

London Borough of Tower Hamlets

Executive Response to Proposed Directions

Mayor Lutfur Rahman

18 November 2014

A. Introduction

1. These representations are made pursuant to section 15(9) of the Local Government Act 1999 ("the Act") on the report issued by Pricewaterhouse Coopers LLP ('PwC') entitled 'Best Value Inspection of London Borough of Tower Hamlets Report', dated 16 October 2014 ("the Report"), and on the directions proposed by the Secretary of State in the Annex to the letter of Paul Rowsell to Stephen Halsey, dated 4 November 2014 ("the Directions").
2. The Secretary of State appointed PwC on 4 April 2014 to investigate allegations of "*poor governance and possible fraud*" at the Council (Report, §1.2). The specific remit of PwC's inspection of the Council was into the Council's compliance with its obligations under Part I of the Act ("the Best Value Duty") in relation to its functions in respect of governance, particularly under section 151 of the Local Government Act 1972 ("the Inspection") (Report, §1.5). PwC were particularly requested to focus on four of the Council's areas of activity: the making of grants; the disposal of property; publicity and contracting/procurement.
3. The predominant activities of the Council, namely: Education; Health and Social Care for Vulnerable Children and Adults; Housing; Crime Reduction; Libraries; Parks and Waste Collection and Disposal; were not considered by PwC. The Council delivers award-winning services in those fields which are highly regarded by the residents of the Borough. PwC have noted some of the Council's awards at para 3.11 of the Report.
4. After more than six months, the deployment of dozens of forensic accountants and consideration of all the Council's financial records for

a four year period, at a cost to the Council of almost £1 million, the Report identified breaches of the Council's processes only:

- (a) in respect of the award of some grant payments;
- (b) in the disposal of three properties (out of 185 such transactions in the period); and
- (c) in two aspects of the Council's publicity arrangements.

Moreover, PwC concluded there had been no breach of the best value duty so far as concerned the Council's contracting processes and despite the Secretary of State repeating allegations of fraud; such allegations were dismissed as lacking credibility by the Police before the inspection and no such fraud was found by the Inspectors.

5. Nevertheless, it is accepted that the Report has found some matters on which the Council has fallen short of the standards set. For this reason it is accepted in general terms, that in the light of the findings of the Report, it would in principle be open to the Secretary of State to conclude that the power to make directions under section 15 of the Act could be used providing that he is satisfied as to the reliability of the Report. It is suggested that the Secretary of State should take account of the attached Representations on the Report.
6. In this regard, it is important to note that for the most part the matters identified by PwC as amounting to breaches of the duty were already known to the Council and either had been addressed or were already being addressed. It is also important to note that the power to make directions must be considered "*necessary or expedient to secure its compliance with the*" Best Value Duty. The Secretary of State does not have the power to make directions to the Council on matters which are unrelated to, or will not secure compliance with, the Best Value Duty.

Were he to attempt to do so, he would be directly undermining the democratic legitimacy and accountability of local government. Even in instances in which some form of direction may be appropriate, the importance of the democratic principle is such that it will require the Secretary of State to keep the extent of any intervention to the minimum necessary to achieve such legitimate objective as may exist.

7. This response is that, overall, the Directions proposed by the Secretary of State fall some way short of providing an outcome that is either (a) proportionate to the criticisms contained in the PwC report; or (b) workable and coherent. Directions that are vague, ill-thought through, or which undermine the structures of local democracy will hinder rather than secure compliance with the Best Value Duty. Unless otherwise stated, references below to paragraph numbers are to the paragraphs in the Annex to the Secretary of State's letter dated 4 November 2014.

B. Three Commissioners are to be appointed by the Secretary of State; the Council is directed to pay for the three Commissioners; the direction period is to be until 31 March 2017 (Directions, paragraphs 4 and 5)

8. It is not possible to comment on the specifics of any fee arrangements, as these have not yet been specified by the Secretary of State. In this regard it is requested that any decision taken by the Secretary of State should take proper account of the extensive budget cuts which the Council has been required to make since 2010 including the fact that since 2010/11 the funding received by the Council from the Secretary of State has reduced by 30%. Thus the Council is already in a position in which it must continue to deliver a wide range of necessary services having considerably reduced resources. In these circumstances, it is suggested that any fees or expenses payable by the Council must be reasonable by comparison with the allowances regime applicable to the Mayor and Councillors of the Council. The appointment of Commissioners must be made to secure compliance with the Best Value Duty. It would be contrary to the Best Value aim of "economy" were it to be perceived by the local residents that Commissioners' fees and expenses were in excess (pro rata) of those paid to elected representatives whose functions the Commissioners will partially exercise.
9. The Direction Period appears to be excessive. The Inspection and the Report are focussed on four specific areas. It is only in respect of grant making that the PwC report could be said to reveal any form of generalised non-compliance with the Best Value Duty. All the areas highlighted by the PwC report are capable of being addressed by the adoption and monitoring of clearer procedures.
10. The adoption of a Direction Period lasting until 31 March 2017 is excessive to the aim of ensuring the Council has in place appropriate

procedures to secure compliance with the Best Value Duty in the areas found to have breached that duty by the Report. A maximum Direction Period of 12 months, subject to earlier termination by the Secretary of State on advice from the Commissioners is now proposed. A year is a reasonable period in which to make any further necessary adjustments and monitor the application of those adjustments through a budgetary cycle. Paragraph 47 below indicates the difficulties that have arisen for third sector organisations in the borough while the Best Value Inspection was undertaken; in so far as Government intervention has resulted in instability, stability needs to be re-established as quickly as possible.

C. Best Value Strategy and Action Plan

(Directions, paragraph 6)

"The Authority is directed

- *within three months from the date of direction, to draw up and agree with the Commissioners a strategy and action plan, for securing the Authority's compliance with its best value duty (to include as appropriate complying with the specific directions set out below), and to submit this to the Secretary of State;*
- *to prepare under the direction of the Commissioners and submit to the Secretary of State at 6 monthly intervals thereafter during the Direction Period, a report on progress against the action plan, including any comments from the Commissioners about the continuing need for some or all of the intervention measures."*

11. It is accepted that a direction to draw up and agree a best value strategy and action plan with the Commissioners within 3 months of the date of the direction is appropriate. It is also accepted as appropriate that a direction to prepare under the direction of the Commissioners and submit to the Secretary of State at 6 monthly intervals thereafter during the Direction Period a report on progress against the action plan, including any comments from the Commissioners about the continuing need for some or all of the intervention measures.

12. However, the proposed scope of the "strategy and action plan" is unwarranted and excessive. The strategy and action plan should concern only matters specific to (a) grants; and (b) property disposals. These were the areas of the Council's activities which were the subject of adverse findings in the PwC report of any magnitude.

13. Although failures to comply with the Best Value Duty were found in two respects in relation to the Council's publicity activities, what is required in that regard ought to be addressed in the context of the draft Direction

at paragraph 15 (which is considered below). This will aid clarity in terms of what the Council is now required to do. In any event, there is nothing in the PwC report which provides the basis for any conclusion that any more widespread review of publicity is justified (or which, for that matter indicates what any such wider review would entail) and such a direction would not be acceptable.

14. Nor is the appointment of statutory officers a matter which is appropriately subject to an action plan over and above anything that will be within the scope of the specific Direction referred to at paragraph 8. Matters relating to the Directions at paragraphs 19 and 21 are addressed separately below.

15. It is not considered that the development of a best value strategy and action plan for all services of the Council is a proportionate or reasonable request or that it can be justified by the Report. The breadth of the Direction proposed would require an evidential basis on which the Secretary of State could be rationally satisfied that the Council was failing to secure compliance with its Best Value Duty across the entirety of the Council's activities. The Report does not provide any basis for the Secretary of State to conclude that the Council is generally failing to comply with its Best Value Duty. The draft Directions do not suggest any other basis upon which the Secretary of State relies. None of the Council's services are failing and many are amongst the best performing in London or nationally. The breadth of the proposed Direction at paragraph 6 is therefore unjustified.

D. Appointment of Statutory Officers

(Directions, paragraph 8)

"The Council is directed to

- a. *Undertake as a matter of urgency a recruitment exercise, under the direction of the Commissioners, with the aim of making as soon as practicable and in any event by 1 April 2015, subject to 'b' below, permanent appointments of suitable persons to the positions of the three statutory officers:*
- b. *For the Direction Period, to obtain the agreement of the Commissioners to (a) any dismissal or suspension of a Statutory Officer, appointed as a result of a. above or otherwise: and (b) any proposed appointment of a replacement following such dismissal or suspension."*

(1) General Comment.

16. While the appointment of officers and the allocation of statutory duties to them is a Council (non-executive) function, the Mayor shares the desire of the Secretary of State to make permanent appointments to the roles of Monitoring Officer, Section 151 Officer and the Head of Paid Service, and accepts that permanent appointments will be likely to assist in securing ongoing compliance with the Best Value Duty. As the Secretary of State may be aware the Council already has recruitment processes underway in respect of the vacant Directorships of Resources (which encompasses the Section 151 Officer role) and Law, Probity & Governance (that includes the Monitoring Officer role).
17. Nonetheless, the Direction as worded lacks clarity. In particular the term "*under the direction of the Commissioners*" in part (a) is not explained. It is unclear whether this is intended to mean that the Commissioners must (i) approve the selection process; or (ii) directly run the selection process; or (iii) have a say in the appointment selection; or (iv) have the only say in the appointment selection; or (v) have a power of veto over selections; or (vi) or some combination of these matters, or to have some other meaning.

18. Given the advanced state of the current recruitment processes outlined above for two of the three key roles identified, the absence of clarity regarding the extent and focus of the direction risks that the permanent recruitment processes, which are currently underway, are likely to be delayed rather than enabled.
19. The response is, therefore, as follows: *First*, given that the Direction is premised on the importance of early permanent appointments to these statutory roles (and the undertakings already sought and provided to the Secretary of State), that the Secretary of State does not envisage that the Commissioners would require abandonment of the present recruitment processes. For the avoidance of doubt, these processes have been agreed with all Council groups and have not been the subject of any criticism from any party.
20. *Second*, the Commissioners' role includes ensuring that the timetable for recruitment is adhered to, and the approval of any modification to it. There is no objection to the role of the Commissioners extending to the oversight and approval of any modifications to the recruitment timetable.
21. *Third*, there is no objection to the Commissioners' participation in (a) development of evaluation criteria for the award of these jobs; (b) the short-listing group for the appointment processes; and (c) the interview appointment panel.
22. However (and *fourth*), it is not considered that the Commissioners should have any power of veto either at the short-listing stage or the appointment stage.
23. It is not clear that the draft Direction does anticipate any such right of veto. Any such right of veto would be contrary to the established

appointment procedures. No such power is necessary or expedient to secure compliance with Best Value. Participation in the process by the Commissioners (to the extent described above at paragraphs 22 – 23) is more than appropriate.

24. As already stated, the importance of making appointments to each of the positions is recognised. However, the direction to be made by the Secretary of State should not contain any long-stop date by which appointments must be made. The draft contains a long-stop 1 April 2015. If this date (or any other) remains, it will run the risk that if the existing or any subsequent recruitment process fails to attract suitable candidates for appointment, the Council would be required to make appointments notwithstanding the absence of any suitable candidate. The suggestion is that, given the presence and role of the Commissioners (as described above), a long-stop date for appointments is not required. The Secretary of State is requested to make clear the position in respect of the above points in any Direction he may choose to make.

(2) *Monitoring Officer.*

25. Following the restructure this year that created the Department of Law Probity and Governance, the statutory role of Monitoring Officer has been identified as forming part of the post of newly created and currently vacant Director of Law Probity and Governance post. The role is currently covered by a temporary employee.
26. The Director post incorporating this statutory role is currently the subject of a recruitment process. Recruitment consultants (Penna) have already been appointed, advertising undertaken and technical assessments are scheduled for mid-December 2014.

27. Under the Council's constitution, and in accordance with the Standing Orders required by the Local Government (Standing Orders) (England) Regulations 2001, the appointment of senior officers of the Council is vested with Full Council as a non-executive function. The responsibility for managing the appointment process is vested with the Human Resources Committee ("HRC") which typically appoints an Appointment Sub-Committee ("ASC") to oversee the recruitment process. This has been the case in this instance.
28. The membership of both the HRC and the ASC are established by the constitution on a proportionate basis.
29. The suggestion is that the involvement of the Commissioners in the appointment process for the Monitoring Officer role should comprise the following matters:
- a) Review the appointment arrangements to confirm their compliance with the Council's constitution.
 - b) Review the Membership of the ASC panel.
 - c) Advise on all relevant matters specific to the appointment process.
 - d) Represent the Secretary of State to the HRC on matters specific to this appointment.
 - e) If already established, to review the said criteria and ensure fitness for purpose requiring review if necessary by the ASC.
 - f) Advising the Members of the interview panel.
 - g) Make an independent statement to Full Council as part of the recommendation to Full Council specific to this appointment.

(3) Section 151 Officer.

30. This statutory role forms a key part of the Corporate Director Resources Post in the Council. This post (and the section 151 role it comprises) is currently vacant and is occupied by a senior manager on

an 'acting up' basis. This post is also the subject of a current recruitment exercise (with a view to a permanent appointment). Recruitment consultants have been appointed (Penna) have already been appointed, advertising undertaken and technical assessments are scheduled for mid-December 2014.

31. Constitutional appointment arrangements are the same as set out above for the Director of Law Probity and Governance (see at paragraphs 27 - 28 above).
32. The suggestion again is that the involvement of the Commissioners in the appointment process for the Section 151 Officer role be the same as that for the Monitoring Officer role – i.e. as set out at paragraph 29 above. The Secretary of State is again requested to make clear in any direction that he is minded to make the particular extent of the involvement of the Commissioners in the appointment processes to the above posts.

(4) Head of Paid Service.

33. Within the Council the statutory function of the Head of Paid Service is not a free-standing post. Rather, the statutory functions of Head of Paid Service have been allocated for the past two years to the Corporate Director for Communities, Localities and Culture.
34. The Director of Communities Localities and Culture has been appointed/re-appointed to the Head of Paid Service role unanimously by Full Council on three separate occasions, most recently on the 30 July 2014.
35. The Report was not critical either (a) that the Head of Paid Service functions are allocated in this way; or (b) of the officer presently undertaking these functions. The only issue raised in the PwC report

was to the effect that the functions are presently allocated on a temporary basis.

36. Schedule 5 of the Local Government Act 2000 prevents the holder of the statutory role of Monitoring Officer carrying out the role of the Head of Paid Service. Similarly the Section 151 Officer cannot undertake this role. The Head of Paid Service role cannot be allocated to either senior officer post currently under recruitment.
37. The most efficient way to achieve a permanent appointment to the Head of Paid Service role, which has the agreement and confidence of the Full Council, to support the Council in making the existing appointment a permanent one. This is what is proposed.

E. Grants

(Directions, paragraph 11)

"For the Direction Period

All functions that the Authority exercises relating to the making of grants are to be exercised by the Commissioners, who will take account of the views of the Authority as to the recipients and amounts of such grants;

The Authority is to provide them with such assistance as they may require for the purposes of exercising of these functions."

38. The draft Direction does not address the Secretary of State's stated purpose – i.e. to put in place arrangements to rebuild the Council's governance and financial management capacity (so as to secure its future compliance with the best value duty). It should include an explicit reference to the development of robust and transparent arrangements for grant decisions and commit to termination of the direction at the point when the Commissioners confirm that these are in place. The Council has already started a learning review of the grants process which could serve as a basis for collaborative working between the Council and the Commissioners.
39. Accordingly, any Direction to be made by the Secretary of State should only make provision for the oversight by Commissioners of the application of grant criteria to the applications received, and of the monitoring arrangements in respect of the use of grant money by successful applicants. The Direction should be limited to the grant schemes addressed in the Report and found to be failing to comply with the Best Value Duty. There is no rational evidential basis for any wider approach.
40. As presently proposed the direction removes "all functions" from the Council and gives them to the Commissioners for the direction period.

Thus on this basis it would be for the Commissioners to decide (a) whether the Council should adopt any grant schemes at all, and if so what level of funding should be provided under the Council's budget for grant schemes generally, and how much should then be made available under each such scheme; (b) for what purpose grants should be awarded, and what the criteria under each scheme should be; and (c) all other matters going to or related to grant decisions. There is simply no basis in the PWC report for such an extensive and comprehensive transfer of power from the Council. The findings of the Report in relation to compliance with the Best Value Duty did not criticise the Council's criteria for the award of grants, the level of funding available for grants, or grant schemes per se. What was criticised was the process by which grant applications in particular schemes were approved and levels of funding on each application were set along with some deficiencies in monitoring arrangements.

41. If, contrary to the above, a comprehensive transfer of power is to take place, the Secretary of State's direction must make provision for the way in which the Commissioners are required to address transition issues. The existing mainstream grants programme ends at the end of March 2015. At that point a major part of the Third Sector in Tower Hamlets will no longer have funding sufficient to continue. Thus arrangements need to be clear now, so as to allow Third Sector providers to be able to plan for the next financial year. If the Direction is to transfer "all functions", then it must address these matters in terms. If it does not it is inevitable that there will be serious funding dislocation for Third sector providers with consequent serious prejudice to the members of the public who rely on the services they provide.
42. Similarly, if the transfer of power is to include transfer to the Commissioners of the power to set how much of the Council's budget is to be allocated to grant funding, the Direction ought to specify how this will fit with the provisions of the Local Government Finance Acts of

1988 and 1992 and the Local Government Act 2003 which govern how the budget is to be set.

43. Further, if the Commissioners are to exercise all functions in relation to grant payments, the Direction ought also to specify the way in which the Commissioners will be able to be held to account, legally and democratically and financially for the use by them of these powers (including the power apparently given to the Commissioners to require the Council to make administrative etc., resources available to them).
44. It is noted that the proposed direction states that it would apply to all grants, other than those relating to disabled facilities grants. The Council makes a large number of third party payments to organisations and transfer payments to vulnerable residents (including social fund and education clothing grants) that fall within the general terms "grants". It also makes additional grant payments to Schools, funded through the Dedicated Schools Grant and can provide discretionary rate relief to organisations. Clearly, if all of these activities are to be incorporated within the Direction any Commissioner based approval process has the potential to become a bottleneck high volumes of small value grant payments that will have significant safeguarding and social impact implications. It would also be disproportionate as the PwC findings were limited to a small number of discretionary grant programmes and did not examine the whole range. The Secretary of State is requested to review the breadth of this direction and, if he is minded to make it, to be explicit as to the grant types covered.
45. The delay to the Grant programme already caused by the inspection and the proposed intervention has been sufficient to create an immediate and widespread funding crisis from April 2015 onwards. Based on the apparent effect of the direction presently proposed, the Commissioners will need to construct an administrative infrastructure from scratch, review the processes and existing needs assessments

and commission new ones if considered necessary. They will have to review targeted funding streams, consult with the community and third sector and commission equality impact assessments and risk assessments where decisions impact on duty of care and safeguarding. This is an area of significant complexity. All of this will take time during which the Third Sector will potentially be failing for lack of funding. During this period the Commissioners will have to carry Third Sector providers with them in relation to decisions made by an unelected commissioner reporting directly to the Secretary of State without undermining community cohesion. It is not a role that can be fulfilled by persons detached from locally elected politicians.

46. Thus this proposed direction is a high risk exercise that does not reflect the objectives of Best Value, and is inconsistent with the Secretary of State's stated reasons for intervention. It will not serve to address the matters that do arise from this part of the PwC report.

F. Property

(Directions, paragraph 13)

"The Authority is directed to obtain during the Direction Period, the prior written agreement of the Commissioners before entering into any commitment to dispose of, or otherwise transfer to third parties, any real property other than existing domestic property for the purposes or residential occupation."

47. In the process of the inspection, PWC were provided with a list of 185 property disposals including shop leases, community buildings and land disposals. Of these disposals only in 3 instances did the report find any breaches in process. Furthermore, despite much publicity, the report found no evidence of properties being sold at an undervalue. It is therefore unclear how the Secretary of State justifies the imposition of a blanket direction which requires all property transfers and disposals to be subject to a written agreement by the Commissioners and which does not focus on process change.

48. A second concern, is how the Secretary of State proposes to deal with the position which will in all probability be taken by third parties; to decline to obtain property from the Council, or to factor in the uncertainty arising from Commissioner involvement into their pricing position? In particular, this added element of risk is likely to reduce the value of bids received by the Council. It should be recognised that the market has already been destabilised by the way in which the Secretary of State chose to present the conclusions contained in the PWC report in the House of Commons. Developers may now be pricing-in risk associated with central government involvement. In these circumstances, it is important that any direction made by the Secretary of State attempts to remove or at least reduce any such concerns.

49. So far as concerns the substance of any direction to be made, it should be noted that the Council has already provided a list of property disposals and leases it anticipates undertaking over the coming period, which range from the letting of shops, extensions of leases alongside disposal via sale of properties/land. The bulk of the Council's work on property relates to the marketing of shop/business and community facilities, which generally released on leases and of a low value.
50. The Council therefore suggests that the present draft direction be modified so that the role of the Commissioners only arises in relation to disposals of property freeholds or on long leasehold (where the Council receives a capital receipt at the commencement of the lease). Prior to any disposal being made, the Council will follow a pre-agreed action plan outlining the process, in collaboration with the Commissioners as set out in points 52a to 52d below. The letting of shops and/or the statutory renewal processes should sit outside this direction given the sheer volume of transactions and their relative low value so should be regarded as de minimis.
51. Without prejudice to this, and in any event, the Secretary of State should substantially clarify how it is envisaged that the Commissioners will engage with the sign off process. This is necessary to give the market some degree of certainty, and avoid the risk that the Secretary of State's intervention will further distort the market (i.e. by reducing prices offered to the Council for transactions).
52. The Direction should be clarified so that Commissioners' involvement will comprise approval of the following matters. By being clear about the points of engagement and exact about the role of the Commissioner at those points within Direction the plainly destabilising impact of a government Commissioner on the Market can, to some degree, be mitigated when recommendations to dispose and move to contract are made.

- a) The outline business case and disposal strategy. This will set out clearly the process to be followed to dispose of the property. This will include how the value of the property will be determined, how external valuations will be commissioned, the key stages of the disposal process and how best value specific to the disposal will be established. Where this process will not vary and subject to the Commissioners agreement, such a business case and disposal strategy can apply to a schedule of disposals.
 - b) The tender package information and bidding strategy once bids are ready to be invited.
 - c) Any agreement to dispose based on returns of the above and such scrutiny of the process that the commissioner considers it appropriate to make.
 - d) That the property disposal has demonstrably complied with the disposal plan and that all departures from it have been (a) sufficiently accounted for (b) approved by the commissioner (c) achieve best value as defined by the original disposal plan.
53. Subject to Commissioner sign off all reports and recommendations are made subject to approval by the Council's CMT, or cabinet in the normal way. The Commissioners should be required to raise any points arising with any proposed disposal plan, promptly, and with a view to agreement with the relevant Council officers (i.e. the Director of D&R, and Service Head Corporate Property and Capital Delivery).
54. The Secretary of State should make clear in the Direction that there will be no direct negotiation by the Commissioners with bidders or prospective development partners, just as there should be no direct engagement by the Mayor with bidders during the bidding process.

G. Publicity

(Directions, paragraph 15)

"The authority is directed to prepare a fully costed plan for how its publicity functions can be properly exercised, agrees that plan with the Commissioners, reports to the Commissioners on the delivery that plan and adopts any recommendation of the Commissioners with respect to that plan or to publicity more generally."

55. The proposed Direction is disproportionate and unreasonable in that it is over-broad.
56. The PwC report made very specific and limited findings of a failure to comply with the Best Value Duty in relation to publicity. The Report did not consider all areas of the Council's publicity-related expenditure (Report, §2.92). PwC stated, by agreement with the Secretary of State, they did not look at matters which constituted "*significant proportion of the budget*" (Report, §2.13).
57. PwC concluded that the Council's overall publicity expenditure "*modest*" (Report §2.13). The Report reached no general conclusion that there was a failure to comply with the Best Value Duty.
58. Despite all these matters, the Direction applies generally, and to the entirety of the Council's publicity functions. In the premises, there is no rational connection between the findings of the Report and the Direction proposed.
59. The 21 January 2013 Ofcom ruling concerning payments made for broadcasts identified a failure to comply with the Best Value Duty in relation to those matters. The Council has addressed this, and has (with effect from November 2013) introduced a new Communications Protocol to avoid any repeat of this incident (see Report, §6.63). That Protocol is not the subject of any criticism in the Report, and neither the

Report nor the Secretary of State have suggested that the Council has acted contrary to the Protocol. There is, accordingly, no reasonable need for any Direction which relates to payment for broadcasts, let alone supervision by the Commissioners for the two and a quarter years of the Direction period.

60. The substantive finding in the Report in relation to publicity was that a lack of clear documentation produced by media advisors used in the Mayor's office meant that there was a lack of control around the monitoring of the demarcation between Council business and party political business (acknowledged in the Report be a "grey area": §2.93) such that there was a failure to comply with the Best Value Duty (Report, §2.14).
- 61 It is open to question whether this finding – which it is accepted has highlighted an area for improvement – reveals the level of systemic failure needed for a finding of breach of the best value duty. However, even apart from this, the particular and limited nature of the failure identified in the PwC report cannot justify the generalised ability of the Commissioners under the Direction to take control of any and all aspects of the Council's publicity activities.
- 62 Therefore a more proportionate and reasonable direction is proposed.
- 63 It is proposed that the Commissioners meet with the Head of the Mayor's Office on a monthly basis (or as directed) to review any PR/communications matters specific to the functions of that Office that relate to demarcation of roles and responsibilities. It is also proposed that the Commissioners receive copies of all instructions to any externally hired media advisor or externally hired firm at the point of commission in respect of publicity specific to the Mayor's Office. The Commissioners shall report to the Council any concerns about the

maintenance of the demarcation between Council business and party political business.

H. Elections

(Directions, paragraph 19)

"The functions of appointing and dismissing the Electoral Registration Officer and Returning Officer for Local Elections are to be exercised during the Direction Period by the Commissioners."

64. With respect, this Direction is an extraordinary attempt on the part of the Secretary of State to influence the work of the Election Court, to undermine the electoral independence of the Council from Government, and to subvert the jurisdiction of the independent and apolitical Electoral Commission.
65. The Secretary of State is fully aware that the Report upon which these Directions are based made no investigation into, and no findings concerning, the conduct of elections within the Borough. That is admitted in paragraph 16 of the Directions. The suggestion that the Report refers to "*certain concerns*" fails to make clear that the only reference in the Report to election matters is in §1.10, in which the Report notes adverse media comment about the Council on a variety of issues.
66. The reason the Inspection and Report did not consider, and the Secretary of State did not request that PwC consider, the conduct of local elections within the Borough is that they have no possible relevance to the Council's Best Value Duty. The conduct of elections are separately regulated by the Electoral Commission and, where relied upon, the Election Court. Any suggestion that the Best Value Duty – designed to enable and encourage outsourcing of public sector functions – encompasses such a function is unjustifiable and inexplicable.

67. There is, accordingly, no basis upon which the Secretary of State's power to make the Direction under section 15 arises.
68. Moreover, and in any event, the Electoral Commission's report of July 2014 does not support the Direction. The July 2014 report was not intended to be a comprehensive assessment of the election or of the performance of the returning officer. As the title of the report suggests, it addressed '*Delays at the verification and count...*'. Other aspects of the election, including the additional integrity measures around registration and postal votes; issue and return of postal votes; management and policing of polling stations were successful and acknowledged to be so by the Electoral Commission. The recommendations of the Electoral Commission were principally aimed at ensuring appropriate venues are used and that individuals obey the instructions correctly given to them by the returning officer.
69. In accordance with the Electoral Commission's report and recommendations, the Council has remained in close contact with them. The Electoral Commission, whose report makes clear that progress in relation to the recommendations should be made by September 2014, has expressed satisfaction with the Council's actions.
70. Oversight of the election process is a matter for the independent Electoral Commission; it is not a matter over which the Secretary of State can or should have any jurisdiction. The Electoral Commission has communicated to the Council that it has concerns about the Direction apparently based on its July 2014 report and the proposed nature and the timing of the intervention given the closeness of the Election Court proceedings and the proximity of the General Election. I understand that they will be writing to you on this matter directly to support your deliberations on this matter.

71. For the avoidance of doubt, the Council does not accept any of the allegations made in the Election Court proceedings. These matters are *sub judice* and are outside the Secretary of State's knowledge. Comment on and consideration of them is entirely improper.

I. Contracts/Procurement
(Directions, paragraph 21)

"The authority is directed to

a) Urgently and in any event by no later than 1st February 2015, to prepare and implement an action plan , in consultation with the Commissioners, to achieve the improvements in its processes and practices for entering in to contracts; and

b) During the Direction Period to adopt all recommendations of the statutory officers in relation to the processes and practices to be followed in relation to entering into contracts, unless the Commissioners written agreement is obtained not to do so."

72. In relation to contracting and procurement, the Report sets out at length the processes and procedures the Council has in place for contracting and procurement decisions; the reviews of those processes by the Council's Internal Audit team; and the revisions made to the processes and procedures made in the light of Internal Audit recommendations (Report, §§7.4-7.43). The express conclusion reached by PwC was that it considered the Council's *"written procurement policies and procedures to be sound"* (Report, §2.107). Moreover, the Report accepted that where there were instances of failures to comply with those policies and procedures, the Council's Internal Audit process had picked up those failures (Report, §2.108).

73. In short, the Council has appropriate processes in place, and where there are errors, the Council's own internal monitoring has noted those areas and remedial action has been taken. The Report expressly concluded that *"we do not consider that the matters brought to light by our review constitute a failure by the Authority to comply with its best value duty in relation to contracting"* (§2.18).

74. Despite these conclusions it appears that the Secretary of State has reached an entirely different view: see Directions at paragraph 20. No

basis for this conclusion is provided. The Secretary of State refers only to matters set out at §§7.70 and 7.71 of the Report, and (it would appear) fails to recognise that those paragraphs recorded contrasting pieces of evidence, and that the Report reached no concluded view on those disputed facts except to find that in any event there was no failure to comply with the Best Value Duty (Report, §2.109).

75. There is therefore no rational basis for this proposed Direction (or for that matter, any other direction in relation to contracting and procurement). It is not understood how the Secretary of State can reasonably consider it necessary or expedient to make a Direction to secure compliance with the Best Value Duty, where the only evidence available to him concludes that the Duty is being complied with.
76. Without prejudice to the foregoing, it is not open to the Secretary of State to make a Direction which focuses on processes and practices where his own Report makes no criticism of those processes. Any attempt to rely on more general weaknesses in the core governance arrangements is unreasonable and disproportionate where the Secretary of State has (a) not explained the connection between the general weakness and the specific Direction, and (b) already proposed Directions to remedy the general weakness.
77. Further, and in any event, even on its own terms the Direction is vague, and for that reason, unworkable. It is impossible for the Council to produce a compliant action plan to achieve "*the*" improvements in its processes and practices when no such improvements have been identified. Nor does the Secretary of State make any attempt to define what is meant by "*processes and practices*", which is a vague, over-broad and administratively unworkable phrase.


Lutfur Rahman, Mayor of Tower Hamlets.

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