

COUNCIL OF THE LONDON BOROUGH OF TOWER HAMLETS

DIRECTIONS UNDER SECTION 15 OF THE LOCAL GOVERNMENT ACT 1999

EXPLANATORY MEMORANDUM

1. The Secretary of State has exercised his powers of direction under section 15 of the Local Government Act 1999 (“the 1999 Act”) in relation to the Council of the London Borough of Tower Hamlets (“the Authority”) to secure its compliance with the best value duty.
2. This memorandum is intended as a companion document to the Directions sent on 17 December 2014. It summarises: the circumstances in which the Secretary of State has made these Directions, his reasons for this exercise of his powers, and the implications of the Directions for the Authority.

The context for the Directions

3. On 4 November 2014 PricewaterhouseCoopers LLP (“PwC”), having undertaken an inspection of the Authority’s compliance with its best value duty, sent to the Authority a report (“the PwC report”) setting out their findings. The PwC report, produced after PwC had conducted a thorough investigation, provides a deeply concerning picture, with PwC concluding that the Authority has failed in numerous respects to comply with its best value duty.
4. On the same day, the Secretary of State published the PwC report, together with a letter to the Authority setting out a proposed intervention package to secure the Authority’s compliance with the best value duty. He invited the Authority, if it wished, to make to him on or before 18 November 2014 representations about the PwC report and about that proposed package.
5. The Secretary of State explained in that letter that the proposed intervention package would need to, and was designed to, achieve the following:
 - to put an end to any of the Authority’s activities that are not compatible with its best value duty,
 - to remove so far as possible the risk of further failures by the Authority to comply with the duty, and
 - to rebuild the governance and financial management capacity of the Authority to secure its future compliance with the best value duty.

He further explained that to achieve those objectives the proposed intervention package involved putting in place a team of three Commissioners (a Lead Commissioner and two other Commissioners), and set out the Directions that he proposed to make under section 15 of the 1999 Act in order to implement the proposed package.

6. Representations were received by the Secretary of State from the Authority on Tuesday 18 November 2014 and comprised the following:
 - a covering letter from the Authority's Interim Monitoring Officer, Meic Sullivan-Gould;
 - a joint letter from the Chair of the HR Committee, Cllr Claire Harrisson, and the Chair of the General Purposes Committee, Cllr Shiria Khatun ("Chairs letter")
 - a note on executive functions signed by the Mayor, Lutfur Rahman ("Mayor's letter")
 - a critique ("the report critique"), including four appendices, of the PwC report.

PwC report critique and further commentaries:

7. Following receipt of these representations the Secretary of State invited PwC to provide their commentary ("the PwC commentary") on the report critique. He then offered the Authority a further 48 hour period in which to comment on this commentary, which they did in a letter from the Mayor of 10 December 2014 ("the 10 December letter"), although they commented that this was not a sufficient amount of time for them to fully consider the PwC material.
8. In summary, the Authority's position appears to be that the PwC report either may not be, or is not, sufficiently well-evidenced and robust to act as a basis for an intervention. In particular, in the 10 December letter, the Mayor asks the Secretary of State to reconsider his preliminary view expressed in his letter of 4 November 2014 that the Authority was failing to comply with its best value duty. In terms of general points, while the Mayor says he does not "reject the findings of the report out of hand", he considers that it is "not safe or desirable" for profit-centred organisations to undertake inspections of this kind and states that no authority inspected in such circumstances can have confidence in the neutrality of the findings (the 10 December letter, Annex A, paragraphs 5-7). Additionally, the Authority raises in its 18 November letter several alleged specific weaknesses in the PwC report, including weaknesses in sampling methodology, failure to apply the best value criteria properly, failure to acknowledge evidence of the Authority meeting the best value duty, and failure to remove unsubstantiated allegations. In the 10 December letter, the Mayor states in respect of each of these points that nothing in the further PwC commentary affects the Authority's original view set out in the critique, and provides additional information.
9. Having carefully considered afresh the PwC report and the subsequent comments on it, the Secretary of State considers that the PwC report is soundly

based. It is the result of a thorough investigation undertaken by a widely respected professional firm, and has been conducted independently from Government. The Secretary of State does not accept the proposition that commercial organisations are not capable of producing reliable and independent work. In relation to the 48 hour period given for the Authority to comment on PwC's commentary, the Secretary of State noted that the commentary covered largely the same material as the original report with which the Authority was familiar and on which the Authority had already made substantive representations. The Secretary of State is therefore satisfied that this period of 48 hours was reasonable. Turning to the report itself, it is transparent regarding the methodology it has used and the evidence it presents. Neither does the Secretary of State accept that the specific criticisms set out by the Authority have weight. A summary of principal criticisms and the Secretary of State's view of them is set out at Annex A.

10. The Secretary of State also received on the 18 November 2014 representations from the Labour Group at the Authority ("the Labour Group letter") and from one of the Authority's councillors, Peter Golds ("the Peter Golds letter"). The Secretary of State noted that these representations were generally supportive of the approach he has in any event decided to take.
11. The Secretary of State also received representations from the Tower Hamlets Electoral Petitioners, who asked him to direct the Commissioners to release material which the Petitioners had sought from the Authority but which the Authority had refused to release. The Electoral Petitioners also asked the Secretary of State to authorise PwC to permit the Petitioners to inspect all the documents PwC have examined relating to grants and publicity, and for copies to be provided of requested documents. These representations have been disregarded by the Secretary of State for the purposes of making his decision; a separate response will be sent to the Electoral Petitioners.
12. The Secretary of State also received a letter, after the deadline for representations, from the Chair of the Tower Hamlets Overview and Scrutiny Committee, requesting that the Commissioners have some oversight over overview and scrutiny. This representation has been disregarded for the purposes of these Directions. However, concerns have been raised in the PwC report and elsewhere about the functioning of overview and scrutiny in the Authority, and the Secretary of State does not rule out issuing a further Direction in relation to overview and scrutiny, if evidence comes to his attention (whether via the Commissioners or elsewhere) indicating that such a Direction is necessary or expedient to secure the Authority's compliance with its best value duty.

Publication of representations:

13. This memorandum, together with all the representations received by the Secretary of State, except those received from the Electoral Petitioners, and the PwC commentary and the Authority's response to it, are on the Government website at www.gov.uk.

The intervention package

14. Having considered afresh the PwC report, together with the report of the Electoral Commission published on 1 July 2014, "Delays at the verification and count for the May 2014 elections in Tower Hamlets - Report of the Electoral Commission's review" ("the Electoral Commission report"), and carefully considered the representations received as described above, the PwC commentary and the Authority's further comments on it, the Secretary of State is satisfied that the Authority is failing to comply with the requirements of Part 1 of the 1999 Act (i.e. the best value duty).
15. In reaching this view the Secretary of State has noted the specific conclusions of the PwC report in which failings by the Authority to comply with its best value duty are described. These are failings in relation to the matter of grant making, certain property transactions, and certain matters connected with publicity. He also has noted the conclusions in the PwC report that the Authority's current governance arrangements do not appear to be capable of preventing or responding appropriately to failures of the best value duty of the kind identified in the report, and the view reached by PwC of the Authority having a tendency towards denial or obfuscation rather than an inclination to investigate concerns raised. Moreover, the Secretary of State has noted the conclusion of the Electoral Commission's report that there were significant lessons for the Returning Officer to learn from following the conduct of the count at the May 2014 elections (which had been planned for six hours but which in the event took 23½ hours).
16. In the Authority's representations, the Mayor accepts "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." As to reliability, the Secretary of State is confident that the PwC report is soundly based, as set out in the previous section.
17. Accordingly, the Secretary of State has concluded that it is both necessary and expedient to put in place for the Authority a package consisting of a number of intervention measures designed to deliver the objectives referred to in paragraph 5 above. Hence he has decided to put such a package in place by making appropriate Directions under section 15 of the 1999 Act. He considers this

package will address the failings identified in the PwC report and also those in relation to the Authority's exercise of its functions as shown by the Electoral Commission's report. For the avoidance of doubt, the Secretary of State believes that each individual element of the intervention that he has implemented to address a particular area of concern is individually justified.

18. In adopting this package, the Secretary of State has made the following clarifications and adjustments in response to representations received:

- That the strategy and action plan submitted to him within three months of the beginning of the intervention should include arrangements to achieve “robust and transparent arrangements for grant decisions”, reflecting that the Directions provide it will be for the Commissioners to exercise functions in relation to grant making.
- Both Committee Chairs and the Mayor expressed uncertainty about the meaning of recruitment processes for statutory officers being “under the Direction of the Commissioners”. The Secretary of State has clarified that with the Commissioners' approval the recruitment processes carried out under this Direction may be built on, or be a continuation of, recruitment processes started before the Direction was made.
- The Secretary of State has clarified the wording of the Direction so it is clear that any appointment or dismissal of statutory officer (or designation or de-designation) during this period must be agreed in writing by the Commissioners.
- On grants, he has clarified below that his Direction allows the Commissioners to work within the Authority's existing policies and procedures and delegation arrangements where the Commissioners conclude this would be appropriate. This means the Commissioners can ensure that grants are paid quickly where appropriate, and that they do not need to revisit or overturn such elements of existing arrangements as they deem to be consistent with achieving best value. The Commissioners will have powers to amend policies and procedures and the delegation scheme in relation to grants where they are not consistent with best value.
- In relation to property disposals, he welcomes the Authority's proposal for a pre-disposal protocol between the Authority and the Commissioners, and will draw this to the Commissioners' attention.
- In relation to the appointment of electoral officers, the Committee Chairs emphasised to the Secretary of State the Authority's responsibilities towards the council officer currently appointed as the Electoral Registration Officer and Returning Officer for local elections. The Secretary of State has clarified that the Commissioners will have no powers in relation to the employment of this person as Head of Democratic Services, which means that all such

responsibilities remain matters for the Authority. Instead they will only exercise the Authority's power to appoint another person to the statutory office of Electoral Registration Officer and/or Returning Officer.

- The Secretary of State has explained below the meaning of "processes and practices" in relation to his intervention on contracting.

19. The Authority has also made some helpful suggestions about how it might work alongside the Commissioners in relation to statutory officer appointments and disposal of property. While the Secretary of State has not sought to fetter the discretion of the Commissioners by requiring that they follow these approaches, he intends to bring them to their attention.

20. The measures that the Secretary of State has decided to put in place are centred on a team of Commissioners (a Lead Commissioner and other Commissioners). As outlined below, he has made a number of Directions under section 15 of the 1999 Act in relation to them, including providing for them to perform certain functions and having roles overseeing certain other functions which the Authority is to exercise. The Commissioners are to act jointly or severally. They are accountable to the Secretary of State in that they have been nominated by him and can have their nomination withdrawn by him, and in that they will report to him on the progress of the intervention.

21. The Secretary of State has nominated a Commissioner team with a wide range of expertise in local government and transforming failing authorities. The Commissioners are:

- Sir Ken Knight (Lead Commissioner), former Commissioner (or Chief Officer) of the London Fire Brigade, and former Chief Fire and Rescue Adviser to the Government.
- Max Caller CBE, Chair of the Local Government Boundary Commission for England, and former Chief Executive of Hackney Council, having led that authority successfully out of intervention.

The Secretary of State intends to nominate a third Commissioner in due course.

22. The breadth of skills and experience in this Commissioner team means that it is both possible and sensible to give the Commissioners considerable levels of discretion over how they implement their roles and responsibilities under these Directions, in order that they can find the solutions most likely to lead to the most rapid improvement in the Authority.

23. In its representations, the Authority makes reference to the democratic principle (for example at paragraph 6 of the Mayor's letter). The Secretary of State agrees

that it is important that the functions of local authorities are exercised by those who have been democratically elected to do so and who are democratically accountable to the local electorate, and he has taken this into account. However, in certain cases it is necessary to derogate from this principle, and Parliament has conferred upon the Secretary of State the power to do so. In this case, the Secretary of State considers that it is both necessary and expedient to do so.

24. In his Directions, the Secretary of State has directed that the Commissioners exercise certain functions of the Authority. In these cases, he has also directed that the Commissioners will have the power under section 101 of the Local Government Act 1972 to alter the Authority's scheme of delegation. This is consequential upon and incidental to the other Directions providing for the Commissioners to exercise functions of the Authority, as it will enable the Commissioners to carry out their responsibilities in the most efficient and effective manner.

The Directions

Directions in relation to overall purpose and approach

25. The Secretary of State has decided to direct that the Commissioner team, acting jointly or severally, should be appointed to oversee the intervention in Tower Hamlets. He has directed that they should be in place until 31 March 2017. He has directed that the Authority must draw up and agree with the Commissioners a strategy and action plan for securing the Authority's compliance with its best value duty and to submit it to the Secretary of State within three months of the date of the Directions. The Authority should report to the Secretary of State every six months thereafter.

26. *Representations received:* the Mayor has suggested that the Commissioners' fees must be "comparable with the allowances regime applicable to the Mayor and Councillors of the Council". (para 8, Mayor's letter). He disagrees on the scope of the proposed intervention, and its duration. In his view, the scope of the intervention is too broad, in view of the limited number and nature of the concerns identified by PwC, and the fact that the strategy and action plan covers all matters in relation to this Authority, including those where it is not failing. In his view, the duration of the intervention should be a maximum of twelve months, which could be shortened by the Commissioners. The reasons for this are that the weaknesses in the PwC report are few and limited, and that any intervention would cause instability which may adversely affect the third sector, and it should therefore be as brief as possible. (para 9 and 10, Mayor's letter). The Mayor agrees with proposals for reporting, except in as far as he believes the scope of the intervention should be narrower, he also believes reporting should cover a narrower range of matters.

27. *Secretary of State's position:* The Secretary of State is mindful of the need for Commissioner remuneration to represent value for money for local taxpayers. The Authority, like other authorities, faces pressures on its budgets arising from the wider pressure on the public finances, but, like other authorities, it can take proactive steps to properly run its affairs within the available resources. Instead of comparing this to the very different role of a local councillor, the Secretary of State provisionally proposes to benchmark it against the Doncaster Commissioners (£750 a day) and the Boundary Commissioners (£365 a day for the lead Commissioner, and £323 for other Commissioners). He therefore provisionally proposes that £600 a day for the Lead Commissioner and £500 for the other Commissioners would be appropriate. The Commissioners will work a maximum of 50 days in the first year, and 30 days in the years thereafter. These are modest sums in the context of the Authority's overall budget of £1.4 billion, and more than worthwhile if this expenditure can enhance the governance arrangements overseeing much more significant sums of public money which might otherwise be at risk. The Secretary of State will consult the Authority on this proposal.

28. With regard to the scope of the inspection, as stated above the Secretary of State does not accept the Mayor's view that the failings found by PwC are limited and had already been identified by the Authority. As stated in the PwC commentary at paragraphs 31 to 44, PwC have noted in their report at several points the improvement activity which the Authority claims that PwC has disregarded. PwC remain of the view that the weaknesses in governance identified by them mean that such failings as they identified in their report would not be prevented. The three month report to the Secretary of State and subsequent reports need to be broad enough to cover any matter where the Authority is failing to comply with the best value duty, where it is at risk of failing to comply with its best value duty, or where its governance and financial management capacity needs to be rebuilt to secure future compliance with the duty. However, it is not intended that these reports would cover all of the Authority's functions where they are not relevant to these matters.

29. On timing, the Secretary of State remains of the view, as he proposed in his letter to the Authority of 4 November 2014, that any aspect of the intervention should only be long enough to achieve the stated objectives of the intervention, and he will if necessary use further Directions to vary the end point of the intervention. However, given the serious concerns raised by PwC, he believes 31 March 2017 is an appropriate indicative end point for the intervention. The Secretary of State does not accept the Authority's suggestion that the adoption and monitoring of clearer procedures will be sufficient to address these problems within the shortened time frame proposed by the Mayor. An issue is not simply the question

of procedures but how these are implemented in practice. The Secretary of State welcomes the Mayor's agreement as to the timing of reporting to the Secretary of State.

Directions in relation to statutory officers

30. The Secretary of State has directed the Authority to undertake a recruitment exercise as a matter of urgency, under the direction of the Commissioners, to make permanent appointments of suitable people to the positions the holders of which are to be designated as the three statutory officers: the Head of Paid Service (the Chief Executive), the section 151 officer (Chief Financial Officer) and the Monitoring Officer (in charge of legal compliance). He has directed that during the period of the intervention, any appointment or dismissal of such a person and any designation or de-designation of such a person as a statutory officer must be agreed by the Commissioners.
31. *Representations received:* both the Committee chairs and the Mayor point out that the Authority has begun the process of appointing a section 151 officer and Monitoring Officer, having issued adverts, and make similar suggestions about how Commissioners may be brought in to the existing processes. Both the Mayor and the Committee Chairs ask for further elaboration of the term "under the direction of the Commissioners". The Mayor suggests that it does not necessarily imply that the Commissioners could veto any appointment of officers to these two posts, and nor should it (Mayor's letter, para 22/3). There is inconsistency in the representations with regard to the designation of a person as Head of Paid Service. The Committee Chairs say that they have made plans to recruit a person who would be so designated. The Mayor suggests that the current interim arrangement where the Corporate Director for Communities, Localities and Culture holds that designation in addition to his substantive role, should be made permanent.
32. *Secretary of State's position:* the Directions have been amended to add clarity in this respect. Firstly, the Secretary of State accepts the Authority's point that the Commissioners should build on any work which has been undertaken regarding recruitment to the statutory officer positions, so long as they believe that work to be of the necessary quality. The Secretary of State has therefore clarified that the Commissioners may give approval to recruitment processes that are already under way, but may also ask the Authority to begin these processes again if they believe, based on their extensive experience of local government, that the work done has not been sufficiently rigorous. The Secretary of State welcomes the helpful suggestions about how the Commissioners may choose to adopt and fit into current arrangements, and the Secretary of State will bring these to their attention.

33. Secondly, for the avoidance of doubt, the Direction clarifies that the Commissioners must agree any dismissal or appointment of the three statutory officers during the Direction period (which would include appointments following any recruitment processes underway or shortly to be undertaken). This is entirely necessary given the concerns about governance raised in the PwC report; appointing the correct statutory officers on a permanent basis is a foundation for all other improvement in the Authority. For similar reasons, the Secretary of State believes that it is right to set a timetable for these appointments, to ensure that the Authority begins its improvement journey in earnest as soon as possible.
34. With regard to the date by which appointments should be made, the Secretary of State believes that it is appropriate to set an aim for these appointments to be made by 1 April 2015 in order to encourage early appointment, but it should be noted that this is an aim rather than a fixed date. It is most important that the best possible candidates are appointed through transparent processes.
35. Finally, with regard to the office of Head of Paid Service, the Secretary of State does not accept the Mayor's proposal that the best means of putting in place a permanent Head of Paid Service is simply to make permanent the current interim arrangement. The Authority has therefore been directed, as per the original proposal, that there must be an open competition to appoint an officer of the Authority who would then be designated as the Head of Paid Service, as the Committee Chairs have envisaged. This approach will afford the best chance of finding the best candidate and thereby strengthening the Authority's senior officer capacity. The person currently designated as Head of Paid Service would of course be able to apply for this post. For the avoidance of doubt, no Directions have been made in relation to the position of Corporate Director for Communities, Localities and Culture, and the Commissioners have no power in relation to this position.

Directions in relation to grant making

36. The Secretary of State has directed that the Commissioners should exercise all the Authority's grant making functions for the duration of the intervention, and that the Authority must provide them with any assistance they need.
37. *Representations:* The Mayor's principal point on grants is that the intervention proposed is too broad, encompassing matters where PwC found no failure, such as payments covered in legislation, and even touching on matters such as the power to set the budget. The Mayor proposes a much narrower intervention on grants, stating that "any direction to be made by the Secretary of State should only make provision for the oversight by the Commissioners of the applications of

grant criteria and in respect of the monitoring arrangements in respect of grant money by successful applicants” (Mayor’s letter, para 39). It should only cover the grant schemes covered in the report. He asks for an explicit reference to the “development of robust and transparent arrangements for grant decisions” (Mayor’s letter, para 38).

38. The Mayor suggests that new arrangements should be in place quickly to avoid any impact on the third sectors and states that “the Commissioners will need to construct an administrative structure from scratch”, which risks delay. He asks that some types of grants be excluded by block approvals, and that “if the transfer of power is to include transfer to the Commissioners of the power to set how much of the Authority’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 which govern how the budget is to be set” (Mayor’s letter, para 42). Finally, he suggests that the Direction should specify how Commissioners will be held to account legally, democratically and financially.
39. *Secretary of State’s position:* To first address the Mayor’s central point about the breadth of the Direction, the Secretary of State believes that in view of the seriousness and generality of the failure on grants identified by PwC, it is proportionate that the intervention in this area be broader and more comprehensive than in other areas. For this reason, the Secretary of State has directed that the Commissioners exercise these functions rather than overseeing the Authority in exercising them. While PwC did not focus on every single grant issued by the Authority during the period covered by the inspection, the breadth of evidence on the grants reviewed by PwC was very broad, as they focussed in particular on 5 grant programmes covering 60 percent of grants made during the period of the inspection. Common failures were found across these grant programmes which led PwC to conclude that there was a failure to comply with the best value duty in relation to grant-making, not just in relation to specific grant programmes. The intervention should therefore not be limited to specific programmes.
40. It may be helpful to set out further what the impact of the Direction will be on the Authority’s existing arrangements for paying grants, which will be to leave those systems in place in so far as it is consistent with compliance with the best value duty to do so. The Direction is that the Commissioners will exercise the Authority’s functions in relation to grants, and the Authority’s existing scheme of delegation will remain in place unless and to the extent that the Commissioners are of the view that it is appropriate to change it. Under these arrangements, officers could still continue to pay grants where they have delegated authority without reference to the Commissioners, for example on schemes governed by strict statutory criteria. The Commissioners could draw on the advice and work of

officers in relation to deciding on grant awards and making grant payments, and could, if they wished, give block approvals to grant payments. The Commissioners would not therefore need to set up an entirely separate apparatus for the payment of grants. In view of these facts, the Commissioners will be able to act quickly to make arrangements to pay grants, and will not be obliged to depart unnecessarily from the Authority's existing approach where that approach is necessary or expedient to achieve compliance with the best value duty. For the avoidance of doubt, however, the Commissioners could, if they believed it necessary to secure compliance with the best value duty, make changes to the Authority's arrangements to pay grants. The power to change or revoke the Authority's scheme for delegation in relation to grants is set out at paragraph 5 of Annex B of the Directions.

41. It is envisaged, that the Commissioners seek the views of elected politicians over which grant programmes and payments should be in place, and the Directions require the Authority to give its views to the Commissioners, if requested, about the recipients and amounts of any grants. The Directions do not give the Commissioners any powers to set or alter the Authority's budget. The Commissioners will exercise functions incidental or consequential to the functions relating to the making of grants, such as responding to Freedom of Information requests in relation to the making of grants.
42. The Secretary of State does not agree with the Mayor that the development of robust and transparent arrangements for grant decisions should be made an objective of the intervention. The objective of the intervention is to secure the compliance of the Authority with its best value duty. However, as this is a matter of concern to the Authority, the Secretary of State has clarified that a reference to this should be made in the Authority's initial three month strategy and action plan to be submitted to him.
43. The Commissioners will seek to ensure that grants to third sector organisations can be made as early as possible (and as noted above, they will not need to completely transform the Authority's arrangements to pay grants in order to do this), but it is more important that the right grants are made in an open and transparent fashion than that decisions are rushed to meet an arbitrary timetable.

Directions in relation to property transactions

44. The Secretary of State has directed that the Authority must obtain the prior written permission of the Commissioners before entering into any commitment to dispose of or otherwise transfer to third parties, any real property except housing ("existing single dwellings for the purposes of residential occupation").

45. *Representations*: though the Mayor argues PwC's findings do not support a "blanket direction", the Mayor does not specifically object to a Direction in this area. He is concerned that the market will reduce the value of bids because the Commissioners' role will create uncertainty. He makes some proposals for how the Commissioners can be involved in agreeing both the process and the outcome of property transactions, involving the development of a "pre-agreed action plan". He suggests that the Commissioners should not negotiate directly with bidders or prospective development partners.
46. *Secretary of State's position*: the Secretary of State considers it right that the scope of the Direction on property should be wide, having recognised that the procedural failings on property disposals identified by the PwC report (e.g. acceptance of a late bid after other bids had been opened, creating a risk of bid manipulation) could in principle arise in a wide range of types of disposals, and noting the conclusions of the report that "the current governance arrangements do not appear to be capable of preventing or responding appropriately to failures of the best value duty of the kind we have identified". How the Commissioners decide to discharge their role of approving property disposals will depend on their judgements about the efficiency and effectiveness of the Authority's practices and processes and their assessment of the risks involved.
47. It is certainly sensible that Commissioners are involved at any early stage in planned disposal transactions, so that the risk of their not giving agreement to a transaction on which a great deal of work has already been done is reduced. The Secretary of State therefore welcomes the Authority's suggestions for an agreed pre-disposal protocol. The Secretary of State believes it should be a matter for the Commissioners, given their expertise in local government, and the opportunity they will have to look closely at the details of these matters and how they will work in practice, to decide exactly what arrangements should be put in place. Likewise it may be sensible for the Commissioners to grant block approval to certain types of disposal; the Secretary of State believes that this is most appropriately decided by a discussion between the Commissioners and the Authority.
48. While it is possible that the market will be adversely affected by Commissioner intervention as the Mayor suggests, the Secretary of State sees no evidence – and certainly the Authority has presented no evidence – that this will be the case. Indeed, it is also possible that intervention might create greater confidence that proper procedures will be followed, leading to a likelihood of more and stronger bidders.

49. The Direction does not confer any responsibility on the Commissioners in terms of negotiating with bidders or prospective development partners, although there may be circumstances where it would be appropriate for the Commissioners to meet bidders or prospective development partners.

Directions in relation to publicity:

50. The Secretary of State has directed that the Authority prepare a fully costed plan for how its publicity functions can be properly exercised, agree that plan with the Commissioners, report to the Commissioners on the delivery of that plan, and adopt any recommendation of the Commissioners with respect to that plan or to publicity more generally.

51. *Representations:* the Mayor considers the proposed direction disproportionate and unreasonable in that it is over-broad. The Mayor argues that the Authority has addressed the Ofcom ruling regarding payments to broadcasters and introduced a new Communications Protocol, which PwC does not criticise. He proposes an alternative approach whereby the Commissioners would meet the head of his office monthly, receive copies of all instructions to any externally hired media advisors or firm regarding publicity in the Mayor's office, and would report to the Authority any concerns about the demarcation between publicity for the Authority's benefit and for party political benefit.

52. *Secretary of State's position:* the Secretary of State considers that the proposed Direction is reasonable and proportionate in view of the fact that the PwC report found two serious failures to comply with the best value duty in this area, as well as other matters of concern. For a public authority to purchase television advertising for the political benefit of one group or individual, as PwC found to be the case in the Authority (para 2.17, PwC report), is action that falls well below the standards that are expected of a well governed publicly funded body. It is important that the Commissioners have the necessary powers, and access to the necessary information to address such weaknesses in governance. The Secretary of State has stopped short of recommending that the Commissioners exercise this function.

Directions relating to electoral officers:

53. The Secretary of State has directed that the functions of appointing and removing persons from the statutory offices of Electoral Registration Officer and Returning Officer for local elections (and the function of appointing a person as an officer of the Authority for the purposes of appointing him or her as the relevant statutory officer) are to be exercised during the Direction period by the Commissioners. He

envisages that the Commissioners would use these powers to appoint a widely recognised experienced Returning Officer.

54. *Representations*: The making of these appointments is under the Representation of the People Act 1983, and is not a function that is exercised by the Mayor and Cabinet (i.e. an executive function), but is a function of the Authority that is exercisable by the full council or may be delegated to a committee, sub-committee or officer of the Authority. The Mayor's comments within the Authority's representations of 18 November in a note referenced in the Authority's letter as "In respect of the Executive functions of the Authority: a representation by Mayor Lutfur Rahman", include comments on the proposed Direction relating to electoral officers, notwithstanding that these are not executive functions. However, the Committee Chairs, who respond on behalf of the Authority in relation to this function, support the proposal to appoint a widely recognised experienced Returning Officer. They are concerned that the Department note the Authority's responsibilities towards the current post holder, and ask the Department to contact the Electoral Commission. The Mayor takes a very different position, stating that "this Direction is an extraordinary attempt on the part of the Secretary of State to influence the Election Court, to undermine the electoral independence of the Authority from Government, and to subvert the jurisdiction of the independent and apolitical Electoral Commission" (Mayor's letter, para 64).
55. The Mayor claims that the conduct of local elections has "no possible relevance to the Council's best value duty", and therefore the Secretary of State has no powers to intervene in this area. He also states that the July report by the Electoral Commission only found limited weaknesses in the Authority's management, and that the Electoral Commission has subsequently "expressed satisfaction" with the Authority's actions (Mayor's letter, para 69), which means that there is insufficient evidence of failure on which to base an intervention. According to the Mayor, the Electoral Commission has "communicated" to the Authority that it has concerns about the Government's Direction, and will be writing to the Department on these matters.
56. *Secretary of State's position*: The Secretary of State welcomes the support of the Committee Chairs for this Direction. He has noted their comments regarding their responsibilities towards the current post holder, and has clarified the direction accordingly, as follows. The roles of Electoral Registration Officer and Returning Officer are appointments to a statutory office of an individual who is already an officer of the Authority (currently the Head of Democratic Services). The Direction transfers to the Commissioners the function of appointing the Electoral Registration Officer and Returning Officer. For the sake of clarity, the Secretary of State has also given the Commissioners the power to appoint a person as an

officer of the Authority for the purpose of enabling him or her to be so appointed. The Direction does not give any powers to the Commissioners with regard to the employment of the Head of Democratic Services, which therefore remains a matter for the Authority. It is envisaged that this person would remain in post to support an incoming Returning Officer.

57. The Electoral Commission has been contacted following the Committee Chairs' request to the Department. The Commission confirmed that it had no plans to write to the Secretary of State or the Department on this matter. The Commission explained that it was concerned about the impact of the proposals on the planning for the election if there was to be a change in Electoral Registration Officer in spring 2015. If there is an intention to appoint a person as a matter of urgency (as the Secretary of State proposed in his 4 November letter to the Authority) who would retain the responsibilities until after the General Election, they would have less concern. It is understood that these concerns relate to the fact that until an appointment is made, there is continuing uncertainty and risk that the early appointment will not be achieved. They also observed that the Acting Returning Officer has gone out to consultation on his plans for the conduct of the count in the two parliamentary constituencies for which he is responsible. The practical implementation of these plans will be critical to the effective administration of the forthcoming election in Tower Hamlets. They are happy to meet with the Commissioners once appointed and with anyone appointed as Electoral Registration Officer. The Secretary of State has communicated to the Commissioners his view that the Electoral Registration Officer should be appointed as a matter of urgency, and remain in place until after the General Election.

58. As to the Mayor's challenges to the legal and evidential basis for the Secretary of State's intervention in this area, the Secretary of State is clear that the best value duty set out in section 3 of the Local Government Act 1999 applies to all Authority functions. As the Authority has the functions that relate to the appointment of an Electoral Registration Officer and a Returning Officer, the best value duty must apply to these functions. These two functions of the Authority are separate from the conduct of elections, which are the responsibility of the Returning Officer and in relation to which the Electoral Commission has certain regulatory functions.

59. With regard to the Electoral Commission report, the Secretary of State is satisfied that it provides evidence that the Authority has not achieved best value in relation to its function of appointing a Returning Officer for local elections and an Electoral Registration Officer (for parliamentary elections, this is the Acting Returning Officer, who under the Representation of the People Act 1983 is the Electoral Registration Officer for the Authority concerned). This is not least because the local election vote count planned to last for six hours lasted for 23½ hours. As the

Commission notes at paragraph 2.29 of the Commission's report, there were also problems in the 2010 and 2012 elections in the borough. It is also public knowledge that the Authority has not appointed as Electoral Registration Officer one of their most senior officers. In the generality of authorities, one of the most senior officers, often one of the statutory officers such as the Head of Paid Service, serve this role in order to provide confidence that the person so appointed will be able to obtain from the Authority the resources that they need for their roles of Returning Officer for local elections and Acting Returning Officer for parliamentary elections. In its guidance note ('(Acting) Returning Officer role and Responsibilities') the Electoral Commission states that Acting Returning Officers have management responsibilities attached to their role which include that the post holder should "command the required staff and resources to deliver a well-run UK Parliamentary election" and "take all necessary steps to ensure that the local authority provides you with the resources you need to deliver the local government election...". Considering these factors, it appears that the Authority, in its appointment of Returning Officer and Electoral Registration Officer, has not complied with its best value duty given the appointment that it has made. The Secretary of State is therefore satisfied that he has both the legal powers and the evidence he needs to make the Direction that he has proposed, and that is it the right step to address the weaknesses the Authority exhibits in this area.

Directions in relation to contracting:

60. The Secretary of State has directed that the Authority prepare and implement a plan to achieve the improvements in its processes and practices for entering into contracts, in consultation with the Commissioners. He has also directed that the Authority must obtain the Commissioners' written agreement if it does not wish to adopt a recommendation of its statutory officers in relation to entering into contracts.
61. *Representations received:* The Mayor did not support the intervention, stating the following. "It is not open to the Secretary of State to make a Direction which focuses on processes and practices when 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."
62. *Secretary of State's position:* The Secretary of State accepts that the concerns identified by PwC were not considered by them to amount to a failure to meet the best value duty, and, for the avoidance of doubt, share PwC's view that no best value failure has been identified by them. However the Secretary of State's view

remains that there are real and serious risks that such failures are occurring or might occur. That is based both on the evidence in this part of the Report and more generally on the concerning nature of the remainder of the Report, including specifically the weaknesses in the core governance arrangements. The intervention in this area is deliberately light touch, as the Commissioners will play a consultative role in the development of a plan, and will not be able to issue binding directions to the Authority except in circumstances where they fail to adopt recommendations of the statutory officers.

63. The Mayor points out at paragraph 72 of his letter that the Authority's policies and procedures were found by PwC to be sound, and suggests that the Secretary of State's Direction in relation to an improvement plan for "processes and practices" is impossible as no improvement can be made. The Secretary of State has clarified that "processes and practices" does not mean "policies and procedures", rather it references that PwC did find a number of instances when the Authority did not adhere to those policies and procedures. It is this failure to adhere to policies and procedures which is referenced in the Direction. The Direction refers specifically to how the Authority implements its written policies and procedures.

Conclusion:

64. The Secretary of State considers that his intervention contains the right measures to address the weaknesses in the governance of the Authority, having had regard to the appropriate information, including the Authority's representations. It is hoped that the Authority will now work closely with the Commissioners to put in place the improvements which will benefit the people of Tower Hamlets.

Annex A – summary of the main concerns raised by the Authority about the PwC report, and the Secretary of State’s view:

1. The following is not intended as a comprehensive account of all the points made on the PwC report by the Authority and the Mayor.
2. *Major weaknesses in sampling methodology* – in summary, the Authority states that the sampling methodology applied was not based on “the essential best value review criterion”, but was instead “largely driven by third party information” (paragraph 3, report critique). In his response of 10 December, the Mayor states that no sampling methodology was included at all in the report. The Authority suggests that in relation to the Main Stream Grants programme, the total sample was only 20 out of 431 applications (paragraph 4, report critique).
3. The Secretary of State takes the view that PwC did include a transparent account of the sampling methodology in the report, both in section 1, particularly pages 8 and 9 and later in the respective chapters of the report. The Secretary of State agrees with PwC’s view that a judgement or risk based sampling approach rather than a statistical sampling approach is appropriate in a report of this nature. He also notes that, in certain cases, the amount of material reviewed by the PwC report was extremely broad. An example of this is Main Stream Grants programme, where the Authority wrongly states that only 20 of 431 applications were included in the sample. This was in fact the sample used for considering follow-up monitoring of grants only. In fact, PwC’s work covered the whole of the Main Stream Grants programme. For example, PwC were able to conclude at paragraph 2.33 of their report that officer recommendations were over-ruled in 81 percent of the 431 applications.
4. *Test of compliance with the best value duty against PwC definition* – The Authority states that PwC’s findings do not “clearly and consistently meet the criteria for failure as set out by PwC” that failures need to be “regular or endemic as well as material in value and/or their wider implications”. For example on property, only three out of 185 transactions entailed procedural failings and PwC found no more than a minimal financial impact. The Authority states that PwC do not mention that the Authority has updated and strengthened its Communications Protocol.
5. PwC responds to these points by stating that the Authority misrepresents their view. In fact they made clear that failures did not need to be to “regular or endemic” in order for there to be a best value failure; there are other matters to consider such as whether matters are “immaterial in value and/or in their wider implications” (paragraph 1.25, PwC report). It is wrong to suggest that they have therefore mis-applied their own test. In the 10 December response, the Mayor then states that if this is so, PwC appear to be “widen[ing] the definition of a breach of a best value failure also to include isolated incidents of no material impact or value” (paragraph 21, 10 December letter).

6. The Secretary of State recognises the Authority's point that where there are fewer instances of a particular failure, there is likely to be less reason to conclude that there is a failure to meet the best value duty. However, as PwC states, there may be other factors to consider, such as the seriousness of an individual, or number, of failures. Failures identified by PwC in relation to three of the four property disposals they looked at in detail were indeed serious failings, which PwC has rightly identified as failures to comply with the best value duty. The Secretary of State has weighted the level of the interventions that he proposes according to the extent of failure or risk of failure to comply with the best value duty.
7. *Failure to properly acknowledge evidence demonstrating that the Authority is meeting its Best Value duty* – The Authority states in its report critique that PwC do not refer to evidence of continuous improvement supplied by the Authority, or the role of internal audit and scrutiny processes and the Authority's actions in response to internal criticism. PwC respond to this in their comments by providing extensive examples of how they have indeed referred to material the Authority has provided in relation to continuous improvement, for example on the Youth Service Improvement Programme, revised requisition templates, and needs assessment and geographical analysis (paragraph 35-38, PwC Commentary). In response, the Mayor takes a somewhat different line in the 10 December letter to the one adopted in the Authority's report critique, arguing that PwC has downplayed the importance of continuous improvement, which should have been the "core guiding focus" of their report. The Authority are also concerned that PwC do not benchmark their findings against other authorities.
8. The Secretary of State notes that the Authority's original point that material in relation to continuous improvement was not referred to in the report is inaccurate, as PwC have given instances of where they do refer to it. The conclusions they reach include consideration of this material. It is noted in particular in relation to contracting that PwC remark on the Authority's update of its policies in the course of 2014, to internal audit reports (para 2.107, PwC report) (an example of continuous improvement), and that in this area, PwC did not find a best value failure. The Secretary of State therefore concludes that the importance of continuous improvement has not been left out of or downplayed in the report. Insofar as the Authority has expressed concern that the nature of the best value duty has been misunderstood, the Secretary of State is well aware of the nature and content of the duty imposed by s 3 of the Local Government Act 1999 and of the commentary on that duty set out by Underhill LJ in the *Nash* case.
9. *The extent of the evidence base* – In the Authority's view, PwC should be more specific about where they have relied on "uncorroborated statements from limited number of individuals" (paragraph 20, report critique). PwC have, in their response, explained their approach, including at paragraph 1.37 of the report where they note that they have received 256 communications from 38 individuals, and paragraph 1.39 where they note that not all allegations have been backed up by evidence. The Authority has not returned to this point in

their further comments. The Secretary of State is satisfied that PwC have been transparent about the contacts and sources they have relied upon, subject to the need to respect the anonymity of those who provided information.

10. *Failure to correct or remove significant factual inaccuracies or unsubstantiated allegations* – The Authority alleges that the PwC report contains factual inaccuracies and unsubstantiated allegations. Having considered the Authority’s critique and PwC’s commentary, the Secretary of State is satisfied that the PwC report is based on an accurate and well-evidenced understanding of the facts. It is worth drawing out two instances where there is alleged to be factual inaccuracy, the first as an important example where the facts are correct, and the second to reflect on incident where there is a potential inaccuracy.
11. In the first case, the Authority has stated that there is an inaccuracy over Mazar’s report on Poplar Town Hall (paragraph 24, report critique). The Mayor suggests that PwC are “wrong” (paragraph 23, 10 December response) to state that Terms of Reference of the Mazars’ audit report on the Poplar Town Hall transaction did not reflect the full council motion recommending a review of that transaction. The Mayor states that the full Terms of Reference for the Mazars’ review did indeed include the entirety of the full council resolution, and PwC have mistakenly interpreted the “extract” from the Terms of Reference annexed by Mazars to their final report as the full Terms of Reference. However, while the full council’s resolution was indeed contained in the instructions to Mazars in the “background” section of those instructions, the section which contained the proposed “scope” of the Mazars’ review used a different form of words which did not reflect the full council’s resolution. This position is accurately summarised in the original PwC report at paragraph 5.104 and 5.105. The Secretary of State is therefore satisfied that the PwC report is accurate on this significant point.
12. In the second case, there does appear to be a potentially misleading or inaccurate statement with regard to contract AHWB4147 (paragraph 24, report critique). PwC report that, in this case, changes were made by individual councillors to this procurement process after it had been agreed by the Cabinet, which does not appear to be in line with the Authority’s constitution – this is the point that PwC were aiming to make. However, no tendering process had begun, and in view of this, the PwC report statement that members had been involved “during the tendering process before the final decision” is potentially misleading or inaccurate, which the Secretary of State is happy to recognise. This case does not overturn his view of the overall sound factual basis of the report.
13. *Inclusion of narrative that implies wrongdoing where none has been evidenced* – the Authority state that at paragraph 2.9 of the PwC report, reference is made to a connection between the Mayor and the winning bidder for Poplar Town Hall and argues that “neither Mazars nor PwC have identified any evidence to suggest that the Mayor had a role in the decision to award

the sale of Poplar Town Hall to Dreamstar” (text under paragraph 25, report critique) therefore no declaration of interest would have been required. The Authority states that this “casts doubt on the objectivity of the inspectors” (paragraph 25). PwC does not accept the Authority’s assertion that they have sought to present or combine facts so as to imply wrongdoing. They claim to have set out in detail the information they have relied upon, for example at 5.109 of their report where they discuss Poplar Town Hall in more detail.

14. The Secretary of State is of the view that the most transparent approach is for all the relevant facts to be set out in the report, which appears to have been the case here. He notes that PwC have rightly avoided reaching conclusions where the evidence is insufficient or inconclusive, as in the case of the Mayor’s knowledge of and involvement in the Poplar Town Hall disposal.
15. *Grants: geographical distribution and needs analysis* – The Authority argues that “funding must follow need and as such balanced geographical distribution is irrelevant. This is not understood by PwC” (report critique, paragraph 27). PwC’s use of postcode of organisation rather than delivery address is inappropriate. PwC’s comparisons with the Indices of Multiple Deprivation is insufficiently nuanced to “sub-factors” such as job seekers claimant levels which drive targeting of grant (paragraph 31 report critique). PwC fail to acknowledge the existence of clearly evidenced grant related needs assessments including documents they were sent at the outset. The Authority also comment that the Secretary of State interpreted the PwC report as giving “significant weight” to the need for some form of geographical balance when speaking in the House of Commons on 4 November 2014 (10 December letter, paragraph 32).
16. The Secretary of State agrees with PwC’s over-arching point that the matter of most significant concern is that the reasoned conclusions of officers with regard to the right projects to award grants to were very substantially overturned without evidence as to the reasons for these changes. The geographical distribution is a helpful illustration of the significant discrepancy between officer recommendations and the final grant awards, which the Secretary of State drew on in the House. However, the Authority’s claim that PwC have given “significant weight” to the idea of geographical balance is inaccurate, and the Secretary of State did not interpret the PwC report as doing so. The Secretary of State’s principal point in the House was that public money had been handed out “without thought or consideration”, referring to the absence of evidence as to the reasons for changes to officer recommendations.
17. *References to Authority Delay in the Report* – the Authority refute the suggestion that it has caused unjustified delay to the inspection and is concerned about the level of sustained misrepresentation of the Authority by PwC. The Secretary of State has reviewed evidence presented by PwC and the Authority in relation to delay in the inspection, and has concluded that it is accurate to say that the Authority delayed the inspection through late provision of information.