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10 December 2014

Dear Mr Rowsell,

London Borough of Tower Hamlets – Proposed Intervention

When you wrote to the Head of Paid Service on 4<sup>th</sup> November 2014, you indicated, firstly, that the Secretary of State had considered the Pricewaterhouse Cooper Report of 16 October and other information (referred to in the Annex), and, secondly, that he was “satisfied on the basis of those matters that your Authority is failing to comply with... the best value duty.”

May I respectfully suggest that the Secretary of State now reconsiders that position.

You invited the Council to make representations on the PwC Report and it did so by sending you a Critique on 18<sup>th</sup> November. You have now copied to the Council a Commentary on the Critique (dated 8 December) by PwC and allowed the Council 48 hours in which to respond. The Council is glad that the Secretary of State is allowing critical thinking to be applied to the PwC Report now as that may avoid expense and delay in due course.

In the time that the Council has been given it is only possible to draw the Secretary of State's attention to certain matters of critical importance before he considers exercising any power of direction under the 1999 Act:

1. The PwC Commentary of 8/12/14 reveals:

a. A fundamental misunderstanding of the “Best Value Duty”, as follows:-

- i. Section 3(1) Local Government Act 1999 created a duty on each best value authority to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”.
- ii. PwC's Commentary misrepresents “continuous improvement” as:
  1. “a factor, it is only one of a number of factors that need to be considered”(para 15), and
  2. “the issue of continuous improvement is relevant to the question of whether the Authority is complying with its best value duty. However, it is only one of a number of factors (para 33).”

- b. PwC could not justify wide interventions by the Secretary of State as follows:-
- i. In the Council's Property Transactions: "we do not present any conclusion specific to processes and controls as they relate to property "more widely". Our conclusions relate to the four properties that we examined in detail.(para 22)"
  - ii. In the Council's Publicity Functions: "We do not present an overall conclusion that relates to publicity spending as a whole. Rather we conclude in our Report that there has been a failure to comply with the best value duty in two areas." (Para 24; goes on to specify lack of activity monitoring of media advisors and television advertising that occurred in January 2012 only.)
  - iii. Generally; "We are not seeking to justify 'intervention by exception' nor indeed do we consider at all the matter of whether intervention is or is not justified on any basis." Para 48)
2. PwC were of course empowered (by Section 13(2)(b) of the Act) to recommend that the Secretary of State should make Directions under section 15. PwC did not do so.
  3. PwC has clearly noted (paras 34 to 46) Council arrangements demonstrating repeatedly that it has capacity to learn and develop through its continuous improvement activities of audit and review. Whilst we do not believe this has been properly applied in the Inspection report it is clear that no adverse findings on the effectiveness of that continuous improvement process has been made.

There are many continuing errors and misrepresentations in the PwC Report that the Council considers the Secretary of State should take into account before exercising any intervention powers. The Council has not yet had an equivalent time to that allowed to PwC to research and evidence the contested statements. The Council therefore has to reserve its position to bring evidence and make representations on other parts of the PwC Commentary at a later date, should it need to do so. However, in the meantime, I attach a response to the Commentary.

Yours sincerely,



Lutfur Rahman  
Mayor of Tower Hamlets

## **Appendix A.**

### **London Borough of Tower Hamlets Executive Response to PricewaterhouseCoopers (PwC) commentary on the Authority's Critique of the Best Value Inspection Report dated 16<sup>th</sup> October 2014.**

1. These comments are provided to the Department of Communities and Local Government to inform the Secretary Of State's outstanding decisions specific to best value interventions.
2. We note that the Authority has been given two days to comment on material that PwC has had three weeks to prepare and we do not consider this to be reasonable or equitable. Within this limited time frame it is not possible to respond directly to each of the points raised by PwC. Where we have not addressed specific points directly, this should not be interpreted as acceptance of PwC's position.
3. The comments that follow address the main points of outstanding concern and represent the view of the Authority's Executive.

#### **General observations**

4. The Executive has set out in its response to DCLG's draft directions and in its critique of the PwC report the extent to which it accepts the findings of the Inspection Report. Further it has expressed clearly its views as to the extent to which the proposed draft directions represent a proportionate response to those findings and has made constructive suggestions for amendments to them.
5. It is important when reviewing the comments below to note that the Authority does not reject the findings of the PwC report out of hand and accepts that there are areas for improvement in respect of grants and property.
6. It is not considered to be either safe or desirable for profit-centred commercial organisations to undertake public sector inspections of this kind.
7. Given the commercial nature of the relationship between the company delivering the inspection and the Secretary of State and the lack of transparency regarding this relationship, it is believed that no local authority being audited under such arrangements can have confidence in the neutrality of the findings, the quality of the findings, the financial management or the controls associated with the conduct of the inspection. It does not accept that the conduct of the inspection or the development of the final report has been free from political interference.
8. It cannot be right that a local authority seeking to secure clarification on important points of law that have been promptly brought to the attention of the inspectors is then accused of 'failing to cooperate'. It is bad for democracy and sets a dangerous precedent.
9. The extraordinary cost of this exercise cannot be justified. £1m for a best value inspection of a strongly performing authority (a list of the Authority's more recent achievements is appended) is ten times the cost of the last Audit Commission audit of a fully failing authority. The Audit Commission inspections were replaced by these new commercial arrangements in the name of efficiency. Twenty Six inspectors were deployed by PwC and no proper checks or balances were brought to bear by DCLG. Furthermore there has been no transparency regarding the terms upon which PwC were procured and no transparency regarding the financial controls, if

any, on PwC. It is an entirely unjust, unjustifiable and punitive cost that has been charged to the people of Tower Hamlets by the Secretary of State.

#### **PwC clarifications welcomed by the Authority.**

10. A particular criticism of the inspection report centred on the way in which PwC had presented information and the extent to which that invited conclusions by the reader that were, in fact, carefully avoided in the text itself for lack of evidence. In some limited instances this has been addressed in the response to the critique. These points are briefly acknowledged below along with instances where PwC has further clarified or actually changed its position from that set out in the inspection report.
11. We welcome the explicit clarification that PwC's conclusions regarding best value are limited only to 4 out of 184 property transactions as stated in paragraph 22 of the response - *'we do not present any conclusions specific to processes and controls as they relate to property 'more widely'. Our conclusions relate to the four properties we examined in detail'*. Accordingly the PwC findings do not justify any intervention in the Authority's wider processes for disposal of property – in particular in the context of the definition of best value set out by PwC itself.
12. We welcome the explicit clarification by PwC in paragraph 24 that it does not present an overall conclusion that relates to publicity spending as a whole. Accordingly the PwC findings do not justify any intervention in the Authority's wider processes for publicity.
13. We welcome clarification in paragraph 66 and 67 of the response that PwC do accept that officers of the Authority had a duty to pursue best consideration and were right to do so. We do not accept, however, that the references quoted clearly acknowledge that officers were bound by S123 of the Local Government Act 1972.
14. We welcome clarification provided in paragraph 74 that PwC no longer takes the view that Members had involved themselves during the tendering stage of contract AHWB4171. It is regrettable that this statement was included in the inspection report at all given that the Authority pointed out the flaws in this assertion at the fact check stage.
15. We welcome clarification as set out in paragraph 79 that PwC draws no conclusion as to whether the relationship between Dreamstar Ltd and the Mayor was known with the Authority at the time. *'It is clear that we have not sought to conclude as to whether the relationship between Dreamstar Ltd and the Mayor was known within the authority at that time'*. In effect there is no evidence to suggest that it was.
16. We welcome clarification in paragraphs 93 to 95 of the response that PwC do not conclude that RCDA's have been used in contravention of the Authority's' procedures. It is nevertheless regrettable that the wording of the original report leaves the reader with that impression.

#### **Weaknesses in sampling methodology.**

17. Nothing in PwC's response effectively addresses our original concerns. No sampling methodology was included in the report and PwC cannot and does not claim that it was. Descriptive passages relating to *'approach and nature of our work'* are cited (paragraph 13) along with poorly developed arguments that low sampling took place in areas of work that were less important. Referencing a range of disconnected factors that may have resulted in a selection decision is not a sampling methodology.

18. In paragraph 7 PwC argues that the Authority's statement does not appear in the factual extracts document and is therefore misleading. It is misleading to infer that the Authority's statement was presented as a direct quote from PwC extracts. It was, in fact, an observation by the Authority of statements made by PwC in paragraphs 1.36 and 2.36 of the inspection report. These make it clear that the approach to sampling was 'judgemental and risk based rather than purely random or statistical' or was very specifically not statistically based.
19. It continues to be clear that the approach taken to sampling would be, by PwC's own admission, unrepresentative. It may therefore undermine one's ability to draw wider strategic conclusions about the capacity of the organisation in a best value context. This undermines the Secretary of State's ability to judge the need for or extent of any potential intervention.

### **Test of compliance with the Best Value Duty against PwC definition.**

20. Nothing in PwC's response effectively addresses our original concerns as set out in the Critique.
21. The Authority notes that in its response to the Authority's critique of the inspection report, PwC appears to widen the definition of a breach of the best value duty to also include isolated incidents of no material impact or value. This attempt to widen the definition retrospectively is a matter of serious concern. The Authority does not agree with PwC's assertion that the inspection report is clear in this respect or that by raising these concerns we are in any way misrepresenting PwC. The Authority maintains that in light of the original definition set out by PwC in the inspection report, the findings of the inspection in relation to property, publicity and contracts in particular do not constitute endemic and/or regular failing and /or failings with material implications and /or of material value and should not therefore be considered breaches of the best value duty.

### **Failure to correct factual inaccuracies**

22. Nothing in PwC's response materially addresses the concerns identified in the critique. The arguments put forward in paragraphs 57 and 58 conflict directly with statements made in paragraph 52b of PwC'S response and it is disappointing to note that PwC continues to misrepresent the facts as regards to the scope and content of the Mazars report in paragraph 61. This 'evidence' is then specifically relied upon by PwC to support the suggestion in paragraph 63 that this Authority seeks to 'deny or obfuscate rather than investigate concerns raised' further undermining the validity of these conclusions.
23. Specifically in paragraph 61 of the response PwC is wrong to try to argue that the Authority did not reflect fully the Full Council Motion. The Appendix 1 referred to in the response is clearly marked as 'Terms of Reference Extract'. The full Terms of Reference which PwC has been given by the Authority carries the full unexpurgated Council motion as an integral and leading part of the ToR. It then explicitly requires the examination of the arrangements for the disclosure and control of conflicts of interests from bidders and those involved in the sale and the change of use process, and in relation to the relevant policy and procedural guidance. Furthermore clear and unambiguous proof that Mazars correctly interpreted these references to address in particular 'any conflicts of interest' are clearly set out in the Mazars report itself. This again recites verbatim the requirements of the Full Council Motion and clearly sets out the auditor's considerations and findings on the position regarding potential conflicts of interest at paragraphs 4.2 to 4.4. In particular paragraph 4.2 states '*We have checked the minutes of Council meetings and found that no declarations of interests were found with regard to the sale of the former Poplar Town Hall. However, in accordance with the Council's own policy,*

*there would have been no declaration required since the members present at the Council meeting solely agreed the recommendation to sell an asset belonging to the Council, not to whom that asset should be sold'. Paragraph 4.3 states 'During the sale of the property, no declarations of interests have been made by potential buyers and nor were any required of them. No members of the bid panels made declarations of interest and we have not identified any interests that should have been declared.'* PwC's position, in the light of the above, is simply untenable.

24. In respect of paragraph 74 we note that PwC has now backed away from the serious assertion made in the inspection report that Members had involved themselves during the tendering stage of contract AHWB4171. We note that PwC has avoided directly acknowledging this significant shift of position. Whilst we welcome the clarification it is a matter of concern that the amendment was not made to the final inspection report following the Authority's response to the factual extracts. We do not accept that PwC's current modified position is consistent with 7.15 to 7.21 of the inspection report as claimed.

### **Failure to properly acknowledge evidence demonstrating that the Council is meeting its Best Value Duty.**

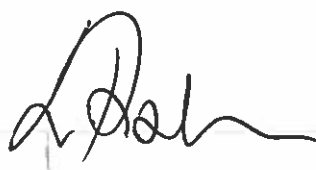
25. Nothing in PwC's response effectively addresses the original concerns as set out in the critique. The critique focused on the consistent failure of the inspection report to link in any coherent and qualitative way the learning activities pursued by the Authority to problems identified by its own due diligence processes. Nothing referenced in the response to this section demonstrates that PwC did. Continuous improvement is downplayed and almost dismissed by PwC in paragraph 33 of the response. It is the principle focus of the statutory duty as set out in Section 3 Sub Section 1 of the Local Government Act 1999. This and not the wording of the instruction from DCLG should have been the core guiding focus of their report.
26. Given that continuous improvement is the primary focus of remaining best value statute this is a major shortcoming and again prevents the Secretary of State from using the report to accurately determine the need for and extent of any potential intervention.
27. The above failure to undertake this essential best value evaluation exercise is demonstrated by Paragraph 45 where PwC state *'the Authority has not identified what specific process failures it considered to exist and to be remediable, nor the specific actions it has put in place to address them'*. We would point out that PwC has the entire library of internal and external audit reports and associated action plans for the Authority for the last four years. This assertion coming at the end of a seven month long £1m review is alarming.
28. With reference to paragraph 47 we continue to be of the view that it is unsafe to try to determine the need for and extent of government intervention without having reference to comparative material that demonstrates the Authority's relative performance to other local authorities in respect of best value inspection findings. On the basis of the PwC response the Government clearly has no ability at all to know if it is intervening in matters where the Authority is performing at or beyond the levels of its peers. If, as is probable, every local authority would fail some aspect of its best value duty if assessed over a four year period against the extraordinarily broad definition of best value outlined by PwC in its response and as PwC's sampling approach has been too flawed to establish systemic failure there is no sound basis upon which the Secretary of State can reach well-grounded and reliable conclusions about the need for intervention.

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

29. Nothing in PwC's response effectively addresses the original concerns as set out in the critique. We do not intend to address the specific points made here other than to use an example.
30. In paragraph 92 PwC attempts to defend the linking of particular disconnected events in the inspection report presentation as being nothing more than a chronological description of a chain of events stating '*we consider it appropriate to have presented the timing of those events in our report*'. The report does not, as suggested, present these disconnected events as part of a wider time line narrative. Instead PwC make a specific and separate noting statement '*we note that the authorisation to proceed with the contract race was granted by the Corporate Director for D+R on 15 September 2011, one day after Dreamstar Ltd was incorporated*'. This appears to be the quite deliberate bringing together of two entirely disconnected events in order to give the impression of impression of wrongdoing.

#### **Grants: Geographical distribution and needs analysis.**

31. Nothing in PwC's response effectively addresses the original concerns as set out in the critique. We have been granted insufficient time to address the points set out in this section in detail. However we have the following comments to make.
32. Paragraph 97 states that the Authority's assertion that significant weight is given by PwC to the idea that there should be some form of geographical balance when grants are made is misleading. We disagree. It is very easy to interpret the inspection report as suggesting that balanced geographical distribution should in itself be an objective. It is a matter of public record that the Secretary of State interpreted the report in just such a way when answering a question from Luciana Berger MP on 4<sup>th</sup> November 2014 in the House of Commons. He stated '*In the early part of the report, there is a map that shows how the grants have been allocated in a quite arbitrary way, concentrating them on just one area*'... '*I refer the hon. Lady to the map on page 23 of the report, which shows the way in which the money has been distributed. It is an absolute disgrace*' (Hansard Debates).
33. PwC fails to engage entirely with the critique's concerns regarding the inappropriate application of the Indices of Multiple Deprivation to determine the extent to which grants have followed need.
34. The Authority also notes that in certain places PwC has not responded to particular points raised in the initial critique. A clear example relevant to this heading is the point made in paragraphs 29-30 of the Critique drawing attention to information which PwC had been provided dealing with the geographical basis of grant awards. The Authority would have welcomed a clarification of the Report's wording, or an acceptance of the Authority's point.

A handwritten signature in black ink, appearing to be 'A. Dal' or similar, written in a cursive style.

