant and far reaching decisions.

24. These instances are set out below.

- PwC included an allegation that the witness has since clarified to them cannot be substantiated. During the fact checking exercise the Council questioned the LBTH Solicitors assertion that it was “common knowledge” that the Mayor was familiar with the person behind Dreamstar Ltd. PwC reverted to the LBTH Solicitor for further clarification. Paragraph 5.118 contains the same assertion and further states that the LBTH Solicitor has clarified more recently that he is not in a position to substantiate this assertion. Nevertheless, the unsubstantiated assertion remains in the report giving it greater legitimacy than is justified.
- Paragraph 2.22 alleges that the Council “has a tendency towards denial or obfuscation rather than an inclination to investigate concerns raised. In support of this allegation PwC state in relation to the Mazars report into the sale of Poplar Town Hall that “the scope of work agreed by the Full Council concerning the need to pay particular attention to conflicts of interest was not fully reflected in the instructions given to Mazars (the firm appointed to conduct the review)”. This statement is factually incorrect because the Council drew PwC’s attention to this during the fact checking stage by directing them to a copy of the full brief. This brief demonstrated that the requirements of the Full Council motion were fully communicated to Mazars and formed part of their work.

- Paragraph 2.9 cites the eventual delay to contract completion by the successful winner of the contract race as one of the alleged ways in which the Authority failed to meet its Best Value duty. This fails to acknowledge or consider the Council's 'best consideration' duty under s123 of the Local Government Act 1972. In addition, the Authority provided PwC during the fact checking stage with evidence that demonstrates that the Corporate Director – Development & Renewal was ensuring that his officers were behaving fairly and were clear that their decisions were being driven by their duty to achieve 'best consideration'. This evidence has been omitted by PwC.
- Paragraph 4.89 as drafted omits essential context provided to PwC by the Council and the absence of which from the report serves to give the impression that political pressure was being brought to bear on officers by the Mayor. In fact, Internal Audit have conducted a whistleblowing investigation in accordance with the Council's whistleblowing procedures and found from interviews with a number of assessment officers that a senior member of that team was asserting that the organisation had the full support of the Mayor. There is no evidence that this assertion was indeed based on direction from the Mayor. This has been pointed out to PwC which has failed to make this clear in its report.
- Paragraph 7.61 incorrectly asserts that members involved themselves in the procurement process during the tendering stage of contract AHWB4171. This error was highlighted to PwC in the fact checking stage. PwC has nevertheless retained the allegation. The tendering process for this procurement started on 13 January 2012 with the publication of the contract notice. The report does not identify any member involvement after this date. PwC incorrectly assume that the tendering process commences at Tollgate 1 stage. Tollgate 1 was agreed on 5 October 2009. Member engagement in a review of the Tollgate 1 procurement strategy for contracts which are not yet out to tender is in accordance with the Procurement Procedures and would be expected in any government context (local or national) where a strategic approach was agreed under a previous administration. There is no evidence to substantiate involvement during the tender stage.

F. Inclusion of narrative that implies wrongdoing where none has been evidenced

25. PwC's report contains a number of paragraphs in which factually accurate statements are presented or combined in such a way that they may be read as implying wrongdoing. The inclusion of such statements casts doubt on the objectivity of the inspectors and the extent to which the Secretary of State may be able to make sound decisions based upon the report before him. The following examples have been identified by the Council:

- Paragraph 2.9 provides one of the main reasons why PwC considers the Council failed in its Best Value duty. It cites the historical connection between the Mayor and the winning bidder for Poplar Town Hall without providing any evidence that the Mayor was sighted on this fact at any time during the disposal process. Furthermore, it does not make clear that the process was sufficiently designed to ensure that the Mayor had no role in decision making and would not have known the identity of the individuals associated with the winning bidder.

Notwithstanding the above or PwC's views on what was appropriate, prior to the implementation of the Localism Act in 2012 the requirement was: (by paras 9(1) and 12(1) of the Model Code specified by the Local Authorities (Model Code of Conduct) (England) Order 2001 (No 3575)) for Members with Personal Interests to disclose interests to the meeting and withdraw from decision-making when it was classed as a "prejudicial" interest.

Neither Mazars nor PwC have identified any evidence to suggest that the Mayor had a role in the decision to award the sale of Poplar Town Hall to Dreamstar.

It is correct for PwC to note that there may be circumstances under which declaration of interests would be required. However, none of these circumstances have been proven to have occurred and as such citing concerns about declarations of interest as a reason for failure to comply with the Best Value duty is not founded on any evidence of wrongdoing.

- There is no evidence that materially connects the dates set out in paragraph 5.250 or explains why PwC decided to place them together. No attempt is made to draw a conclusion from the presentational approach. Dreamstar Ltd withdrew their offer on Limehouse Library as part of their BAFO on Poplar Town Hall as per the BNP Paribas clarifications. This was highlighted to PwC during the fact checking stage.
- Paragraph 3.31 discusses recommendations from O&S to the Executive and states that "the Full Council appears to have no power to compel the Mayor to implement such changes." Use of the word "appears" suggests that the Authority may have chosen to structure its arrangements deliberate in order to achieve the outcome described by PwC. The arrangements are in fact they governed by legislation and are consistent with arrangement in other Mayoral administrations.
- Paragraph 5.70 seeks to infer a connection between the date of incorporation of Dreamstar Ltd and the date the Corporate Director Development & Renewal approved the contract race. While the statement is factually correct, there is no rationale or evidence that connects these two events. It is questionable what place such a

statement has in a Best Value report. This was highlighted to PwC at the fact checking stage.

- The RCDA analysis contained in paragraph 7.11 is misleading as the total value of RCDAs does not distinguish between the different types of RCDA (waiver of procurement procedures, adoption of capital estimates and virements) as set out in the Financial Procedures provided to PwC at the outset of the inspection. This distinction was highlighted to PwC at the time of providing sample RCDAs and RCDA registers and again during the fact checking stage. PwC have nevertheless chosen to present the use of RCDA as inconsistent with the Authority's procedure. In the context of the audit of procurement, only those RCDA relating to waiver of procurement procedures are relevant. PwC assert that they understood that RCDA are used in exceptional circumstances and the volume they have (incorrectly) identified suggests their use is not exceptional. In the context of a four year period of a £1bn per annum budget an average of 133 RCDA per year does not, in the Authority's view, present anything other than exceptional use. The use of RCDA is a good governance tool and entirely consistent with the Financial Procedures.

G. Grants: geographical distribution and needs analysis

26. Significant weight is given by PwC to the idea that there should be some form of geographical balance when grants are made. The report suggests that the Council did not have clear needs assessments which directed its decision-making in relation to grants. The first assertion is unsound and the second assertion is factually incorrect.

a. Failure of the Inspection Report to understand geographical distribution of grant awards.

27. In order to achieve Best Value, funding must follow need and as such balanced geographical distribution is irrelevant. This is not understood by PwC. PwC has wrongly interpreted equity of grant distribution as being demonstrated by equality of distribution of grant award recipients per ward. In attempting to demonstrate a lack of equity PwC has assessed geographical distribution on the basis of the postcode of the grant recipient organisation rather than on the basis of where the organisation will be delivering its services. Paragraph 4.57 endorses the notion that geographical balance across the borough should be a measure to be employed when making grant decisions. Geographically balanced distribution of grants has no intrinsic relationship to need and would inevitably lead to a failure to achieve Best Value as need differs across the borough. The analysis of geographical distribution is significantly in error.

28. Whilst geographical balance of the recipient organisations in its own right would not achieve Best Value, assessment of geographical

distribution of delivery to address areas of identified need was an integral part of the MSG assessment process.

29. Paragraph 4.57 wrongly concludes that CGPB did not look “at the geographical balance of proposals either by individual funding stream or as a whole within the context of need.” In this respect PwC has failed to take account of information provided at the very beginning of the inspection. PwC was provided with the Equalities Impact Analyses (EIA) underpinning the final MSG recommendations. These EIAs, carried out at funding stream level and which formed part of the papers presented to CGPB and the Mayor, clearly contain detailed geographical analysis of the delivery area for each grant award.

30. As such, the consideration of geographical distribution in the grant decision making process carried out for MSG was clearly evidenced to PwC and is substantially more refined and evidence based than the simplistic and flawed analysis carried out by PwC (which is based on the addresses of organisations that received grants).

b. Failure of the Inspection report to acknowledge the existence of clearly evidenced grant related needs assessments

31. Paragraphs 4.77 to 4.88 of the Report are dedicated to an analysis of funding distribution in relation to Indices of Multiple Deprivation (IMD). The application of IMD at overall MSG level to determine the extent to which funding follows need, fails to take into account the sub factors of deprivation that relate to specific MSG funding streams. For example, the Arts, Sports & Environmental Services (ASES) specification makes specific reference to areas with low levels of physical activity while the Lifelong Learning Services (LLS) specification notes areas of high job seekers allowance claimant rate. Attempting to analyse geographical spread at overall MSG level against IMD fails to understand the targeted nature of deprivation related grants and the extent to which the targeted nature of the grant specifications drive geographical distribution.

32. During the fact checking process the Council highlighted to PwC that needs analyses underpinned the service specifications for the MSG (see the examples for ASES and LLS above). Paragraph 4.88 notes this and then states that PwC “*note that the documentation purporting to constitute the Council’s needs analysis was only provided to us during the fact checking process and was not referred to by anyone we spoke to over the course of the Inspection when asked about the rationale for grant award recommendations.*”

33. Contrary to this statement PwC was provided with relevant information in April 2014. PwC failed to realise its significance or interpret it correctly. The statement in the report suggests that there is doubt as to whether or not this documentation did in fact inform grant recommendation and specifications. Such a suggestion is categorically

rejected by the Council. The documentation provided to PwC during the fact checking stage comprised the source documents that informed two key sets of documents that were integral to the MSG assessment process: the service specifications and the EIAs. Both the service specification and EIAs contain relevant information and statistical data from these source documents. It should be noted that the service specifications and EIAs were provided to PwC at the very outset of their inspection period. Examples are attached at Appendix A1 to A4. The source documents were provided to PwC as additional evidence as they had clearly failed to recognise the needs analysis information contained in key documents at their disposal.

H. References to Council Delay in the Report

34. A number of attempts have been made in the report to justify the time extension granted to the inspectors by the Secretary of State (and the £1m cost of this exercise) by claiming that the Council raised a number of obstacles to progress which significantly delayed provision of information to them and 'in large part' let to PwC's request for more time to complete the inspection. The use of the term 'in large part' is noted particularly as the Secretary of State has only ever blamed delay entirely on the Council.
35. The Council refutes any suggestion that it has caused unjustified delay to the inspection. It is concerned about the level of sustained misrepresentation of the Council by PwC in this respect and this continues to be the subject of separate and continuing correspondence between PwC and the Council's Executive. DCLG have refused to make clear the process by which PwC were appointed, the date that they were commissioned, the financial terms upon which they were appointed, the financial controls, if any exerted by DCLG during the inspection. DCLG have informed the Council that it is entirely up to PwC (a private profit centred company) how they run the inspection.
36. It is hard to understand this level of largess which seems an open invitation for private firms appointed to such positions of authority to create reasons for extensions to time lines, misrepresent public authorities, inflate staff numbers (26 inspectors were deployed by PwC to conduct this Best Value Review), pursue unwarranted lines of enquiry.
37. In view of the unprecedented £1m cost of this Best Value review it is difficult to understand how this can be justified as providing value for money when compared to the £100k cost of the Audit Commission's last 'root and branch' review of Doncaster Metropolitan Borough Council. Furthermore the nature of what will clearly be very lucrative Best Value commissions going forward are such as to call into question the independence of the private sector 'Inspectors' and the veracity of their findings when they have such a direct and valuable commercial

relationship with a Secretary of State. This should concern all local authorities.