

REPORT OF AN INVESTIGATION INTO THE USE OF PUBLIC FUNDS BY THURROCK THAMES GATEWAY DEVELOPMENT CORPORATION

Introduction

1. The Director General Finance and Corporate Services commissioned a review into the use of public funds at Thurrock Thames Gateway Development Corporation (The Corporation) following concerns raised by the sponsorship team, the Corporation's internal auditors and the National Audit Office. Following representations from the former Corporation Chief Executive and the Chair of its Board, the scope of the investigation was extended to consider the Department's sponsorship role in the run up to the Corporation's closure.

2. The final terms of reference for this review are at annex A to this report. In summary the review looked at:

- Payments made to and on behalf of the Corporation's personnel;
- The relationship between key players and certain external bodies; and
- The Department's sponsorship of the Corporation in the run up to its closure.

3. This report covers our findings in each of these areas, concludes with the lessons learned and makes some recommendations for the future.

PAYMENTS MADE TO AND ON BEHALF OF THE CORPORATION'S PERSONNEL

4. Our review considered the following payments which may be deemed by the Department to be novel and contentious:

Payments in lieu of notice (PILON)	£151,308
Training	£9,163
Software	£3,952
Bonuses	£21,787
Relocation expenses	£2,385
Total	£188,595

5. Our findings are based on the analysis by PWC of the Corporation's financial records, our validation of that work, our interviews with the Board and senior officials of the Corporation and with officials of the Department and further examination of the Corporation's records. In the event that any of the payments are deemed to be novel or contentious, the Department will need to seek retrospective approval from the Treasury for their payment. If authority is not granted, the Department should seek to recover them.

Payment in lieu of notice (PILON)

6. Secondary legislation made on 2 April 2012 stipulated that the closure date of TTGDC was 31 October 2012. TTGDC personnel contracts of employment specified the notice period in the event of redundancy; these varied for the six remaining employees who remained in post after 1 April 2012.

7. The Corporation submitted a business case to the Department in August 2011 for the payment of a retention package to Corporation staff who stayed beyond 31 March 2012 to help to close the organisation. The Department informed the Corporation in October 2011 that they were rejecting the business case on the grounds that retention arrangements were regarded by the Department as “Novel and Contentious”.

8. Initial redundancy letters were issued on 12 January 2012 by the Director of Resources (Mr. O'Donnell) to the remaining staff. One of the Corporation staff signed the letter to Mr. O'Donnell. Four of the letters were incorrectly dated 12 January 2011; however, the signatures acknowledging receipt were dated in January 2012. These letters do not constitute formal notification of redundancy because they do not specify the date of final redundancy. The letters informed the recipients that:

“it is with regret that your position has been selected for redundancy. This letter is therefore to formally confirm our intention to terminate your employment with effect from no earlier than 30th September on the grounds of redundancy. I will confirm the final date in a subsequent letter”.

9. Final redundancy letters, informing the employees that their last day of employment with the Corporation would be 22 October 2012, were sent on 10 October 2012 by the Accounting Officer and Chief Executive (Mr. Lindsay) to Mr. O'Donnell and by Mr. O'Donnell to the other five staff including Mr. Lindsay.

10. Through our examination of documents and our interviews we have not identified any suggestion of alternative closure dates other than 30 September 2012 or 22 October 2012. The two key factors impacting on which closure date would be achieved appear to be (i) whether or not the Corporation would be required to complete the Clear Line of Sight (CLOS) reporting and a number of last minute changes that were made to the template required for this exercise; and (ii) obtaining a figure for the crystallisation of the Corporation's staff pension costs. Neither of these factors could have delayed the dissolution date of 31 October 2012 that is set out in the Dissolution Order.

11. We note that the under the Corporation's Financial Memorandum (Para 54), there is a requirement that:

“Any proposal by the [Corporation] to pay any redundancy or compensation for loss of office, requires the approval of [DCLG]”

12. Whilst the Department was aware that the remaining employees of the Corporation would become redundant on or before the dissolution of the Corporation on 31 October 2012, we have not seen any evidence that DCLG formally approved either the redundancy payments or the PILON for these employees.

13. On 27 January 2012 the DCLG sponsorship team sent Mr O’Donnell an email asking:

“Can you confirm that you have considered other planned redundancies and notice periods and that given timescales, [two other redundancy cases not relevant to this investigation], are the only ones in which pay in lieu of notice may be required.

14. Mr. O’Donnell responded the same day:

“Regarding those leaving post March to undertake the final winding up work, I have yet to issue final redundancy notices as I don’t want to create potential problems if say a particular piece of work takes longer and we have already made that person redundant. Therefore there may be a balance in risk between certainty of leaving date and certainty of work completion, which may result in at least some lieu of notice being paid to ensure that we don’t get problems. However, I will manage the risk and contain any such costs within the budget provision that you are providing for 2012/13. Certainly I believe this approach is preferable to having to negotiate what we would have (sic) pay someone to stay on of they come to the end of their confirmed redundancy date as they would not be obliged to stay on or the alternative of having to get in expensive interims to cover”

15. On 4 October 2012 the sponsorship team raised concerns following examination of the Corporation’s Board papers for the meeting that day. The Corporation’s recollection of events is set out at Annex B to this report.

16. From 2011 there were discussions around the closure of the Corporation in advance of its dissolution on 31 October 2012. The Corporation’s Closure Programme Board paper produced for the Corporation Board meeting on 30 July 2012 indicates that following a request from the Department the Corporation’s agreed to move closure forward to 30 September 2012. However, the quarter 2 CLOS return, which was required for the Department’s accounts could not be done until after 30 September 2012. This meant that closure of the Corporation would have to revert back to October.

17. From the outset of the final phase of closure the Corporation produced a detailed project plan which, from March 2012 onwards, was circulated with papers for both the Corporation Board meetings and the Department's Closure Board. These project plans (a Gantt chart) included an entry "set up final payroll and redundancies including redundancies" and from the July updates onwards this wording changed to "payment of final payroll and serve notice on staff (26/09/12)" – this was at a point when a September close was being planned. For the September Corporation Board update the closure project plan had been updated to "payment of final payroll and serve notice on staff (17/10/12)" this was to support a 22 October closure. In addition the process of serving notice of redundancy on remaining Corporation staff members was included in the key activities section of the Corporation Board – Closure Update Reports for May, July and September. These Board reports and papers were circulated to the Department and the NAO in advance of the meetings. No comments were provided by either party before, during or after these Board meetings.

18. In the period from March 2012 to closure of the Corporation there were five Corporation Board meetings (March, May, July, September and October and three Closure Boards (May, July and October). However, there was no clear reference in the Board papers until September to any specific proposal to pay PILON. We have not seen any evidence of any challenge until an email from the sponsorship team dated 10 October 2012 raising the issue of PILON with the Corporation. Similarly details were entered in the draft Remuneration Report and Annual Accounts that were in circulation between the Corporation, the Department and the NAO from July onwards; no comments were received from either the Department or the NAO.

19. As part of their external audit, on the 20 July 2012 the NAO e-mailed a document to Mr. O'Donnell asking a number of questions in relation to the process of closing down the Corporation, including whether the remaining staff would be entitled to and paid PILON/CILON. Mr. O'Donnell replied in the affirmative on 30 July 2012. The Department did not see a copy of Mr. O'Donnell's responses to the NAO questions, but it had been copied into the template as it needed to complete certain questions. The Corporation argued that sight of the template (even though uncompleted) may have alerted the Department to the possibility that PILON was being considered.

20. The Department therefore had opportunities to challenge the Corporation's proposal to make PILON payments. The NAO did not raise this issue directly with the Department, as they had raised queries around PILON with the Corporation, which they believed had in turn been shared with the Department. The NAO's view at the time was that, since the PILON payments were contractually legitimate, and the NAO believed they were being made with the Department's knowledge and hence implicit approval, the payments were regular

although they did not consider them to represent a good use of public funds. Following consultation with the C&AG, and clarification that the Department would not have approved the payments had their approval been formally sought – as required by the Corporation’s Financial Memorandum, NAO updated their view. The NAO concluded that, as the intent of Parliament to close the Corporation by the end of October was clear, and as the Department are clear that they would not have approved these payments had approval been sought, then the PILON payments were irregular.

21. The Corporation’s Board and management assert that both the Department and the NAO had opportunities to challenge the proposal to pay PILON. They argue that it was therefore reasonable for them to conclude that PILON payments were appropriate. However, the Corporation had a responsibility under the terms of its Financial Memorandum actively to seek the Department’s approval for PILON. In our view while the Department had opportunities to challenge the Corporation’s plans to pay PILON, these opportunities did not satisfy the Memorandum’s requirement that the Corporation actively seek the Department’s consent for such payments. DCLG would not expect the Corporation to have looked to the NAO to endorse either the action of issuing a notice or any related thinking around the timing of such action. The Corporation claims that the financial returns and forecasts provided to the Department did include planned PILON payments, but these figures were not separately identified and were subsumed in the pay budget element of the return. It would therefore not be possible for the Department to spot planned PILON payments from these returns.

22. Whilst acknowledging there were changes to closure dates, it was never a possibility that the final closure date would extend beyond the statutory date of dissolution of 31 October 2012. We can see no reasonable justification for not issuing the final redundancy letters in sufficient time to meet the individual notice periods. The Corporation said that work beyond the closure date may still have been required because of the work needed to close the accounts. In this case the Corporation should have raised the issue of PILON directly with DCLG as required by its Financial Memorandum

23. The Department’s view is that there is no legal basis for requesting repayment of the PILON payments to the junior members of the Corporation staff. Arguably this does not make these payments any the less contentious, and the Department will wish to consider how these payments (amounting to £34,234) should be treated in the Corporation’s final Accounts. The Department is pursuing action against the Chief Executive and the Director of Resources for recovery of PILON payments to them amounting to £117,073 (less tax and NI contributions).

Training

24. The Corporation employment contracts do not make specific reference to entitlement to training. However, the Corporation Employee Handbook covered development and training, but not what personnel could expect when facing redundancy. The only reference to training within the Corporation's Redundancy Policy is:

“Employees under notice of redundancy will be given permission to take time off work to look for work or training in accordance with current legislation”.

25. In preparation for the first tranche of redundancies announced by the Corporation its Board agreed in March 2011 that support for staff would be provided. This included training in relevant skills where there were identified gaps. Similar arrangements were applied for those staff retained at the Corporation to close down the organisation. The Corporation management did not consider there was a need to seek further Board approval to adopt the same approach. We could find no evidence of an agreed policy and guidance to describe how this policy should be delivered. To ensure public funds are used appropriately we would expect a clear direction to be provided in terms of the parameters on the types of training or the financial limits that were to be applied.

26. We understand that individual discussions were held between the Corporation staff and their line management to identify training needs. Some of the courses that were approved by the Corporation management clearly show a change in career path. However, the question remains for organisations facing closure in the future as to the type of training that should be offered and paid for to support staff being made redundant. The factors which should be taken into consideration include:

- The current role of the individual applying for training support?
- Future career aspirations including a change in career path?
- The local job market? What chances do individuals have of getting a like for like job locally?

27. The lack of clarity in terms of what training could be provided as part of the Corporation's approach to preparing staff for redundancy has led to challenges from the Department over the propriety of certain training expenditure. As the Corporation did not consider any of the training costs novel or contentious it made no applications to the Department for their approval.

28. During the period 1 April 2012 to 22 October 2012 a total of £9012 of training costs were incurred by the Corporation, most of which is either novel or contentious by its nature (i.e. arguably not for the purposes of the Corporation) or by its timing (i.e. appropriate for the original purposes of the Corporation but beyond the time when it had planning responsibilities). The Corporation had a policy, approved by the Board, of providing training for onward career support to

staff facing redundancy. From our interviews with the Board and with senior officials we understand that no formal limits were set as to the amount or type of training provided. The figures break down as follows:

Beneficiary	Total amount	Nature	Timing	Unknown	Not contentious
Mr. McKee	897.60		897.60		
Mr. Lindsay	958.80		958.80		
Mr. O'Donnell	153.00				153.00
	282.50			131.50	151.00
	4026.32	4000.02			26.30
	2122.73		2122.73		
	720.28	341.55	230.00	148.73	
Other	1.95			1.95	
Totals	9163.18	4341.57	4209.13	282.18	330.30

29. The training costs for Mr. McKee were incurred to enable him to attend three conferences related to development, planning and development finance in September and October 2012. In interview Mr. McKee said the training was to provide him with additional skills that would enable him to enhance the value he could offer as a trustee of High House Production Park: he had discussed this with Mr. O'Donnell who had responsibility for training at the Corporation. Mr. O'Donnell's view was that the training was regular and it was booked. When later Mr. McKee asked Mr. O'Donnell if he maintained his view. Mr. O'Donnell replied that it was regular, and that moreover, the NAO had not challenged it. Arguably HHPP (which by that time had become a charitable company) should have met these costs. However, it has been confirmed by another Trustee of HHPP that there has been no discussion with trustees or staff of HHPP regarding Mr McKee's training needs in order to support HHPP going forward. The Department may wish to consider seeking recovery of the £897.60 incurred. In interview Mr. McKee advised that if the Department subsequently considered the payments to be irregular, he would be content to refund the payments.

30. Mr. Lindsay received training amounting to £720 on the use of Argus software, an industry standard valuation software for Chartered Surveyors and Valuers, . He also attended a conference on "implementing the community infrastructure levy" costing £238.80. Both costs may be argued to be relevant for onward career support; otherwise the Department may wish to consider seeking recovery of the total £958.80 incurred.

31. The costs for Mr. O'Donnell relate to net costs arising from his attendance at a retirement seminar. These are arguably contentious as the Corporation had funded his attendance at a languages course as he was also considering pursuing a career in the European Commission. A further £595 plus VAT of

contentious expenditure was also incurred in 2011/12 for [REDACTED] attendance at the retirement seminar. It should however be noted that Mr. O'Donnell refunded the money paid for the languages course following challenge last year by the NAO. Moreover, following our interview with him he has also repaid [REDACTED] course fees – he had asked for the money to be deducted from his salary but on checking he realised this had not been done. This leaves a balance of £153 which the Department may wish to regard as non contentious.

32. In respect of the remaining training costs for [REDACTED] [REDACTED] the Department has already decided not to pursue recovery from them for PILON on the grounds that they had reasonable grounds to believe that they were entitled to the payments that they have received. In interview with the Board and with senior officials of the Corporation they asserted that all their courses were vocational in nature and therefore in line with the Board's policy of providing forward career support for staff facing redundancy. It is a matter for the Department, which now has responsibility for preparing the accounts, to decide whether to accept this position and treat the balance of £7127.30 either as non-contentious, contentious but not for recovery, or contentious and for recovery. In the event that any of the payments are deemed to be novel or contentious, the Department will need to seek retrospective approval from the Treasury for their payment. If authority is not granted, the Department should seek to recover them. Separately the Department should consider seeking advice from HMRC as to the tax treatment of the amounts paid for their training, as this may be considered by HMRC to be part of their redundancy settlements.

Software

33. The Corporation purchased Argus Developer Software and one year's technical support, costing £3,953, in August 2012; two months from the Corporation's dissolution. As this was the software on which Mr. Lindsay had been trained, we asked him why this was purchased and what had happened to it. Mr. Lindsay advised that

- he had been trained in Argus software as part of his onward career support – the Corporation's duty of care applied as much to him as it did to its other employees;
- the software had been purchased because he needed to be able to work through the training exercises he had picked up from his course; and
- he had retained the software as it was of no use to Thurrock Council.

34. It is arguable whether this is a legitimate use of public funds. The Department may wish to consider seeking recovery of the £3,953 incurred

Bonuses

35. Mr. Lindsay and Mr. O'Donnell each received a bonus agreed by Mr. McKee, calculated on the basis of their increased salaries (i.e. including a 1% pay rise added in error) and for almost the full annual amount, although they had only worked for just over six months of the year. The amounts involved were £11,743 for Mr. Lindsay and £10,044 for Mr. O'Donnell. Their contracts provide for a potential bonus of up to 10% of their salaries at the approval of the Board; in this case they were paid 9% of their salaries as bonuses approved (apparently) by Mr. McKee. We have been informed that Mr. McKee did advise the other remaining Board member, of his proposed approach to handling this matter and sought his views. In interview with the Board and senior officials of the Corporation we have established that:

- Mr. McKee would usually consult the chairs of the Board's sub-committees about the performance of Mr. Lindsay and Mr. O'Donnell before awarding a bonus;
- The award was made on the basis of the achievement of their objectives rather than the amount of time in year; and
- Mr. McKee reduced the bonus from 10% to 9% because of the error in applying the 1% pay increase to senior staff – in other words they were awarded 90% of the total bonus available.

36. The award of the bonuses to Mr. Lindsay and Mr. O'Donnell, while not strictly in accordance with their contracts, appears to have followed custom and practice established over many years and is arguably therefore not contentious. However there was an error in their calculation; the bonuses had been based upon their salaries including the erroneous pay increase. Mr. Lindsay had been overpaid by £116 and Mr. O'Donnell by £100.

We understand the Department has now recovered the overpayments incurred.

Relocation Expenses

37. The Corporation paid an invoice from a firm of estate agents in July 2012 for the value of £1,987.50 plus vat for relocation costs for a Corporation employee, who [REDACTED]. These costs related to the sale of a property in [REDACTED]. We asked Mr. O'Donnell about this payment as he had authorised it. We were informed that the claim had been made by the individual concerned as he had not claimed any relocation expenses when he took up appointment with the Corporation and that according to the relevant Corporation policy there was no time limit for claiming relocation expenses. The individual concerned started work at the Corporation in August 2005. The Corporation relocation policy (dated April 2009) states that:

“In order to receive the payments in accordance with the scheme, the employee concerned must move home within two years of the date of the change”.

38. It is questionable whether this is a legitimate expense, and the Department may wish to consider its recovery. However, Mr. O'Donnell in his interview said that this cost may well have been subsequently charged to Thurrock Council by the Corporation. Thurrock Council has confirmed that there have been no discussions with them about the Council paying the individual's relocation expenses nor has there been any refund to the Development Corporation. The Department should consider recovery of these expenses.

Conclusion

39. Of the £189k considered possibly to be novel and contentious, we have recommended that the Department consider recovery of some £126k. While the total irregularity is not large in terms of the Corporation's total spend, most of the irregularity could have been avoided by adherence to the Corporation's Financial Memorandum, the development of appropriate policies (e.g. around training) and compliance with existing policies (e.g. around relocation). The Department should consider discussions with the remaining arms length bodies facing closure to ensure these lessons are learned.

RELATIONSHIP BETWEEN KEY PLAYERS AND EXTERNAL PARTIES

Land And Property Asset Realisation Ltd. (LAPAR)

40. The NAO raised questions about a potential business relationship between the Chair and Chief Executive of Thurrock. IAS can confirm that the Chair and Chief Executive of the Corporation have set up a company called LAPAR Ltd; the date of incorporation was 30 May 2012. They are the only two named directors on the records at Companies House.

41. Mr. Lindsay's employment contract, dated 7 October 2004, includes a clause:

"You will not hold any other post or employment or engage in any other business or occupation during your employment with the Employer [the Corporation] except with the prior written consent of the Board."

Mr McKee's contract states:

"Members should avoid situations in which their NDPB [Non Departmental Public Body] duties and private interests conflict or where there would be a suspicion of conflict. Relevant interest should be entered in the Register of Interests [...] and the entry kept up to date."

We have not seen any evidence that the existence of LAPAR was disclosed to the Corporation Board or that specific notification to the Department was made by either individual of their involvement with this company. The 2011/2012 Corporation Governance Statement, which was finalised after 30/05/12, – Register of Interests, states that there were no interests held by Board members that were in conflict with their management responsibilities.

42. Mr. Lindsay and Mr. McKee in their interviews with IAS confirmed that they did not seek the Board's approval. They did not consider their involvement in the company to be in conflict to their roles with the Corporation because:

- The Corporation was in the process of being closed down when the company was set up;
- from 31 March 2012 the Corporation ceased to exist as an executive body as their delivery responsibilities had transferred to Thurrock Council, which included all its and property assets;
- when Mr. McKee agreed to assist Mr Lindsay in setting up the company his tenure as Chair of the Board was due to end on 31 July 2012 and the Department had made a decision not to renew his contract and to dispense with the Board. This decision was subsequently changed by the Department following challenges from Chair, the NAO and internal audit; and

- Mr. Lindsay stated that LAPAR was probably his only future employment option following the closure of the Corporation as he was over 55 years of age.

43. We have been advised by both Mr. McKee and Mr. Lindsay that LAPAR was not active prior to closure of the Corporation. We have seen no evidence to suggest that the new company has benefited from the director's roles at the Corporation. Although the company has not yet filed accounts at Companies House, the Corporation's draft Remuneration Report and Annual Accounts for the period ending 31 October 2012 and the Trial Balance as at 17 October 2012, do not indicate any transactions with LAPAR.

44. The LAPAR website has been reviewed and we note that details of the Corporation projects have been promoted on a page headed with a LAPAR logo. Whilst the website does not explicitly state that these projects have been undertaken by LAPAR someone viewing the website may infer from the layout of the page that this was the case. There is clarification in another page of the website that contains Mr. Lindsay's CV that these projects were completed whilst working at the Corporation.

45. Whilst we understand that LAPAR's first engagement letter was signed on 15th October 2012 and the Chief Executive wrote to CLG Director General on 24th September 2012 about the new company, it had however been in existence since 30 May 2012. Mr. McKee and Mr. Lindsay should have formally reported their interests in LAPAR as Mr. McKee's role as Chair of the Corporation Board required him to ensure that an up to date Register of Board Member's Interests was maintained, which is consistent with guidance provided by the Cabinet Office to NDPBs. In addition the Corporation Governance Statement dated November 2005 states that:

“ A member must register his continuing outside interests by providing written notification to the Chief Executive. All such interests will be entered into the Register of Interests maintained by the Chief Executive on behalf of the Corporation and which will be available for public inspection following adoption of the Governance Statement on the Corporation's web site. Members must register their interests on appointment or as soon as practicable after the interest arises.”

High House Production Park (HHPP)

46. Among the concerns originally raised by the NAO on the closure of the Corporation's accounts was the propriety of the clearance of what appeared to be a loan by the Corporation to its subsidiary, High House Production Park Ltd (HHPP). We included a review of this under our terms of reference. The NAO have subsequently confirmed that they are content that the “loan” (which was actually recognition in the accounts of a liability to find land of the stated value to

exchange for the HHPP site) was legitimately cleared. However in the course of our investigations we identified the following issues:

- That the Corporation officials who presented the case to the Department's Investment Sub-Committee to allow HHPP to become a charity did not disclose that they were to become directors of the charity, nor was it disclosed that the Chair of the Board of the Corporation and the Chief Executive were to become trustees;
- That in the 2010-11 Annual Accounts of HHPP £7.677m was spent on acquiring land and buildings and on assets under construction, which was written off at the year end;
- The write-off also reduced the asset value of the subsidiary from £5m at the beginning of 2010/11 to around £2.5m at the end; and
- Various employees of the Corporation have since become directors of the charity's subsidiary, High House Enterprises Ltd (HHEL).

47. The write-off (£10.2m in total) was due to an independent revaluation of the site by Chartered Surveyors GVA, which valued the High House site and buildings at £1.1m despite the amounts invested in year. The Department was aware of the write down and sought assurance as to the causes behind it. We asked the sponsor team in place at the time of the £7.677m investment for its rationale, given the Corporation was in its last full year of operation. We were advised that the rationale behind the Corporation's activities was not to deliver increased asset value but to regenerate the region; the HHPP project was a key part of that programme. The business case appraisal for the project is not available from the Department's records. However there is evidence that an assessment was made by an external consultant who found that a net present value of £30.6m to the UK as a whole from the project would ultimately be delivered from new jobs for Thurrock, skills enhancement of the local community labour pool, new community facilities and an improvement in the image and economy of the region.

48. HHPP has been functioning as a charity since 12 January 2012 and has a subsidiary, High House Enterprises Ltd, in operation since December 2011. At the time of the investigation a number of the trustees of the charity and directors of its subsidiary HHEL were associated with the Corporation in some capacity. In the case of Messrs McKee and Lindsay they informed us that they became trustees of the charity, only as a stop gap, because of their background knowledge of the HHPP project. We were also advised that these individuals undertook these roles voluntarily and did not receive any financial benefit from their involvement with HHPP. It has been confirmed that Mr. Lindsay has subsequently resigned from the Board of the charity.

Conclusion

49. In neither of the cases we reviewed did we find any evidence that anyone benefited financially from the relationship between the Corporation and the two external bodies. In the case of LAPAR, concerns could have been avoided had the Corporation's policy of disclosure been observed by the parties concerned (Mr. McKee and Mr. Lindsay), and more care taken over the presentation of the Corporation's work in their company's publicity. In respect of HHPP, it is not our role to assess the value for money of the investments made by the Corporation in the charity. The Corporation's role was to promote regeneration in the region, and the investment in HHPP was a key part of that programme. Again concern could have been avoided by better disclosure by the Corporation's officers of their involvement in the charity.

THE DEPARTMENT’S SPONSORSHIP OF THE CORPORATION IN THE RUN UP TO ITS CLOSURE.

Background

50. There are numerous references as to how relationships between a department and its Arms Length Bodies (ALBs) should be conducted, including in *Managing Public Money*. However, we draw particular reference to the document *Corporate Governance in Central Government Departments (Code of Good Practice 2011)*. This guidance produced by HM Treasury and the Cabinet Office sets out a suggested approach for departments on how the principles may be applied. In particular paragraph 6.3 states:

“ALBs are publicly accountable, whether funded directly from parliament, a central government department, or through a government sponsored commercial structure that enables the body to generate its own revenue. Therefore ALBs are accountable to their sponsor department for performance and the use of their resources [...] within the established arm’s length relations as set out in the Framework document.”

In addition, paragraph 6.11 goes on to state:

“The department’s relationship with ALBs should reflect the board’s assessment of each ALB’s ability to manage its risks, including those relating to delivery and financial management, and its performance. The aim should be to ensure that the department’s monitoring of, and support for, its ALBs is concentrated on those with the most significant risks.

51. Furthermore, the Department’s document *Responsibilities for Resource Management and Corporate Governance* (with effect from 1 April 2012) which was issued as part of the delegation pack issued to Directors, including the Corporation in May 2012, refers to the Department’s sponsorship framework with it ALBs. Paragraph 4.8.1 - *Your responsibilities* states:

“There are no hard and fast rules to sponsorship but a clear channel of two way communication between you and your sponsored body is key.”

This paragraph goes on to mention a number of other useful components to support an effective relationship between the Department and its ALBs.

52. The extent and level of Departmental oversight of its sponsored bodies is therefore a matter of judgment, taking into account the level of risk and materiality of their responsibilities and its assessment of their capability to deliver their aims and objectives. We therefore assessed the Department’s sponsorship

of the Corporation in the run up to its closure in terms of its capacity and capability to manage the process, the programme and project management techniques applied and the use of management information.

Capacity and Capability

53. The Department had resource at Deputy Director level providing constant oversight of the Corporation until the Department was restructured in 2011. Since then there have been two different Deputy Directors allocated with responsibility for oversight plus changes at day-to-day operational level. Such inconsistency in the personnel tasked with providing oversight in a close down situation can prove destabilising.

54. Furthermore, the amount of time that the Department has been able to commit to oversight of the Corporation since restructuring has reduced considerably, against a need for greater assistance. In interview, the current officials responsible for the Corporation's sponsorship advised that they had little experience of the sponsorship role and they left many technical issues such as TUPE, PILON etc to the Corporation to resolve in the first instance. Where the Corporation had queries the sponsorship team sought to resolve them. The closure of the Corporation was perceived as low risk as only a small running cost budget was involved and there were only a small number of employees remaining. The sponsorship team had other priorities, and therefore little time to devote to the closure of the Corporation.

55. The Corporation's Non-Executive Board appointments were due to end on 31 July 2012 and originally were not going to be extended by the Department, as the Department expressed the view that it could manage the closure process over the remaining period itself. This would have left the Corporation without any Board oversight until the closure of the organisation in October, which in the view of the NAO and the Corporation's internal auditors meant that the governance arrangements did not comply with the Corporate Governance Code. The NAO also raised concerns about these transition arrangements. The Chair of the Corporation wrote to the Permanent Secretary raising his own concerns and the Department subsequently decided to ask the Chair and Deputy Chair of the Corporation Board to stay on until the organisation was closed. Both individuals agreed to this and continued their roles until the Corporation was closed. Although the right outcome was eventually reached, the original proposal to leave the Corporation without Board oversight in breach of the Governance Code shows a lack of awareness of its principles.

For future ALB closures the department needs to consider the capacity and capability of the resources required to provide an effective approach to providing both challenge and guidance to the body concerned.

Project management

56. The Corporation asked the Department for a “tool kit” (their words), essentially a guide to the closure process that the Corporation could follow. This was not forthcoming, so using their project management experience and expertise they put in place a project based approach for closing the organisation. This approach, whilst not examined in depth by internal audit, appeared robust and delivered closure. The Corporation put in place a governance process for managing the closure of the organisation, which included monthly updates at Corporation Board meetings, a continually updated closure project plan and an appointed project manager. Although the Department was invited to the Board meetings, there was no representative from the sponsorship team between May 2012 and September 2012 (4 meetings) and the Corporation received no comments in relation to the Board papers or the subsequent meeting minutes. This reduced the opportunity both for the Department to challenge Corporation progress with the closure, but also for the Corporation to seek guidance from the Department.

57. At the request of the Department's Director of Local Economies, Regeneration and European programmes the Department set up a Closure Board, which we understand was to provide the Department with assurance that closure was on track to meet the end of October 2012. The Closure Board comprised of representatives from the Department's sponsorship and finance teams, Corporation finance, closure lead and internal audit. The NAO also attended meetings in an observer only capacity. An issues log was devised and used as a means of tracking issues that were identified during and outside the meetings. None of the issues Logs raised the question of PILON.

58. The Department adopted a relatively “light touch” approach to project management of the closure process because of its assessment that there was a relatively low level of risk. As a result the Closure Board oversaw rather than managed the closure process. In retrospect, had the Department adopted more of the suite of PPM techniques (e.g. risk management, critical path analysis etc) many of the issues identified by this report may have been avoided. This is however a matter of judgment and the Corporate Governance Code encourages Departments to use its judgment in deciding on the appropriate level of oversight for its arms length bodies. Given the experience of the closure of TTGDC, we recommend that in the event of any future closure the Department should:

- Assess the capability of the ALB (both Board and Executive) to manage the closure process;
- Seek additional specialist input where required; and
- Document the level of involvement it expects to have in the closure process (including the PPM techniques to be deployed) and agree this with the relevant parties.

Management Information – Budget Monitoring

59. As part of the Corporation's regular financial reporting to the Department they completed monthly "workbooks" to the Department's Finance Team which detailed the in-year spend against budget and their forecast for the rest of the year. Whilst these are a helpful tool for the Department to oversee progress against budget the return is based at individual budget level e.g. Training, which restricts the level of detailed information to allow an effective challenge to be made. Given that the period of closure of an organisation represents an increased level of risk, we would recommend that to increase the opportunity to challenge expenditure, the Department should consider producing a more detailed return to be completed by ALBs during closure.

Other Issues

60. Our review covered the Department's sponsorship of the Corporation in the run up to its closure principally at the request of the Corporation itself, with the agreement of senior officials within the Department. Most of the points raised by the Corporation have been covered either in this section, or in the previous sections of the report covering the Corporation's payments and its relationships with external parties. Two additional areas were raised by the Corporation:

- The disagreement between the Corporation, Departmental and NAO officials as to the events of the final Corporation Board meeting on 15 October; and
- The role of NAO officials and whether any pressure had been put upon them to question decisions about which they had not previously raised any concerns.

61. In respect of the events of the last Board meeting, the accounts of the DCLG and NAO officials are in accord – but so too are the accounts of the Corporation Board members and officials. The principal area of disagreement was whether the Director of Resources had said the final salary payment run (which included the PILON payments) had been paid or was pending. While it is regrettable that the parties cannot agree, we can find no evidence that this failure is in any way indicative of malign intent – or lapse of capability – on any of their parts. We understand that both versions of the minutes, those prepared by the Corporation and the amended version agreed by the Department and the NAO, are available as part of the public record.

62. The Corporation's concern about the NAO more widely is that it had not previously raised any concern about its proposal to make PILON payments. The Corporation questioned whether the NAO (and indeed Departmental officials) had been under pressure to oppose the payments following high profile criticisms made in the press of the severance terms paid to other public officials. We could not find any evidence of any such pressure.

Conclusion

63. Whilst it is right that it was the Corporation's responsibility to manage and deliver the closure of the organisation, it is the Department's responsibility to satisfy itself that its sponsored bodies have the capability and capacity to discharge this role. There appears to have been a lack of clarity between the parties over their respective responsibilities. Open and transparent discussions throughout the process, in particular at the beginning to put in place the arrangements for delivering closure, may have alleviated the confusion over the differing expectations.

64. The report has already covered a number of areas that caused concern to the Department. In our view some of these issues could have been avoided if the Department and the Corporation had agreed a closure strategy. The Department should consider agreeing such strategies for those of its remaining arms length bodies facing closure. This strategy should describe how a body would deliver closure, the governance arrangements, roles and responsibilities, reporting arrangements including the level of departmental oversight and assistance to staff being made redundant e.g. entitlements regarding pay, training etc. This would provide a single over-arching document that both the body and the sponsor would work to and monitor delivery.

Terms of Reference
Use of public funds at Thurrock Thames Gateway Development Corporation - Investigation

Objective

1. The Director General Finance and Corporate Services has commissioned IAS to undertake an investigation into the use of public funds at Thurrock Thames Gateway Development Corporation (TTGDC) following concerns raised by the sponsorship team and the National Audit Office.
2. The investigation will initially focus on the propriety of the payments made to staff and the relationship between the Chair of the Board of Trustees, senior staff at TTGDC and an external body, with particular regard to the circumstances around the settlement of a loan made by TTGDC to that body. The review will also consider the extent to which the sponsorship relationship with the department contributed to any problems with the use of public funds at TTGDC.

Scope

3. The scope of our investigation is limited as TTGDC closed its operations from 22 October, from when current employees will no longer be readily available.
4. We propose to interview staff in the Department, TTGDC staff (who may be former staff by the time we interview them) and the NAO, and review the paper and electronic records, to provide an opinion on whether there is evidence of irregular activity. The report will identify potential next steps with regard to the concerns raised and will identify any lessons learned.

Engagement and Reporting

5. In the course of our investigation we will liaise regularly with Legal Directorate and the Sponsorship Team. We will provide regular updates to the Director General Finance and Corporate Services, who will be the recipient of our final report.
6. The scope of the review may change as the investigation progresses. Any changes to the timetable and/or scope will be discussed with the Director General Finance and Corporate Services. The Audit Manager responsible for the investigation will be [REDACTED], reporting to [REDACTED] Deputy Director IAS.

PILON Timeline

The original timetable for the closure plan was an end date of 22nd October and the Department for Communities and Local Government (CLG) agreed to this by letter from David Morris dated 6th February (attachment 1) and created the Dissolution Order with a dissolution date of 31st October. The draft Order was issued with this date sometime in February. This information was presented to TTGDC's Board on 8th March 2012. This Board meeting also included a programme plan chart (attachment 2) showing the timetabling of redundancy notices late in the process. Line 318 reads - "Set up final payroll including final redundancies" with a start/completion dated 28th/29th August 2012.

An updated version of this programme plan, still with an end date of 22nd October, was presented to the Board on 31st May 2012. While that was the end date presented to the Board, the Board were also informed that following a meeting with CLG the day before, we were to review the timetable to see if it could be brought forward as CLG wished the pension cessation position to be known before dissolution on 31st October. The closure programme report (attachment 3) (still with an end date of 22nd October) was considered by the Board at 31st May and circulated to CLG and (National Audit Office) NAO listed 6 key activities, pulled out of the detailed plan, one was the service of redundancy notices in September, ie a few weeks before the staff departure. So even if the detail was missed in the plan it was highlighted in the programme report as a key activity. In presenting the closure report to the Board the key activities were always directly raised and emphasised. CLG were invited and expected to attend Board meetings during this crucial period, but gave their apologies to this meeting.

In a letter (attachment 4) to NL dated 26th March, Philip Cox of CLG proposed the establishment of a Closure Board, which would, "drive progress on issues". This together with its membership of various CLG teams, the NAO and TTGDC was the extent of the stated terms of reference for the Closure Board. Together with the programme plan version that went to TTGDC Board of 31st May, a revised possible programme plan with an earlier end date of end September was also discussed at the first meeting of CLG's Closure Board on 30th May 2012 in order to meet CLG's desire that the final pension crystallisation position would be known before dissolution. While I sent an electronic version of the timetable assuming an October end date after the meeting (attachment 5), I said that TTGDC would review a revised end date of 30th September. It is not clear if CLG ever produced minutes of the Closure Board meetings, but if so, none were provided to TTGDC. The only output provided was an Issues Log (attachment 6) which after the first meeting on 30th May numbered only 8 issues to which a further issue was added after the second meeting on 12th July (attachment 7). None of the issues on either CLG's Issues Logs made any reference to PILON at all. While I had been told by CLG that my involvement with the inaugural Closure Board meeting could be dealt with by conference call, I felt it important that as it was the first meeting and that I had not met many of the attendees I should attend that meeting in person. The attendees included a representative of the NAO as well as a range of CLG officials (including Internal Audit). Indeed Internal Audit had not originally been invited and I informed them of the meeting details so they could attend. At the end of the meeting I was informed that that future attendance by TTGDC could be by conference call.

At the second Closure Board on 12th July, (a conference call with two other TTGDC colleagues, [REDACTED], in attendance as well as me), CLG stated that they now wanted TTGDC to do Quarter 2 CLoS (additional accounts consolidation work) which could not be done until after 30th September, so this meant the closure date had to revert back to October. While TTGDC tried to resist this late change, CLG insisted we accepted the position as they said that they did not have the resources to do it themselves. This required not only a major review of the Closure Programme again, but had a number of effects as notice had already been given on IT and telephony contracts. Not all companies, in particular BT for telephony and internet access, would agree to the extension of their contract and it was necessary to create a workaround. This workaround resulted in a much reduced level of internet access and required much more frequent intervention than normal. No papers were produced by CLG for the Closure Board other than the Issues Log produced after the first meeting, and for the second meeting, the latest version of TTGDC's programme plan (now with an end date for staff of end September – attachment 8) that had been sent to them in advance plus a letter from the TTGDC Board Chair, Will McKee, addressed to the Permanent Secretary on behalf of the Board requesting a reconsideration of CLG's decision to end the Board's role at 31st July as this represented a breach of the Corporate Governance Code (attachment 9). As before and in so far as TTGDC are aware, no minutes were produced by CLG. The programme plan submitted to the Closure Board meeting of 12th July in line 54 made it clear that notice would not be served until 26th September – close to the then end date of 30th September. Neither CLG nor NAO demurred or raised an issue with this.

Items for Audit consideration were received from NAO on 20th July. This comprised a schedule of detailed questions prepared by the NAO intended to inform the subsequent audit meeting during week 13th August. Responses to the questions allocated to TTGDC were sent back on 30th July (attachment 10) followed by further responses from CLG on the questions allocated to them. In this schedule there were a series of questions on PILON - at points 5, 6, 8 and 12 of the schedule. In my response to these questions, I specifically stated that PILON will be due to the staff. I made it clear that the changes proposed by CLG to Closure Plan created uncertainties such that final redundancies were yet to be fixed and indicated that notices had to be given. I received no response on these points at all from the NAO and made the reasonable assumption that in the absence of any comment to the contrary this approach was acceptable to them. While CLG had not seen the questionnaire responses from me to the NAO, CLG had a copy of the schedule as they were requested to co-contribute to its completion. Despite the various specific references to PILON as detailed above, there was no intervention or request from CLG to see the TTGDC responses although the NAO questions on notices and recompense for notice periods were positioned immediately following the first set of questions CLG were asked to consider and provide answers on.

The Board meeting on 30th July received a closure report and project plan (attachments 11 and 12) This time to reflect CLG's requirement that the closure process be accelerated to complete by 30th September. In the project plan, at line 25, it was clear that notice to staff was to occur on 26th September shortly before the end September end date. The covering report listed just four key activities one of which stated: "Serve notice of redundancy on remaining Corporation staff members 26th September 2012". As with the May report even if the detail was missed in the programme plan it was highlighted in the report as a key activity. It was not concealed it was easily there to read. As before these documents were circulated to CLG and the NAO. At no stage did either party raise any

queries. Again CLG were invited and expected to attend the Board meeting, but once again gave apologies. At this meeting the Board were informed of the further change to the programme required by CLG that would necessitate another change in the plan so work would continue into October.

After a further review of the closure programme with CLG and on their direction, another revised plan was created to close TTGDC on 22nd October and not 28th September. As with previous CLG imposed revisions this raised the risk profile of the programme and added to the already heavy pressures on the TTGDC staff. The Board meeting of 3rd September received a closure report (attachment 13) and in the project plan (attachment 14) at line 42 it was clear that the notice had moved back in parallel with the closure programme and now said 17th October. The closure report listed just five key activities one of which stated: "Serve notice of redundancy on remaining Corporation staff members 17th October 2012". Once again, even if the detail was missed in the plan it was highlighted in the report as a key activity. It was not hidden, it was easily there to read. Again these documents were circulated to CLG and the NAO. At no stage did they raise any queries. As before CLG were invited and expected to attend the Board, but once again gave apologies.

In summary, the factual position is that both CLG and the NAO received the programme plan with five separate TTGDC Board agendas and papers, (March, May, July, September and October), plus three Closure Boards, (May, July and October), - at least 8 times in total. This excludes additional copies of the plan being provided on an ad hoc basis on request to CLG and NAO.

Throughout the process of the audit it was clear that PILON was being proposed in the Report and Accounts starting with version 3 on 7th August under the heading "Remuneration Report". The version of the Report and Accounts (R&A) in the Board papers of 3rd September showed that PILON would be payable (circulated to both NAO and CLG) (attachment 15). The draft AR&A included the actual PILON proposed to be paid from version 17 (4th September) onwards (attachment 16). The Annual Report section in which the Remuneration Report showed the PILON figures for the Directors. There was no query by NAO or CLG of PILON or of these figures.

In an e-mail from ██████████ of NAO dated 4th October (attachment 17), ██████ stated: *"Please find attached our updated issues log. The items which are greyed out have now been cleared. There have been a few changes to the issues log since my last email of 20 September - see items in blue. You will find that it mainly reflects some of the items reported in our management letter which were not incorporated in my log of 20 September. I have also used the opportunity to include your comments of 21 September in the client response column."* The greyed out items included the Remuneration Report. Thus at that point, the NAO provided clearance on the Remuneration Report and had raised no issues not only on the payment of PILON but also none on the amounts payable.

████████ went on to say that "The other 2 PDF documents contain comments and suggestions for changes arising from the Engagement Director's review of both the Annual Report and Accounts. To keep the email size down, I have only attached the relevant pages of the Annual Report but all pages of the Accounts. Please don't hesitate to come back if you have any queries in respect of any of the documents". The review by the Engagement Director raised no issues at all with the Remuneration Report. The version reviewed would have been either version 22 or 23 of the Annual Report and Accounts (attachment 18 – the remuneration did not change between versions 22 and 23) both of

which showed that not only PILON was payable but also the amounts involved. The detailed figures on PILON had been included from version 17 onwards (date 4th September).

By saying they had cleared the Remuneration Report it clearly indicated that they found no issue with the payment of PILON or that it was considered irregular in any way. Added to this there was no query whatsoever of the Remuneration Report contents by the Engagement Director.

Because of the particular pressures of workload on my colleague, [REDACTED], it was my habit most days on arrival in the office to discuss the next stages of work that [REDACTED] had to do and see what I could do to relieve the pressure on [REDACTED]. So on the morning of Wednesday 10th October, I as usual asked [REDACTED] whether there was anything I could do to help [REDACTED] in [REDACTED] workload. [REDACTED] indicated that [REDACTED] had been requested by the NAO to produce a final set of accounts for the Friday. However, in order to do so all the outstanding journals needed to be posted. The key journals were the final payroll journals as these were the most significant costs outstanding to be posted. In order to do this, my colleague, [REDACTED], said that the final payroll needed to be run that day so [REDACTED] was in a position to post the payroll journals in time for [REDACTED] to produce a final set of accounts for the morning of Friday 12th October. I agreed that the payroll should be run that morning. [REDACTED] then set about doing the payroll finishing it at lunchtime at which time I reviewed, agreed and approved its payment through the bank account to be paid by BACS into the recipient accounts on 17th October.

During the morning of the 10th October CLG raised their awareness of PILON for the first time through an e-mail from [REDACTED] and asked for justification/information in order to deal with any PR issues that might arise. They did not say it should not have been made or request that it should be reversed. Niall Lindsay responded on 12th October (attachment 19). Late in the evening of 12th October an updated Audit Completion Report (attachment 20) was received from the NAO raising PILON as an issue for the first time since the question was originally raised back in July in the NAO questionnaire and in the face of the Remuneration Report having previously been confirmed and cleared. While I looked at the report later that night, I did not notice the raising of PILON as an issue until I looked again the night of Sunday 14th October. The Audit Completion Report was discussed at the Board meeting on 15th October in which I said in response to a question that the payroll had already been run and the payment in the bank set in motion. After the meeting I checked the bank account and saw that the payroll transfer was completed, ie that I understood that it had left the Corporation's bank account. On Tuesday 16th, I had a phone call from David Morris of CLG requesting that I stop the payment of PILON but I informed him that I had viewed the account the previous day and had seen the payment process marked as complete and that the monies had left the account the previous day.

CLG has written to all the staff requesting that they agree to the repayment of PILON (attachment 21). I am aware that as well as me, Niall Lindsay has agreed to repay the net amount of PILON. We are waiting to hear from CLG as to the amount and how to repay it.

In addition to Niall Lindsay, I phoned all the four affected colleagues advising them that the advice was that we made an error in paying PILON and that they should repay it when requested by CLG.

Sean O'Donnell

2nd November 2012