

*Best Value
Inspection of
London Borough of
Tower Hamlets
Report*

16 October 2014

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List of terms and abbreviations

The table below includes a description of the defined terms and abbreviations used within this report.

Term	Description
the 1972 Act	Local Government Act 1972.
the 1999 Act	Local Government Act 1999 (as amended by the Local Audit and Accountability Act 2014).
the Agresso Financial Data	A copy of the data held in the Agresso Financial System.
the Agresso Financial System	The primary financial / Enterprise Resource Planning (ERP) system employed by the Authority from April 2013.
AHWB or AHW	Adults Health and Wellbeing directorate.
AMCSB	Asset Management and Capital Strategy Board.
AMCSWG	Asset Management and Capital Strategy Working Group.
the Appointment Letter	Letter dated 4 April 2014 appointing PricewaterhouseCoopers LLP to carry out the Inspection.
the Authority	The local authority of the London Borough of Tower Hamlets.
BAFO	Best and Final Offer.
BBC Panorama	BBC Panorama programme aired on 31 March 2014 titled 'Panorama: The Mayor and Our Money'.
BNP Paribas	BNP Paribas Real Estate Advisory & Property Management UK Limited.
the Borough	Tower Hamlets as a geographical and electoral area.
the Cabinet	A committee composed of the Mayor, the Deputy Mayor and eight Lead Members appointed by the Mayor.
Call in	Process through which Executive decisions are brought for consideration and/or challenge by the O&S Committee.
CDA	Corporate Director's Actions.
CFBSS	Community Faith Buildings Support Scheme.
CGPB	Corporate Grants Programme Board.
CGPB Members	The two Members who are members of the CGPB.
CGPB officers	The five officers who are members of the CGPB.
CHE	Chief Executive's directorate.
CLC	Communities, Localities and Culture directorate.
the Communications Act	Communications Act 2003.
the Communications Protocol	The Authority's best practice document setting out the purpose and extent of Authority communications activity.
the Constitution	The two versions of the Authority's Constitution, the first dated November 2010 and then subsequently updated in April 2014.

Term	Description
Contracts Listing	A listing of 208 contracts provided by the Authority in response to a request for a list of all contracts over £25,000 let by the Authority during the Period.
CSF	Children, Schools and Families directorate.
D&R	Development and Renewal directorate.
DCLG	The Department for Communities and Local Government.
Dreamstar Ltd	Dreamstar Limited, registration number 07773327.
Dreamstar Pictures	Dreamstar Pictures Limited, registration number 05143980.
ESCW	Education, Social Care and Wellbeing directorate.
e-tendering portal	The public sector procurement portal for the London boroughs.
Executive	Elected Mayor and Cabinet.
Financial Data	The combined data contained in the Agresso Financial Data and JD Edwards Financial Data.
the Full Council	The body of directly elected Mayor and councillors of the Borough.
GIFTS	Grant Information and Funding Tracking System.
the Inspection	Best value inspection in accordance with the Appointment Letter.
the Interfaith Forum	Tower Hamlets Interfaith Forum in operation to facilitate better communication and understanding between the different faiths in the Borough.
the JD Edwards Financial Data	Extracts from JD Edwards for the data tables PwC identified as relevant to the Inspection.
the JD Edwards Financial System	The primary financial / Enterprise Resource Planning (ERP) system employed by the Authority prior to April 2013.
Key Decision	Key decision as determined by the Mayor. Constitutionally defined category of Mayoral Executive Decision which is open to Call in by the O&S Committee.
LBTH	London Borough of Tower Hamlets.
LBTH Solicitor	The solicitor assigned to the PTH transaction.
LPG	Law, Probity and Governance.
MABSARP	Mayor's Advisory Board Strategic And Resource Planning.
the Mayor	Elected Mayor of Tower Hamlets, Mr Lutfur Rahman, elected in October 2010.
the Mayor's Office	The Authority's department for supporting the Mayor and Cabinet Members in their Executive functions.
MAYP	Mayor's Activities for Young People.
Mazars	Mazars LLP.
Mazars' report	Report of Mazars LLP dated July 2014 in relation to PTH.
Media Advisor	An individual employed to provide specialist media advice to the Mayor.

Term	Description
Mela	The Boishakhi Mela. This is an annual festival promoted as Bengali New Year Festival but open to and attended by other sections of the community.
Mellish Street	111-113 Mellish Street.
Member	An elected councillor of the Borough.
MSG	Mainstream Grants.
O&S Committee	Overview & Scrutiny Committee.
Ofcom	The Office of Communications, independent regulator and competition authority for the UK communications industries.
Officer	A member of staff of the Authority.
PAYP	Positive Activities for Young People scheme.
the Period	The period covered by the Inspection from 25 October 2010 up until 4 April 2014 which is subject to Inspection.
PH&W	Prevention, Health and Wellbeing.
PMO	Project Management Office.
the POE Panel	Premises Officer Evaluation Panel.
PPF	Preferred Provider Framework.
PQQ	Pre-qualification questionnaires in relation to procurement.
the Procurement Procedures	The two versions of the procedures applied by the Authority in respect of procurement activities (2009 - 2013 and the revised version dated January 2014) together.
PTH	Poplar Town Hall.
the Publicity Code	The Code of Recommended Practice on Local Authority Publicity dated 31 March 2011.
Purdah	The period of time from when an election is announced until after the election is held, also referred to as the pre-election period.
PwC or “we”	PricewaterhouseCoopers LLP.
RCDA	Register of Corporate Director’s Actions.
RES	Resources directorate.
SLA	Service Level Agreement.
THCVS	Tower Hamlets Council for Voluntary Service.
Third Sector Allocation Process	The Authority’s allocation process for “ <i>Council-owned</i> ” property to third sector organisations.
Trust	Organisation awarded the concession to manage the Mela.
YCS	Youth and Connexions Services.

1. Introduction

1.1 By a letter dated 4 April 2014 (“the Appointment Letter”)¹, PricewaterhouseCoopers LLP (“PwC” or “we”) was appointed by the Department for Communities and Local Government (“DCLG”) to carry out a best value inspection (“the Inspection”) of the London Borough of Tower Hamlets (“LBTH” or “the Authority”) pursuant to section 10 of the Local Government Act 1999 (as amended by the Local Audit and Accountability Act 2014) (“the 1999 Act”).

1.2 The Appointment Letter explains the grounds for the Inspection as follows:

“In making this appointment ... the Secretary of State has had regard to certain documents that the Department has received about governance in Tower Hamlets, and the review of those documents undertaken by PwC, which recommends that appropriate further investigations are carried out to establish whether allegations about poor governance and possible fraud have any foundation. He has also had regard to the BBC Panorama programme broadcast on 31 March 2014, which made allegations about governance failures, poor financial management and possible fraud at Tower Hamlets, particularly in relation to grant payments.”

1.3 This report sets out a summary of the work we have performed in conducting the Inspection and the findings and conclusions arising from our work.

Disclaimer

1.4 This report has been prepared only for DCLG and solely for the purpose and on the terms agreed with DCLG. While, having considered its contents, the Secretary of State may decide to publish it, we accept no liability (including for negligence) to anyone other than DCLG in connection with this report.

Terms of reference

1.5 The Appointment Letter instructs PwC to carry out an inspection of the compliance of the Authority with its obligations under Part 1 of the 1999 Act “*in relation to the Authority’s functions in respect of governance, particularly the Authority’s functions under section 151 of the Local Government Act 1972*” (“the 1972 Act”).

1.6 The Authority’s obligations with regard to governance under Part 1 of the 1999 Act are set out in sections 3(1) and 3(2) thereof. These are defined as follows:

“3 (1) A best value authority must 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.

¹ Attached as Appendix 1.

(2) For the purpose of deciding how to fulfil the duty arising under subsection (1) an authority must consult—

- (a) representatives of persons liable to pay any tax, precept or levy to or in respect of the authority,
- (b) representatives of persons liable to pay non-domestic rates in respect of any area within which the authority carries out functions,
- (c) representatives of persons who use or are likely to use services provided by the authority, and
- (d) representatives of persons appearing to the authority to have an interest in any area within which the authority carries out functions”.

1.7 The Authority’s functions with regard to governance under section 151 of the 1972 Act are defined as follows:

“...every local authority shall make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has responsibility for the administration of those affairs.”

1.8 The Appointment Letter further instructs PwC that the matters to be covered initially by the Inspection should in particular relate to:

- a. The Authority’s payment of grants and connected decisions;
- b. The transfer of property by the Authority to third parties;
- c. Spending and the decisions of the Authority in relation to publicity; and
- d. The Authority’s processes and practices for entering into contracts.

1.9 The Appointment Letter defines the period subject to the Inspection to be 25 October 2010 (the date on which the mayoral form of governance was implemented in the London Borough of Tower Hamlets) “to the present”, which we have taken to mean up until 4 April 2014, the date of the Appointment Letter (“the Period”).

1.10 Both the Mayor individually and the Authority as an institution have been the subject of adverse media comment at various times throughout the Period. For these purposes, the term “media” includes local and national newspapers, television and radio, social media and blogs. Issues aired in the media have included, amongst other matters, allegations of:

- a. Electoral irregularities in connection with both the 2010 and 2014 mayoral elections, including (without limitation) fraud in relation to postal votes, intimidation of voters at polling stations and interference of one kind or another in the vote counting process;

- b. Favouritism on the part of the Mayor and/or the Authority towards certain sections of the community in The London Borough of Tower Hamlets, i.e. the geographically defined area within London (“the Borough”), Tower Hamlets, for the purposes of gaining political favour or otherwise;
 - c. Irregularities in respect of the Authority’s grant making;
 - d. Irregularities in relation to certain property transactions, of which the leasehold sale of Poplar Town Hall (discussed in this report) has been a prevalent example;
 - e. Irregularities related to planning and/or the use of monies earmarked pursuant to section 106 of the Town and Country Planning Act 1990; and
 - f. Links between the Mayor and/or those closely associated with him and individuals or organisations said to have religious extremist tendencies.
- 1.11 We note in addition that, as at the date of this report, there are a number of criminal investigations on-going into allegations of fraud (reported by the Authority). Furthermore, an Election Petition, which is being pursued by members of the public seeking to invalidate the 2014 mayoral election on grounds of electoral fraud, will be heard before the High Court later this year.
- 1.12 Not all of the above matters fall within the scope of our terms of reference. Accordingly, except where otherwise explicitly stated in this report, we have not sought to investigate the validity of these various allegations and we neither express nor imply any view on whether or not they have any foundation.

Powers of an Inspector

- 1.13 Section 11 of the 1999 Act sets out certain provisions concerning the powers of Inspectors appointed under section 10 of the 1999 Act. These include (by way of summary):
- a. The right of access to premises and documents of the subject authority at all reasonable times;
 - b. The right to require information or explanations to be given by relevant persons; and
 - c. The requirement upon the subject authority to provide the Inspector with all facilities and information that the Inspector may reasonably require for the purposes of the Inspection.
- 1.14 In addition, section 11 of the 1999 Act makes it an offence for any person without reasonable excuse to fail to comply with a requirement of an Inspector. An Inspector is required to give three clear days’ notice of any requirement.

Reporting obligations

- 1.15 Our reporting obligations are defined in section 13 of the 1999 Act. This states that:

“(1) Where an inspector has carried out an inspection of an authority under section 10 the inspector shall issue a report.

(2) A report—

(a) shall mention any matter in respect of which the inspector believes as a result of the inspection that the authority is failing to comply with the requirements of this Part, and

(b) may, if it mentions a matter under paragraph (a), recommend that the Secretary of State give a direction under section 15.

(3) The inspector—

(a) shall send a copy of a report to the authority concerned and to the Secretary of State, and

(b) may publish a report and any information in respect of a report.

(3A) The Secretary of State may publish a report and any information in respect of a report.

(4) If a report recommends that the Secretary of State give a direction under section 15, the inspector shall as soon as reasonably practicable arrange for the recommendation to be published.”

1.16 Pursuant to section 13 (2) (a) of the 1999 Act, our conclusions as to whether or not the Authority is failing to comply with its obligations under Part 1 of the 1999 Act in relation to any of the matters which have been the subject of the Inspection are set out in section 2 of this report. The factual grounds for our conclusions are summarised in section 2 and set out in more detail in the relevant sections dealing with each of the areas which have been the focus of the Inspection.

1.17 With regard to section 13 (2) (b) of the 1999 Act, we have not formulated any specific recommendations as to the actions the Secretary of State might wish to take in light of our conclusions. We consider that this is a matter for the Secretary of State to decide, based on the various options available to him.

The best value duty

- 1.18 As stated above, the best value duty is a duty 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.*” The term “*arrangements*” is broad and will cover those management structures policies, processes and controls which are put in place to govern the exercise of an authority’s functions. To meet the best value duty, any such arrangements should be designed to secure continuous improvement in the exercise of the organisation’s functions and should also be operating in a way that substantially meets that objective. The details of what constitutes “*continuous improvement*” are not defined in the 1999 Act. It is clear, however, that arrangements for continuous improvement cannot be wholly divorced from the achievement of a combination of economy, efficiency and effectiveness. In particular an organisation which took steps to make improvements to the way it executed its functions, but continued to fail to achieve a satisfactory level of economy, efficiency and effectiveness could not be said to be fulfilling its best value duty.
- 1.19 The functions of an authority are its powers and duties². The making of arrangements “*for the proper administration of [its] financial affairs*” (pursuant to section 151 of the 1972 Act) is a function and therefore an aspect of the best value duty. Responsibility for children’s services, planning and aspects of social care are further examples of functions of an authority. Activities such as grant making, property disposals, procurement, etc are things that an authority does in the exercise of its functions.
- 1.20 “*Economy, efficiency and effectiveness*” are related but separate concepts. The term “*economy*” refers to the objective of minimising the cost of achieving an appropriate desired outcome. Economy does not equate to value for money unless it is combined with efficiency and effectiveness.
- 1.21 The term “*efficiency*” refers to the objective of achieving the maximum output for a given level of input. Amongst other things, this might entail avoiding as far as possible waste in the application of resources, for example through duplication of effort, redundant or disproportionate processes, failure to maximise the use of available technologies, and so on, depending on the nature of the activity in question. Such inefficiencies may also touch upon issues of economy.
- 1.22 The term “*effectiveness*” relates to the degree to which an appropriate desired outcome is achieved through the application of resources, including financial resources. An activity that is executed effectively is one which achieves the desired objective (and does so with appropriate economy and efficiency); conversely, an activity which is executed in a way that fails to achieve the desired objective is one that clearly has not been executed effectively. Funds spent and other resources applied in a manner that is ineffective in this way are clearly also not being used economically or efficiently.

² See for example the ruling of Lord Templeman in *Hazell v. London Borough of Hammersmith and Fulham (1992)*, where he says: “*I agree with the Court of Appeal [1990] 2 Q.B. 697, 785c that in section 111 the word "functions" embraces all the duties and powers of P a local authority; the sum total of the activities Parliament has entrusted to it. Those activities are its functions. Accordingly a local authority can do anything which is calculated to facilitate or is conducive or incidental to the local authority's function [of borrowing].*”

- 1.23 It should also be noted that, in its “*Best Value Statutory Guidance*” issued in September 2011, DCLG has stated that under the duty of best value, authorities should “*consider overall value, including economic, environmental and social value, when reviewing service provision. As a concept, social value is about seeking to maximise the additional benefit that can be created by procuring or commissioning goods and services, above and beyond the benefit of merely the goods and services themselves.*” What constitutes social value will be case specific and the quantification of social value is less straight forward than that of economic value. This does not detract from the need for clarity as to social value aims or robust governance around the achievement of those aims.
- 1.24 In light of the above, it is necessary to consider what might constitute a failure to comply with the best value duty. No governance regime is perfect; no system of financial control is fool proof. The very concept of “*continuous improvement*” implies that there will always be some room to make such improvement. Despite the best efforts of those charged with governance, errors will occur, controls may be breached or circumvented, whether inadvertently or deliberately, and some level of fraud may be perpetrated on the organisation, without necessarily calling into question the fundamental integrity of an organisation’s governance or its compliance with the best value duty.
- 1.25 However, for this to apply, such errors, irregularities or fraud should clearly be isolated and exceptional rather than regular or endemic, as well as immaterial in value and/or in their wider implications. The absence or the frequent or wholesale failure or circumvention of one or more controls is clearly no longer an isolated matter, and might constitute a failure to make the “*arrangements*” referred to in the 1999 Act and therefore to comply with the best value duty. Likewise, the absence or failure of processes and controls which result in the inability of an organisation to determine whether or not it is achieving economy, efficiency and effectiveness in a particular area would seem logically not to be conducive to continuous improvement or therefore to the fulfilment of the best value duty. Furthermore, errors, irregularities or fraud which indicate the existence of more widespread governance failings will have implications beyond the immediate instance. Errors, irregularities or fraud in which those charged with governance are implicated, whether by direct involvement, consent or connivance, will also tend to raise more fundamental questions about the integrity of governance and the fulfilment of the best value duty.
- 1.26 To establish that there is a failure to comply with the best value duty, it is not necessary to demonstrate that monies have in fact been applied fraudulently, or even merely in a manner that has failed to achieve an appropriate standard of economy, efficiency or effectiveness (although any such finding might well be indicative of a failure). It is sufficient to establish that the above defined “*arrangements*” have not been put in place (or, if notionally in place, have not operated).
- 1.27 Finally, while any opinion to the effect that an organisation is failing to comply with its best value duty is, as dictated by statute, expressed in the present tense, it is necessarily based on evidence of past events occurring during the period under inspection.

Timing and duration of the Inspection

- 1.28 The Inspection commenced on 4 April 2014, the date of the Appointment Letter. Our field work was substantially complete by 5 September 2014, since which time we have focused on fact checking with the Authority and with individual witnesses (see below for more detail) and in finalising this report.
- 1.29 In the Appointment Letter, we were directed to report our findings from the Inspection by 30 June 2014 or such later date as might be agreed between us and the Secretary of State. This flexibility reflected the inherent uncertainties at the outset of the Inspection. Examples of these uncertainties included the volume and ease of access of information that might need to be examined; the extent, nature and implications of any issues that might emerge; and the level and timeliness of co-operation we would receive from the Authority.
- 1.30 By a letter dated 27 June 2014, PwC informed DCLG that it would not be in a position to report by 30 June. This letter formalised the position that had been apparent for some time prior to that date and which had been discussed between PwC and DCLG on a number of occasions. The primary reason given in the 27 June letter for the need for an extension beyond 30 June 2014 was the failure of the Authority to provide information on a timely basis, or at all, in relation to a number of important requests made by the Inspection team. Given the inherently iterative nature of the Inspection, the delay in provision of information had a significant impact on our overall progress in pursuing our enquiries in the various areas of focus, as well as our ability to plan for and arrange interviews, which were expected in turn to bring to light further information and documents that we would need to review and consider.
- 1.31 By a letter dated 30 June 2014 DCLG replied, agreeing to a postponement of the reporting deadline. It was proposed that further discussions should take place between PwC and DCLG in the first half of July 2014 to determine by when PwC could reasonably be expected to report under the circumstances. Those discussions led to the conclusion that we were unlikely to report before the middle of September 2014, but that the position would be kept under regular review.
- 1.32 For the sake of completeness, it should be noted that by a letter dated 4 July 2014 (received by PwC on 7 July 2014), the Mayor wrote to PwC objecting to the manner in which the Authority's level of co-operation and responsiveness to requests had been characterised in PwC's letter to DCLG of 27 June 2014 and asserting (in summary) that such characterisation was inaccurate and partial. PwC responded to the Mayor's letter by a further letter dated 17 July 2014. In the 17 July letter, PwC rejected the Mayor's assertions on the basis that there were no material errors of fact in our 27 June letter, and also took the opportunity to expand on some of the aspects of the Authority's stance that had contributed to delays in the provision of requested information and documentation.
- 1.33 On 25 September 2014 we received a further letter from the Mayor responding to our letter of 17 July 2014 to him. The Mayor reiterated his view that our 27 June 2014 letter did not present an accurate and impartial view of the Authority's co-operation with the Inspection. We remain of the view that our 27 June 2014 letter presented a materially accurate and fair view of the position. We will respond formally to the Mayor's latest letter shortly.

Approach to our work

General principles

- 1.34 As directed by the Secretary of State through the Appointment Letter, our primary focus throughout the Inspection has been the four areas outlined at paragraph 1.8. Our approach to each of these areas is set out in more detail in the relevant sections of this report, however, at a general level, our approach to each area has typically included the following common elements:
- a. Fact finding meetings with relevant officers (i.e. employees of the Authority) (“officers”) to gain an understanding of the operation of the area in question;
 - b. “Walk-throughs” of relevant processes to confirm our understanding;
 - c. Requests for information, data and documentation of relevance to the Authority’s financial systems³, relevant processes generally, or individual programmes or transactions, as appropriate;
 - d. Detailed analysis of individual transactions or categories of transactions targeted on a risk based approach; and
 - e. Formal interviews with selected officers, councillors and the Mayor.
- 1.35 The above steps are iterative and often overlapping, rather than strictly sequential. Furthermore, while each of the four areas has been the subject of a separate work stream within the Inspection, there are certain points of cross-over between them, which are brought out in the relevant sections of this report.

Selection of items for detailed examination

- 1.36 Within the four primary areas of focus, the selection of specific transactions or categories of transaction for detailed examination has been judgemental and risk-based rather than purely random or statistical. As intimated above, the Inspection has not occurred in a vacuum. It was instigated as a result of concerns brought to light by a variety of sources, some of which have been aired in the media. In addition, further sources, from both inside and outside the Authority, have approached us with information during the course of the Inspection. We have also had regard to matters escalated through the Authority’s own governance processes, including the deliberations of the Overview & Scrutiny Committee (the “O&S Committee”) and the work of the Authority’s Internal Audit function. Finally, we have made our own judgements about where risks might lie given the nature of the transactions in question.

³ The primary financial / Enterprise Resource Planning systems used by the Authority during the Period, being the JD Edwards Financial System and the Agresso Financial System.

Information sourced other than from the Authority

- 1.37 In the early stages of the Inspection, we established a dedicated and regularly monitored email address (lbth.inspectors@uk.pwc.com) through which anyone wishing to provide information in confidence could contact us. This email address was featured on the DCLG website. Over the course of the Inspection, we have received 256 communications into that email address from 38 individuals. In addition, other sources have approached us directly (i.e. other than through the dedicated email address referred to above), again with information of varying degrees of relevance to our remit. Not all of these communications were relevant to our terms of reference, but those that were have been factored as appropriate, into our approach.
- 1.38 In addition to the above, we have also had dialogue with a number of former officers of the Authority about their contemporaneous knowledge of matters relevant to the Inspection.
- 1.39 We have actively sought to engage with those sources who have come forward and who appeared to have information of potential relevance to our terms of reference and where we required further detail or clarification. Not all sources have been able to back up their concerns or allegations with tangible evidence and in those instances, where we have not been able through our Inspection to fill this evidential gap, we have been unable to give the information they have provided much, if any, weight.

Fact checking by the Authority and by interviewees

- 1.40 The extensive factual components of sections 3 to 7 inclusive of this report have been subject to a fact checking exercise between us and the Authority. The Authority was given a 10 working day period from 11 to 24 September 2014 to review factual extracts and provide comments and, where appropriate, any additional evidence which it wanted us to take into consideration. In parallel, individuals whom we have interviewed, and from whose interviews we were proposing to cite particular statements (with or without attribution), were given the opportunity over 10 working days to review and comment on those citations. We have received responses from the Authority and the majority of the relevant individuals, which at our discretion we have reflected as we deemed appropriate in this final version of the report.

The Authority's stance vis-à-vis the Inspection

- 1.41 On 4 April 2014, the date of our appointment, the Mayor's Office⁴ issued a statement welcoming the Inspection stating *"I welcome the Secretary of State's decision to send independent auditors to review our grants processes. This review will demonstrate that the Council acts in the best interests of all Tower Hamlets residents"*.

⁴ The Authority's department for supporting the Mayor and Cabinet Members in their Executive functions (the "Mayors Office").

- 1.42 On 1 July 2014 (some three months later) the Mayor wrote to the Secretary of State informing him that he had asked the Authority's Interim Monitoring Officer to initiate a judicial review of his decision to instigate the Inspection. We note that, in refusing the Authority's application for judicial review, the judge considered each of the grounds advanced by the Authority in its application as "*unmeritorious*" and the first ground as "*hopeless*". We understand that the Authority has now applied for an oral hearing and that this is due to be heard by a High Court judge on 14 November 2014.
- 1.43 It should be acknowledged that the Authority gave assurances to us that the initiation of judicial review proceedings would not affect the on-going cooperation of the Authority with the Inspection. Notwithstanding the issues outlined below and elsewhere concerning the level of cooperation of the Authority and its responsiveness to our requests for information and documentation, it is fair to say that the commencement of judicial review proceedings did not in itself have any significant effect on the Authority's dealings with the Inspection team.
- 1.44 At the outset of the Inspection the Authority established a Project Management Office ("PMO") to oversee and manage the flow of information and documentation to the Inspection team and to assist in the arrangement of meetings and, in due course, more formal interviews. This was in principle a helpful step and created a useful mechanism for liaison between the Inspection team and the Authority, very much in accordance with our desire for there to be a clear line of communication and a single point of contact for formal requests. The Inspection team has met regularly with the PMO team to discuss the status of information requests and provide further explanation and clarification where necessary. Initially, such meetings took place on a daily basis, reducing in frequency as the Inspection progressed and the need for such frequent meetings reduced. We recognise the PMO team and no doubt many other officers have put in considerable effort to collate and provide the requested material.
- 1.45 Over the course of the Inspection, we made a total of 290 requests via the PMO for information or documentation. Some of these were quite broad, in some cases involving the provision of large volumes of documents or data, while others were for targeted items mentioned to us in meetings or interviews or referred to in other documents already provided to us. Inspectors are required to give three days' notice of a request. In practice, we have not generally insisted on being provided with full responses to all requests within three days, recognising that some of our requests were substantial in scope or that the requested information or documentation might reasonably be expected to take longer to collate.
- 1.46 As discussed at paragraph 1.41 et seq, despite its public assertions of support for the Inspection, the Authority has at various stages raised a number of obstacles to our progress which have significantly delayed the provision of information or documentation and which in large part led to our request for an extension of the time table for the Inspection. These obstacles broadly related to the Authority's concerns about the legality and/or scope of the Inspection. Additionally, the Authority raised issues as to whether or not we were entitled access to documents that might be covered by legal professional privilege. Taking each of these in turn:

- a. On 12 May 2014, we were informed that the Interim Monitoring Officer required us to “certify” a significant number of requests. There is no legal basis upon which the Authority could require such certification, and we were not prepared to do so. Furthermore, the form of words the Authority sought to prescribe in the certification defined the scope of the Inspection too narrowly and were therefore not in a form which we could accept, even if we had been prepared to do so in principle. All requests for which the Authority was taking the position that it needed individual certification were put on hold. On 13 June 2014 (just over a month later) without further explanation, we were informed that certification was no longer an issue.
 - b. On 7 May 2014 we requested access to certain legal files. This request was followed up as outstanding on a number of occasions until 4 June 2014 (almost a month later), when the Authority informed us that we were required to sign up to a number of written conditions and undertakings in relation to the requested material. These included an acknowledgement up front that all the said material was privileged, which we pointed out we could not know without seeing it first and which was unlikely in any event, given the probability that even legal files would contain material that was not itself privileged by virtue of the circumstances in which it had been created. Without our acceding to all of the Authority’s demands in relation to this material, we started to gain access to it on 16 June 2014, some six weeks after first requesting it.
- 1.47 One example of a request of central importance to the Inspection which was subject to very significant delay was the provision of basic accounting data covering the majority of the Period. Until 1 April 2013, the Authority used a JD Edwards Financial System, migrating to an Agresso Financial System during that year. While in discussions with the Authority about the provision of data from the current Agresso Financial System (which also resulted in some delay) we requested data from the JD Edwards Financial System on 29 April 2014. We know from discussions with relevant Authority staff that the data was extracted and ready to be provided to us by 12 May 2014. However, the Authority challenged the legality of this request, and it has continued to reserve its position on this matter, even as it finally authorised the release of the data to us on 20 June 2014, almost two months after the initial request and just ten days before our original reporting date. We have referred to the data from the JD Edwards Financial System and the Agresso Financial System together in the remainder of this report as the “Financial Data”.

2. *Summary and conclusions*

- 2.1 This section sets out a summary of the scope of the Inspection, the key findings arising from it and the conclusions we have drawn from those findings. Because of its summarised nature, this section should be read and interpreted in conjunction with the rest of the report, which provides more detail and context.

Overview of the Inspection

- 2.2 PwC was appointed by the Secretary of State for Communities and Local Government on 4 April 2014 to carry out an Inspection of the London Borough of Tower Hamlets pursuant to section 10 of the Local Government Act 1999 (as amended). The Inspection has continued since that time up to the date of this report.
- 2.3 The Appointment Letter states that the appointment was prompted by “*allegations about governance failures, poor financial management and possible fraud at Tower Hamlets*” contained in certain documents passed to the Secretary of State and also featured in a BBC Panorama programme, which aired on 31 March 2014. The nature of the allegations led the Secretary of State to direct us to focus the Inspection on four key areas, covering the period from 25 October 2010 to the date of our appointment:
- a. The Authority’s payment of grants and connected decisions;
 - b. The transfer of property by the Authority to third parties;
 - c. Spending and the decisions of the Authority in relation to publicity; and
 - d. The Authority’s processes and practices for entering into contracts.
- 2.4 The purpose of the Inspection was to form a view as to whether the Authority is complying with its obligations under Part 1 of the 1999 Act in relation to its functions in respect of governance, particularly its functions under section 151 of the Local Government Act 1972. Broadly speaking, these governance obligations encompass the requirement to make arrangements to secure continuous improvement in the way in which the Authority’s functions are exercised, having regard to a combination of economy, efficiency and effectiveness, as well as consulting appropriately on how to do this. One such function, pursuant to section 151 of the 1972 Act, is to make arrangements for the proper administration of the Authority’s financial affairs.
- 2.5 Pursuant to section 13 of the 1999 Act, we are required to issue a report concerning the Inspection. In this report, we are required to mention any matter in respect of which we believe that the Authority is failing to comply with the requirements of Part 1 of the 1999 Act, as outlined above.

Overall conclusions

- 2.6 We set out below our key findings and conclusions in relation to each of the four key areas of focus. We also set out some general observations and conclusions on governance matters. A summary of the factual basis for our conclusions is set out in the remainder of this section. Sections 3 to 7 of this report contain a more detailed account of the work we have done and our factual findings.

The Authority's payment of grants and connected decisions

- 2.7 In relation to the matter of grant making, we conclude that the Authority is failing to comply with its best value duty. While the details of each grant programme examined vary, we have noted a number of common themes, including the following:
- a. A lack of transparency generally over the rationale for decisions as to grant awards. Where application processes exist, the evaluation of these applications has been to a significant extent overridden (for example for MSG 2012-2015 and for CFBSS awards), without any clear rationale. The purported application of "local knowledge" is unsupported by any adequate analysis and breaks the connection between such needs analysis as may have been factored into Officer recommendations and the awards ultimately made. In the case of the 954 Fund, there is effectively no open application process at all, with monies targeted at Member discretion;
 - b. The CGPB does not seem to us to have operated as an effective governance mechanism over grant awards. Rather than acting to ensure an objective, fair and transparent approach to grant funding and that all project applications were assessed using the agreed methodology in accordance with its terms of reference, certain of the CGPB Members have become so embroiled in the detail of Officer grant award recommendations to the CGPB that the CGPB itself has in effect approved its own recommendations, at the same time setting aside the very methodologies it was intended to safeguard;
 - c. Grants have been awarded to organisations which were ruled ineligible or which did not meet the required evaluation score when assessed by officers applying the agreed applications evaluation methodology. For example, this applies to approximately 11% of final awards under the MSG 2012-2015 awards;
 - d. There has been no independent review into grant awarding processes, despite an O&S Committee recommendation on 17 December 2012 that the award process relating to the MSG 2012-2015 programme should be referred to the District Auditor. From information provided by the Authority, we understand that an Internal Audit review of monitoring systems and processes around grant monies post-award is being carried out. This was said to be subject to internal "fact checking" in July of this year, and it has not been provided to us as of the date of this report;
 - e. Our testing indicates that there are gaps in the monitoring of performance of grant recipients. The impact of spreading grant monies more widely, with each organisation on average receiving less, makes it inherently more difficult (and relatively more costly) to monitor the use of grant monies. This in turn places more emphasis still on the need for good governance around initial grant awarding procedures; and

- f. Overall, we do not see an effective system in place to ascertain whether or not the allocation of grant monies awarded is such as to obtain best value.

The transfer of property by the Authority to third parties

- 2.8 In relation to three of the four property transactions we looked at in detail, namely Poplar Town Hall (“PTH”), Sutton Street Depot and Mellish Street, we conclude that in those instances, the Authority failed to comply with its best value duty.
- 2.9 With regard to PTH:
- a. The Authority accepted a late bid from the winning bidder after other bids had been opened, creating a risk of bid manipulation which could have been avoided or reduced by either not accepting the late bid or waiting for receipt of the late bid before opening other bids;
 - b. While the difference was small, the Authority did not in fact select the highest bidder, in spite of the external adviser’s recommendation to do so, which appeared also to be accepted by various officers internally. We understand that the contract race was devised to achieve a quick completion, however in the event, completion was delayed as the winning bidder needed to put financing in place;
 - c. The winning bidder also asked for and was granted changes to the contract it had signed, which further undermined the purpose and credibility of the contract race process; and
 - d. The winning bidder was, as a matter of fact, connected to a person with other business interests that had an association with the Mayor. Whether this was known within the Authority at the time is unclear. If it was known at the time then in our view it should have been disclosed.
- 2.10 With regard to Sutton Street Depot:
- a. Despite the property being marketed on an “as seen” basis, the Authority has ultimately exposed itself to significant costs in terms of rent foregone and potential (though not yet actual) cash outlay;
 - b. Again, the highest bid was not selected;
 - c. Again, a late bid from the winning bidder was accepted (21 days after the bids were opened), with no evidence that other bidders were asked to submit further bids, say by way of a best and final offer; and
 - d. The rationale given for opting for the winning bidder was that its bid appeared to offer various local community benefits, which were contained in a side letter separate from its main bid. It is not evident that other bidders were asked to provide such information.
- 2.11 With regard to Mellish Street:
- a. Ultimately there were two bidders whose bids were taken forward. One bidder was also a consortium member of the other bidder, meaning that the two bidders were not independent of

one another and there can be no assurance in those circumstances that the best rental offer was achieved; and

- b. The Authority's own assessment of the market rental value was significantly above the rent ultimately achieved. The difference was purportedly offset by various community services to be provided by the winning bidder, however the Authority had no formal model for valuing such services.

- 2.12 As illustrated by the case of Limehouse Library, the fact that the property department files have gaps in them is not conclusive proof of a lack of satisfactory documentation overall. As explained in section 5, we conducted a preliminary review of property department files in relation to 28 property disposals in total. While we found some gaps and anomalies in a number of other cases, these were not of the same magnitude as those identified in the cases of the four property transactions examined in more detail. Our experience with these more detailed reviews is that the Authority's property related documentation is spread over a number of departments.

Spending and the decisions of the Authority in relation to publicity

- 2.13 The value of publicity expenditure relative to the overall Authority budget is modest, however it is by definition a high profile area of expenditure and potentially controversial in terms of the demarcation between that which is genuinely for the benefit of the Authority and that which is of a party political nature pertaining to the Mayor or other elected Members as politicians. A significant proportion of the budget is allocated to the publication of "East End Life" (which we have not examined), or items which we considered to be relatively low risk from a demarcation perspective.
- 2.14 With regard to the use of media advisers in the Mayor's office, we found a lack of control around the monitoring of the demarcation of activities, based on a lack of clear documentation of those activities. Where in one case there was somewhat more information, some of this was at best ambiguous as to which side of the line the activities lay. In relation to this specific matter, we therefore conclude that there is a failure to comply with the best value duty.

- 2.15 With regard to the Authority's response to the BBC Panorama programme, we note that the Authority appears to have taken some steps to safeguard the correct demarcation. Specifically, the Authority included within its terms of reference with both external advisers an instruction to observe the appropriate demarcation. The Authority also sought to draw a distinction between those questions put forward by the BBC which should be responded to by the Authority's Communication Service and those which should be responded to by the Mayor's Office. In our view, the programme as broadcast appears to have largely focused on the conduct and motivations of the Mayor. This view is shared by its presenter, John Ware, and, according to a post on the Mayor's personal web site (lutfurrahman.com), the Mayor himself⁵. Notwithstanding this, we have no reason to doubt that the external advisers – having been given clear terms of reference – adhered to those in their work for the Authority.
- 2.16 The decision itself to engage external advisers in this instance at all can be questioned from a best value duty perspective. However, we accept that the safeguarding of the Authority's reputation is in principle a legitimate concern in terms of the maintenance of public confidence in its standards of governance and stewardship of public monies. While it seems to us that in this case the Authority devoted considerably more resource to seeking to counter the allegations made and/or challenge or undermine those making them than it did in seeking to determine whether or not there was any substance to the allegations, on balance we do not consider that the appointment of external advisers in itself was inappropriate.
- 2.17 With regard to the Ofcom finding, the clear implication is that Authority monies were spent inappropriately on what amounted to political advertising for the benefit of the Mayor, breaching the Code of Recommended Practice on Local Authority Publicity. This in itself constitutes a failure to comply with the best value duty in this instance.

The Authority's processes and practices for entering into contracts

- 2.18 Notwithstanding the issues summarised later in this section and in section 7, which point to a number of areas where the Authority could improve, 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.

⁵ A press release on lutfurrahman.com entitled "Serious questions raised about journalistic integrity at BBC as "leaked memo" disavowed by Tower Hamlets Council for Voluntary Services". The press release includes the statement "The programme focused exclusively on Tower Hamlets Mayor, Lutfur Rahman, claiming on very thin evidence that Rahman, the only Asian Directly Elected Mayor in the UK, is channeling (sic) money to supporters in the Bangladeshi and Somali communities."

Observations and conclusions on governance

- 2.19 The Inspection has, as directed, focused on certain specific areas of the Authority's activities. There are large areas of the Authority's activities and expenditures which we have not examined. However, those areas we have looked at – in particular grants, property disposals and publicity expenditures – are ones which have a disproportionately high profile in relation to the monetary values involved. All are open to the risk of abuse in various ways (including political interference) and relatively small transactions in these areas can have a potentially significant impact, positive or negative. Because of their profile, any public perception of misconduct (actual or potential) or poor governance in these areas will tend to have a particularly adverse impact on public confidence in an authority's integrity and stewardship of public monies.
- 2.20 To the extent that we have in the course of our Inspection identified failures to comply with the best value duty, these failures have occurred under the Authority's governance arrangements as they have existed throughout the Period and continue to exist at the present time. At the core of the Authority's system of governance are the statutory officers, specifically the Head of Paid Service, the section 151 Officer and the Monitoring Officer. All of these positions have been held by a variety of individuals through the course of the Period. Currently, all of these positions are held on an interim basis.
- 2.21 We do not ascribe any particular failure to any particular individual. However, the failures identified demonstrate that, as a whole, the existing governance arrangements have weaknesses which have resulted in these failures not being prevented.
- 2.22 Furthermore, in our view the Authority's response to the identification of issues in the above areas suggests a tendency towards denial or obfuscation rather than an inclination to investigate concerns raised. Examples of this include the following:
- a. With regard to the MSG 2012-2015 awards, at a meeting on 17 December 2012 the O&S Committee agreed to refer the process concerning the awarding of grants in relation to the MSG 2012-2015 programme for independent review by the District Auditor. However, no such referral was made and at the date of this report, we understand that no review of the grant awarding processes has been completed. We understand that an Internal Audit review of the use of grant monies post-award is being carried out. This was said to be subject to "fact checking" in July of this year, and has not been provided to us as at the date of this report.
 - b. In its comments on the factual extracts of our report, the Authority advised us that certain actions to address "remediable process failures" have been put in place. While this assertion itself recognises that some process failures existed, 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. Additionally, the wording used suggests that the Authority may be aware of other process failures that are not able to be remediated. In any event, neither this nor the Internal Audit report referred to above appear to address the significant issues associated with the original grant awards.

- c. In relation to the PTH transaction, a meeting of the Full Council on 22 January 2014 resolved to instruct the statutory officers to commission an independent review of the sale. However, a number of aspects of the resolution passed concerning this review were not addressed appropriately:
- i. The scope of work agreed by the Full Council concerning the need to pay particular attention to conflicts of interest was not fully reflected in the instructions given to Mazars (the firm appointed to conduct the review).
 - ii. The resolution agreed by the Full Council required the appointment of an independent valuer to conduct a fresh valuation of the property. However:
 - A valuation was not commissioned until 9 July 2014, some 5 months after the Full Council’s resolution had been passed; and
 - The firm appointed by the Authority to conduct the valuation was the same firm that had carried out the original valuation at the time of the sale of PTH.
- d. We also note that in its communications with advisers and others in relation to the BBC Panorama programme, the Authority tended to pronounce allegations to be baseless and/or politically motivated without having conducted what we would consider to be an adequate investigation into the issues raised.

2.23 In light of the above, in our view 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. This calls into question the adequacy of these governance arrangements and the extent to which they are sufficiently robust to enable the Authority to prevent or respond appropriately to other failures of a similar nature.

2.24 In the remainder of this section we set out a summary of the key facts that support our conclusions.

The Authority’s payment of grants and connected decisions

2.25 As described in section 4 of this report, the Authority has operated and continues to operate a number of grants programmes. During the Period, some £20.6 million in grants were awarded across 25 different grant streams. Some of these grants are funded, or part funded, out of monies from central government, however a significant proportion is funded out of the Authority’s own resources and therefore ultimately by local tax payers. We note that the Mayor has retained decision making power over all grants in excess of £1,000, and therefore over the majority of the Authority’s grant making activities, as the Authority’s Constitution and the law entitle him to do.

Approach to the examination of grants

2.26 For the reasons set out in section 4, we have focused in particular on five of these programmes, namely:

- a. Mainstream Grants (“MSG”) 2012-2015 (including Prevention Health and Wellbeing);
- b. The 954 Fund;
- c. The Community Faith Buildings Support Scheme;
- d. Grant making in Youth and Connexions Services; and
- e. Community Chest/Community Events.

2.27 Taken together, these programmes account for over 60% of grants awarded during the Period. The MSG 2012-2015 awards including Prevention Health and Wellbeing awards 2013-2015 accounted for approximately 42% of all grants awarded during the Period. We have also taken note of the fact that certain grant programmes in particular have been the subject of concerns raised both before and during the Inspection, both by individuals inside and outside the Authority and through the Authority’s own governance processes, notably Call ins by the O&S Committee.

MSG 2012-2015

2.28 The MSG programme existed prior to the Period. MSG awards are made every three years and are intended to fund the provision of services to the community by third sector organisations. The MSG 2012-2015 programme ultimately led to the award of some £8 million⁶ of grants to 327 organisations to cover a 27 month period, rather than the 30-month period initially envisaged, owing to a delay in the commencement of the programme. The previous round of MSGs was for the period 2009 to 2012 and resulted in the award of grants totalling some £13.1 million to cover that period. The award process for the previous MSG round fell outside the Period and, accordingly, we have not examined it in detail.

Establishment of the MSG 2012-2015 programme

2.29 A Cabinet paper of March 2012 set out the proposed objectives, workings and timetable of the programme. It also proposed the replacement of the existing Grants Panel (which was an open forum with decision making powers) with a Corporate Grants Programme Board (“CGPB”), which is only empowered to make recommendations for approval by the Mayor and whose proceedings are not open to the public. While the shift of decision making to the Mayor is consistent with the Mayor’s lawful retention of decision making over matters such as grants, it has led to a loss of transparency from this important element of governance over grant making.

⁶ Both this figure and the equivalent figure given for the MSG 2009-2012 programme exclude grants relating to Prevention, Health & Wellbeing.

Development of MSG grant proposals

- 2.30 Officers from the relevant directorates evaluated grant applications in accordance with agreed criteria and scored each application on a consistent basis. Based on these evaluations, which were subject to moderation through discussion amongst officers and a degree of adjustment to reflect their analysis of gaps in expected outputs or outcomes as defined in MSG grant Service Specification documents, officers put forward a set of award recommendations in early August 2012. This was later than originally envisaged, owing to the higher than expected number of grant applications, which considerably exceeded that experienced in the previous MSG round (2009-2012). The August 2012 officer recommendations were for awards to 255 organisations totalling some £8.2 million across eleven different funding streams (covering a 30-month period, equating to £7.4 million pro-rated for 27 months).
- 2.31 During August and September of 2012, an iterative process took place, whereby one Member in particular who sat on the CGPB intervened to make significant changes to the officer recommendations prior to their being presented to the CGPB. This has been explained to us as the application of “local knowledge” to achieve a wider spread of grant monies across more organisations, as well as seeking better to address key areas of need and promote a thriving third sector across the Borough (we have also been told that there were “errors” in the officer recommendations, albeit that the nature of these has not been specified). Taken together, these aims would in principle be unobjectionable in themselves, however the process by which they were pursued lacks transparency and is inadequately documented. Further, without a record of what local knowledge was applied it is not clear how this is linked to the assessment criteria for the MSG 2012-2015 awards.
- 2.32 There is evidence that officers were concerned as to what the basis for the proposed changes were and, indeed, evidence of a concern that such changes might reduce the effectiveness of the use of grants in terms of securing viable services from third sector organisations. Concerns of a similar nature were also raised by the chairman of the Tower Hamlets CVS, the sole external member of the CGPB. There was also an acknowledgement by the senior in-house legal adviser considering this issue that the changes were significant and that care would need to be taken to ensure that the process and its outcome could be justified.
- 2.33 The result of this process was a new set of recommendations which were significantly different from those made in August. Out of a total of 431 initial applications, the updated recommendation was different in 347 cases (81% by number). This included 15 applicants who had not met the minimum eligibility criteria even to undergo evaluation and scoring by officers. These applicants were recommended to receive aggregate awards of £243,500. A further 18 applicants were recommended who had, on the basis of officer evaluation, failed to reach the agreed minimum score to qualify to receive a grant and had therefore not been recommended by officers for an award. These applicants were recommended to receive, in total, awards of £407,700.

- 2.34 We note one example of Member input into the decision making of MSG 2012-2015 awards whereby Members recommended £40,000 of funding to an organisation despite identified manipulation in the documents provided to support the applications of the organisation and an Internal Audit report assigning nil assurance to the organisation's control environment in September 2012. This organisation was not scored by officers as it failed to meet eligibility criteria. In addition to this we note that three other applications to the same funding stream, were turned down for funding with the following comment "*this was a reasonably good scoring project, however there was very high demand for funds from higher rated proposals which meant that this project was not able to be supported*". Given the scarce resources available and the apparently good quality capacity already in place it is not clear how seeking to build capacity within this organisation was the best use of resources within this funding stream.
- 2.35 The new recommendations were put forward at a Cabinet meeting (open to the public) on 3 October 2012. At this meeting, the Mayor indicated that he was minded to accept the recommendations, however he was announcing a seven-day review period, during which grant applicants could ask to have their proposed award (or lack of award) reconsidered. In the event, some 177 applicants asked for their award to be reviewed. Of these, 76 were awarded an increased grant. In addition, a further 32 applicants received increases although we have not seen evidence that they had in fact asked for a review of their award.

Degree of involvement of the Mayor

- 2.36 In interview, the Mayor told us that he had not been involved in the detail of awards, although he had kept abreast of things generally through occasional high level discussions with one Member in particular. This is somewhat at odds with an email dated 8 August 2012, shortly after the initial circulation of the original officer recommendations, which stated that "*the Mayor has requested a vastly expanded Appendix 1*". We also note that a press statement dated 1 April 2014 put out by the Mayor's office in response to the BBC Panorama programme included an assertion to the effect that the Mayor, acting within his powers, had intervened in 32 specific cases (details of some of which were also given). We consider it likely that the 32 cases referred to in the press statement concern largely the same applicants as the 32 applicants, included in the final award, who received an increase without requesting that their awards be reviewed. In response to our request for clarification of whether or not the Mayor intervened in the manner suggested in the press statement, neither the Mayor's office nor the Authority has been able to shed any further light on the matter.

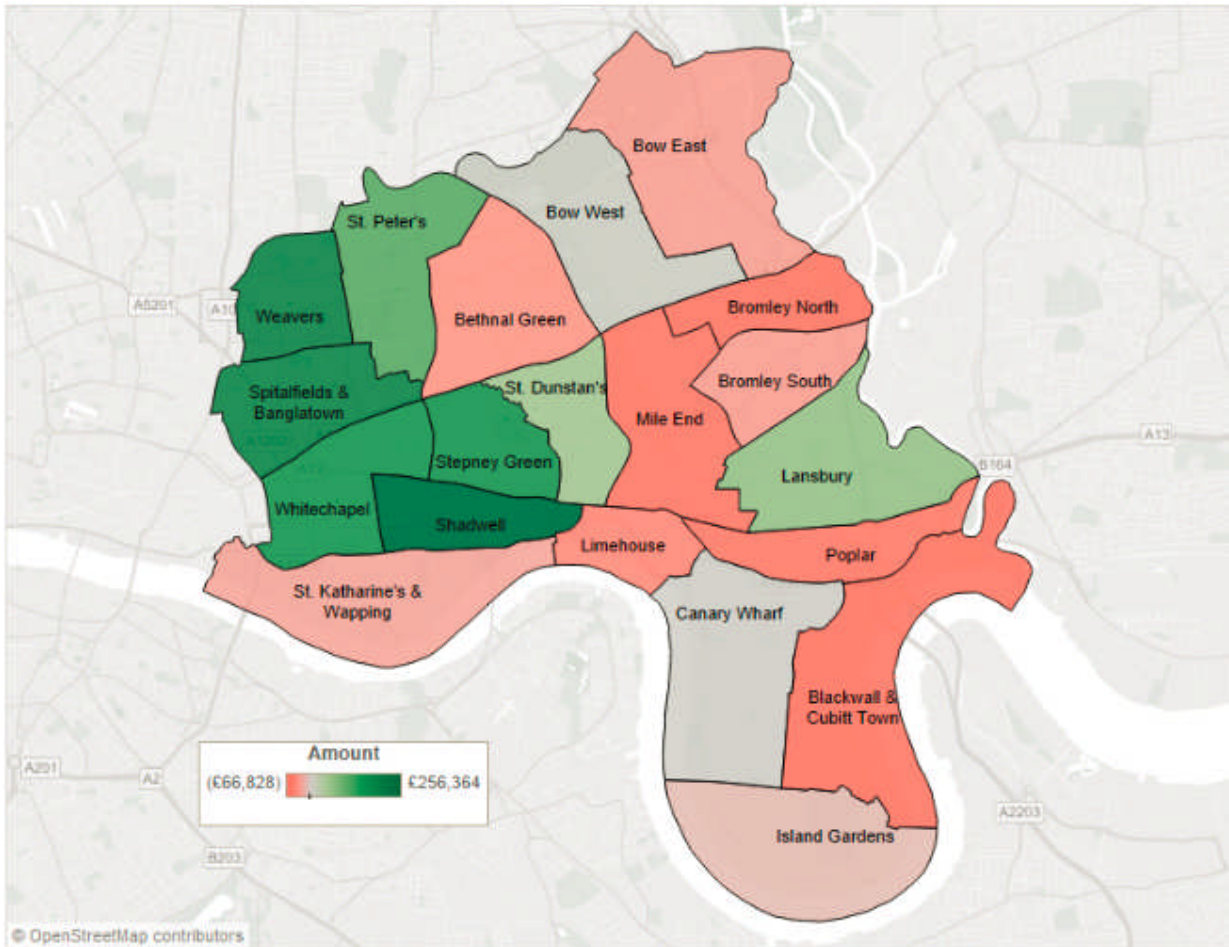
Final decision and Call in

- 2.37 The final MSG awards were approved by the Mayor by way of a Mayoral Executive Decision on 30 November 2012. The final version of the award recommendations involved the granting of more money in total than the previous August and October recommendations, requiring an estimated extra £714,000 call on general reserves to cover the shortfall. This Mayoral Executive Decision was subject to a Call in by the O&S Committee, which resolved at an open meeting on 17 December 2012 to ask the Mayor to reconsider the decision. On 7 January 2013, the Mayor responded to the O&S Committee resolution, reconfirming his original Executive Decision of 30 November 2012.

Analysis of distribution of MSG grant awards

- 2.38 In section 4 of this report, we include at paragraph 4.69 et seq certain graphical analyses showing the distribution of grant awards according to applicant post code. These are plotted for each of the key iterations of the proposed awards from the original applications, the officer recommendations, through to the final awards. In each case, the awards are superimposed on a map of the Borough, showing relative levels of deprivation by ward based upon DCLG data. We also include two graphics which show the distribution of grant awards by ward and the aggregate net change in proposed awards between the officer recommendations and the final awards. While such analyses have some limitations, as set out in section 4, on their face the graphics indicate:
- a. A significant concentration of awards to organisations based in the west of the Borough. We note that this pattern of concentration is also true of the original applications;
 - b. That this westwards distribution was accentuated by the impact of the Member proposals, which significantly changed the somewhat more evenly spread officer recommendations;
 - c. That there was uneven coverage of areas which appear to suffer from broadly similar levels of deprivation; and
 - d. By the pattern of both the initial applications and the final awards, that there was either an uneven level of awareness of the availability of grant monies or that there is in fact an uneven level of third sector activity across the Borough. Either way, it is unclear how the ultimate distribution was intended to promote a “thriving third sector” across the Borough as a whole (a key objective of the CGPB) or the similar outcome sought in the various MSG grant specifications, which generally expressed or implied as an objective a good geographical spread of service provision.
- 2.39 By way of illustration, we replicate below Figure 2 from section 4, which shows the impact of changes to the officer recommendations in terms of aggregate net change by ward.

Changes to MSG 2012-2015 between August 2012 officer recommendations and November 2012 final awards (based on 2014 ward boundaries)



Monitoring of use of grant monies

- 2.40 One of the inevitable results of awarding on average smaller grants to a larger number of organisations has been to increase the level of effort on the part of the Authority involved in seeking to monitor effectively the use of grant monies paid out. Not only is there an increase in the absolute number of organisations to be monitored but, in addition, the smaller grants made to some organisations mean that the effort and cost of monitoring might be seen as disproportionate to the amount of money at stake in individual cases, resulting in a lower level of monitoring of those organisations. The Authority's Grants Officers Manual stated that the minimum monitoring requirement for organisations with a good track record applying for a small grant, less than £5,000 per annum, is desktop monitoring. Officers told us that it was difficult to visit every recipient organisation at least once a year.

- 2.41 We tested a sample of MSG grant awards across all 11 funding streams to establish the level of post award monitoring to which the recipients had been subjected by the Authority and what, if any, action was taken when issues were identified. In nine out of 19 cases sampled, we found evidence of issues such as lack of evidence of grant-funded activity, failure to provide defined output measures and/or provision of inconsistent information and/or a failure to meet grant conditions. In some of these cases, the organisation in question had failed to meet the minimum quality standard when assessed by officers. This could be seen to vindicate the original officer assessment. These sample results raise questions about the extent and effectiveness of the monitoring regime over MSGs.

The 954 Fund

- 2.42 The 954 Fund is so called because it originally comprised £954,000 of monies from more than one source within the Authority's budget that were deemed during the course of 2012 to be surplus to requirements.
- 2.43 Notwithstanding the suggestion in various contemporaneous documents that the 954 Fund was intended to operate as an extension of the MSG programme and subject to similar processes, in practice no open process for the solicitation, submission or evaluation of applications from third parties has been established. This is inconsistent with one of the Authority commitments under the Tower Hamlets Compact which was to give fair access to funding opportunities. All proposed uses of 954 Fund monies have been derived from elected Members, in particular the Mayor and Councillor Asad.
- 2.44 All of the awards made from the 954 Fund during the Period were made between April and October 2013 by way of a number of Mayoral Executive Decisions. These can be summarised as set out in the table below:

Date of Mayoral Decision	Number of organisations that received award	Project	Award (£)
26 April 2013	1	Boishakhi Mela	170,000
30 April 2013	1	Community Centre	64,000
3 June 2013	10	Lunch clubs	152,000
16 July 2013	2	Projects formerly funded by Home Office Community Action against Crime Innovation Fund	100,000
1 October 2013	1	Youth provision	36,000
Total			522,000

Funding of the Boishakhi Mela

- 2.45 The Boishakhi Mela is a major annual public event in the Borough. It is in origin a celebration of the Bengali New Year, but is attended by people from all sections of the community (the “Mela”). The organising Trust was granted a total of £170,000 in April 2013 out of the 954 Fund to help finance the event. The Trust shares an address and some common directors with the organisation that previously ran the Mela until the Authority took the organisation of the event in house on the grounds that the previous organisation responsible lacked “*the expertise or resources to deliver on a number of key aspects of the event.*” We note that the Trust had been the subject of certain concerns raised by an Internal Audit in 2012 relating to an absence of established financial controls and the existence of transactions with parties related to directors of the Trust. This independent audit also found that the Trust had outsourced the management of a trade fair linked to the Mela to Company A, by way of a non-standard procurement process. Company A is associated with the Mayor and with the sale of Poplar Town Hall (see paragraph 5.114 et seq. below for more detail). The CGPB resolved in April 2013 to pay 80% of the grant monies to the Trust based on the fact they had produced supporting documentation and implemented the auditors’ recommendations. A later Internal Audit (reported in June 2013) found that there was some supporting documentation for payments in most cases.

Lunch clubs

- 2.46 The original proposal by officers was that £152,000 of the 954 Fund should be allocated to extended provision of lunch clubs, focusing on those that had applied through the MSG programme but had received no money or less money than they had applied for. Later proposals by the Service Head for Commissioning and Strategy⁷ referred to the need to address a shortfall in lunch club provision in certain wards and in certain sections of the population, such as the LGBT community and the Jewish, Sikh and Hindu communities. Notwithstanding these proposals, the CGPB chose at its 23 April 2013 meeting to focus on multi-generational families, acknowledging that it was not known at that stage which organisations would provide the extra lunch club services. In the event, by January 2014 it was reported that only £99,212 of the £152,000 allocated had actually been awarded owing to the fact that it had taken longer than anticipated for lunch clubs to be established. Of the ten recipient organisations, all had Bangladeshi and/or Somali target groups. None of these organisations had applied for grants under the MSG 2012-2015 programme.

Other grants awarded out of the 954 Fund

- 2.47 Of the other grants made out of the 954 Fund, £36,000 granted in October 2014 appears to be partially duplicative of payments made to the same recipient organisation for some of the same services under a separate contract.

⁷ Currently the Service Head for Commissioning and Health, Education, Social Care & Wellbeing.

Community Faith Buildings Support Scheme (“CFBSS”)

- 2.48 The Community Faith Buildings Support Scheme (“CFBSS”) was established by the Mayor in Cabinet in October 2012 with the aim of helping faith organisations fund the maintenance and enhancement of existing buildings within which faith-based activities take place. The Cabinet report relating to the formal decision to proceed with the CFBSS is clear that these grants were not intended to fund the construction of new buildings for faith organisations, nor the activities of faith organisations as such. The size of the fund was initially set at £2 million. This was later – without any clear documented explanation – increased to £3 million. As at the end of the Period, only a first round of grants totalling £600,000 had been awarded to 42 faith organisations, of which not, all but a substantial proportion, has been paid out. We understand that a second round of awards has been stalled as a result of an objection lodged by an external interested party.

Assessment of applications for grants

- 2.49 As for the MSG programme, there was a formal process for the submission and evaluation of grants. Officers reviewed all applications received and evaluated each application on the basis of pre-determined criteria. In this case, the evaluation resulted in the designation of applications as eligible (with a red-amber-green rating depending on the officers’ assessment of the quality of the application) or ineligible. We understand that officers did not make specific recommendations as to how much a given applicant should receive at this stage.
- 2.50 The outcome of the officer evaluation process was revised prior to the CGPB meeting on 11 April 2013 as a result of comments from Members. The final recommendations of the CGPB had the effect of awarding monies to all bar one applicants, regardless of whether they had been judged to be eligible or not by officers. This resulted in £145,000 out of the total £600,000 being awarded to ten organisations whose applications had originally been ruled ineligible.

Observations on CFBSS grant awards

- 2.51 As for the MSG programme, the ultimate awards diverged significantly from the original officer recommendations, which were based on a structured evaluation process broadly along “Green Book” principles. There is no evidence of a proper consideration of whether the smaller amounts granted to a significantly larger number of faith organisations were such as to enable those organisations to achieve meaningful outcomes within the purpose of the CFBSS programme, or therefore for the Authority to achieve value for money. As well as the awarding of grants to organisations or for applications assessed to be ineligible, there is no discernible correlation between the value of the grant awarded and the officers’ red-amber-green evaluations, or indeed the amount of money applied for by a given applicant.
- 2.52 We have identified CFBSS awards to five local organisations that either received the transfer of Authority buildings or received Authority funding to build their own premises. In one case the local organisation received £10,000 for professional fees in relation to a proposed new building. However, the Authority had already contributed £170,000 from reserves to fund the building of that community centre.

- 2.53 It had originally been proposed in the 3 October 2012 Cabinet report that grant monies would only be paid to applicants in arrears on the basis of credible documentation of eligible expenditure. In practice, however, many organisations received advance payment, which the Authority rationalised as being necessary to help such organisations with their cash flows.

Youth and Connexions Services (“YCS”)

- 2.54 During the Period the Authority made grants totalling some £2.5 million under the Youth and Connexions Services (“YCS”) programme as well as additional grants for YCS activities out of the MSG 2012-2015 programme. The YCS programme covers a range of schemes designed to promote activities for young people, notably during school holidays. We understand that a significant proportion of YCS grants are funded by money from central government under the Early Intervention Grant. For example, in 2013/14, the budget for YCS funding was £1,331,959, of which £1,233,959 (or around 93%) was to be funded by central government.
- 2.55 YCS activities are funded in either of two ways:
- a. Grants, subject to a defined application, evaluation and approval procedure; or
 - b. Service Level Agreements (“SLAs”), which are separate from grant awards but may be financed from grant budgets. SLAs are a form of “spot purchase” and fall under the Authority’s procurement procedures.
- 2.56 We have examined samples of both YCS grants and SLAs and found the following:
- a. Seven of the 10 YCS grant award files tested did not have any documentation of application assessment, recommendation and approval, with gaps in this documentation for the remaining three of 10 files. We found that four of the 10 grant files provided monitoring reports but no supporting evidence of grant-funded activity and spend. We also found gaps in payment documentation for six of the 10 grant files selected for testing.
 - b. Of the 11 files selected for testing, 10 did not have any documentation supporting the procurement and assessment processes. Officers stated that they do not hold any procurement documents for any YCS spot purchases. In addition, we identified the following issues:
 - i. The SLA was missing in four of the 11 files;
 - ii. There were gaps in monitoring documentation, with six of the 11 files lacking supporting evidence, including two files where the same group provided the same duplicated monitoring report for projects in different years; and
 - iii. Gaps were identified in payment approval documentation for six of the 11 files, including four of 11 files having unsigned or undated payment approval documentation.

- 2.57 We note that evidence of possible fraudulent payments has been identified and reported by the Authority to the police in connection with nine third sector organisations (not included in our sample) that received monies under the YCS programme. By agreement with the police, we have not examined these matters in detail. We further note that the Authority's Internal Audit carried out a review of YCS funding awards which concluded that there was a lack of segregation of duties and that "*no discernible procurement process appears to have been followed*".

Community Chest/Community Events

- 2.58 The Community Chest fund was established in October 2012 to offer grants of up to £10,000 to help develop the capacity of local voluntary organisations. A Community Events fund, offering grants of up to £5,000 was also established in October 2012. Officers described the assessment of Community Chest and Community Events applications as being light-touch given the relatively small awards, with all applicants meeting the minimum criteria being awarded a grant.
- 2.59 From award data provided to us, we were able to identify significant variation in distribution between wards, ranging from three awards to groups in Millwall to 34 to groups in Spitalfields and Banglatown. We note that the variation in award distribution between wards is largely accounted for by variation in the number of applications submitted by organisations in each of the wards.
- 2.60 The Community Chest and Community Events funds were subject to Call in by the O&S Committee three times: in July 2013, November 2013 and January 2014. The reasons for these included concerns about a lack of transparency in officer recommendations, geographical imbalance in award distribution and unjustified transfer of residual Community Chest funds to the Community Events fund.
- 2.61 There appear to be no formal mechanisms for monitoring the extent to which the same recipients receive more than one grant out of the Community Chest or Community Events funds, or the extent to which recipients of monies out of either of these funds also receive monies from other grant programmes.

The transfer of property by the Authority to third parties

- 2.62 Authority records indicate that there were some 185 property disposal transactions during the Period. These property disposals comprised:
- a. 41 disposals with capital proceeds totalling £30,593,159; and
 - b. 144 commercial, residential and third sector leases (i.e. leases to not-for-profit organisations) totalling £1,306,619 in annual rent; 23 of these leases are at a peppercorn or nil rent.

- 2.63 Given the heterogeneous nature of the overall population of property disposals, we have not attempted to undertake statistically based sampling. Instead, on a judgemental basis we selected 28 property disposals for file review. Whilst not statistically representative, the selection was intended nonetheless to include examples of the principal categories of property disposal. Each case selected was subject to a file review following a structured process to assess whether there were any significant gaps or anomalies in the file which might call for more in-depth investigation.
- 2.64 For the reasons set out in section 5 of this report, our review of property disposals led us to focus on the disposal of four properties in particular, in relation to which certain issues are highlighted below.

Poplar Town Hall

- 2.65 The disposal of PTH by way of the sale of a 199 year lease in 2011 has been the subject of considerable controversy and led to the commissioning of an investigation by Mazars, who provide internal audit services to the Authority, pursuant to a Full Council resolution dated 22 January 2014. Amongst the concerns raised about this transaction were the allegations that the property had been sold to a company linked to an associate of the Mayor (such connection not having been properly disclosed) and that the Authority had lost out financially by subsequently granting permission for a change of use not envisaged at the time of the sale which would materially enhance the value of the property.
- 2.66 PTH had previously been marketed and bids received in 2007. We have not examined this earlier attempt to sell the property in detail, but in any event the sale did not proceed. In 2008, it was resolved that PTH was surplus to requirements and should be put up for sale again, however the transaction did not proceed until 2011, no doubt in part as a result of the impact of the financial crisis on the property market during the intervening period.

Marketing and bid process

- 2.67 In 2011 PTH was marketed with the assistance and advice of BNP Paribas, who also provided indicative valuations on the basis of various uses, including its existing use (D1: Non-residential institutions). A total of ten bids were made in the first instance. After elimination of the lowest bids, the top six bidders were invited to submit a best and final offer (“BAFO”) by close of business, Friday 8 July 2011. Bids were formally opened on the following Monday. The bid of Dreamstar Pictures had not been received by the time of the formal opening, but was accepted on the basis that it was understood already to be in the post. The original of that bid is stamped as having been received on that Monday. Regrettably, the Authority has not retained the envelope in which this later bid was contained to document that it was indeed received by post and when it had been posted. In any event, the acceptance of a late bid in whatever form created the possibility of manipulation, which could have been avoided or significantly reduced, either by excluding the late bid – which the Authority would have been within its rights to do – or by delaying the opening of all bids until the late bid was received during the course of the same day.

The contract race

- 2.68 Bids from PTH Bidder 8 and Dreamstar Pictures were the two highest bids, the former being £1,000 higher than the latter. On that basis, the advice from BNP Paribas and the general opinion held internally at that time was that PTH Bidder 8's bid should be accepted. For reasons that are not wholly clear, this position changed to a decision to run a "contract race" between the two highest bidders, whereby the first bidder to be in a position to exchange contracts would win the race and secure the property.
- 2.69 There is some indication that this decision might have been taken or influenced by the Mayor or others close to him. An internal memo refers to the decision coming "*from the very top*". There is also reference in a meeting minute of the Capital and Asset Management Board dated 25 August 2011, which suggests that there was expected to be progress on the PTH transaction "*after the Corporate Director of D&R has met with the Mayor today*". Both the Mayor and the Corporate Director for D&R have stated that they have no recollection that any such conversation took place and the Mayor has stated more broadly that he had no involvement in the transaction.
- 2.70 In the event, Dreamstar Ltd won the contract race, being the first to deliver a signed contract. PTH Bidder 8 was informed through its solicitor on the same day. The reaction of PTH Bidder 8 is unknown and there appears to have been no further contact between PTH Bidder 8 and the Authority in respect of the PTH transaction after that point. In participating in and winning the contract race, Dreamstar Ltd committed to completing within approximately four weeks of exchange. In fact, Dreamstar Ltd was unable to achieve this, in part because – according to a contemporaneous email from BNP Paribas – it needed to put in place the financing of the balance of the monies due to purchase the lease. The Authority served a Notice to Complete on 31 October 2011 after Dreamstar Ltd failed to complete the transaction within the originally agreed timescale. Furthermore, Dreamstar Ltd subsequently asked and received Authority consent for changes to the contract it had signed to allow it to sub-let all or part of the property. All of these factors call into question the fairness of the contract race. There is no evidence that any consideration was given to re-opening the race to PTH Bidder 8 or more widely in light of Dreamstar Ltd's inability to meet its commitments as winner of the race.
- 2.71 Throughout the initial bidding process, the bid that is referred to as being from "Dreamstar" in the contemporaneous records was communicated to the Authority on letter-headed paper with a footnote that referenced Dreamstar Pictures. We further note that the bank statement that was provided as part of the financial due diligence procedures undertaken by BNP Paribas carried the name of Dreamstar Pictures.
- 2.72 The legal entity that completed the purchase of PTH was Dreamstar Ltd, which was incorporated on 14 September 2011, presumably for the purposes of becoming the legal owner of the leasehold. Dreamstar Ltd and Dreamstar Pictures are connected at the date of the disposal by one common shareholder and director, Mr Y.

Planning application for change of use

- 2.73 25 days after the transaction was completed Dreamstar Ltd applied to the Authority for permission to change the use of the property to enable it to develop the property as a hotel. Given that PTH has listed status, this also required listed buildings permission. Planning was granted apparently at the discretion of the planning officer who dealt with the application, which was subsequently signed off by the relevant team leader. The matter was not referred to the Authority's Development Planning Committee, which would normally be required for a listed property owned by the Authority. We have been informed that internal legal advice was obtained to the effect that, because the property had been sold on a 199 year lease, it was in substance no longer owned by the Authority (notwithstanding that the Authority still owned the freehold), such that a referral to the Planning Committee was not required. The Authority has been unable to provide any written evidence of this legal advice. We note that, while the Authority has given consent to the change of use in its capacity as planning authority, discussions continue as at the date of this report with Dreamstar Ltd as to whether the Authority will agree to the change of use as the freeholder of the property.

Connections between the purchaser, the Authority and the Mayor

- 2.74 Mr X was until 20 August 2010 a director of a company related to Dreamstar Pictures, which was initially involved in the bid process. Mr X was also a director of Dreamstar Ltd in the period from August 2013 to October 2013. Mr X is recorded in BNP Paribas' log as having visited PTH for a viewing on 8 June 2011, representing "Company A". We note that Company A was one of the bidders for the same property when it was previously put up for sale in 2007. We also note that Company A hosted the Mayor's electoral website at the 2010 mayoral elections. The Mayor acknowledged in interview that he knew Mr X and that Mr X had provided assistance to his 2010 election campaign. The Mayor stated that he had no knowledge of Dreamstar Ltd or of Mr X's connection to it at the time of the sale of the property. The LBTH Solicitor suggested in interview that it was common knowledge that Dreamstar Ltd had a connection with the Mayor. However, he subsequently clarified that he was unable to corroborate this or recall who had such knowledge. We note that a contemporaneous file note written by the same individual refers to the need to be "mindful of connections". Others we have spoken to – including the Mayor himself – have denied that there was any knowledge of a connection at the time of the transaction.
- 2.75 On 22 January 2014, a Full Council resolution was passed calling for an investigation into the PTH transaction. It also called for an independent valuation of the property as at the date of sale and as at 2014 on the basis of its use as a hotel. The resolution included a stipulation that the investigation should encompass any undisclosed conflicts of interest. In fact, the terms of reference given to Mazars refer to a more narrowly defined examination of "*arrangements for the disclosure and control of conflicts of interest from bidders, those involved in the sale and the change of use process.*" Accordingly, the report Mazars produced – which was provided to us on 4 July 2014 and is dated "July 2014" – does not mention any of the information relating to Mr X, as set out above. Owing to what the Authority has described as an oversight, a fresh valuation report was not commissioned until 9 July 2014. BNP Paribas were engaged to carry out the valuation. Without calling into question the integrity or

objectivity of BNP Paribas in any way, there is a legitimate question for the Authority as to whether BNP Paribas could really be considered to be independent in these circumstances.

- 2.76 We have used PwC property valuation specialists to carry out an indicative valuation as at the date of the transaction assuming various uses, including that of a hotel. Our specialists have also reviewed the recent BNP Paribas valuation. The value of the property based on use as a hotel is subject to a number of uncertainties given the unusual nature of the property, as well as the differing assumptions that might be made about the projected costs of redeveloping the property for such use, which would need to be taken into account in arriving at a market value. Based on our own analysis, we do not consider that there is conclusive evidence that the change of use to a hotel would have led to a material enhancement of the value of the property from the Authority's point of view at the time of the sale.

Sutton Street Depot

- 2.77 Sutton Street Depot was declared as surplus to the Authority's requirements at a Cabinet meeting on 3 August 2011. The property continued to be used for various purposes until January 2012, when it was first marketed for sale. In the event a full sale did not go ahead and the Authority changed its strategy for the property, deciding instead to opt for a short lease arrangement, while it considered its longer term options. Accordingly, a second marketing campaign was launched in May 2012, managed by an external firm of chartered surveyors, Strettons Ltd.

Bidding process

- 2.78 In all, six bids were received for a five-year lease of the property. The bids were opened on 10 July 2012. Bidders proposed various uses for the property and there were a range of offers in terms of the rent to be paid. Strettons Ltd's recommendation was that the second highest bidder, SSD Bidder D, should be granted the lease, on the basis that the bid from the highest bidder, SSD Bidder F, was non-compliant in certain respects. By contrast, SSD Bidder D's bid showed a credible financial track record, good covenant strength and did not require planning permission for change of use.
- 2.79 For reasons and under circumstances that remain unexplained, on 31 July 2012 – some 21 days after the bids had been opened, SSD Bidder A submitted a revised bid. This was still not the highest compliant bid, however it represented an 11% increase on SSD Bidder A's previous bid. This, in conjunction with the contents of a supplementary letter from SSD Bidder A dated 5 July 2012 (whose original bid had been dated 28 June 2012) which set out various information about SSD Bidder A's intention to use local suppliers and offer jobs to local people, was used as the basis for a decision by the AMCSB to recommend SSD Bidder A as the preferred bidder to Cabinet. We note that there was no explicit stipulation in the documentation of bid requirements that bidders should offer commitments in relation to matters such as local employment and the use of local suppliers.

Subsequent negotiations

- 2.80 Having been informed that it was the preferred bidder, SSD Bidder A commenced negotiations with the Authority regarding the terms of the lease, including discussion of a rent-free period and the right to sub-let. The decision as to the duration of this rent-free period was elevated to the Mayor. Contrary to the preferred options of officers, the Mayor decided (via an Mayoral Executive Decision) on 28 March 2013 to grant SSD Bidder A a full one-year rent free period, along with a capped £50,000 cash sum to contribute to “*essential H&S works to allow the buildings to be occupied*”. In terms of potential cash outlay and rent foregone, the total benefits that might be provided by the Authority to SSD Bidder A as a result of this arrangement amounted to 143% of the agreed annual rent. We note that the property had originally been marketed on an “as seen” basis and there are no indications that any of the other bidders would have also sought a rent free period.
- 2.81 The Mayor’s decision was subject to Call in and considered by the O&S Committee on 7 May 2013, amid concerns that the decision could result in legal challenge on grounds that SSD Bidder A had received an unfair advantage. The Mayor did not attend this meeting, however Councillor Choudhury did so, and sought to address the objections raised. He defended the arrangement on grounds that “*major works*” were needed at “*great cost*”. This included the fact that “*asbestos had now been identified which required removal*”. We note that the Mayor in interview with us also recalled that asbestos had been an issue in respect of the property and that this was part of his thinking in granting a full one-year rent free period.
- 2.82 Two asbestos surveys were carried out on the property during the Period. The first, in November 2011, did not identify any asbestos, however the survey report noted that the gate house building had been inaccessible to the surveyor and therefore Health & Safety regulations required that it should be assumed that asbestos materials might be present in areas not accessed until proven otherwise. The second survey was carried out in April 2013 to cover the previously inaccessible gate house and was the subject of a report issued on 13 May 2013. This survey also found no evidence of asbestos. The topic of asbestos is not mentioned in the documentation of the Mayoral Executive Decision. It is unclear on what basis Councillor Choudhury pronounced at the time of the O&S Committee meeting that asbestos had been found at the property, when clearly there was no evidence of this at that time.
- 2.83 The lease documentation records costs budgeted in relation to Health & Safety work of £105,000 and a further £220,000 for general refurbishment.

111-113 Mellish Street

- 2.84 The Mellish Street property consists of a plot of land on which certain temporary buildings are situated. The previous tenant occupied the property until February 2013, after which point the lease ended and the property was vacated.

Approaches by an interested party

- 2.85 In May 2012, a local community organisation (later a consortium member of “MS Bidder B” referred to below) wrote an email to the Mayor, referring back to a meeting with the Mayor in March 2011 and an undertaking given at that time by the Mayor to find premises for the organisation. The email specifically referred to the Mellish Street property as one that would suit the needs of the organisation. The email was followed up in August 2012 by a petition sent to the Mayor to demonstrate local support for the use by the organisation of the Mellish Street property. The Authority continued to consider its options and in October 2012 a report commissioned from Drivers Jonas Deloitte valued the site in the range from £1.21 million to £1.37 million if sold for residential development and depending on the type of properties to be built on it.
- 2.86 Whilst future residential use was considered a decision was taken in the short term to grant a short lease on the site with the existing temporary buildings. In February 2013, an internal Authority valuation estimated the annual rental value of the site in its current state and based on current use (D1 Non-residential institutions) at £55,000.

Marketing and bids

- 2.87 The site was marketed for a period of around two weeks with a deadline for bids of 15 March 2013. Third sector organisations were specifically targeted for a three-year lease period. Three bidders submitted bids by the deadline. All three bids were evaluated and found to have failed to meet the requirements of Stage 1 of the Third Sector Allocation Process for a variety of reasons. We also note that none of the bids included a quantification of the rent offered, nor did the marketing material contain any reference to the amount of rent required to be paid.
- 2.88 Subsequently, a decision was taken to proceed with two of the three bidders on the basis that the shortcomings in their bids were remediable. The third of the three bidders was eliminated on the basis that it had no board members with residential addresses in the Borough. In fact, the initial bid evaluation had found that four members of the managing body of the third bidder had addresses with Tower Hamlets postcodes, however a cross check with the electoral roll had found no matches and, apparently without further efforts to clarify this matter, the third bidder’s bid was ruled ineligible and excluded from further consideration.

Connections between the two competing bidders

- 2.89 The two remaining bidders, Mellish Street Bidder A (“MS Bidder A”) and Mellish Street Bidder B (“MS Bidder B”), were subjected to a “stage 2” assessment, resulting in a scoring of their respective bids. The aggregate score given to MS Bidder B (which was a consortium of five third sector organisations including the entity that had submitted a petition for use of the property in August 2012) was higher than that given to MS Bidder A. The difference between the two aggregate scores related to the higher individual scores accorded to MS Bidder B in the two areas of “Sound management arrangements” and “Management structure and accountability”. The documentation indicates that MS Bidder B’s higher score rested on the quality of management capability demonstrated by Consortium Member 5. Consortium Member 5 and MS Bidder A are in fact one and the same. Notwithstanding this, the same positive management capability was not attributed in the Authority’s assessment to MS Bidder A’s own separate bid. Nor is there any documented discussion of the fact that, if MS Bidder A was a consortium member of MS Bidder B, then the bids of MS Bidder A and MS Bidder B could not be considered to be independent of one another, nor was it possible in these circumstances to safeguard against the possibility of information sharing about bids, including the amount of rent to be offered, between MS Bidder A and MS Bidder B.
- 2.90 A three-year lease was signed by MS Bidder B on 26 July 2013. The rent payable per annum was less than 50% of the £55,000 estimate that had been used by the Authority in its internal discussions and appraisal of the financial viability of the bids received, albeit higher than the rent paid by the previous tenant. The reduced rent was purportedly offset by a Service Level Agreement (“SLA”) between the Authority and MS Bidder B under which MS Bidder B was to provide a range of community services. We have seen no documented calculation of the value of the SLA to the Authority or discussion of whether such value was commensurate with the rental discount. We have seen some evidence of monitoring of performance against the SLA, albeit this is limited to the first quarterly report that was submitted by MS Bidder B.

Limehouse Library

- 2.91 While our initial review of the property files highlighted a number of gaps and potential anomalies warranting further enquiry, our more detailed examination of these and further relevant documentation was able to resolve these initial concerns and did not ultimately give rise to any material issues.

Spending and the decisions of the Authority in relation to publicity

- 2.92 Publicity related expenditures are incurred by the Authority both centrally by the Authority’s Communications Service and also by individual Directorates. The Mayor’s Office also has its own budget for publicity expenditures. By agreement with DCLG, we have excluded the publication of East End Life from our Inspection on the grounds that this matter is the subject of a separate developing dialogue between DCLG and a number of local authorities (including LBTH) regarding local authority publications.

- 2.93 A key consideration in respect of publicity expenditures is the need to ensure a clear demarcation between publicity which is genuinely related to legitimate Authority matters and publicity which is wholly or predominantly related to the Mayor or elected Members as politicians or to party political matters. As a matter of basic principle, the Authority should only incur publicity costs associated with genuinely Authority-related matters. The importance of this demarcation has been universally acknowledged by all those we have spoken to on the matter, including the Mayor and the Authority's Service Head for Communications and Marketing. In practice, it is quite difficult to draw a clear line between the Authority-related and the political and there is undoubtedly a grey area between them, in so far as the Mayor is the elected Executive Mayor of LBTH and his pronouncements and conduct in many instances will have a bearing on the affairs of the Authority as well as on his profile and perception as a politician.
- 2.94 The Code of Recommended Practice on Local Authority Publicity (dated 31 March 2011) is the guidance that applies to all Authority publicity. This introduces seven principles stating that publicity issued by local authorities should be lawful, be cost effective, be objective, be even-handed, be appropriate, have regard to equality and diversity and be issued with care during periods of heightened sensitivity.
- 2.95 Given the sensitivity of this issue, it is important that the Authority has clear guidelines on what is appropriate in terms of publicity, as well as robust processes and controls to ensure that those guidelines are adhered to. This has been a significant matter of focus in our review of publicity expenditures. The matters set out below are the salient issues to have emerged from our Inspection of this area.

Media advisers

- 2.96 We identified three individuals who have acted as media advisers as contractors to the Mayor's office. The total cost of these advisers in the Period has been £313,500. Timesheets submitted by these advisers have been approved for payment by the Head of the Mayor's Office. We requested copies of these time sheets to determine what level of detail they provide as to the day-to-day activities of the advisers. Those timesheets that have been provided contain no detail as to activities, however we were provided with invoices pertaining to one of the media advisers which give a short narrative description of the task undertaken by day. There appears therefore to be little documentary basis upon which any independent review of the activities of media advisers could be conducted and, accordingly, no mechanism for monitoring compliance with its Communications Protocol and the appropriateness of advisers fees and activities from the Authority's perspective with particular regard to the demarcation issue.

Response to the BBC Panorama programme

- 2.97 In responding to the prospect of a BBC Panorama programme entitled "The Mayor and Our Money" to be aired on 31 March 2014, the Authority engaged the law firm Taylor Wessing and the PR consultants Champollion to advise it. The total costs incurred in doing to, according to information put out into the public domain further to a Freedom of Information Act request, were some £101,479 (net of VAT).

- 2.98 In relation to this matter, we have sought to understand: (i) how the demarcation issue was addressed in circumstances where the figure of the Mayor as a politician was very much in focus; and (ii) why the Authority felt it was necessary to engage external advisers at all in the circumstances. In connection with these issues, we note the following:
- a. In preparation for the broadcast, the BBC submitted to the Authority a list of questions covering the key areas of the programme's findings that it intended to cover during the programme as a whole and/or in a planned interview with the Mayor. We have been informed by the Authority's Service Head for Communications and Marketing that the Authority analysed these questions in terms of whether they were for the Authority or the Mayor's office to respond to.
 - b. In the briefing document sent to Champollion "*support in producing FAQs*" is given as part of the scope. The Authority also stipulated that assistance was sought solely for the Authority, stating; "*In working on this contract it is absolutely essential that the agency understands the distinction between political and corporate activity. Employment under this contract will be with the council and will not further any political aims*". We understand that a similar stipulation applied to the terms of reference agreed with Taylor Wessing. In accordance with this we have been informed that the questions for the Mayor as a politician were not sent to Taylor Wessing and Champollion for their advice. We understand that Taylor Wessing were also asked to advise on whether the legality of the BBC's conduct in producing the Panorama programme might be open to challenge in some way.
 - c. We asked in interview with the Interim Monitoring Officer about the rationale for engaging external advisers, given that the Mayor's office already has paid media advisers, the Interim Monitoring Officer is an individual with considerable experience of dealing with sensitive situations and the Mayor himself is an experienced and accomplished politician no doubt used to tackling difficult questions. The Interim Monitoring Officer expressed the view that most, if not all, of the questions were of legitimate concern to the Authority as an institution. He also stated that this was an unusual situation which the Authority did not feel equipped to deal with entirely in-house.

Ofcom rulings

- 2.99 On 21 January 2013 the Office of Communications ("Ofcom"), which, amongst other things, regulates the content of television broadcasts, issued a bulletin in which it set out findings against five separate broadcasting companies; ATN Bangla UK Limited, Bangla TV (UK) Limited, Prime Bangla Limited, Channel S Global Limited and Runners TV Limited. The subject matter of these findings was a broadcast each of the companies had aired which purported to be for the purposes of disseminating information about services of the Authority to sections of the community within the Borough. The findings were that the advertisement was in breach of section 321(2)(b) of the Communications Act 2003 and Rule 7.2.2(g) of the Code of Broadcast Advertising as it constituted political advertising. Ofcom concluded "*we considered that the advertisement served to portray the Mayor of Tower Hamlets, Lutfur Rahman, in a positive light*".

- 2.100 In response to a Members Enquiry, the Service Head for Communications and Marketing disclosed that the Authority had made payments to each of the five companies as a fee for the broadcast.
- 2.101 The Authority has stated that it did not agree with Ofcom's ruling, but it did not in fact challenge it. Therefore, the facts indicate that Authority monies were used to pay for an informational broadcast that was ruled by the responsible regulator to be intended to "*promote the image and reputation of the Mayor*" in breach of various codes including the Authority's own.
- 2.102 The Authority has asserted that it has made a number of process improvements subsequent to this Ofcom Broadcast Bulletin, including introducing a Communications Protocol.

Processes and practices for entering into contracts

- 2.103 The area of contracting is a very significant one in terms of the Authority's overall budget, as it is for other local authorities and most commercial organisations. It is difficult to be precise as to the total value of contracts entered into in a given period, as the Authority does not have one centralised database of all contracts. Nor do contracts equate exactly to money spent in a given period, as many contracts straddle more than one period and there will be a time lag between the procurement and inception of a contract and payments made in relation to that contract, with many contracts paid for in multiple instalments over the period of the contract. We have focused on contracts with a value in excess of £25,000 entered into during the Period which, according to the Authority's own listing, amount to some £406.5 million in aggregate.
- 2.104 Contracting takes place within a highly structured and regulated environment, governed as applicable *inter alia* by EU procurement rules, the Authority's Constitution and its documented procurement procedures. There are various sets of rules and procedures that apply, largely depending on the value of a particular contract. The higher the value, the more stringent the requirements and, typically, the more stages there are in the procurement process.
- 2.105 Given the volume of contracts, the multiplicity of contracting arrangements and applicable sets of procedures, along with the difficulties of obtaining a comprehensive list of contracts, we have taken what we consider to be a pragmatic and proportionate approach to this area. This has broadly comprised:
- a. A review of the Authority's procurement documentation and discussions with relevant officers to gain an understanding of how procurement and contracting work in principle;
 - b. A detailed review of reports concerning both the procurement and operation of contracts produced by the Authority's Internal Audit function. These number 29 in total over the Period, of which seven in particular deal with contract procurement, either on an Authority-wide basis or focusing on one or more specific directorates. The remainder concern reviews of individual contracts, more from a post-procurement operational perspective; and
 - c. A detailed review of a limited sample of contracts selected by us on various risk-based criteria, including in some cases specific concerns raised by individuals within the Authority, or through

the Authority's own governance procedures, such as Call ins by the Overview & Scrutiny Committee. The purpose of this sampling was to obtain first-hand insight into the way procurement procedures have operated in practice and thereby a more direct understanding of the basis for the findings and recommendations made by the Authority's Internal Audit function. Where specific concerns have been raised, we have also sought to follow these up.

- 2.106 Given the relative complexity of procurement procedures, particularly in relation to contracts which are larger by value, what follows in this summary section is a high level overview of some of the matters observed.
- 2.107 Overall, we consider the Authority's written procurement policies and procedures to be sound. We note that these policies have been updated during the course of 2014, in part in response to the findings and recommendations emerging from Internal Audit reports in relation to procurement activities.
- 2.108 Both we in our limited sampling and the Authority's Internal Audit function in their work have found instances of procurement policies and procedures have not been adhered to. Examples include:
- a. An absence in a significant number of cases of signed contracts;
 - b. A prevalent lack of audit trail in procurement documentation;
 - c. Some instances during the early part of the Period where the correct number of quotations had not been received. On the evidence we have examined, we do not see this recurring to the same extent later in the Period;
 - d. Lack of evidence of tollgate reviews in a significant minority of procurement files;
 - e. Some examples of a failure to provide bidders as required with information concerning the criteria for evaluation of bids;
 - f. Lack of maintenance of complete contracts registers by directorates; and
 - g. Lack of monitoring by Central Procurement of the adherence of directorates to procurement procedures in their areas.
- 2.109 In addition, there is some evidence – albeit disputed – of the involvement of the Mayor and/or other Cabinet Members in the selection of suppliers in one case at the PQQ stage before bidding. In another case, it is suggested that the Mayor or Cabinet Members removed two suppliers from a list of four recommended by officers after evaluation of bids, rather than simply accepting or rejecting the recommendation as a whole, which is all that the Mayor in Cabinet is empowered to do. If it were true that the Mayor or Cabinet Members intervened in this way, that would represent a clear breach of the Authority's procurement policies. However, whether true or not, in the instances we have seen the evidence taken in the round would not support a categorical conclusion that the Authority did not achieve best value in those cases.

- 2.110 There is also some evidence that there have been and continue to be delays in the letting of certain contracts, which may indeed be costing the Authority money in terms of cost savings foregone while the decision remains pending. Having said this, the mere fact that potential cost savings are not made does not necessarily mean that a decision to delay is not justified in terms of the wider strategic issues that may apply in the given circumstances. These delays are in part a result of conscious decisions for one reason or another by the Mayor to pause certain procurement processes. It also appears that it may in part be a result of the fact that procurement decisions over larger contracts have been delegated to be made by officers “in consultation with the Mayor”, which tends to create an inevitable bottle neck for decision making, given the number of such decisions that need to be made in the course of the Authority’s business.

Constitution and decision making

- 2.111 A high level overview of the Authority’s constitutional arrangements and the allocation of decision making powers is set out in section 3 of this report. In reviewing these arrangements, we have focused our attention on those aspects of the constitution and decision making powers which are relevant to the exercise of governance over the areas of focus for our Inspection. More detail on the manner in which decisions are made in practice is also contained in the detailed factual sections of this report in relation to the key areas of focus.

Powers of the Mayor

- 2.112 Under current local government legislation, any function is an executive function, unless it is specifically reserved (in whole or in part) to the Full Council. Within the framework provided by relevant statutes, the Mayor has reserved to himself substantially all of the decision making powers which it is legally possible for an executive mayor to exercise. Accordingly, in relation to large areas of the Authority’s activities, including the areas of focus for the Inspection, the Mayor has ultimate decision making power. Even where the Mayor chooses to delegate decision making powers over particular matters, he retains the right to make decisions on those matters.
- 2.113 Since July 2012, the Authority has had no Chief Executive. One of the Authority’s Corporate Directors has since that time (with a short hiatus) fulfilled the role of Head of Paid Service, as required by statute, however the Head of Paid Service has not had the full powers of a Chief Executive delegated to him under clause 3.5.5 of the Authority’s constitution. These powers have remained with the Mayor. This means that, for most purposes, the Head of Paid Service, other statutory officers (being the Section 151 Officer and the Monitoring Officer), as well as other Corporate Directors are all directly accountable to the Mayor.
- 2.114 The Mayor presides over a Cabinet of up to nine elected Members chosen by him. The Mayor has delegated to members of the Cabinet decision making powers over matters within their portfolio, subject to consultation with the Mayor and to his having no objection to the decision proposed; in other words the Mayor has effectively retained a veto. To date, we understand that these delegations have not actually been used. Therefore, all decisions in relation to executive functions have been taken either:

- a. By the Mayor, either in the Cabinet meeting or individually by means of a ‘Mayor’s Executive Decision’; or
- b. By an Officer in accordance with his/her delegated powers.

Key Decisions and challenge

- 2.115 Certain Executive Decisions are defined as Key Decisions. There are written criteria governing what constitutes a Key Decision, however ultimately the determination of whether a decision is a Key Decision rests with the Mayor. Any Key Decision must be published and can be called in prior to implementation by the Authority for review by its O&S Committee. Where changes are recommended, the decision is referred back to the Mayor, however the Authority appears to have no power to compel the Mayor to implement such changes. We note that of the 23 decision subject to Call in 19 have remained unchanged from the original Key Decision by the Mayor.

3. *The Authority and the Borough of Tower Hamlets*

The Borough of Tower Hamlets

- 3.1 In the 6 May 2010 referendum⁸ the electorate of the Borough, voted in favour of having a directly elected mayor with a majority of 60%⁹. Three other London Boroughs also have directly elected mayors, namely: Hackney, Lewisham and Newham. There are 15 directly elected mayors in the UK in addition to the Mayor of London, and two former mayoralties¹⁰. One further Borough¹¹ has recently voted in favour of electing a directly elected mayor with the election yet to be held¹².
- 3.2 The map below shows the location of the Borough within the area of Greater London. The Borough is further divided into wards¹³, each served by between one to three councillors.



⁸ Referendum on Directly Elected Mayor, LBTH website.

⁹ Election results, LBTH website.

¹⁰ House of Commons standard note entitled 'Directly-elected mayors' (reference SN/PC/5000), dated 16 July 2013.

¹¹ Copeland Borough Council.

¹² Mayoral referendum result information, Copeland Borough Council website.

¹³ 20 wards as at 2014 and 17 wards as at 2010 (Election results, LBTH website).

- 3.3 At the last census (taken in 2011) the Borough had a resident population of 254,100 which ranks it 17th out of the 33 boroughs in London for this metric. The Borough had the fastest growing population in England since the previous census in 2001, with an increase of 29% (57,990 residents and 22,727 extra households). By comparison, Hackney had the second fastest growing population with an increase of 18% (15,648 extra households) over the same period. This compares to the London average for growth in households of 8.3% and the England average of 7.9%¹⁴.
- 3.4 The population of the Borough analysed by ethnic group as recorded in the 2011 census¹⁵ is summarised in the table below.

Ethnic group	Percentage
Bangladeshi	32
White British	31
Other White	12
Sum of all other ethnicities (each being less than 5%)	25
Total	100

- 3.5 The population of the Borough analysed by religion as recorded in the 2011¹⁶ census is summarised in the table below.

Religion	Percentage
Muslim	35
Christian	27
No religion	19
Religion not stated	15
Sum of all other religions (each being less than 3%)	4
Total	100

- 3.6 Per the 2011 census the Borough has the fourth highest national rate of residents reporting that they have “*bad or very bad*”¹⁷ health. However the Borough out of all the London Boroughs has had the “*largest reduction in the proportion of residents with a limiting long term health problem*”¹⁷ since the

¹⁴ LBTH Research Briefing 2012-12 entitled ‘Headline analysis Demography, Households and health’ dated December 2012.

¹⁵ Census 2011 Ethnicity topic report, LBTH website.

¹⁶ Census 2011 Faith topic report, LBTH website.

¹⁷ LBTH Research Briefing 2012-12 entitled ‘Headline analysis Demography, Households and Health’ dated December 2012.

2001 census. Similar improvements have also been made in other East London Boroughs including Hackney and Newham.

- 3.7 Unemployment per the 2011 census at 6.7% remains above both the London average of 5.2% and the England average of 4.4%.
- 3.8 The Borough, per the 2011 census, was ranked second nationally for the percentage of over occupied housing; having “*fewer bedrooms than the notional number recommended by the bedroom standard*”¹⁸; 34.8% compared to the London average of 21.7%. Newham was ranked first with 34.9%¹⁷.

The Authority Annual Accounts

- 3.9 The Authority publishes annual accounts which are audited and publically available. A summary of the Authority’s expenditure and gross income for the years ended 31 March 2011-2014 is as follows. We note that the 2014 accounts are published¹⁹ in draft and are un-audited.

	2010-11	2011-12	2012-13	2013-14
	£’000	£’000	£’000	£’000
Gross expenditure – Continuing operations	(1,530,514)	(1,229,317)	(1,211,235)	(1,267,080)
Gross income – Continuing operations	1,031,898	942,097	931,476	995,863
Net expenditure	(498,616)	(287,220)	(279,759)	(271,217)
Council tax income	77,417	78,161	81,994	64,266
Non domestic rates	202,761	175,443	209,738	96,259
Non-specific grant income ²⁰	155,520	493,506 ²¹	115,690	242,412
Other income and expenditure	(64,825)	(238,643)	(23,488)	(48,219)
Surplus/(deficit) on the provision of services	(127,743)	221,247	104,175	83,501

The Authority’s overall service delivery

- 3.10 Our terms of reference have not extended to examining the quality of front-line service delivery as such. To place our work in context, it should be noted that, in many respects, the Authority is widely seen to be delivering services that are of good quality.

¹⁸ Office for National Statistics release entitled ‘2011 Census Analysis, Overcrowding and Under-occupation in England and Wales’ dated 17 April 2014.

¹⁹ On LBTH’s website.

²⁰ Non-specific grant income includes non-ringfenced government grants and capital grants and contributions.

²¹ Includes a Housing Revenue Account settlement determination.

- 3.11 Since the beginning of the Period the Authority has achieved a wide range of awards and performance measures, including :
- a. In 2013 65% of pupils in the Borough achieved 5 or more GCSEs at grade A* - C including English and Mathematics. This compares favourably to the 2013 national average for pupils “*achieving 5 or more GCSEs or equivalent at grade A* - C including English and mathematics GCSEs*”²² of 59%;
 - b. The Tower Hamlets Dementia Partnership (which the Authority is part of) was awarded the National Local Government Chronicle Health and Social Care Award in 2014 due to improving the lives of people with Dementia, including their carers;
 - c. Silver Investors in People Award 2014;
 - d. A national award for the highest number of sustainable new build housing units completed;
 - e. The Authority’s school meals service has been awarded for being the best in Britain at the Lead Association for Catering in Education awards;
 - f. The Authority’s parks service won 5 green flag awards for the quality of their parks;
 - g. The Authority’s Young@Heart programme won the Community Physical Activity Project of the Year award at the 2014 London Awards for Sport and Physical Activity; and
 - h. The Authority became an accredited London Living Wage employer.

The Authority’s organisational structure

The Mayor

- 3.12 The Borough has had a directly elected mayor since October 2010. Lutfur Rahman, as an independent candidate in 2010 and then as a Tower Hamlets First representative in 2014, won the mayoral elections with a share of the vote of 52% and 43% in 2010 and 2014 respectively. The current Deputy Mayor is Oliur Rahman of the Tower Hamlets First party. Voter turnout for the mayoral election in 2014 was 48% compared to 26% in 2010²³.

Cabinet

- 3.13 LBTH’s Cabinet (“the Cabinet”) is composed of the Mayor, Deputy Mayor and eight Members (the “Cabinet Members”) appointed by the Mayor. The current Cabinet Members, all from the Tower Hamlets First party, are²⁴:
- a. Mayor Lutfur Rahman;
 - b. Councillor Oliur Rahman (Deputy Mayor and Cabinet Member for Economic Development);
 - c. Councillor Ohid Ahmed (Cabinet Member for Community Safety);
 - d. Councillor Shahed Ali (Cabinet Member for Clean and Green);
 - e. Councillor Abdul Asad (Cabinet Member for Health and Adult Services);
 - f. Councillor Alibor Choudhury (Cabinet Member for Resources);

²² “2013 GCSE and equivalent results including key stage 3 provisional”, SFR40/2013, dated 17 October 2013.

²³ Local Elections, 22/05/2014 and Local Elections, 06/05/2010, LBTH website.

²⁴ Committee details, Cabinet, LBTH website.

- g. Councillor Shafiqul Haque (Cabinet Member for Culture);
- h. Councillor Aminur Khan (Cabinet Member for Policy, Strategy and Performance);
- i. Councillor Rabina Khan (Cabinet Member for Housing and Development); and
- j. Councillor Gulam Robbani (Cabinet Member for Education and Children’s Services).

3.14 The Mayor in Cabinet is responsible for decision making within the Budget and Policy Framework as set out in the Authority’s Constitution²⁵ (“the Constitution”). The Mayor may also make decisions outside of the Cabinet as an Mayoral Executive Decision. Each Cabinet Member is allocated an area of responsibility (shown above) by the Mayor.

Councillors

3.15 The current councillors (or “Members”) were elected in the 2014 Local Election and the council (“the Full Council”) is composed of the Mayor and 45 elected councillors, 22 of whom are Labour, 18 Tower Hamlets First and five Conservative²⁶. The Full Council elected in the previous 2010 Local election comprised 51 elected councillors, 41 Labour, eight Conservative, one Liberal Democrat and one Respect.

3.16 The 20 wards at the 2014 Local Election had the following political split: ten wards have a mix of councillors from more than one party, five wards have solely Tower Hamlets First councillors, four wards have solely Labour councillors and one has only a Conservative councillor²⁷. In the 2010 Local Election there were 17 wards and these had the following political mix; four wards had a mix of councillors from more than one party, 11 wards had solely Labour councillors, two wards had solely Conservative councillors.

Directorates

3.17 The Authority is composed of directorates in a “*structure designed to support the council’s objective of ensuring the provision of services that are responsive to the needs of individuals and communities and integrated at the point of delivery*”²⁸.

3.18 We note that there are also three officers with roles defined in statute, being the Monitoring Officer, the Head of Paid Service and the Chief Financial Officer (also referred to as the “*Section 151 Officer*”).

3.19 Each directorate has a Corporate Director, we note that currently one is an Acting Corporate Director. The Corporate Director for Communities, Localities and Culture was appointed to also act as the Head of Paid Service²⁹ until 31 October 2014. The Acting Corporate Director for Resources is also the Chief Finance Officer, and the role of Director for Law, Probity and Governance is vacant and currently subject to recruitment. The Authority currently has an Interim Monitoring Officer.

²⁵ See section 1.

²⁶ Local Elections, 22/05/2014 LBTH website.

²⁷ Local Elections, Wards summary, 22/05/2014, LBTH website.

²⁸ “Council departments and offices” LBTH website.

²⁹ We have referred to the Acting Head of Paid Service as “Head of Paid Service” within this report.

- 3.20 The Authority's directorates are³⁰:
- a. Communities, Localities and Culture ("CLC");
 - b. Development and Renewal ("D&R");
 - c. Education, Social Care and Wellbeing ("ESCW");
 - d. Law, Probity and Governance ³¹; ("LPG"); and
 - e. Resources ("RES").
- 3.21 We note that during the Period the Authority had the following directorates which have been superseded:
- a. Chief Executive's ("CHE");
 - b. Adults Health & Wellbeing ("AHWB" or "AHW"); and
 - c. Children, Schools & Families ("CSF").

Committees

- 3.22 The Authority has a number of committees and panels including the O&S Committee. The O&S Committee is responsible for scrutinising decisions, as well as monitoring and improving services³². The O&S Committee is able to require the Mayor and the Cabinet to submit a report to the Full Council to explain the basis of decisions. The Director of Law, Probity and Governance is able to Call in decisions to be scrutinised by the O&S Committee if requested by:
- a. Five or more Members of the Full Council; or
 - b. Two voting church, faith or parent governor representative in respect of any education matters only³³.
- 3.23 Decisions are also able to be Called in by the O&S Committee under the Budget and Policy Framework Procedure Rules in respect of decisions contrary to the Budget and Policy Framework (after first taking advice from the Monitoring Officer and/or the Chief Finance Officer, as appropriate on a case by case basis).
- 3.24 The decision is then considered at the next meeting of the O&S Committee. A decision can only be Called in once to the O&S Committee. The O&S Committee can refer a decision back to the Mayor, the Cabinet or the Full Council. The decision maker then has to re-consider their decision and either amend or confirm that decision.

³⁰ "Council departments and offices", LBTH website.

³¹ Launched February 2014, LBTH 2014-2015 Budget Book.

³² Committee details, Overview & Scrutiny Committee, LBTH website.

³³ The Constitution, part 4, rule 16.

Constitution and decision making

- 3.25 Our understanding of constitutional and decision making matters pertaining to the Authority is derived largely from various documents provided by the Authority, supplemented by explanations received from the Head of Paid Service.

Statutory framework

- 3.26 In simple terms the current statutory framework governing the allocation of functions between a Local Authority and its “Executive” is contained in the Local Government Act 2000 at section 9D as amended, and the Local Authorities (Functions and Responsibilities) Regulations 2000.
- 3.27 An Executive may take one of two forms, namely either:
- a. An executive leader and cabinet; or
 - b. A directly elected mayor and cabinet, as is the case in the Borough.
- 3.28 There is no definitive list of functions which are the responsibility of the Executive. Rather, the legislation is structured such that all functions of a Local Authority are Executive functions, unless they are specifically reserved to the Full Council, which may be by way of explicit regulation or at the discretion of the Full Council. There are three categories of function which are non-Executive functions. These are:
- a. Functions which cannot be functions of the Executive – these include: town and country planning, licencing, health and safety, elections, community governance, pensions, appointment of staff, making standing orders and administration of financial affairs;
 - b. “Local choice” functions – these are functions that the Full Council can decide to allocate to the Executive or to reserve to itself. Examples include: determination of appeals, school admission and exclusion appeals, various matters relating to environmental issues and outside appointments; and
 - c. Functions not to be the sole responsibility of the Executive – these are functions shared between the Full Council and the Executive and relate to such matters as the specified plans and strategies that are included in the Budget and Policy Framework, which is put forward by the Executive but can be amended by a two thirds majority of the Full Council.

Constitution and decision making within the Authority

- 3.29 In practice, it appears that the Mayor has delegated only a very limited range of functions to others. Where functions are delegated, the Mayor can still exercise those functions himself if he chooses to do so. In particular:
- a. The Mayor has delegated decision making powers in relation to Executive functions set out in parts 3 and 8 of the Constitution. We understand that these delegations are substantially unchanged from those which applied under the previous Executive prior to October 2010;

- b. Under Part 3 of the Constitution, Chief Officers are authorised to “*make decisions relating to any executive function carried out by services under their management other than taking ‘Key Decisions’ as defined by Article 13 of the Constitution which are the responsibility of the Mayor or Executive itself, unless specifically delegated by the Mayor or Executive to an Executive Sub Committee or a chief officer.*”;
- c. The Mayor has also delegated to each Member of the Cabinet individually the power to make decisions on matters within their portfolio after consultation with the Mayor and subject to the Mayor raising no objection to the proposed decision. However, we understand that to date this delegation has not been used. Therefore all decisions in relation to Executive functions have been taken either:
 - i. By the Mayor, either in the Cabinet meeting or individually by means of a Mayor’s Executive Decision; or
 - ii. By an officer in accordance with his/her delegated powers; and
- d. Under current arrangements the Cabinet is not authorised to exercise the Mayor’s powers in the absence of the Mayor. If the Mayor is unable to act for any reason, and only in those circumstances, the Deputy Mayor is authorised to exercise the Mayor’s powers. Subject to certain procedural rules the Mayor is free to make a decision in relation to an Executive function, including a Key Decision (a “Key Decision”), independently and outside the context of a meeting of the Executive.

3.30 Section 3.5.5. of the Constitution provides for the Chief Executive to exercise any functions delegated to other officers and to delegate decisions or functions to one or more officers in any of the directorates. Where the Authority had a Chief Executive or Interim Chief Executive during the Period these delegations applied. However, the Authority has not had a Chief Executive since July 2012 and the powers set out in section 3.5.5 have not been delegated to the Head of Paid Service. Some more limited delegations from the Mayor apply to the Head of Paid Service as set out in a letter of appointment dated 29 January 2013. The Chief Officer delegations set out under Part 3 of the Constitution as described in paragraph 3.29b need to be considered in the light of these current arrangements.

3.31 Whilst the Constitution does set out criteria which seek to define a Key Decision ultimately the determination of whether or not a decision is a Key Decision rests with the Mayor. Key (and non-Key) Decisions are published on the Authority’s website. They can be Called in by the Full Council prior to implementation and subjected to review by the O&S Committee. Where changes are recommended, the decision is referred back to the Executive, however the Full Council appears to have no power to compel the Mayor to implement such changes. We note that four of 23 Executive Decisions Called in during the Period were changed to implement one or more Call in recommendations or were otherwise modified.

3.32 The Constitution does not provide for any Key Decision to be made by an officer, except where the Mayor has delegated a specific decision. In the event that such a delegation is made, by law any Key Decision taken by an officer must also be published and available for Call in.

3.33 Where an Executive Decision, including a Key Decision, falls to be made and either:

- a. Authority to make that decision has not been delegated by the Mayor under this Executive Scheme of Delegation; or
- b. Authority has been delegated but the person or body with delegated powers declines to exercise those powers; or
- c. Authority has been delegated but the Mayor nevertheless decides to take the decision himself,

the decision may be made by the Mayor individually, after consultation with the Monitoring Officer, the Chief Finance Officer and such other Corporate Director(s), the Head of Paid Service or Cabinet Member(s) as appropriate or as required. The Mayor may choose not to follow advice or recommendations by any of the above.

3.34 The practicalities of decision making, as they pertain to the four key areas of focus, are discussed further in the relevant sections of this report.

4. *The Authority's payment of grants and connected decisions*

Introduction

Population of grants awarded during the Period

- 4.1 The Authority provided a number of listings of grant recipients relevant to the Period, totalling approximately £36 million. These listings included both payments made for those grants awarded prior to the Period, and also awards made during the Period where payment may not yet have taken place. Details of a total of 28 schemes were provided to us. A review of each individual listing was undertaken to identify only those awards approved during the Period, the results of which are summarised in the table below:

Grant type	Number of schemes	Total value awarded (£)
Mainstream Grants 2012-2015 (including Prevention Health & Wellbeing 2013-2015)	2	8,711,765
Property Grants, Community Faith Building & Historic Buildings grants	3	5,865,446
Youth grants (Positive/Mayors Activities for Young People, Summer Grants & Youth Opportunities Fund)	4	2,474,214
Children's grants, Early Years Service Development Grant ³⁴ & EL2 Capital Funding	3	1,209,318
Community Chest/Community Events	2	615,048
954 Fund	1	522,000
Mental health and other health grants	2	418,000
Corporate Match Funding	1	349,750
Other schemes where total amount awarded was less than £200,000 in the Period ³⁵	7	449,433
Total	25	20,614,974

³⁴ Data related to Early Years Service Development Grant Funding (2010/11) appeared to be quarterly payments within the Period. It was assumed that the decision to award this grant was made prior to the Period.

³⁵ Data related to the 2010/2011 Events Fund award appeared to be a combination of payment and award data. Where the event and the first payment were in the Period it was assumed that the award was made in the Period.

- 4.2 Information in relation to three of the 28 grant schemes provided to us by the Authority are not included in the table above. MSG awards are made every three years. As such, the MSG awards total in the table above relates to the MSG awards made in 2012 for the 2012-2015 time period and the Prevention Health and Wellbeing (“PH&W”) awards made in 2013 for the 2013-2015 time period. Information in relation to the MSG awards 2009-2012 (including PH&W) was provided to us which totalled approximately £14 million and whilst payments have occurred in the Period, the original decision making predated the Period and so this value has been excluded from the summary. Similarly the Accelerated Delivery Programme awards (£0.2 million) were all made prior to the Period and so have been excluded from the table above. Details of a further £1.8 million of payments were provided to us in relation to schemes active during the Period, where the award decision appears to have been made outside of the Period. These have also been excluded from the table above.

Governance of grant awards

- 4.3 The governance and decision making arrangements vary across grant schemes. Part 3 of the Constitution, dated November 2010, defined a committee called the Grants Panel. This committee consisted of five Cabinet Members and its function was “...to determine, in their entirety, applications for grant funding received by the Authority.” We understand that the Grants Panel was a body that met in public. In a sample set of Grant Panel minutes, dated 18 March 2008, we also have a record of when Cabinet Members disagreed with the awards to certain organisations and when Cabinet Members asked officers at the Grants Panel meeting to change the award that was proposed.
- 4.4 However, the Mayor, in his Executive Scheme of Delegation, did not appoint any committees. Instead, the Mayor retained all decision making power for grants in excess of £1,000 and, as outlined below, an alternative Corporate Grants Programme Board (“CGPB”) was set up to provide recommendations to the Mayor. This new committee consisted of two Members (together “CGPB Members”), an external member from the third sector, five officers and a LBTH legal representative. The CGPB proceedings are not open to the public.
- 4.5 As not all grant awards required Executive Mayoral approval, officers determined the grant awards for a number of the grant award schemes active during the Period. Grant awards determined by officers included youth grants, children’s grants and mental health grants.
- 4.6 The Constitution and CGPB arrangements provided a governance framework for the award of grants, which is further enhanced by the Tower Hamlets Compact. The Tower Hamlets Compact is an agreement between the statutory sector and the third sector, setting out how the Authority and other local statutory bodies work with independent voluntary and community organisations. Whilst this is a principles-based agreement, it includes specific commitments, including a five-step dispute resolution procedure. Specific commitments by the Authority include: clarity and consistency; giving fair access to funding opportunities; keeping to the standards in the code of practice on consultation and involvement; and to consult in good time on any significant changes to funding arrangements.

- 4.7 The Authority has a Grant Information and Funding Tracking System (“GIFTS”) to help administer grants. We understand that GIFTS is a standard computerised system for grant applications, used by many other local authorities and major grant-making charities, with functionality to allow applicants to work on draft applications and attach documentation online before submitting their application. In March 2012 the Cabinet agreed to top-slice £36,000 of the Mainstream Grants (“MSG”) 2012-15 budget to fund the development and ongoing maintenance of GIFTS.

Our approach

Selection of grant schemes for detailed review

- 4.8 The various grants listings provided by the Authority were reviewed in conjunction with information provided to us by third parties during the course of the Inspection, specifically 25 concerns from 22 individuals. The grant schemes selected for further and more detailed review were determined by both value, the level of discretionary decision making and the risks outlined in the third party information received. The MSG 2012-2015 awards, including the PH&W 2013-2015 awards together totalling £8.7 million made up 42% of total grants awarded during the Period and were therefore selected for further review.
- 4.9 Of Property Grants, Community Faith Building and Historic Buildings, Property Grants represent £5 million of the population with Community Faith Building and Historic Buildings grants totalling £0.6 million and £0.2 million respectively. The majority of the Property Grants (£4 million) are mandatory and relate to disabled facilities grants. The remainder of the Property Grants are used to support increased and improved accommodation in the Borough. Due to the fact that the majority of these Property Grants are non-discretionary, no further work was completed on the payment and decision making around this grant scheme. In this category the Community Faith Building scheme was selected for more detailed review.
- 4.10 The grant schemes selected for review cover the two different approval mechanisms for grants, namely grants approved by the Mayor and grants approved by officers. Given the value of the grants awarded and on the basis of third party information received, youth grants were selected to test officer grant award decision making, rather than children’s grants, mental health or other health grants.
- 4.11 Further, as a result of our initial scoping and understanding of the grant schemes active during the Period the decision making process around the 954 Fund awards was not clear. On this basis this scheme was also selected for detailed review. Finally, in response to third party information, a walkthrough of the Community Chest and Community Event award decision making process was also conducted.
- 4.12 In summary, the following grant schemes, representing 63% of the total value of approved awards in the Period, were selected for detailed review:

Grant type	Number of schemes	Total value tested (£)
Mainstream Grants 2012-2015 (including Prevention Health & Wellbeing 2013-2015)	2	8,711,765
954 Fund	1	522,000
Community Faith Building	1	600,000
Youth grants (Positive/Mayor's Activities for Young People, Summer Grants & Youth Opportunities Fund)	4	2,474,214
Community Chest/Community Events	2	615,048
Total	10	12,923,027

Overall approach to testing

- 4.13 In reviewing each of the five areas selected for detailed review we sought to:
- a. Perform a walkthrough of one or more grant applications to understand the award process and associated decision making through meetings with officers and/or a review of the documentation provided to us; and
 - b. Conduct analysis to identify any instances where governance arrangements differed from the process outlined in documents provided to us.
- 4.14 Given the different decision making processes for these awards, each of the five areas selected for further review is dealt with separately below.

MSG 2012-2015 (including PH&W 2013-2015) *Introduction*

- 4.15 The results of our work in relation to the MSG 2012-2015 awards, including PH&W 2013-2015 are summarised in the following sections:
- a. The MSG 2012-2015 award process as outlined in the 14 March 2012 Cabinet report;
 - b. The decision making process following by the Authority;
 - c. Results of decision making;
 - d. Additional governance matters; and
 - e. PH&W 2013-2015 awards.

The MSG 2012-2015 award process as outlined in the 14 March 2012 Cabinet report

4.16 On 14 March 2012 the MSG 2012-2015 funding streams and budgets were set out in a report to Cabinet entitled “*Main Stream Grants Commissioning 2012/15 and Governance Arrangements*”. This report outlined a budget of £3.5 million per annum, the proposed activities of 11 funding streams and the consultation undertaken by officers with voluntary organisations in order to inform these proposals. The envisaged timeline from applications opening in March 2012 to the commencement of services by organisations on 1 October 2012 was detailed, as were the grant eligibility, appraisal and monitoring arrangements.

4.17 The budget of £3.5 million per annum and the 11 funding streams outlined in the report were as follows:

Directorate	Funding Stream	Current annual allocation (£m)
AHW	Older People – Lunch Club Services	0.347
CSF	Children and Families Services	0.181
CSF	Language Services	0.126
CSF	Early Years Services	0.698
CSF	Study Support Services	0.062
CSF	Youth and Connexions Services	0.242
CLC	Arts Sports and Environmental services	0.331
CLC	Lifelong Learning Services	0.087
D&R	Social Welfare Advice Services	0.920
D&R	Community Economic Engagement Services	0.300
D&R	Third Sector Infrastructure Support Services	0.240
Total		3.534

4.18 The eight minimum eligibility criteria that an organisation needed to meet in order to receive funding through the MSG process, as outlined in the 14 March 2012 Cabinet report, included having a bank account, financial management policies and arrangements and being able to demonstrate that the activities or services would primarily benefit residents of the Borough. Should organisations meet these criteria then their applications would be assessed using the same process used in the MSG 2009-2012 commissioning round. This Cabinet report also noted that this project appraisal process was “*independently reviewed through an internal Audit [sic] inspection and found to be robust*”.

- 4.19 The process documented in the 14 March 2012 Cabinet report included an appraisal by two officers, resulting in two scores which would be moderated by a third officer if necessary to produce a consolidated score. Applications would then be ranked by their score. Any application that did not meet the agreed quality threshold, later determined to be 40 (out of a possible score of 95), would be excluded from funding. Finally, officers reviewed the ranking of applications to determine “*how well the projects ranked highest within the appraisal process fits with the budget availability and meets the optimum range of provision outlined within the Service Specification*”. The Service specification referred to was guidance, by funding stream, given to organisations seeking to apply for MSG 2012-2015. Whilst each specification is different, this guidance generally included the following:
- a. Scope of activities;
 - b. Quality standards;
 - c. Types of activities;
 - d. Geographical coverage;
 - e. Expected outputs and outcomes; and
 - f. Budget.
- 4.20 The intention, as outlined in the 14 March 2012 Cabinet report, was that officers would then “*prepare a detailed report setting out recommended levels of awards for projects: this report will be presented to the Third Sector Programme Board for verification and agreement of the recommendations. The recommended awards will then be submitted to the Mayor for approval under his executive authority*”. It was proposed within this same report that the Grants Panel would be replaced by a Third Sector Programme Board called the CGPB with the rationale that efficient and consistent systems, procedures and approaches were needed to maximise the contribution and effectiveness of awards in delivering the Mayor’s priorities. The CGPB was to provide strategic guidance and leadership for all Authority-led grant funding to the third sector.
- 4.21 The proposals put forward were agreed by the Mayor in Cabinet on 14 March 2012.

The decision making process followed by the Authority *Application and assessment process*

- 4.22 In a report dated 14 August 2012 the Corporate Director for D&R presented “*the recommended grant awards and arrangements for the rollout of the 2012-15 Main Stream Grants (MSG) programme in accordance with the decisions of Cabinet of 14 March 2012*”. In this report officers recommended 255 applications for funding out of the 431 applications received. These recommendations were for a 30 month period and totalled £8,242,109.
- 4.23 This report was first circulated to the CGPB on 6 August 2012 in preparation for the planned meeting of the 14 August 2012³⁶. This report was issued six and a half weeks later than the date envisaged in the 14

³⁶ This meeting did not proceed. See paragraph 4.28 for further details.

March 2012 Cabinet report timetable. We understand this was due to a larger than anticipated number of applications.

- 4.24 The officer circulating the report noted the application process and steps taken by officers to maximise applications, for example delivery of five application workshops. In the covering email of 6 August 2012 the officer notes that the “*commissioning and assessment process has been implemented in full accordance with the procedures and arrangements as agreed by Cabinet*”. The report circulated by the officer stated a total of 423 applications were received. However, we note that the actual total number of applications received was 431 rather than 423.
- 4.25 This 14 August 2012 report documented the assessment process used by officers and stated that, in order to “*ensure fairness and transparency applications were assessed solely on the information provided in the Application Form and submitted documents*”. The method adopted to assess applications was one of weighting and scoring, the most common technique used to compare both unvalued costs and benefits according to section 5.78 of the Treasury’s ‘Green Book’ methodology³⁷.
- 4.26 The same criteria for weighting and associated scoring were used by the Authority across all 11 MSG funding streams. These criteria were set out in an Assessment Protocol document as follows:

³⁷ The ‘Green Book’ is “*a best practice guide for all central departments and executive agencies, and covers projects of all types and size. It aims to make the appraisal process throughout government more consistent and transparent*” Source: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf paragraph 1.4.

Area	Weighting	Maximum Score
Organisation structure and governance	1	5
Project description	3	15
Project outcomes	2	10
Experience and track record	3	15
Quality assurance standard	2	10
Project management and control	3	15
Equalities and diversity	2	10
Project staff and volunteers	2	10
Project finances	1	5
Total		95

4.27 The Assessment Protocol document for the MSG 2012-2015 awards stated that applications scoring less than 40 would be considered not to have met the minimum standard and should not be recommended for funding.

Review of officer recommendations by Members

4.28 The 14 August 2012 CGPB meeting did not proceed due to issues identified in the report dated 14 August 2012 which was prepared by officers and circulated on 6 August 2012.

4.29 On 8 August 2012 an officer emailed other officers involved in the MSG award process “to give advance notice of quite a lot of additional work in relation to [the] MSG report”. The email goes on to state “the Mayor has requested a vastly expanded Appendix 1”.

4.30 On 10 August 2012 Councillor Miah, Co-Chair of the CGPB, emailed officers and requested that the 14 August 2012 CGPB meeting be postponed by two weeks. The reason given in the email by Councillor Miah was so that he could read through the information and be briefed on the programme. In interview Councillor Miah and Councillor Choudhury stated that the request for delay was due to errors identified in the officers' report. Councillor Choudhury stated that the request was also due to information gaps in the report and local knowledge from Members not being reflected adequately in the officers' report.

- 4.31 In addition to the concerns of Members, the Chief Executive of the Tower Hamlets Council for Voluntary Service (“THCVS”), the external CGPB member, emailed officers on 13 August 2012 noting his concerns in relation to information provided by them in the report distributed on 6 August 2012. The concerns expressed included the following:
- a. No comparative amounts had been provided to show the MSG 2009-2012 awards;
 - b. “Some service areas did not provide a full project profile of the recommended groups”;
 - c. “Incomplete information from many service areas about the reasons for not recommending groups”; and
 - d. No information had been provided in respect of whether there would be an appeals procedure.
- 4.32 On 14 August 2012 the Service Head for Resources and Economic Development (Co-Chair of the CGPB)³⁸ responded to Councillor Miah by email and outlined that, due to the high risk of Call in by the O&S Committee, it would be unlikely that there would be a formal decision on the MSG 2012-2015 awards until October 2012. As such there was a need to extend existing grants for a further three months. The Service Head for Resources and Economic Development also stated in this email that he was trying to arrange the CGPB meeting for the 6 or 7 September 2012 and that this would allow “time to discuss areas of challenge by yourselves and other board members”.
- 4.33 On 15 August 2012 the LBTH in-house legal representative on the CGPB noted that it was important to demonstrate the consideration of an Equality Assessment³⁹ prior to any substantive decision being made. The Service Head for Resources and Economic Development, stated in interview that no Equality Assessments had been completed at that point.
- 4.34 As a result of the issues raised by Members, a review of the awards proposed by officers was undertaken. An email from an officer, to other officers involved in the MSG award process, dated 6 September 2012 stated “Over recent weeks the 2 Councillors on the Programme Board... presumably in consultation with the Mayor, have... raised various questions [and] anomalies.” In addition the email asked officers “to identify any likely issue which Councillors/the Mayor/Senior Managers might pick up on such as: ‘a recommended grant higher than the requested amount’ or, ‘a recommendation for funding where the project proposal has scored less than a proposal which has not been recommended for funding’... and provide a clear explanation”.
- 4.35 Officers provided a further iteration of their recommendations on 6 September 2012. However, the changes and amendments made to officer recommendations went beyond that of correcting anomalies and addressing the need for an Equality Assessment. At a meeting on 14 September 2012 Councillor Choudhury and Councillor Miah provided details to officers of the applications they thought should receive funding and the amount of that funding. We have not been provided with any documented rationale for these proposals made in relation to specific applications. In interview, Councillor

³⁸ Currently the Section 151 officer.

³⁹ Also referred to as Equality Impact Assessments and EqlAs.

Choudhury stated that he had worked with officers to ensure that the report to the CGPB was robust. In interview, Councillor Miah stated that he did not have any role outside of the CGPB.

- 4.36 Analysis of the files provided to us shows that of a total of 431 applications, Member suggestions were different to the officer recommendation in 347 cases, representing 81% of the total applications (by number). Members recommended 296 organisations for funding totalling £5,851,794. Whilst officers made recommendations that four organisations that scored less than the minimum quality score of 40, received funding totalling £67,712, Members, by making changes to officer recommendations, increased this to 34 applications totalling £637,700. We were informed during interviews that no re-scoring of applications took place following input from Members.
- 4.37 In the absence of documented rationale, it is not clear on what basis the suggestions made by Members were such as to result in a more effective allocation of funds in line with the MSG service specification documents than the original recommendations made by officers in the light of their collective knowledge and assessment based on the formal framework described above.
- 4.38 An internal legal advice memo given to Councillor Miah and Councillors Choudhury in respect of the “considerable” Member proposals notes the “*risk of challenge by organisations whose project proposals were eligible and recommended for funding by officers, but will not now receive funding or have their funding substantially reduced*”. Further, this memo lists a number of other concerns including the fact that “*distribution of funding is not equitable ... and against some of the groups with protected characteristics*”. The memo concludes that “*with further work officers will achieve member proposals, but we do need to take extreme care to ensure the grants programme is not deflected by a costly and time consuming legal challenge*”. We understand that the legal challenge concerns expressed in this note contributed to the decision to instigate a review phase announced by the Mayor in Cabinet on 3 October 2012.
- 4.39 On Thursday 20 September 2012, the Service Head for Resources and Economic Development emailed a number of officers to inform them that, after a meeting between the Mayor, the Corporate Director for CLC⁴⁰ and the Corporate Director for D&R, the CGPB meeting scheduled for that day had been postponed and was now due to take place the following Tuesday. The email goes on to state that his understanding was that before the meeting on Tuesday 25 September 2012 “*each Corporate Director must agree their draft recommended programme individually with the Mayor and Cabinet Member Resources*”. In response to this email a number of officers raised their concerns about the process of agreeing substantially different recommendations to that originally proposed by officers with one officer stating “*I also think we are in grave danger of a challenge from organisations who have delivered well for our community & will now be excluded, many others who deliver across the borough are at risk simply due to their office postcode*”.

⁴⁰ Currently the Interim Head of Paid Service.

- 4.40 The Mayor stated in interview that whilst he did recall the meeting with the Corporate Directors for CLC and D&R, he did not meet individually with Corporate Directors to agree their draft recommendations, as suggested in the email of the Service Head for Resources and Economic Development.
- 4.41 On 24 September 2012, the Service Head for Resources and Economic Development sent a further email to a number of officers to inform them that he understood “*there has been a further meeting regarding the Mainstream Grants, between the Mayor, [the Corporate Director for CLC⁴¹] and [the Corporate Director for D&R] regarding this process*”. He noted that, as a result, the CGPB scheduled for the following day would only consider the recommendations of two of the four directorates and that a further meeting would be set up for later in the week to discuss the recommendations of the other two directorates.

CGPB

- 4.42 The aim of the CGPB, as outlined in CGPB “*Terms of Reference*” dated June 2012, was to ensure an objective, fair and transparent approach to grant funding. This included “*overseeing the process and arrangements for awarding and administering grants to ensure a strategic approach*” and to ensure all project applications were assessed using the agreed methodology. Within these terms of reference the following are outlined to be key factors in creating an environment for a thriving third sector:
- a. “*To improve partnership working between local organisations*”;
 - b. “*To provide longer-term funding to organisations*”;
 - c. “*To ensure that funding is aligned to the Community Plan*”;
 - d. “*To ensure that the Council achieves value for money from its grants*”; and
 - e. “*To ensure that funding supports appropriate services for the benefit of local residents*”.
- 4.43 The CGPB was to be made up of two Members (together the “CGPB Members”), an external member (the Chief Executive of THCVS), five officers (the “CGPB officers”) and a LBTH legal representative. The names of these individuals, bar one officer, are listed in the CGPB “*Terms of Reference*” dated June 2012.
- 4.44 Three meetings of the CGPB were held to discuss the MSG 2012-2015 awards (on 25 September 2012, 28 September 2012 and 1 October 2012). Whilst we recognise that the CGPB is an advisory body and not a decision making body, and as such the meeting minutes may not fully record all discussions, we note that the minutes do record a limited number of questions having been asked by the LBTH legal representative and THCVS representative on the CGPB about the awards. However, there is no record of Councillor Miah, the Co-Chairman of the CGPB, asking questions at these meetings nor is there any record of CGPB officers probing the recommendations of other officers. Based on the minutes it appears that the five CGPB officers only attended CGPB meetings to discuss the recommendations they had made, with no more than two CGPB officers in attendance at any of these three meetings.

⁴¹ Currently the Interim Head of Paid Service.

- 4.45 At the CGPB meeting on 25 September 2012 Councillor Choudhury is recorded in the minutes as having stated “*where considering applications, local knowledge had been applied and it was known where money needed to be redistributed. Due to cuts in the Council budget, it was expected that larger Third Sector Organisations would make efforts to raise or lever in additional funds and use reserves.*” In interview Councillor Choudhury stated that this local knowledge was in relation to the needs, the service gaps and the different dynamics at play with regards to the different communities and the knowledge of who was providing what.
- 4.46 Minutes of CGPB meeting on 25 September 2012 record that an officer stated “*funding had been reduced for some groups, which might become unviable if they failed to raise external funding*”. It was noted that “*such groups would be monitored and further approaches made to the Lead member⁴² after six months if they appeared likely to fail*”.
- 4.47 During the CGPB meeting on 28 September 2012 the THCVS representative on the CGPB abstained from voting on the grant award proposals as he considered insufficient information had been provided and there was also not enough time to review the proposals. On this same day he wrote a note of his “*Observations and Comments*” in relation to the MSG process. This document was forwarded to the Authority to highlight the following concerns:
- a. A continued delay which heightened third sector concerns about the sustainability of their organisations;
 - b. There were a number of cancellations of planned CGPB meetings “*as a result of a review of the recommended awards*”;
 - c. Papers were not released in advance or were released late;
 - d. There were no explanation of “*how the published criteria were used to arrive at different recommendations*”;
 - e. Officer attendance at the CGPB was poor;
 - f. There was no consideration of the full schedule of grant recommendations so as to allow for a holistic view to be taken and the consideration of synergies; and
 - g. For the above reasons he believed he was an observer rather than an effective contributor to the CGPB.
- 4.48 The issue of over-allocation of the budget was raised at the 1 October 2012 CGPB meeting. The minutes of this meeting record that Councillor Choudhury suggested virement of any unspent funding to over-allocated areas. However, the CGPB did not consider this or alternative solutions to be viable. As such it was agreed that temporary virements would be pursued on the basis that not all funding would be taken up. The proposals for an appeals, or review, process were also discussed at this meeting.

⁴² Assumed to be Councillor Choudhury.

- 4.49 At these three CGPB meetings (on 25 September 2012, 28 September 2012 and 1 October 2012), the final recommendations were accepted for all funding streams discussed, with the exception of three applications where recommendations were amended during the meeting. In addition, the minutes note further information was required on a number of organisations.
- 4.50 Councillor Miah stated in interview that his role was limited to chairing the CGPB meetings, looking at the agenda and making recommendations to the Mayor. Councillor Miah stated that he did not need to know where the recommended figures came from and was unable to explain the basis on which he agreed the recommendations.
- 4.51 From a review of both the minutes of the CGPB and CGPB Member recommendations provided to officers, it appears the CGPB Members provided the majority of their input prior to CGPB meetings. Recommendations that were then made to the CGPB substantially reflect the recommendations of CGPB Members. For example the recommendations made to the CGPB for consideration on the 1 October 2012 reflected the CGPB Member recommendations provided to officers on 14 September 2012 in 373 of the 431 applications (87%). Given that the majority of recommendations provided to the CGPB for consideration were the same recommendations provided by Members to officers in advance of the CGPB meeting, and that other attendees of the CGPB were given limited opportunity to review recommendations, as evidenced by the observations of the THCVS representative above, the CGPB review and decision making process in relation to the MSG 2012-2015 awards does not appear to have met the CGPB aims of achieving an objective, fair and transparent approach to grant funding.

Review process

- 4.52 At the 3 October 2012 Cabinet meeting the Mayor agreed that the MSG process and awards were an urgent agenda item. The papers summarise how the “*Council agreed a new process and governance arrangements for the administration of Mainstream Grants in March 2012, whereby the decisions for all awards over £1,000 were to be made by the Mayor under his executive authority.*” The report sought approval for the recommendations of the CGPB, and also introduced a review process whereby organisations could seek a review of their award post Cabinet decision. The decision of the Mayor in Cabinet was that he was “*minded to accept the recommendations of the Board as detailed in the report and to invite [applicants], if they are dissatisfied by the recommendation to request a review within 7 days of being notified*”.
- 4.53 A total of 177 applicants made a documented request for a review of their award, and one organisation withdrew its application as it considered the amount awarded insufficient for the project. Of the 177 applications requesting a review, 76 applications were successful in obtaining an increase in their recommended award.
- 4.54 In addition to the 177 applicants that requested a review, a further 32 increases were made to the recommended awards in cases where there had been no request for review. The reason for the increase in the awards to these organisations has not been determined. However, we note that a press release was posted to the Mayor’s political website on 31 March 2014 and issued by the Authority on 1 April

2014 which referred to 32 changes being made by the Mayor. The press release lists five officer recommendations changed by the Mayor. Of these:

- a. Three are in the population of 32 where a review was not requested;
- b. One organisation referred to in the press release was not awarded any amount as part of the MSG 2012-2015 awards; and
- c. One organisation had requested a review of their award and so the influence of the Mayor was not clear in this case.

4.55 The Mayor stated in interview that he had not been involved in the detail of awards, although he had kept abreast of things generally through occasional high level discussions with Councillor Choudhury in particular. We received the following response from the Authority when we asked for further details about the 32 changes made by the Mayor, as noted in the 31 March 2014 press release:

“Neither the Mayor’s Office or the Council know who wrote the blog. The Mayor’s Political Advisor, ... issued a Press Release reflecting what was written on the blog but has no further detail about the blog. The Mayor is unable to recall any detail about the blog.”

Governance issues raised by the O&S Committee in November 2012

4.56 The 3 October 2012 decision taken by the Mayor in Cabinet was subject to a Call in by the O&S Committee and considered by them on 6 November 2012. Concerns were raised by the O&S Committee in respect of the process, the impact on organisations doing critical work in the Borough, the nature of new organisations receiving funding and the geographical balance of organisations that were recommended to receive funding. In addition, the O&S Committee noted that there had also been complaints from organisations about long delays and that the process kept changing. A key concern was the significant cuts in funding to social welfare advice services.

4.57 A Councillor presented the reasons for the Call in to the O&S Committee and *“argued that the geographical spread of funding across the borough was not balanced, or linked to the level of deprivation in the borough”*. Councillor Choudhury responded that it *“was difficult to carry out an Equalities Impact Assessment at this stage as the process had not been completed. The Board had fully looked at the geographical balance of the proposals”*. In reference to Councillor Choudhury’s comments we note that whilst the minutes of the CGPB meetings considering MSG 2012-2015 awards discuss geographical location of individual organisations, there is no reference to the CGPB looking at the geographical balance of proposals either by individual funding stream or as a whole within the context of need.

4.58 The 6 November 2012 O&S Committee proposed that the MSG 2012-2015 proposals be fully reviewed, taking into account:

- a. The equalities analysis;
- b. The geographical spread of funding;

- c. The impact of welfare reform on vulnerable residents and the impact of funding withdrawal from third sector organisations; and
 - d. The capacity of all organisations commissioned to deliver a quality service and stated outcomes.
- 4.59 The Mayor in Cabinet, on 7 November 2012, stated that he would consider the points raised and withdrew the MSG programme from the agenda to allow further consideration of the issues.

Final recommendations

- 4.60 On 30 November 2012 the Equality Assessment documents were finalised and approved⁴³ and following a discussion of the report, the CGPB agreed the recommendations to be made to the Mayor. These recommendations included:
- a. The awards;
 - b. The “*earmarking from general reserves of an additional £695,000*” to finance recommended grant awards;
 - c. The confirmation that the Dedicated Schools Grant was “*earmarked for education specific projects*”; and
 - d. The officer review of the provision of social welfare advice after 6 months.
- 4.61 We note the Dedicated Schools Grant is a central government grant that can only be used for the “*purposes of the Schools Budget as defined in the School Finance Regulations*”⁴⁴. The School Finance (England) Regulations 2012⁴⁵ define the Schools Budget to include the following classes or descriptions of expenditure:
- a. “*expenditure on the provision and maintenance of maintained schools*”;
 - b. “*expenditure on the education of pupils at independent schools, non-maintained special schools, ..., and on any other arrangements for the provision of primary and secondary education for pupils*”;
 - c. “*all other expenditure incurred in connection with the authority’s functions in relation to the provision of primary and secondary education*”; and
 - d. “*expenditure on early years provision*”.
- 4.62 The CGPB delivered a report dated 30 November 2012 for Mayoral Executive Decision which reflected the decisions and recommendations of the 30 November 2012 CGPB meeting. The report outlined the indicative budget of £3.3 million and how this compared to the recommended awards. The following table was presented:

⁴³ The Older People’s Lunchclubs and Social Welfare advice Equality Assessments were approved subject to comments.

⁴⁴ Source: Dedicated Schools Grant: Technical Note for 2012-2013.
<http://www.education.gov.uk/schools/adminandfinance/financialmanagement/schoolsrevenuefunding/settlement2013pupilpremiu/a00200465/schools-funding-settlement-2012-13>.

⁴⁵Source: <http://www.legislation.gov.uk/uksi/2012/335/contents/made>, chapter 2 section 5.

Directorate	Current Annual Budget (£,000)	27 Months Indicative Budget (£,000)	Recommended Awards (£,000)	Variance between budget and awards (£,000)
AHW	328	738	907	169
CSF ⁴⁶	879	1,978	1,894	(84)
CLC	734	1,652	2,071	419
D&R	1,387	3,121	3,169	48
Total	3,328	7,489	8,041	552

- 4.63 The 30 November CGPB report noted that the likely call on general reserves would be £714,000 over the 27 months from January 2013 to March 2015. The Risk Management Implications section of this report noted that to mitigate and minimise risks all supported projects would be strictly monitored on a quarterly basis to ensure compliance. The final MSG 2012-2015 recommendations were approved in Mayoral Executive Decision 19 on 30 November 2012.

Governance issues raised by the O&S Committee in December 2012

- 4.64 Mayoral Executive Decision 19 was subject to Call in by the O&S Committee for discussion on 17 December 2012. The reason for Call in was given as “*the significant changes to the proposals and the wide ranging public interest in this decision.*” The O&S Committee was also asked to consider specific issues, including the fact that the final decision was not made “*in public amid the open and transparent scrutiny of a Cabinet meeting*”. Other concerns raised were the lack of detail of the process used to make the decision and the use of £714,000 of reserves when “*the Council continues to operate under significant financial pressures*”.
- 4.65 The then O&S Committee Chair, Councillor Ann Jackson raised a number of issues in respect of changes to officer recommendations, the Equality Assessments and awarding grants to ineligible and new organisations that did not have a proven track record. In addition, the then O&S Committee Chair asked a series of questions to each officer in attendance at the O&S Committee meeting to determine whether the officers were satisfied with certain aspects of the MSG 2012-2015 award process. The minutes of the 17 December 2012 O&S Committee meeting recorded that “[a]ll but one officer confirmed that this was correct in so far as this pertained to information supplied by grant applicants”.

⁴⁶ The CSF current annual budget includes £652k per annum of ring-fenced Dedicated Schools Grant funded awards for Early Years Service.

- 4.66 On 17 December 2012 the O&S Committee resolved to “*refer the decision back to the Mayor for further consideration.*” The O&S Committee also endorsed the comments of the O&S Committee Chair to refer the matter to the District Auditor for further probing. However, we understand from the Authority an audit by the District Auditor was not commissioned. The Authority stated that in “*the light of Overview and Scrutiny concerns about the MSG process an audit report was commissioned as part of the Council’s annual audit plan at a point sufficient to have given the monitoring systems and processes time to have bedded down and establish an audit trail. This report has not yet been finalised but will be reporting shortly*”. This Internal Audit report was undergoing factual accuracy checks in July 2014 and as a result of this the Authority placed our request for this report on hold until further notice. As at the date of this report, we have not received the Internal Audit report. However, given the Authority’s commentary in response to our factual accuracy checking (cited above) we infer that this Internal Audit report will not focus on the original MSG 2012-2015 award process which was the focus of the O&S Committee’s concerns and will instead consider monitoring systems and processes.
- 4.67 On 7 January 2013 the Mayor confirmed his 30 November 2012 decision.

Results of decision making

- 4.68 Final MSG 2012-2015 funding recommendations and awards are set out in the table below by reference to 2014 wards:

2014 Ward	Amount requested (£)⁴⁷	August (Officers) (£)⁴⁸	September (Members) (£)	October (Cabinet) (£)	Final awards (£)
Bethnal Green	1,810,710	346,289	228,339	253,089	307,650
Blackwall & Cubitt Town	968,132	460,461	365,448	367,448	393,633
Bow East	421,880	99,397	42,000	67,000	67,000
Bow West	69,255	55,447	45,000	51,000	63,000
Bromley North	201,686	168,800	15,500	45,500	103,000
Bromley South	87,590	86,293	21,000	47,000	53,000
Canary Wharf	55,022	12,375	13,750	13,750	15,000
Island Gardens	421,871	192,239	126,373	146,973	177,973
Lansbury	780,563	249,328	197,470	241,970	312,250
Limehouse	551,979	346,381	122,670	222,670	298,520
Mile End	1,727,181	824,760	416,734	477,982	761,987
Poplar	366,314	165,196	91,250	91,250	103,800
Shadwell	1,111,977	204,386	433,710	429,500	460,750
Spitalfields & Banglatown	3,042,419	1,245,251	1,246,901	1,189,823	1,424,560
St. Dunstan's	655,882	160,291	218,250	208,313	212,113
St. Katharine's & Wapping	418,194	201,678	174,430	172,180	173,430
St. Peter's	3,527,498	1,116,316	687,263	929,263	1,226,350
Stepney Green	792,909	99,708	160,750	160,750	258,500
Weavers	984,281	279,307	376,844	394,844	481,344
Whitechapel	2,645,174	865,718	830,612	820,612	1,023,405
N/A ⁴⁹	1,355,891	242,288	37,500	57,500	123,500
Grand Total	21,996,405	7,421,905	5,851,794	6,388,417	8,040,765
Total applications	431	255	296	306	327

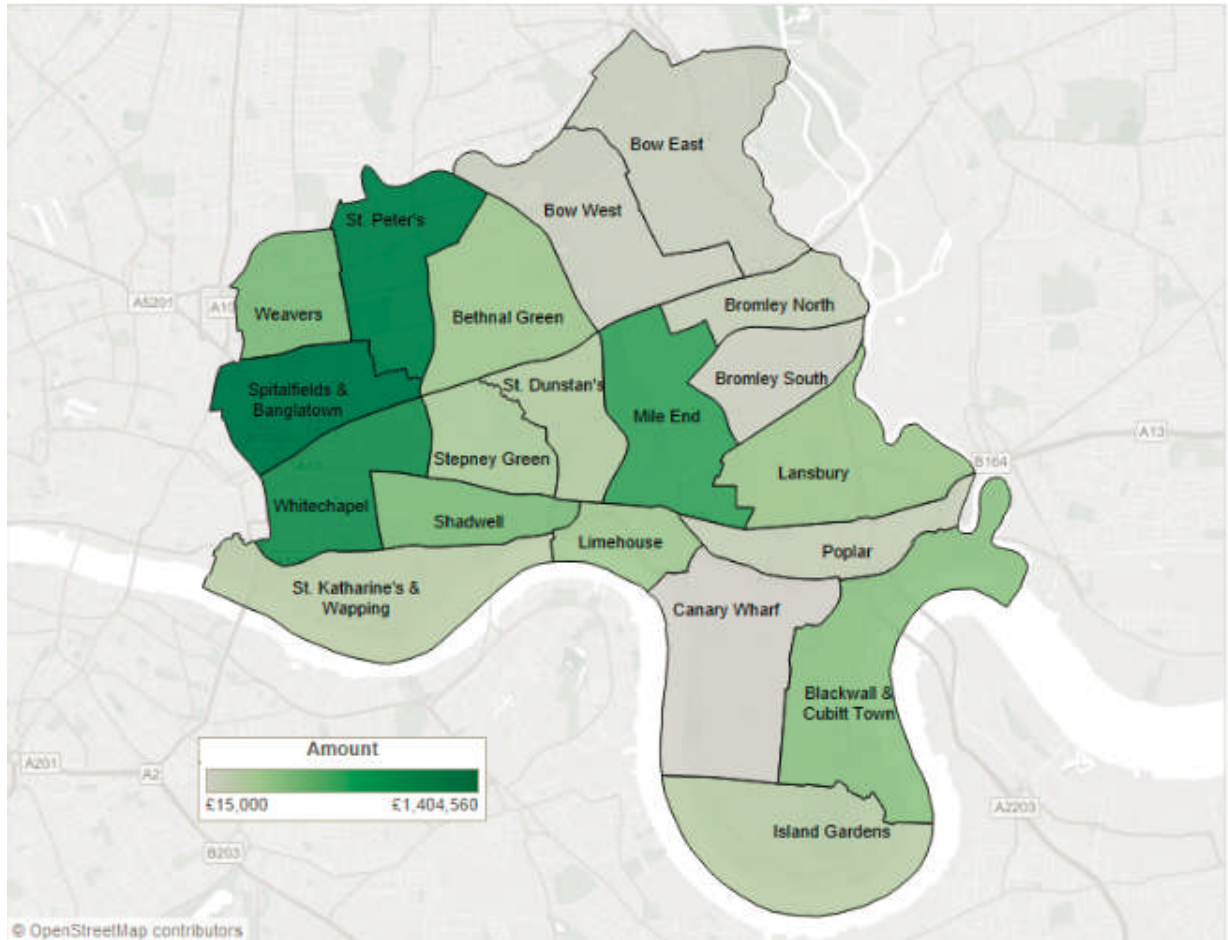
⁴⁷ Amounts pro-rated to 27 months.

⁴⁸ Amounts pro-rated to 27 months.

⁴⁹ Applications from organisations located outside of the Borough.

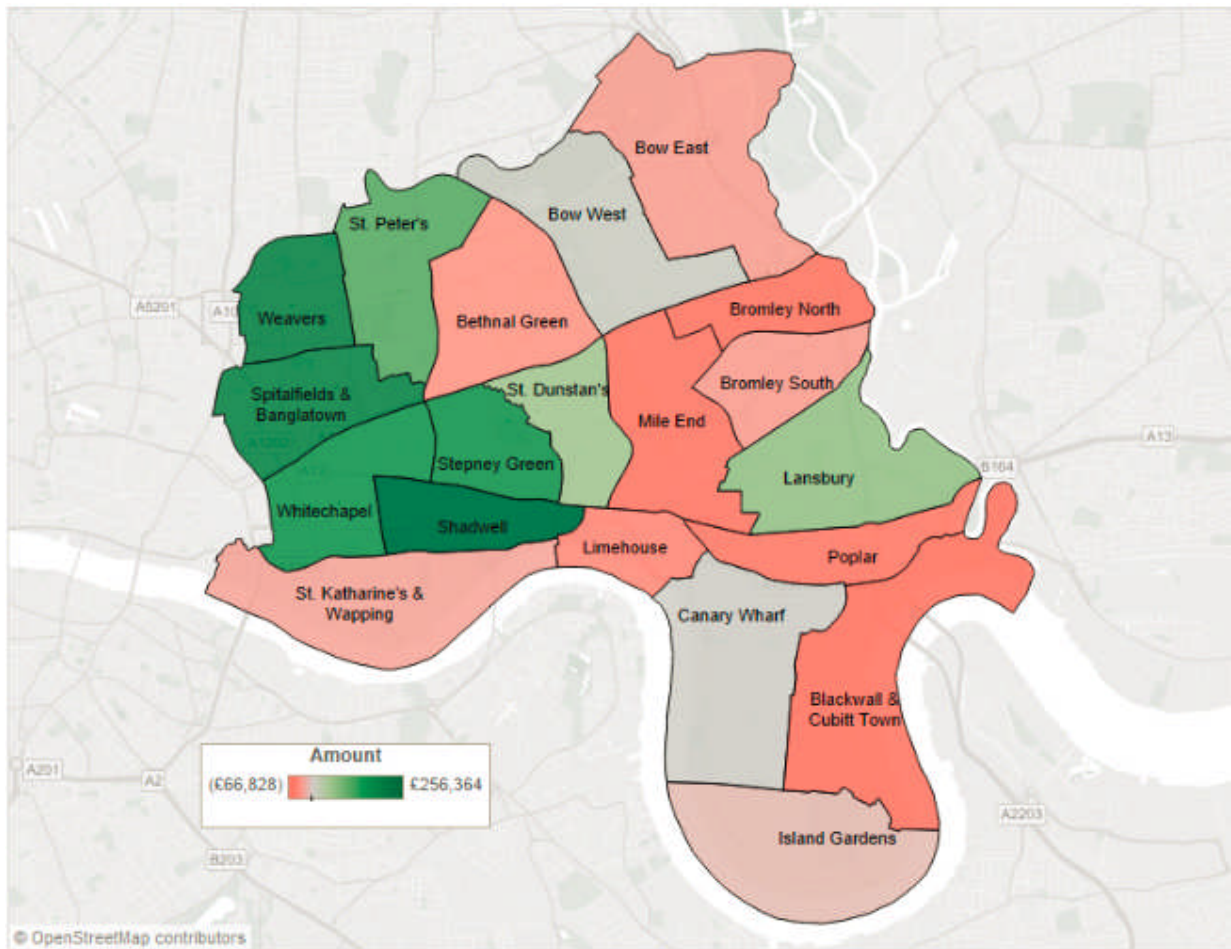
- 4.69 Figure 1 below presents the final awards data contained in the table above in a map of the Borough. As indicated by the colour scale in the key, the darker the shade of green, the higher the aggregate value of grants awarded to applicants within a given ward.

Figure 1 – MSG 2012-2015 final award value by 2014 ward.



- 4.70 Figure 2 below presents how the value awarded by 2014 ward changed between initial officer recommendations in August 2012 to final awards in November 2012. The aggregate decrease (red) or increase (green) is shown by ward on a scale with darker shades indicating greater aggregate decrease (red) or increase (green).

Figure 2 – Changes to MSG 2012-2015 between August 2012 Officer recommendations and November 2012 final awards.



Observations in relation to the MSG 2012-2015 awards

- 4.71 Of the 327 applications that were successful in the final MSG 2012-2015 awards, a total of 15 applications receiving aggregate funding of £243,500 did not meet minimum eligibility criteria and so were not scored by officers. Officers did not recommend any applications for awards that did not meet the minimum eligibility criteria, rather recommendations for funding were made by Members in September 2012 for all bar one of these 15 ineligible applications. The remaining ineligible application was one of the 32 increases to recommended awards following the final review process where the applicant had not requested a review, as discussed in 4.54 above.
- 4.72 Further, 21 applications totalling £455,700, which did meet the minimum eligibility criteria, but did not meet the minimum quality threshold score of 40, were successful in the final awards. This was 18 applications and total awards of £407,700 more than those recommended by officers, as discussed in paragraph 4.36 above. We note one organisation, which was recommended by officers but did not meet the minimum quality threshold, was not successful in the final awards.
- 4.73 When comparing the pro-rated annual amount requested by organisations in their applications to the final awards amount, it was found that 36 organisations were awarded amounts for the 27-month grant

period in excess of the pro-rated application amount (albeit 10 of these applicants did not state an annual amount in their application). Of those 36 awards a total value of awards in excess of funding amount requested was £281,982.

- 4.74 Further, 186 of the total 327 successful applications, i.e. 57%, were awarded exactly the amount recommended by CGPB Members on 14 September 2012. Only four of these 186 awards were exactly the amount recommended by officers in their updated CGPB report circulated on 6 September 2012.
- 4.75 We also note that the Interim Monitoring Officer discussed the published concerns relating to the grant programmes with the staff engaged in administering those programmes and “*found nothing to substantiate any of these concerns*” being expressed publicly at the time of his appointment. The Authority stated that the Interim Monitoring Officer’s comments relate specifically to investigations undertaken into allegations published in a Telegraph article in January 2014⁵⁰.
- 4.76 Specifically the Authority stated “*[t]he Monitoring Officer’s investigation of those most serious matters found nothing to substantiate any of those concerns. Those remediable process failures that did exist did not support a conclusion that the grants processes were “out of control”, an abuse of Executive power or would amount to electoral malpractice. The Monitoring Officer concluded that the published concerns were ill-founded, partial and motivated by political considerations. Actions to address the remediable process failures have been put in place.*” The Interim Monitoring Officer has stated that there “*were evident issues of delay, non-compliance with agreed process and poor record-keeping in respect of some matters.*” However, the Authority has not provided any supporting evidence of the steps it that has taken to address “*remediable process failures*”.

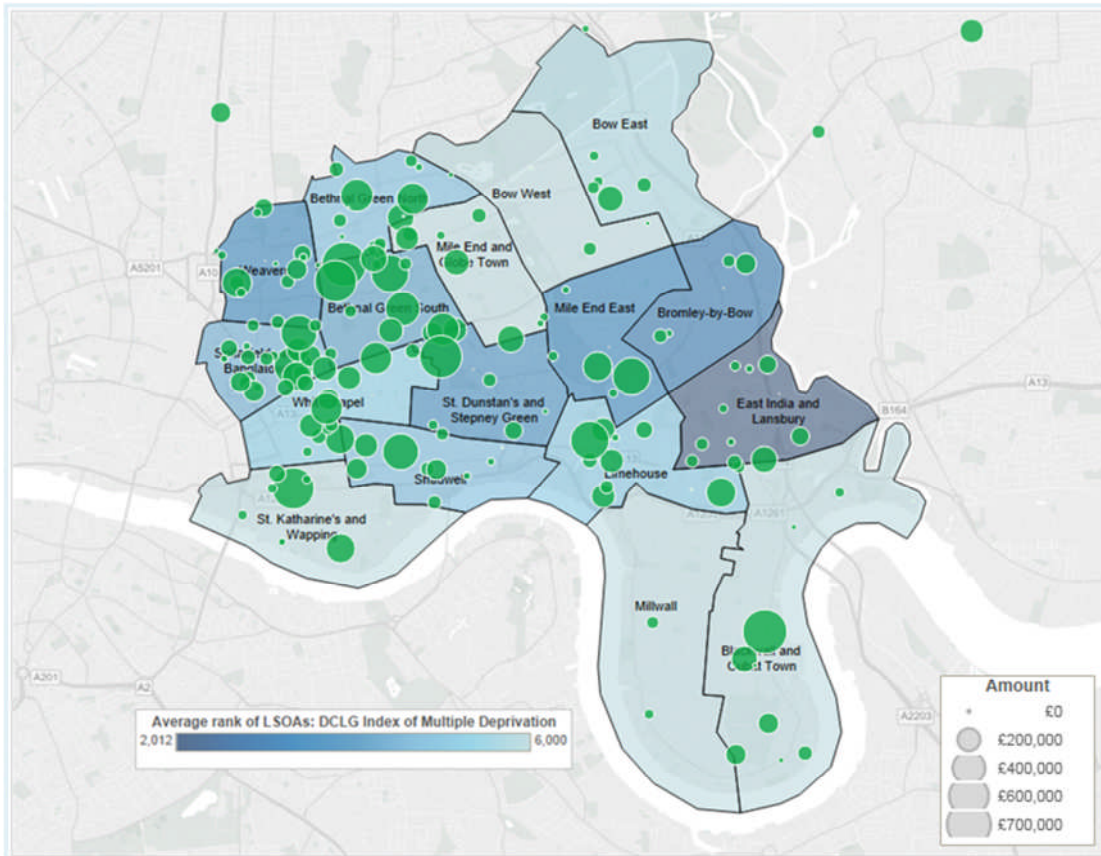
DCLG Indices of Deprivation 2010

- 4.77 The Authority referred us to the DCLG Indices of Deprivation 2010 as an example of one source of needs analysis considered by the Authority in defining grant specification documentation.
- 4.78 In the following section we have plotted the MSG 2012-2015 awards at different points in the process, on a map of the Borough. We have divided the map of the Borough into the wards as they existed in 2010 and represented the relative deprivation, based on the DCLG Indices of Deprivation 2010, in colour, with darker blue representing greater relative deprivation within the ward. The DCLG Index of Multiple Deprivation 2010 provides a ranking for every Lower layer Super Output Area in England. In order to calculate the ranking at a ward level, the latitude and longitude of each Lower layer Super Output Area was used to determine the encompassing ward. The rankings within a ward were then averaged (using the mean average) in order to give a ranking at a ward level.
- 4.79 Figure 3 below shows the MSG 2012-2015 applications, grouped by postcode, in green circles with the size of the circle indicating value i.e. larger circles represent greater relative value. The location of the circle is determined by the postcode of the applicant organisations. We note there are some inherent

⁵⁰ <http://www.telegraph.co.uk/news/politics/10581958/Boroughof-Tower-Hamlets-a-byword-for-sleaze.html>.

limitations in this illustrative approach, as the applicant organisations will vary in the geographical extent of their activities. The distribution of applicants in Figures 3 below shows a significantly large proportion of applications came from the densely populated west of the Borough.

4.80 Figure 3 – MSG 2012-2015 applications.



4.81 By comparison, Figure 4 on the following page shows that the officer recommendations in August 2012 were more evenly distributed geographically than applications received. The diagram also represents the large difference in value between amounts applied for and the available funds. In addition, Figure 5, also on the following page shows that Members' recommendations were more concentrated in the west of Borough and a larger number of organisations were recommended to receive, on average, smaller amounts.

Figure 4 – MSG 2012 – 2015 officer recommendations August 2012.

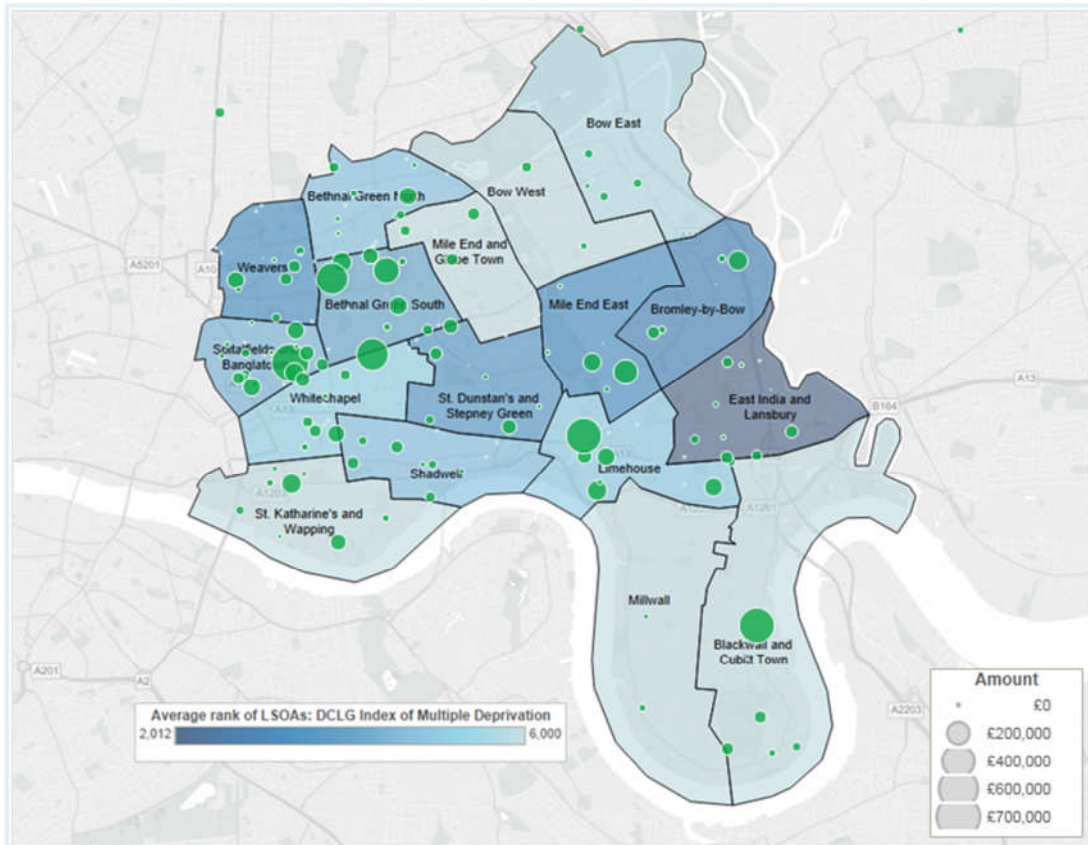
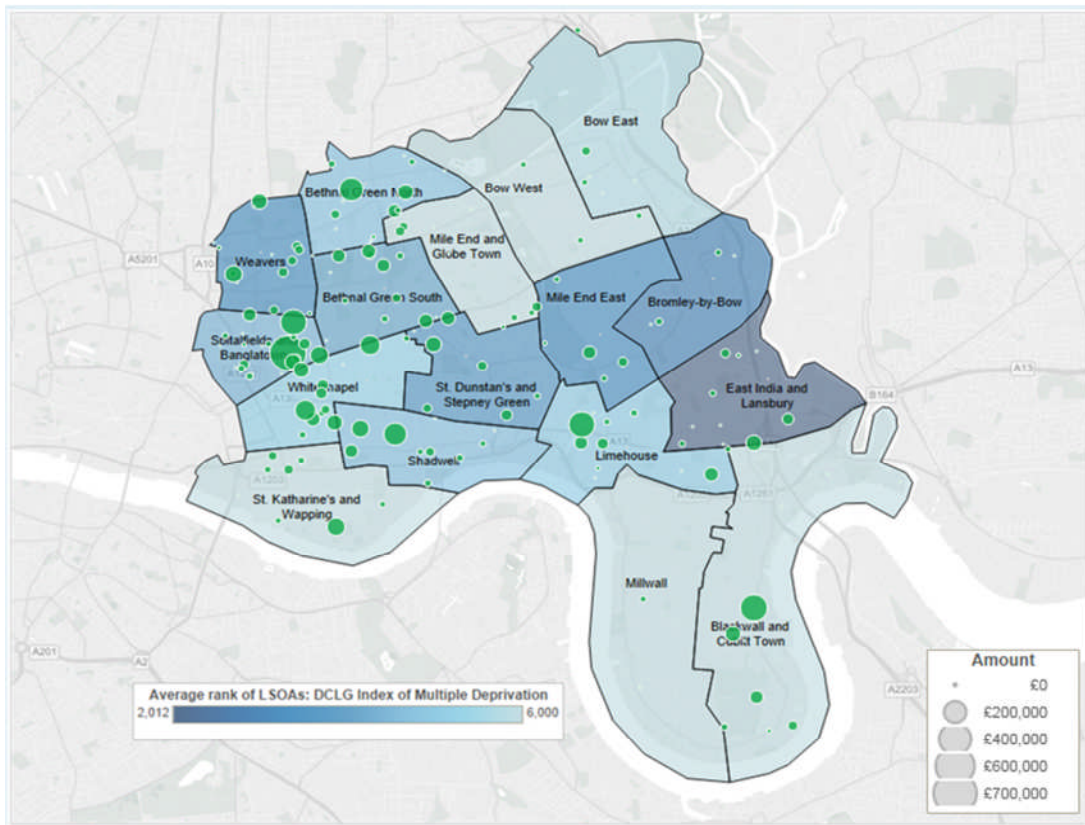
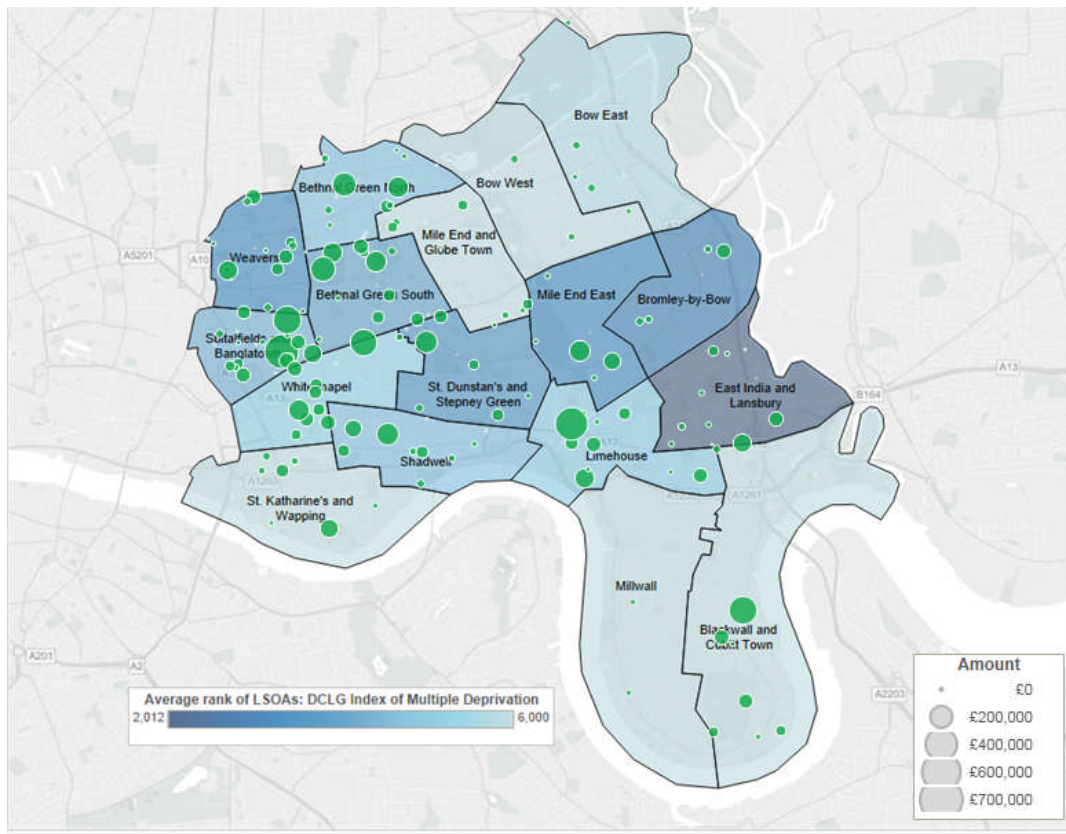


Figure 5 – MSG 2012-2015 Member recommendations September 2012.



- 4.82 Figure 6 below shows the final officer recommendations. The Authority has stated that the “*Authority has provided PwC with a wealth of analysis demonstrating clearly that resource has followed need*”. The Authority have stated also that there are “*clear and direct references to relevant needs analysis within the grant specification documentation*”. Figure 6 below, when reviewed in conjunction with the overall award data presented in the table at paragraph in 4.68 above, and our knowledge of the decision making process as a whole, does not clearly demonstrate the basis on which relative deprivation has been a consideration in the decision to make the final MSG 2012-2015 awards. This is in light of the fact that certain areas in the east of the Borough, with levels of deprivation equal or greater to those wards situated in the west, were awarded less monies in the final MSG 2012-2015 awards than had been recommended by officers in August 2012.
- 4.83 We note the Authority’s statement that needs analysis is often included at the outset in grant specification documentation. This is the grant specification documentation that officers would have conducted their assessments of project outcomes against when providing award recommendations. We note that the documentation purporting to constitute the Authority’s needs analysis was only provided to us during the fact checking process and was not referred to by anyone we spoke to over the course of the Inspection when asked about the rationale for grant award recommendations. Be that as it may, we would expect – and the Authority’s explanation seems to confirm this – that whatever needs analysis was carried out would have been factored into the original officer recommendations. However, the final MSG 2012-2015 awards reflected more closely Member recommendations than officer recommendations and we have not seen evidence of Member recommendations being conducted in light of grant specification documentation. This is also a concern raised by the Chief Executive of THCVS in paragraph 4.47d above.

Figure 6 – Final MSG awards November 2012 final award.



Additional governance matters Monitoring

- 4.84 The services agreed between the Authority and each organisation in receipt of a grant would be documented in the grant offer letter, which provides the basis for monitoring. In addition we received an undated LBTH Grant Officers Manual for the management and monitoring of grant funded projects. This is a process manual covering eight project stages and describes a risk-based approach to monitoring grant-funded projects, taking account of the level of grant as well as the track record of the project or organisation. The levels of grant are defined as small grants of up to £5,000 per annum, medium grants of £5,001 to £20,000 per annum and large grants of more than £20,000 per annum. Monitoring can either be carried out through desktop and/or site visit methodologies, dependent on the size of grant. Small grants can be monitored solely through desktop monitoring if the organisation has a good track record. In the case of medium and large grants, in addition to desktop monitoring, site visits must be conducted once per financial year for medium grants and twice per financial year for large grants.
- 4.85 The LBTH Grant Officers Manual outlines that desktop monitoring includes confirming that all information required in the formal grant documentation has been provided and checking that output and outcome figures meet requirements for the period relevant to the grant. Site visit monitoring is more intensive and includes checking the accuracy and verifying cumulative figures on outputs and

outcomes, equalities monitoring information and expenditure against original documentation, such as checking cumulative expenditure against invoices and bank statements.

- 4.86 We performed a limited review of the available monitoring documentation against the output and reporting requirements for 20 applications covering all 11 funding streams and noted the following:
- a. There was only one file available to support two applications from the same organisation. We note that officers who initially evaluated the application did not believe it to be eligible for funding within their funding stream, so transferred it to another funding stream for consideration. As a result of Member input the organisation received funding from both funding streams. For this reason we reviewed 19 files;
 - b. Of the 19 files reviewed, issues were identified in nine files;
 - i. Three of the 19 files included monitoring reports but did not provide any evidence of grant-funded activity or spend, for example attendance registers, user feedback forms or receipts. These three organisations have received £156,736 in the Period;
 - ii. Four of the 19 files had quality issues within monitoring reports such as failing to provide certain defined output measures (e.g. exam results for service users) or data inconsistencies (e.g. mismatching equality data for a number of service users). A total of £65,781 had been paid to these organisations. There was evidence in two of these four files that organisations were not meeting grant award conditions. This represented £22,833 of the £67,781 payments made; and
 - iii. Two of the 19 files indicated that the grant recipient had struggled or was unwilling to fulfil grant conditions, as one project closed early due to low take-up by service users and one award was declined by the applicant group. Payments made to these two organisations totalled £4,292. Neither of these applications had met the minimum quality standard when assessed by officers.
- 4.87 Officers acknowledged in interview that the level of monitoring will be proportionate to the amounts awarded, and that, due to the number of organisations, it is a challenge to visit all organisations once a year. An officer noted that all projects are visited during the life of the programme (as is the policy) and should monthly desktop monitoring flag up any issues these would be prioritised.

Case study – Organisation A

- 4.88 In some cases, as discussed at the 28 September 2012 CGPB meeting, some bids “*were recommended for approval subject to conditions such as monitoring by the Council on issues like governance*”. For example, we were told in interview that officers identified manipulation in the documents provided to support the application of one organisation (“Organisation A”) and as such did not recommend either of the two applications for funding. However, Members recommended that this organisation receive a total of £40,000 and this was the final amount awarded to the organisation.
- 4.89 We understand that on 26 June 2012 an officer sought advice from Internal Audit on the accounts of Organisation A, which were submitted to support their MSG 2012-2015 application. Internal Audit raised issues about the submitted financial accounts of the organisation and the financial viability of the

organisation. Further, Internal Audit highlighted that “*officers felt that they were being pressured unduly into providing a favourable assessment*” and that staff were advised by a manager within their section that the organisation “*had the full support and backing of the Mayor*”.

- 4.90 A further probity review of Organisation A was conducted. In September 2012, Internal Audit reported that they found the “*overall governance arrangements and financial systems of control to be inadequate*”. Internal Audit assigned “*Nil Assurance*” to Organisation A’s control environment and raised the following matters:
- a. An issue of conflicts of interest where a director of Organisation A was also the main point of contact for another organisation’s MSG 2012-2015 application⁵¹;
 - b. The financial records of Organisation A were in the name of another organisation⁵²; and
 - c. MSG 2009-2012 funding to Organisation A had been used to support other organisations, but six of the 10 tested by Internal Audit “*appeared no longer to be operating*”.
- 4.91 A follow-up review was conducted by Internal Audit in January 2013. Internal Audit raised serious concerns about the validity of records (quotations and invoices) provided to them, some of which they believed appeared to be falsified and had financial irregularities. The Internal Audit report stated “*due to the nature of concerns raised above, we recommend withdrawal of grant funding and clawback in accordance with the conditions of the grant.*” The MSG 2012-2015 grant was not withdrawn. In interview, it was confirmed by the Section 151 Officer that the allocation to Organisation A was held back until governance issues had been resolved, and a new management committee was put in place. We note three directors resigned from their position on 4 January 2013 and on the same date, we note that five director appointments were made. MSG 2012-2015 payments to this organisation began in May 2013 and it has received £21,875 in the Period.
- 4.92 The Authority has stated that “*organisational reform is being driven by support and intervention from the Council and that capacity building of third sector organisations is a key role of local government and entirely consistent with central government policy*”. However, we note that there was no Internal Audit review undertaken prior to the payment of monies to Organisation A in May 2013 to confirm “*organisational reform*” had occurred. In addition we note that three other applications to the Community Economic Engagement funding stream, all of which scored above 60, were turned down for funding with the following comment “*this was a reasonably good scoring project, however there was very high demand for funds from higher rated proposals which meant that this project was not able to be supported*”. Given the scarce resources available and the evidence of existing capacity within other organisations, it is not clear how building capacity within Organisation A was the best use of resources within this funding stream.

⁵¹ We note this organisation was also deemed ineligible for MSG 2012-2015 funding by officers in their original assessment but Members recommended £21,000 be awarded to the organisation.

⁵² We note this organisation was awarded £160,778 of the MSG 2012-2015 funds in November 2012.

Conflicts of interest

- 4.93 The Constitution defines an ‘interest’, and subsequently identifies what actions should be taken by Members to ensure there are no conflicts in their different interests. The Constitution provides significant guidance in relation to seven aspects of disclosable pecuniary interests, being employment, sponsorship, ongoing contracts, land, licenses, corporate tenancies and securities. Where Members or their spouse *“have a [disclosable pecuniary interest] in any business of the authority [they] must withdraw from the room or chamber where a meeting considering the business is being held...”*
- 4.94 Councillor Miah disclosed his employment as a Community Development Worker in his register of interest form dated 22 September 2011. Further, he contributed to a section of his employer’s 2011 Annual Report and specifically described a partnership with another organisation (“Organisation B”), in running a lunch club. This Annual Report stated that funding came from the Authority under the MSG programme, which we understand to be the 2009-2012 funding programme.
- 4.95 Organisation B made an application for MSG 2012-2015 funding to run lunch clubs. This application stated that the application was being made on behalf of a consortium which included Councillor Miah’s employer. We note the following details in relation to this application:
- a. The application was for annual funding of £8,700;
 - b. The application scored 28, which was below the quality threshold of 40 and officers did not recommend funding to the organisation;
 - c. In September 2012 Members recommended the organisation received a total award of £36,000 over 27 months, which was more than the amount applied for; and
 - d. Organisation B were awarded £36,000 in the final MSG 2012-2015 awards in November 2012.
- 4.96 Councillor Miah attended the CGPB meetings dated 25 September 2012 and 20 November 2012 during which MSG 2012-2015 Lunch Club Services funding was discussed. Councillor Miah did not declare any interests at these meetings. In interview, Councillor Miah confirmed he used to hold the position of chair at Organisation B, but resigned in 2010 after being elected as a councillor. He stated that since then he had *“no involvement within the organisation.”* When asked about the jointly run lunch clubs between Councillor Miah’s employer and Organisation B, Councillor Miah said that his employer was not involved in the lunch clubs, albeit he did confirm that some of their members would attend Organisation B’s lunch club.
- 4.97 In relation to this matter, the Councillor Miah has asked us to include the following statement:
- “Since his interview Councillor Miah has clarified that as chair of CGPB he did not see the details of the application and neither were the details of the application set out in the officers’ report. As a result he would not have been in a position to know about his employer’s involvement and therefore unable to declare an interest.”*

4.98 In addition, in Cabinet, Councillor Choudhury declared a pecuniary interest in respect of one Early Years Service application to the MSG 2012-2015 awards, and a personal interest during CGPB meetings, as evidenced in minutes. The Constitution states *“Interest in any business of the authority which is not included in the Member’s register of interests and you attend, in any capacity, a meeting of the authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent; and must within 28 days notify the Monitoring Officer of the interest for inclusion in the register”*. However, Councillor Choudhury did not update his register of interests for this declaration. Since his interview Councillor Choudhury has stated he was advised by the Authority’s Legal department that he had a personal interest and not a pecuniary interest, and that there was no need to change his register of interests. He also stated that *“in view of the facts, either in error I declared a pecuniary interest at the Cabinet meeting when I should have declared a personal one or the minutes inaccurately recorded a pecuniary interest when they should have recorded a personal one.”*

PH&W 2013-2015 awards

- 4.99 As set out in the 14 March 2012 Cabinet report, the *“Older People – Non Lunch Club Activities”* funding stream was not scheduled for re-commissioning until April 2013. We understand a five month extension was given to existing providers from April 2013 to September 2013 and the application process for PH&W awards opened in May 2013.
- 4.100 Officers recommended a total of 15 organisations for funding, carrying out assessments of *“all applications from eligible organisations to establish how well they met the agreed set of criteria.”* However, in the CGPB of 17 September 2013, a total of 35 applications were recommended for funding. The CGPB minutes note that there *“were many applications therefore the principle of awards was revised hence smaller grants have been recommended to a larger number of organisations”*.
- 4.101 The Authority provided a document which listed the organisations that applied for PH&W 2013-2015 awards, the amounts they applied for, details of their project and of scoring and has handwritten values against a number of organisations. The document had a handwritten annotation *“dictated to [officer] by Cll’s AA & AC”*. An officer stated in interview that the decision to fund more organisations, the specific applications to be funded and the amount of funding to be awarded to organisations was dictated to them by Councillor Choudhury and Councillor Asad. We note that there were only two changes to these Member proposals in relation to the PH&W funding; all other recommendations by Members were carried through to final recommendations and final awards.
- 4.102 The approval of the PH&W grant recommendations occurred on 3 October 2013. This decision was taken as a non-key Mayoral Executive Decision, rather than through Cabinet.

954 Fund Introduction

4.103 The payment and connected decisions of awards under the 954 Fund are on an ad hoc basis. In this light the results of our work are set out in the following sections:

- a. Establishment of the 954 Fund;
- b. The relationship between the 954 Fund and the MSG 2012-2015 programme;
- c. Officer Suggestions for the 954 Fund; and
- d. Grant awards from 954 Fund.

Establishment of the 954 Fund

4.104 The 954 Fund was created by decisions taken by the Mayor in Cabinet on 20 June 2012. The minutes of this meeting record that the Corporate Director for Resources stated that a £554,000 underspend “*was no longer required for a transfer to reserves*”. In addition, he identified that the amount set aside for an ICT Future Sourcing programme could be reduced by £400,000 following consultation with the strategic delivery partner. Subsequently, the following decisions were made by the Mayor:

- a. “*That the transfers to reserves...be approved with the exception of £0.4 million of the ICT Future Sourcing / Transformation Programme reserve*”;
- b. “*That the outturn variance of £0.554 million in respect of the 2011/12 General Fund... not be transferred to reserves*”;
- c. “*That the funds identified... above, as not being transferred to reserves, be combined to create another Mainstream Grants Fund of £0.954 million*”; and
- d. “*The secondary Mainstream Grants Fund created... above be used for the same funding priorities as the existing Mainstream Grants Fund.*”

The relationship between the 954 Fund and the MSG 2012-2015 programme

4.105 At the Cabinet meeting dated 20 June 2012 Councillor Choudhury noted the “*Mayor’s commitment to “top-up” the mainstream grants funding by £1m*”. However, the 954 Fund was not added to the MSG 2012-2015 process which was ongoing in June 2012. This was deemed by the O&S Committee, in their report dated 6 November 2012 in relation to the MSG 2012-2015 award, to be “*detrimental to those that have lost significant amounts of funding. Their ability to bid for this funding is also impeded and there have been no proposals set out as to how this fund will be used.*”

4.106 In the report to Cabinet dated 7 November 2012, we note the Members that requisitioned a Call in of the MSG 2012-2015 award process proposed “*the £954k of unallocated funds highlighted... be released to support agencies facing... significant cuts*”. The minutes of the meeting of the Cabinet on 7 November 2012 recorded that the Mayor stated that he would consider the points. In the minutes of the O&S Committee meeting dated 17 December 2012, the Service Head for Resources and Economic Development stated:

“One of the recommendations that the mayor did agree is that officers should monitor the affects [sic] of the welfare changes on the community... Moreover, there is an additional £945,000 [sic], some of which may go towards supporting the Third Sector to provide welfare support”.

4.107 However, the 954 Fund remained a separate fund and was not consolidated with the MSG 2012-2015 budget.

Officer Suggestions for the 954 Fund

4.108 In a briefing paper dated 4 July 2012 from the Service Head for Resources and Economic Development to the Mayor’s Advisory Board Strategic And Resource Planning (“MABSARP”) in relation to the Mayor’s Strategic MSG Grants Programme, it was suggested that the 954 Fund is used *“to support a series of short-life projects”*. The following four themes were identified within this briefing paper as a means of allocating funding:

- a. Supporting residents by focusing on housing, employment and financial inclusion;
- b. Raising skills of non-working residents to improve employability;
- c. Promotion of enterprise through social investment; and
- d. Delivering innovative community solutions.

4.109 The briefing paper also lists a number of other directorate specific project proposals. Only one of the directorate proposals within the briefing paper was progressed, namely the lunch club proposal from the AHW directorate.

4.110 Further, in the 11 June 2013 meeting of the CGPB the minutes record the *“Board proposed that the Mayor be asked to provide a steer on the use of the residual mainstream grants budget prior to the board considering this further. Councillor Choudhury highlighted the fact that in arriving at grant recommendations, senior politicians often were able to provide a wider perspective on the needs of community organisations, over and above the assessments of funding bids made by grants officers”*.

Grant awards from 954 Fund

4.111 The first award from the 954 Fund occurred on 26 April 2013. This award and those made subsequently in the Period are shown in the table below:

Date of Mayoral Decision	Number of organisations that received award	Project	Award (£)
26 April 2013	1	Boishakhi Mela	170,000
30 April 2013	1	Community Centre	64,000
3 June 2013	10	Lunch clubs	152,000
16 July 2013	2	Projects formerly funded by Home Office Community Action against Crime Innovation Fund	100,000
1 October 2013	1	Youth provision	36,000
Total			522,000

4.112 The 954 Fund was not fully utilised during the Period, and we understand only a further £130,000 was recommended for award by the CGPB at the end of the Period. However, at the 25 June 2014 Third Sector Advisory Board meeting, in response to the voluntary sector representatives' request for a report on the 954 Fund, the Acting Service Head for Resources, confirmed "*this fund was a central budget put together in 2012. Its existence was never communicated to the sector. Organisations were able to bid into the fund but that wasn't communicated either. The budget has now gone*".

4.113 The awards that have been made in the Period are addressed in the sections below.

Boishakhi Mela

4.114 The Boishakhi Mela ("Mela") is an annual festival that began in 1998 and is promoted largely as a Bengali New Year Festival but is open to and attended by other sections of the community. Previously, the Mela was organised by a single limited company. Due to the scale and complexity of the event, the report of the Corporate Director for CLC⁵³ on 5 November 2008 recognised that this organisation did not "*have the expertise or resources to deliver on a number of key aspects of the event*". Particular areas for improvement included health and safety management and clear financial records. As a result, the Authority decided to host the Mela in 2009, and that "*a new community trust be established to deliver the Mela from 2010*". However, it was not until the Cabinet meeting of 3 August 2011 that the Mayor agreed for the Mela to be returned to community management for 2012. The associated Cabinet report stated:

- a. "*[T]he right to manage the Mela be granted for a period of nine years, subject to reviews at year one, three, and six by an independent panel*"; and

⁵³ Currently the Interim Head of Paid Service.

- b. *“Representatives of shortlisted organisations will make a presentation to/be interviewed by an independent panel who will recommend an applicant to Cabinet”.*

- 4.115 The 3 August 2011 Cabinet report indicates that a recommendation for award would be made on 5 October 2011. However, no recommendation was made until the Cabinet meeting dated 8 February 2012, only 13 weeks before the date of the Mela. A Trust (the “Trust”) was awarded the concession to manage the Mela subject to an independent audit of the organisation. The Mayor stated *“the funding to be allocated is for the 2012 Mela only. In future years the organisation will seek funding through the mainstream grant process”.*
- 4.116 Our work identified that there are overlaps in the directors at the Trust that was awarded the concession and the organisation which previously ran the Mela. In addition, the vendor master file provided to us identifies both organisations at the same postal address.
- 4.117 The independent audit of the Trust in March 2012 noted the following key findings:
- a. *“The Trust’s Financial Standing Orders (FSOs) are the main document outlining the intended procedures and policies of the Trust, although many are not established yet. The FSOs are not tailored for the Trust’s activities and the content and terminology needs revisiting and updating to accurately reflect the Trust’s circumstances”;*
 - b. *“The FSOs contain information which appears not to be relevant to the Trust. In addition, the financial limits within certain policy areas appear not to be appropriate for the expected activities of the Trust”;*
 - c. *“[T]o date the Trust has had minimal transactions, meaning many controls have not been established yet”;* and
 - d. *“The Trust has contracted with a number of entities who may be related parties of the directors of the Trust”.*
- 4.118 In addition, the report also identifies that the management of a Trade Fair associated with the Mela was outsourced by the Trust to a company called [Redacted] (“Company A”). The audit report noted that the direct procurement strategy was adopted by the Trust *“due to time constraints”* and the knowledge that Company A had *“worked on similar roles before for the Council”* (see paragraph 5.115 below for further details on Company A’s connections with the Authority).
- 4.119 A further review of the Trust was initiated in October 2012 to audit the implementation of recommendations provided by the Authority in June 2012. The expenditure incurred by the Trust for the 2012 Mela was also audited by a third party at the request of Internal Audit. This audit found that expenditure for payments to third parties was agreed to third party invoices in all but two cases. In making the decision to award funding from the 954 Fund, the CGPB, in the meeting of 11 April 2013, agreed to pay the Trust 80% of the grant funding for the 2013 Mela *“following evidenced confirmation that the main event management contracts have been invoiced and on the basis that the Trust have met, to the Council’s satisfaction, the appropriate... audit Priority 2 recommendations”.* The CGPB

minutes of 11 April 2013 also note that the remaining 20% of the funding be “... *paid on completion of the event following the successful conclusion of the independent audit.*”

Lunch clubs

- 4.120 As noted above, the only proposal actioned from the 4 July 2012 briefing paper to MABSARP was a proposal from the AHW directorate for £152,000 for extended provision of lunch clubs. The proposal identifies that funding would be provided to organisations who did not receive funding as part of the MSG 2012-2015 awards and for organisations who were awarded less than the application amount.
- 4.121 A briefing note from the Service Head for Commissioning and Strategy⁵⁴ to the CGPB dated 9 April 2013 proposed that the additional funding could be used to address areas of existing shortfall in provision, for example in areas such as Bow West, Mile End East and St Dunstan’s and Stepney Green. In addition, the briefing note “*highlighted target groups that were not positively impacted by the portfolio of lunch clubs recommended for MSG funding*”, for example the LGBT community and Jewish, Sikh and Hindu communities. Councillor Choudhury asserted in interview that if it was identified by officers that “*there are certain groups that still require provision I would have expected them to at least come back with something that we could agree or disagree*” and he could not recall any such proposals being put before CGPB.
- 4.122 However, the minutes of the CGPB dated 23 April 2013 highlighted a different targeted need that had not been considered in the briefing note of 9 April 2013. The minutes stated that the funds would be used to “*build extra capacity in lunch club provision to alleviate pressures identified in multigenerational families*”. Officers would review delivery in different areas to identify need and “*work with existing organisations to verify how the additional service can be provided and afterwards identify the organisations that would be able to deliver the extra lunch clubs.*”
- 4.123 The CGPB report of the Corporate Director for ESCW dated 23 April 2013 stated there was no application process and instead organisations would “*be identified through links with other third sector organisations, Members, housing providers and other local knowledge.*” In interview, officers stated that Members would use their local knowledge to advise officers of organisations that may be able to provide lunch clubs or had an interest in doing so. An officer stated in interview that the recommendations were communicated by Councillor Asad and this was confirmed to contemporaneous meeting notes provided to us by the Authority. When asked if he had any role in the selection of lunch clubs Councillor Choudhury stated in interview “*it wouldn’t be my role to select individual organisations, the whole point was that officers would, we worked with officers to identify the target areas... but it’s their job to go and develop the organisations.*” We understand that after the names were received, officers would ask organisations to fill in application forms to help organisations develop.
- 4.124 The Mayoral Executive Decision 29, dated 3 June 2013, noted the following:

⁵⁴ Currently the Service Head for Commissioning and Health, Education, Social Care & Wellbeing.

- a. “Little attention is given to the needs of older people living in multigenerational households”;
- b. “The detailed Equalities Impact Assessment supporting the [MSG] process did not address issues of overcrowding but additional data has been gathered which identifies wards where multigenerational households are prevalent”; and
- c. “Members have asked that focus is given to the areas of highest prevalence of multigenerational families in the development of new lunch clubs.”

4.125 In a report of the Corporate Director for ESCW, dated 13 January 2014, one of the key issues identified was that “lunchclubs [sic] have taken longer to set up than initially envisaged”. One of the reasons given is the difficulty in identifying appropriate venues in which to hold the clubs. It was agreed in the CGPB on 20 January 2014, “that any underspend against the... budget can be offset against the MSG lunch club overspend”. As at 4 April 2014, £99,212 of the £152,000, was awarded as summarised in the table below:

Target Group	Number of organisations	Amount awarded £
Bangladeshi Somali & Algerian	1	23,920
Bangladeshi	6	55,517
Somali	1	11,800
Bangladeshi & Somali	1	6,500
Bangladeshi & BME ⁵⁵ Women	1	1,475
Total	10	99,212

4.126 None of the organisations that were awarded funding under the 954 Fund applied for lunch club funding as part of the MSG 2012-2015 process.

Other awards from the 954 Fund

4.127 Four ad hoc awards were made from the 954 Fund. The first, in April 2013, was “to extend provision in the borough for those without formal qualifications and effected [sic] by welfare cuts by committing £65,000 to the establishment [of a new] Community Centre”. This decision was made by Full Council on 27 February 2013 and confirmed on 7 March 2013. The second and third awards were made in July 2013 to two organisations previously funded by the Home Office’s Communities against Crime Innovation Fund. The fourth award was made in October 2013 to provide youth provision in the Borough.

⁵⁵ Black and Minority Ethnic.

- 4.128 We have not identified any advertisement or open application process for these funds. The CGPB reports supporting two of the Mayoral Executive Decision note an alternative option to be to invite applications from a wider group of organisations. In relation to the other two applications, in light of the fact that there was no open application process, an officer stated in interview that these organisations were given funding as a result of a request from the Mayor’s Office. However, the Mayor’s Office stated in response to a written request that “... *it is their recollection that these applications went to the Corporate Board Panel who recommended to the Mayor to grant awards. Other than that the Mayor’s Office does not have any further information about this item.*” All four reports supporting the awards refer to either the experience of the organisations, the existing services they provide, or both. Of the £522,000 approved awards from the 954 Fund, £352,000 was awarded without an open application process and £170,000 relates to the Mela as addressed above. The organisations and projects awarded without an open application process were selected by Members.
- 4.129 The October 2013 award from the 954 Fund was to provide youth provision from a university building. We have identified that the same organisation was awarded a contract for £12,000 on 26 March 2013 for one year, with the possibility to extend for a further two years. The specification of the contract is very similar to that for the 954 Fund grant, for example the organisation of an annual community event to promote community cohesion and youth service values. We have analysed transactions included in the Financial Data provided to us by the Authority. This shows an overlap of payments to this organisation for what appears to be the same service. We note that this organisation’s registered address changed on 21 May 2013 from the university building in Tower Hamlets to an address in Barking. The Authority have stated that “*this anomaly is known to the Council and is subject of an internal investigation which forms part of a broader improvement programme to bring about transformation of the Youth Service.*”

Community Faith Building Support Scheme (“CFBSS”) **Introduction**

- 4.130 The grant awards under the CFBSS follow a similar decision making process to that of the MSG 2012-2015 awards. As such we outline the results of our work in the following sections:
- a. The CFBSS award process as outlined in the 3 October 2012 Cabinet report;
 - b. The decision making process following by the Authority;
 - c. Results of decision making; and
 - d. Additional governance matters.

The CFBSS award process as outlined in the 3 October 2012 Cabinet report

- 4.131 The CFBSS was established by the Mayor in Cabinet on 3 October 2012 to:

“deliver sustainable, appropriate assistance for... works to existing faith buildings where the costs of maintenance, repair and improvement are the responsibility of a local faith organisation. The scheme

is for assistance to existing faith-based buildings only and is not for funding the establishment of new premises by faith groups. The scheme will cover only formally constituted faith groups who meet other detailed eligibility criteria”.

- 4.132 The 3 October 2012 Cabinet report outlined a total budget of £2 million and recommended the establishment of three different types of CFBSS grant; Type A for minor capital works up to £75,000, Type B for major capital works up to £300,000 and Type C for preliminary professional services in support of developing bids for Type A and Type B grants up to £10,000. The Cabinet report stated that the risks would be managed through strong monitoring and payment controls, including payment in arrears on receipt of invoices.
- 4.133 In addition, the 3 October 2012 Cabinet report was supported by an Equality Assessment that identified a mix of positive and adverse impacts by religion and belief, with both this Equality Assessment and the Cabinet report recommending consultation with the Tower Hamlets Interfaith Forum (“the Interfaith Forum”) to ensure that the CFBSS was robust, co-ordinated and consistent.
- 4.134 In line with the recommendations of the 3 October 2012 report, Cabinet agreed to provide £2 million to fund the CFBSS. The financing for the first year of 2012-2013 was provided from General Fund reserves identified on grounds of being no longer required for their original purpose. Finance for the second year of 2013-2014 was to be provided for as part of the 2013-2014 budget process. We note that during the Period only £600,000 was awarded under the CFBSS.

The decision making process followed by the Authority **Launch and assessment of Round 1 grant applications and officer assessment**

- 4.135 The briefing note entitled “[CFBSS] Round 1a” dated 6 December 2012 notes that application forms for the first round of CFBSS funding were launched on 6 November 2012. The first round of funding was open to Type A and Type C grant applications only; Type B grant applications were to be asked to reapply in Round 2 when this type of application would be eligible.
- 4.136 The application forms noted that applications had to be received by 20 November 2012. We understand from interview that there were a number of complaints from potential applicants concerning the two week application period. In response, a second deadline of 2 January 2013 was agreed, for faith groups who wished to apply but could not meet the first deadline. This resulted in two groups of Round 1 applications, 1a and 1b.
- 4.137 Programme officers were appointed, and these officers designed the approach to checking application eligibility and conducted the assessment of applications. Officers reviewed all applications received and evaluated each application on the basis of pre-determined criteria. In this case, the evaluation resulted in the designation of applications as eligible, with a qualitative red-amber-green assessment depending on the scoring of the application, or ineligible. We understand that officers did not make specific recommendations as to how much a given applicant should receive at assessment stage.

- 4.138 A cross-directorate ‘Officer Panel’ met in December 2012 and January 2013 to agree:
- a. The assessment approach;
 - b. The officers’ assessment of the 33 Round 1a applications and nine Round 1b applications; and
 - c. The approach to award allocation.
- 4.139 On the basis that there was no significant difference in scoring between Round 1a and 1b applications, officers agreed to consider all 42 applications together. In total, 10 applications were assessed as ineligible for one of three reasons: applicants were not formally constituted faith groups on the basis of their formal governing documents; applications were for Type B grants which were reserved for Round 2; or the application did not provide the required governance papers or other key supporting documents.
- 4.140 In a similar way to the MSG programme approach to award allocation, officers initially agreed to recommend a minority of applications, based on highest scores. However, this approach resulted in awards to Christian and Muslim faith groups only and no awards to any faith groups in certain geographical areas of the Borough. As part of their own review process, officers agreed to recommend a new balancing mechanism to broaden the mix of faith groups and geographical areas covered, while still only recommending a minority of applications. This work was not completed, but for illustration the original recommendation for 33 Round 1a applications was to fund only the four top scoring Type A applications for a total of £199,101 and the four top scoring Type C applications for a total of £39,600.
- 4.141 In accordance with the Cabinet report of 3 October 2012, officers consulted with the Interfaith Forum in March 2013. Minutes of these consultations confirmed Interfaith Forum support for the proposed balancing mechanism to have a mix of faiths. The mechanism discussed in the January 2013 officer panel was to award funding to the Type A grants that had the highest scoring applications in each of the faiths that applied and the highest scoring in each of the areas not already covered.

Review of officer recommendations by Members

- 4.142 On 13 February 2013 Cabinet Members and other councillors proposed amendments to the 2013-2014 budget proposals. These amendments included an additional £1 million in capital grants for the CFBS. Following this discussion the Mayor “*agreed the recommendations to each of the reports, amended where necessary*”. The 2013-2014 budget was approved by Full Council on 7 March 2013. No reason was given for the increase to the CFBS.
- 4.143 Around this period, in late February or early March 2013, an officer recalled receiving a “*steer back from the powers that be*” to change the recommended approach to award allocation. He understood the steer to be to “*fund everyone or as many groups as possible*”. The Officer assumed this steer came from the Lead Member for Resources, Councillor Choudhury.
- 4.144 We understand from interview that this change in direction led to a revision of the approach to eligibility to try and accept all applications, unless there was a compelling reason not to. This included

accepting four groups without a reference to faith in their formal governing documents on the grounds that their applications referred to faith activities taking place in the building. It also included accepting three applications for Type B grants but treating them as applications for Type C grants. As a result the Round 1 award recommendations changed significantly to 30 Type A awards with a maximum of £25,000 and 13 Type C with a maximum of £10,000.

- 4.145 It was confirmed in interview that the Service Heads would have discussed recommendations in advance of the CGPB with Members and, as a result of these meetings, specific recommendations for funding were made by Members to officers. Further, we understand that in around March 2013 an additional application was identified which increased the total number of applications received from 42 to 43.

CGPB recommendations and Mayoral Executive Decision on Round 1 applications

- 4.146 Following these revisions, a CGPB meeting was scheduled for 11 April 2013 and a report of the Corporate Director for D&R and supporting Equality Assessment circulated in advance with a list of 42 recommended awards capped at £25,000. The late additional application meant that this CGPB report inconsistently refers to 42 and 43 applications for CFBS funding. In addition the total value referred to in the report is inconsistent, referring to total awards of both £580,000 and £595,000.
- 4.147 The list of recommendations circulated in advance of the CGPB meeting was for 42 recommendations totalling £580,000. However, the CGPB minutes note agreement to recommendations totalling £595,000, in line with section 2.3 of the CGPB report ('decisions required'). We understand that a different list of recommendations, totalling £595,000, was tabled at the CGPB meeting. The Authority have stated that the circulation of recommendations totalling £580,000 was "*an administrative error. As a consequence a different list in the form of an updated appendix of recommendations, totalling £595,000, was tabled at the CGPB meeting.*"
- 4.148 The difference of £15,000 is accounted for by increases to two award recommendations. There was also a new application added to the tabled list for a £10,000 award recommendation, while a different application's award recommendation was changed from £10,000 to a nil award. We understand from the Authority this was "*due to concerns raised regarding local knowledge of the organisation*". The newly added application was not listed in the officer panel papers in December 2012 nor in January 2013 and appears to have been added to the list of award recommendations post a letter dated 1 March 2013 from the organisation to the Mayor. This letter stated that the organisation had posted their application during the Round 1b application period but now feared that it was either misplaced or lost.
- 4.149 The CGPB report recommending the CFBS grant awards noted that the recommendations were made in line with the aim of funding widely, and noted an alternative option of awarding in line with highest score combined with a balancing mechanism "*to ensure funding for a range of faiths and geographical spread across the borough*". The report explained that this alternative option would result in 12 Type A

applications and all Type C applications being recommended for award and so was not recommended as “*this process [would] mean that not all applications can be funded*”.

- 4.150 The Equality Assessment supporting the recommendations only identified positive impacts as all faiths that applied were supported and “*the highest number of applications received and the most funding recommended is to Christian and Muslim buildings*”. The Equality Assessment included a comparison of the religious denomination of applications received (e.g. Christian 19.3%, 69.7% Muslim) against 2011 Census data on Tower Hamlets residents declaring a religious belief (e.g. Christian 27.1%, Muslim 34.5%), but no further comment was made in either the Equality Assessment or the body of the report. The Authority has stated that “*the Equality Analysis spoke for itself and did not need further elaboration in the body of the report.*”
- 4.151 After the tabled list of recommendations was approved and sent for Mayoral Executive Decision, there was one further change, with the Mayor increasing the award for one application by £5,000. The Mayor stated in interview that this reflected his personal knowledge of the building and its state of disrepair. This Mayoral Executive Decision was signed by the Mayor on 20 June 2013 with the total CFBSS Round 1 awards approved on this date being £600,000.

Results of decision making

- 4.152 The table below summarises the Round 1 awards by faith group:

Faith	Number of applicants	% of total applicants	Amount requested (£)	% of total amount requested	Amount awarded (£)	% of total amount awarded	Award to amount requested %
Buddhist	2	4.7%	17,006	0.9%	12,000	2.0%	70.6%
Christian	12	27.9%	345,174	19.1%	140,000	23.3%	40.6%
Hindu	1	2.3%	75,000	4.2%	20,000	3.3%	26.7%
Jewish	2	4.7%	29,158	1.6%	25,000	4.2%	85.7%
Muslim	25	58.1%	1,264,142	70.0%	388,000	64.7%	30.7%
Sikh	1	2.3%	75,000	4.2%	15,000	2.5%	20.0%
Total	43	100%	1,805,480	100%	600,000	100%	33.2%

- 4.153 In the CFBSS Round 1 awards, 10 organisations received funding even though officers initially determined that none of their applications met the criteria of the scheme. The value of these awards was £145,000 out of the total £600,000 awarded. The Authority has stated that grant allocations to different faiths were proportionate to the amounts requested and noted that “[o]fficers initially

assessed 10 organisations as not meeting the eligibility criteria on one of three separate grounds”, as below:

- a. “Not a faith group (4 organisations). Subsequent due diligence re-assessed all as meeting the faith group criteria”;
- b. “Incomplete application and insufficient documentation (2 organisations). It was determined that provision of the information should be a pre-award condition rather than lead to immediate rejection”; and
- c. “Organisations that had applied for Type B grant (4 organisations) but as that was not available it was determined they were eligible for Type A or Type C”.

4.154 The awards under the CFBSS were made under the principle of ‘funding widely’. All bar one application that applied for CFBSS monies received an award. However, by not applying the eligibility criteria it would appear that the Tower Hamlets Compact commitment by the Authority to be clear and consistent with third sector organisations was not been met.

4.155 We deal with each of the points raised by the Authority as to how it explains issues of eligibility were resolved in turn below:

- a. The Cabinet report dated 3 October 2012, which introduces the CFBSS, stated that the CFBSS “will cover only formally constituted faith groups who meet other detailed eligibility criteria”. The re-assessment noted by the Authority above meant organisations that were not formally constituted faith groups received funding. Had this been communicated at the outset then more third sector organisations may have been able to apply and be eligible for funding;
- b. In relation to the two organisations that had not provided sufficient detail in their application or supporting documents, we have seen no evidence in the scoring and eligibility check information provided to us, that further documents were received pre-award; nor did the Authority provide evidence that these documents were received with their response to our fact checking; and
- c. Finally, in the case of organisations that applied for a Type B grant, three were awarded £10,000 and one organisation awarded £20,000 against applications all of which were in the region of £300,000. It is not clear how the amounts awarded were such as to enable those organisations to achieve meaningful outcomes within the purpose of the CFBSS programme, or therefore for the Authority to achieve value for money.

Additional governance matters

Design of Round 2 criteria and approach to award allocation

4.156 The criteria for Round 2 funding of the CFBSS was widened to allow repeat CFBSS grants to the same building in exceptional circumstances, to allow Type C professional services grants in support of new buildings and that Round 2 applications would fund as many organisations as possible. The decision to fund widely was different to a draft report dated June 2013 proposing that awards should be based on an assessment process and that a limited number of projects be funded. The minutes of the 9 July 2013 CGPB meeting stated that guidance had been sought from the Mayor regarding funding allocation and

he indicated that the aim should be to “*spread the funding allocations widely albeit with low average awards*”.

- 4.157 On 23 July 2013 the Interfaith Forum minutes note that all applicants except one had received monies, but not the amount requested, and that it “*was proving difficult in realising the aspirations & practicalities of... proposals*”. In addition, the Interfaith Forum expressed concern about the timetabling and criteria of Round 2. Minutes of the Interfaith Forum on 19 November 2013 record that Interfaith Forum involvement appeared to have been disregarded by officers. The Interfaith Forum members present also expressed concern about the confusion about the deadline for Round 2 applications.
- 4.158 In line with the aim of funding widely, officers produced seven detailed options for award allocation on 11 March 2014. However, no final decision has been taken in respect of Round 2 funding and we understand this is on hold due to a complaint from an external interested party.

Events post Round 1 award

- 4.159 The Cabinet report of 3 October 2012 stated that “*[t]he main risk that has been identified is that once given funding, organisations would carry out work that wasn’t approved or not carry out any of work grant aided to them. This will be managed through strong governance of the Scheme. Payments will only be made in arrears on receipt of invoices for eligible work completed.*”
- 4.160 However, officers agreed during their own moderation on 6 December 2012 that “*[m]onthly payments in advance [would] be the standard approach with a cash flow required and the 2nd advance payment onwards dependent on the spend and achievement in the previous month.*” We note the report of the Corporate Director for D&R dated 20 June 2013, which supports the Mayoral Executive Decision, is silent in relation to how the identified risks would be managed. The CGPB was informed on 31 October 2013 that successful applicants could request up to 25% of their CFBSS grant in advance of works and that 28 out of 42 groups had received an advance payment. The CFBSS update report to the CGPB dated 28 February 2014 stated that 37 of the 42 successful applicants had a signed grant agreement and had received at least one payment. The report goes on to say that eight organisations had not provided any monitoring information.
- 4.161 There were extensive delays at post-award stages of Round 1 of the CFBSS. As noted in the 28 February 2014 CFBSS update report to the CGPB, five organisations still had to finalise the grant agreement document. This is despite agreement at the CGPB meeting of 17 September 2013 that cut-off dates would be set for Round 1 funding to be drawn down.
- 4.162 The impact of funding applications that were not eligible for awards meant that, in the case of the CFBSS, there were delays in getting organisations to the place where they were eligible or could use funding, for example ensuring relevant planning permissions were in place.

CFBSS applications for faith organisations based in Authority owned properties

- 4.163 One of the 10 ineligible applications to the CFBSS was initially classified as ineligible by officers on the basis that it was not a faith group according to its constitution or application form. The project cost breakdown provided to us stated the organisation sought £75,000 of an estimated £168,174 for works that included a new substructure, site clearance and Gateway project management costs. This organisation was awarded £10,000 of funding out of the final £600,000 awarded on 20 June 2013. Subsequently, the CGPB update reports in late 2013 and early 2014 note that the £10,000 awarded to the organisation under the CFBSS would be held until 2014 and used for works to their new building. During the interview of an officer we were shown a grant agreement, dated 2 July 2014, that was signed by both parties. The Authority have stated that this document “*was never sent out and the offer never formally contracted*”.
- 4.164 In addition to this, on 12 September 2013, a Mayoral Executive Decision approved the transfer of £170,000 from reserves to contribute 53% of the costs of a new community building. This was classified as revenue expenditure as “*the resulting property will not be owned by the Council*”. “*On completion of the development, the property will be leased to the Council from Gateway Housing for an initial 15 years and the Council will then use it for community purposes*”. The organisation named appears to be the same organisation that received £10,000 under the CFBSS grant award.
- 4.165 We obtained the addresses for all CFBSS buildings and, where different, the grant recipient organisations. We identified four other cases of CFBSS awards granted in respect of the Authority’s buildings that had been transferred to local community groups. We reviewed the leases of this group of four buildings and found that:
- a. In two of the four files there was a reference to religion either in the permitted use or description of activities; and
 - b. In the other two files there was no reference to religion and the permitted use was a community centre. We note the Authority has stated that “*[t]he absence of explicit reference to religious use within the lease does not necessarily prohibit such use where the use is defined as community centre. Use in the lease would normally follow the use classes order. In town planning terms religious uses and community uses fall within the same Planning Use Class (D1 – non-residential institutions).*”

Youth and Connexions Service (“YCS”) grants

Introduction

- 4.166 The YCS team has undergone a number of transitional changes since the Authority’s youth service was brought in-house on 1 October 2012 and restructured. Details of these changes were provided to us within a YCS Business Plan dated June 2014. Section 13 of this business plan details the YCS grants commissioned, namely:
- a. MSG 2012-2015, as discussed above;

- b. The Youth Opportunity Fund;
- c. The Positive Activities for Young People scheme (“PAYP”), rebranded as the Mayor’s Activities for Young People (“MAYP”) for 2013-2014; and
- d. The Summer Grants scheme.

4.167 Given the MSG 2012-2015 awards are covered in paragraph 4.15 et seq above, the following paragraphs will focus on the payment of grants and connected decisions across the Youth Opportunity Fund, the PAYP/MAYP awards and the Summer Grants scheme.

Overview of YCS grants

4.168 The amounts available under each of the YCS grant awards are as follows:

- a. The Youth Opportunities Fund scheme offered awards of up to £3,500;
- b. PAYP/MAYP offered awards up to £4,000 per summer holiday and up to £2,000 per autumn and winter half-term; and
- c. The Summer Grants scheme offered awards of up to £2,000.

4.169 The YCS Business Plan notes that in addition to grant awards, *“where services are limited within certain areas managers have the discretion to spot purchase and ensure youth provision is on offer for all our residents in the borough”*.

4.170 The Authority provided us with details of the YCS budget for grant awards and spot purchasing Service Level Agreements (“SLAs”) from 2010-2014. We note in 2013-2014, the budget for YCS grant funding across these three funding streams was £1,331,959, with the majority (£1,233,959) coming from the central government Early Intervention Grant. The Early Intervention Grant replaced a number of former funding streams in April 2011, in order to provide *“a funding stream to enable local authorities to act more strategically and target investment early, where it will have the greatest impact, with greater flexibility to respond to local needs and drive reform. The grant is not ring-fenced, to enable authorities to target resources where they are needed most.”*⁵⁶

4.171 In addition to the above funding streams, we are aware of further awards made by the Rapid Response Team who sit as part of YCS. In January 2014 an independent investigation was commissioned by the Authority into whistle blower allegations about funding awards made to a third sector organisation. This investigation resulted in the Authority referring the matter to the Metropolitan Police Service for criminal investigation. During the Inspection we became aware of the Authority’s concerns about payments to eight other third sector organisations. In consultation with the police, we agreed to avoid any enquiries that might cut across the criminal investigation, and so our access to documents and

⁵⁶ Early Intervention Grant: Technical Note for 2011-12 and 2012-13 available from <http://www.education.gov.uk/childrenandyoungpeople/earlylearningandchildcare/delivery/funding/a0070357/eig-faqs#faq2>.

witnesses relevant to these issues has been limited. However, we were able to discuss payments in general. As such, our work focuses on high level themes identified in sample testing.

- 4.172 We discuss the payment and connected decisions of YCS grant making separately from YCS SLA awards in the sections below.

Grant awards made by YCS

- 4.173 We understand that Youth Opportunities Fund, PAYP / MAYP and Summer Grant awards would have been made on the receipt of a written application which met the minimum award criteria as assessed by officers. In the case of the Youth Opportunities Fund, young people would apply, be selected and give a successful presentation to a panel of other young people trained in grant making. Final decisions about the award of grant funding were made by officers and awards were not reviewed by the CGPB or Mayor.
- 4.174 The Authority provided us with spreadsheets listing 780 grant awards across the three funding streams listed above. An initial review of the grant award data vis-a-vis the procedural data provided to us identified 64 grant awards above each scheme maximum award. Officers explained that awards may be made in excess of the scheme maximum to offset additional costs incurred by organisations working with young people with special educational needs. The Authority grant data did not consistently identify additional costs associated with special educational needs but we were able to identify a reference to special educational needs in 12 of the 64 awards in excess of scheme maximum.
- 4.175 We tested a sample of YCS grant awards and found that seven of the 10 files tested did not have any documentation of application assessment, recommendation and approval, with gaps in this documentation for the remaining three of the 10 files. We found that four of the 10 grant files provided monitoring reports but no supporting evidence of grant-funded activity and spend. We also found gaps in payment approval documentation for six of the 10 grant files selected for testing.

SLAs within YCS

- 4.176 YCS SLA awards are separate from grant awards but may be drawn from grant budgets. The Authority provided a listing of 177 YCS SLAs relevant to the Period.
- 4.177 We tested a sample of 11 YCS SLAs. We found that the services procured within this sample range from youth training to refurbishment of community venues, sports and recreational activities, youth peer work including workshops and evening diversionary activities.
- 4.178 We understand that SLAs were spot purchases of services and as such would fall under the Procurement Procedures, as defined in paragraph 7.4. Of the 11 files selected for testing, 10 did not have any documentation supporting the procurement and assessment processes. Officers stated that they do not hold any procurement documents for any YCS spot purchases. In addition, we identified the following issues:
- a. The SLA was missing in four of the 11 files;

- b. There were gaps in monitoring documentation, with six of the 11 files lacking supporting evidence, including two files where the same group provided the same duplicated monitoring report for projects in different years; and
- c. Gaps were identified in payment approval documentation for six of the 11 files, including four of 11 files having unsigned or undated payment approval documentation.

4.179 We found that all five files with payment documentation had “AP1” forms, an alternative payment process reserved for grants and exceptional one-off requirements. We note that the Authority’s procedures obtained from the financial compliance department provide an exhaustive list of payment types that can be made via the AP1 payment process. This list includes grants to voluntary organisations but does not include spot purchasing of services from third parties.

4.180 Issues identified in our sample checking were consistent with a further Internal Audit report following up the January 2014 independent investigation into funding awards made by the YCS team. This report noted that payments to eight further organisations were under investigation. Issues raised in the report included a lack of segregation of duties and that “*no discernible procurement process appears to have been followed*” nor was Head of Service sign off or oversight provided. The report also notes payments were made using the AP1 voucher process which is intended to be used for exceptional circumstances and not day-to-day business.

Other statements relevant to grant decision making in the YCS Business Plan

4.181 The YCS Business Plan noted the following in relation to the performance and governance of the YCS grant payment and decision making process:

- a. “*Central Targeted Support services, supported by the [PAYP grant] and targeted intervention, supported achieved a reduction in the NEET cohort from 12.6% in 2005-2006 to 5% in 2011-2012*”;
- b. “[A]n additional [Key Performance Indicator] has been introduced and a clear distinction has been made between certified and accredited outcomes to enhance the development of young people and demonstrate value for money”; and
- c. “*The service will redesign the grants process in line with any corporate recommendations*”.

Community Chest and Community Events

4.182 The report of the Corporate Director for D&R supporting Mayoral Executive Decision 34 entitled “*Community Chest and Community Events Fund 2012-14*” noted that the Community Chest fund was launched in October 2012, and that the “*approach for allocating the Community Chest Fund and the Community Events Fund was considered at a meeting of MABSARP on 7th July 2012. It was confirmed that the Community Chest Fund would total £250,000 in 2012/13 and £338,000 in 2013/14 and that a one-off £100,000 had been identified for the Community Events Fund.*” The Community Chest fund was established to help develop the capacity of local voluntary organisations. In making his

decision the Mayor noted that he was of the view that the “*applications for the Community Chest are for a maximum award of £10,000 and for the Community events a maximum of £5,000*”. Officers assessed Community Events applications for five funding rounds and submitted award recommendations for each round to the CGPB. Officers assessed Community Chest applications for three funding rounds. Approved recommendations were agreed by Mayoral Executive Decision.

- 4.183 Mayoral Executive Decision 34 dated 19 June 2013 approved the transfer of £164,000 from the Community Chest fund to the Community Events fund, which had become heavily over-subscribed, and to suspend the Community Chest fund pending a review. During the Period there were 160 Community Chest awards totalling £426,305 and 117 Community Events awards totalling £203,500.
- 4.184 The Community Chest and Community Events programmes were subject to Call in by O&S Committee three times: in July 2013, November 2013 and January 2014. The reasons for this included concern about a lack of transparency in officer recommendations, geographical imbalance in award distribution and unjustified transfer of residual Community Chest funds to the Community Events fund.
- 4.185 We were provided with an example Community Chest award file and an example Community Event award file, and met with officers to walk through the assessment and recommendation process. Officers scored applications against a list of weighted criteria and made award recommendations along with any pre or post award conditions. The total recommendations for each funding round were submitted by report for CGPB review and then recommendation for Mayoral Executive Decision. In one of our examples the officer scored the application poorly for explanation of value for money and on this basis recommended less than a quarter of the amount requested. In the other example, the officer scored the application as top scoring and recommended the full amount requested.
- 4.186 From award data provided to us, we were able to identify significant variation in the distribution of grants between different wards, ranging from three awards to groups in Millwall to 34 to groups in Spitalfields and Banglatown. Officers described the assessment of Community Chest and Community Events applications as being light-touch given the relatively small awards, with all applicants meeting the minimum criteria being awarded a grant. From award data provided to us, we note that the variation in award distribution between wards broadly mirrors the variation in the number of applications submitted with 7 applications in the Millwall ward and 47 in the Spitalfields and Banglatown ward. We understand that officers do not undertake a formal process to keep track of awards in order to ascertain the extent to which multiple awards might be made over time to the same organisation under either the Community Chest fund or Community Events fund. Additionally, we understand officers do not formally monitor whether awards are made to the same organisation as are receiving awards made as part of any other grant programme.
- 4.187 Given the approach to assessment described by officers, we sought to test whether awards were being made for ineligible or unjustified proposals. From CGPB and Mayoral Executive Decision papers we were able to identify that most awards were for less money than applied for with an explicit explanation

for this reduced amount in terms of ineligible or unjustified proposals for example “*core cost*” and “*administration*”.

5. *The transfer of property to third parties*

Introduction

The Authority's property

- 5.1 The Authority's Asset Strategy, which was approved by Cabinet on 9 February 2011, sought to "*reflect the future challenges the Authority faces around its property assets and their vital importance in supporting the delivery of services*". The Asset Strategy set out a summary of the Authority's property portfolio, which totalled 863 properties including schools, corporate and community assets.
- 5.2 We were provided with a listing of all properties sold by or leased by the Authority in the Period, which detailed 185 properties. Our initial review of this listing indicated that these 185 transactions comprised:
- a. 41 disposals with capital proceeds totalling £30,593,159; and
 - b. 144 commercial, residential and third sector leases (i.e. leases to not-for-profit organisations) totalling £1,306,619 in annual rent; 23 of these leases are at a peppercorn or nil rent.
- 5.3 The two disposals that we have subjected to further detailed review (see paragraph 5.27 below) are both in the top ten disposals (by value) in the Period.
- 5.4 We note that the decision to dispose of a property via a short term lease, long lease or on a freehold basis is typically considered on a case by case basis. This is dependent on a number of variables, for example, existing planning consent, external market conditions and the Authority's community priorities.
- 5.5 We have undertaken the following work:
- a. Considered the Authority's policies and procedures in respect of property disposals;
 - b. Reviewed property files for 28 transactions;
 - c. Conducted meetings with relevant Authority employees; and
 - d. Undertaken a detailed review of four property transactions, in respect of which our initial review identified particularly significant gaps or anomalies.
- 5.6 The work we have undertaken in respect of the above steps is set out further below.

Policies and procedures relating to property transactions

Introduction

- 5.7 To consider the extent to which the Authority has complied with its policies and procedures relating to property transactions in the Period, we have undertaken a review of relevant internal documents concerning process, including the Authority's:
- a. Financial Instructions, specifically procedure CR10 "*Disposal of property and obsolete assets*" for the disposal of the Authority's property; and
 - b. "*Allocation process for [Authority] owned property to third sector organisations*".
- 5.8 The documents have been considered separately as noted below.

Financial Instructions for the disposal of Authority property

- 5.9 The Financial Instructions set out general principles and detailed guidance for the disposal of Authority property, including the following:
- a. "*Once it is decided to dispose of an asset, generally it is important to get the best value for money for the Council.*";
 - b. "*The highest offer must be accepted unless the prior agreement of the Cabinet (and the Secretary of State where necessary) has been obtained to accept other than the highest offer*"; and
 - c. "*A written record of all actions taken and offers obtained must be made and retained for a minimum of three years. If, for good reason, these instructions have not been followed, the written record should include an explanation for this.*"
- 5.10 A protocol for disposing of Authority owned property was approved by Cabinet in February 2009. The Authority has also developed a checklist setting out procedures involved in the disposal of Authority owned property. This was appended to the Asset Strategy and approved by Cabinet in February 2011.
- 5.11 In summary, the Disposal Protocol stated that:
- a. The Asset Management and Capital Strategy Working Group ("AMCSWG") and the Asset Management and Capital Strategy Board ("AMCSB") approve properties as surplus to operational requirements;
 - b. Where the valuation is likely to be "*over £50,000, a valuation must be obtained*";
 - c. Property should be "*widely and openly marketed*", when sold in the open market;
 - d. Where property is sold in an open market, "*offers will be submitted by a fixed time and date*" and "*failure to meet any of the preconditions or processes required by the Council may invalidate an offer*";
 - e. "*Evaluation of offers will be undertaken by officers who will consider the financial standing of bidders, the level of offer, the bidders' track record and any other relevant information*"; and

- f. “Prior to sale, the Service Head, Corporate Property will consider what level of certainty about planning is required to maximise value”.

The Allocation process for Authority owned property to Third Sector Organisations

- 5.12 The “Allocation process for [Authority] owned property to third sector organisations” (the “Third Sector Allocation Process”) was approved by Cabinet in August 2010. This sets out the Authority’s approach to allocating Authority owned properties to third sector organisations as they become available and considered surplus to operational needs and can be summarised as follows:
- a. The AMCSB determines whether a property should be made available for allocation to the third sector;
 - b. The property’s previous use, and potential future use is considered;
 - c. Properties will be marketed at a fixed rent, with set lease terms, which are “non-negotiable”;
 - d. Applications are assessed against the Stage 1 Gateway Eligibility Criteria, which includes an assessment of financial viability;
 - e. Successful applications at Stage 1 are then assessed against Stage 2 criteria, which involves the Premises Officer Evaluation Panel (“the POE Panel”); and
 - f. The POE Panel’s recommendation is presented to the Asset and Capital Strategy Board, which will then make a decision on the allocation.

Internal Audit Reports

- 5.13 We have undertaken a review of the following Internal Audit reports (as noted by the Authority as being relevant to property disposals in the Period):
- a. Asset Management and Disposal, dated February 2011;
 - b. Follow up report on Asset Management and Disposal, dated November 2012;
 - c. Community Building Portfolio Management, dated June 2012; and
 - d. Follow up report on Community Building Portfolio Management, dated December 2013.
- 5.14 Where findings from these Internal Audit reports are relevant to the process followed for each of the property transactions we have reviewed, then this is noted in the relevant text below.
- 5.15 Our review of a sample of property transactions that occurred in the Period is summarised below. Our work has considered the extent to which the Authority’s policies and procedures set out above have been applied for each transaction, and if applicable, the extent to which findings from the Internal Audit reports have been implemented appropriately.

Initial review of property files for 28 transactions

Our approach to testing

- 5.16 The list of 185 properties that were sold or leased in the Period (as noted above at paragraph 5.2), detailed the following information:
- a. Address of the property;
 - b. Value of the property at the date of sale or transfer;
 - c. Name and address of the party acquiring the property; and
 - d. Date of sale or transfer.
- 5.17 We also requested all policies and procedures pertaining to property disposals, property strategy documents and terms of reference for the AMCSB and the AMCSWG. The remit of these groups extends to recommending that properties are surplus to requirements and also providing recommendations relating to lease properties.
- 5.18 From the listing of 185 properties either disposed of or leased, on 24 April 2014 we requested access to asset management files for 28 of these properties. Our selection of the 28 properties was based on an initial assessment of the listing of disposals against the following criteria;
- a. Value of transaction;
 - b. Third party information; and
 - c. Our knowledge of organisations as derived from our initial review of the Authority's grant awards.
- 5.19 Our sample of 28 properties comprised transactions concerning:
- a. 11 third sector leases (which included three peppercorn rents);
 - b. 8 disposals of long leases;
 - c. 8 commercial leases; and
 - d. 1 residential property.

Initial review

- 5.20 The Authority has provided us with paper files, soft copy property files and/or electronically scanned "Laserfiche" files for the 28 properties that we selected for initial review.
- 5.21 Our review of these files sought to establish the facts in relation to the disposal or lease process, from the initial identification of a property as being surplus to requirements to completion of the disposal/lease. To the extent that subsequent planning applications were received, we also considered the steps taken in approving or rejecting such applications. Our objectives were to determine whether the Authority's procedures (set out above) appeared to have been followed and whether there were areas of concern relating to the valuation, bidding process, authorisation or other aspects of the disposal/leasing process.

- 5.22 In addition to our review of the property files provided to us, we met with the Service Head for Corporate Property and Capital Delivery and an officer from the Asset Management team to discuss a number of queries that arose from our initial review.
- 5.23 Of the 28 property files subject to initial review, we identified a number of properties where there was insufficient documentation on file to evidence the principal decisions that had been taken from a governance and best value perspective. This lack of documentation prevented a clear assessment of the Authority's adherence to its own policies and procedures, as referred to above.
- 5.24 Whilst recognising that our initial review was limited to the information that was provided to us in the property files, and therefore did not consider further pertinent information that may exist, the findings from this initial review can be summarised as follows:
- a. A lack of a clear documented audit trail to evidence that the appropriate processes and procedures had been followed, including;
 - i. No clear documented rationale for the selection of the winning bid on 13 properties; and
 - ii. Two properties where the authorisation to dispose is not clear from the documentation available.
 - b. The successful bid appeared to represent a value that was less than the perceived market value for four properties; and
 - c. Three instances where the successful bid did not appear to be the highest bid received.
- 5.25 Without a detailed review of all documentation that is held by the Authority in relation to these 28 properties, it is recognised that additional information may exist to address the initial findings.
- 5.26 In light of these initial findings, we selected a sample of those properties to undertake a more detailed review on the basis that they appeared to contain the most indications of potential procedural or control failings in the disposal process followed.
- 5.27 The four properties selected for further review were as follows:
- a. Poplar Town Hall ("PTH"), Woodstock Terrace (199 year lease sold to Dreamstar Limited on 11 November 2011 for £875,000);
 - b. Sutton Street Depot (five year lease signed with SSD Bidder A on 7 June 2013 for £[redacted] per annum);
 - c. 111-113 Mellish Street ("Mellish Street") (three year lease signed with MS Bidder B on 26 July 2013 for £[redacted] per annum); and
 - d. Limehouse Library (199 year lease sold to [Redacted] ("LL Bidder B") on 12 April 2012 for £[redacted]).

- 5.28 In addition to the consideration of the findings from our initial review in the selection of these four properties, we also note that each of the properties selected for further review were also known to us as a result of third party information and/or the Authority's own governance processes (e.g. the O&S Committee).
- 5.29 The additional work undertaken on this sample included;
- a. A review of the corresponding legal file and third sector file (where applicable); and
 - b. Interviews with key individuals involved in the relevant transaction.
- 5.30 We set out below the information that came to our attention from our further work in relation to these four properties.

Poplar Town Hall

Overview

- 5.31 PTH⁵⁷ is a Grade II listed building located at 117 Poplar High Street which was purpose-built c.1870⁵⁸. We set out below a summary of the chronology of relevant events concerning the sale of the 199 year leasehold by the Authority in 2011.

Aborted disposal in 2007

- 5.32 Although prior to the Period, we have observed references within the documentation provided to us that PTH was also marketed for sale in 2007⁵⁹; it appears the process reached the stage of bids being received from interested parties. We have been provided with a schedule of bids⁶⁰ that were received at the time, which listed 28 bids ranging from £750,000 to £1,281,324. We note that BNP Paribas Real Estate Advisory & Property Management UK Limited ("BNP Paribas"), who subsequently valued PTH in 2011 and acted as agent for that disposal process, stated⁶¹ that "*these offers were made at the top of the market*".
- 5.33 We have not performed any specific review work in relation to the 2007 sale, however we noted from the 2007 schedule of bids that the second highest bid was submitted by ("Company A") (being £1,210,000). We are aware that Company A was connected to the eventual purchaser in 2011, via a common shareholder and director (as discussed further at 5.15 below). We also note that both companies used the same solicitor.

⁵⁷ Note, PTH is also referred to as "117 Poplar High Street" and "Woodstock Terrace" in the Authority's documented records.

⁵⁸ BNP Paribas "Risk and Reward Development Options Appraisal" dated 29 March 2011.

⁵⁹ BNP Paribas "Risk and Reward Development Options Appraisal" dated 29 March 2011.

⁶⁰ File entitled "2007 – Schedule of bids – 117 Poplar High Street.pdf"

⁶¹ In relation to residential use.

5.34 Reference to the 2007 marketing of PTH is also made in a Cabinet report⁶² which stated that there were “a number of flaws with the [2007] marketing exercise”. These included:

- a. “No proper planning information provided to bidders”; and
- b. “The marketing... had not fully reached the potential interest in the site, particularly local interest”.

2008 Decision to dispose

5.35 PTH was declared surplus to requirements in Cabinet, as chaired by the Leader of the Full Council⁶³, in March 2008⁶⁴. This meeting resolved to authorise the Corporate Director for D&R to market the property using the informal tender process approved by Cabinet “...seeking appropriate terms for the best price reasonably attainable in the context of the [draft] planning statement attached...”⁶⁵.

5.36 The informal tendering process sets out the following key stages to be followed:

- a. The initial submission of bids;
- b. The evaluation of bids and preparation of a shortlist for best and final offers (“BAFO”); and
- c. The receipt of BAFO bids, from which a decision is made.

5.37 We note that the planning statement, prepared by the Authority’s “Development Schemes Team”, referred to in the minutes of the Cabinet meeting set out, inter alia, development considerations in relation to three potential uses, B1 (office space), D1 (community education use) and redevelopment as residential space⁶⁶. However, the draft planning statement stated “...that redevelopment for residential use is unlikely to be supported”.

5.38 A subsequent Cabinet meeting on 11 February 2009 resolved “in light of the development of the Asset Strategy and current market conditions, that the sale of a number of surplus assets be deferred until the market improves” and refers to a list of surplus assets, which included PTH, within the Asset Management Plan submitted to Cabinet.

5.39 The disposal of PTH returned to Cabinet on 12 January 2011 and that meeting resolved “that the Corporate Director [for] Development and Renewal be instructed to develop proposals for accelerated sale” of PTH⁶⁷ and “to report back before the end of the current financial year”.

5.40 The 12 January 2011 Cabinet meeting minutes included a report entitled “Proposed disposal of surplus properties – estimated site values” which stated that PTH “is declared surplus but is currently being

⁶² Dated 2 April 2008.

⁶³ We note that this was Councillor Denise Jones, prior to the Mayor being elected in October 2010. In interview, the Service Head for Corporate Property and Capital Delivery was unable to recall any further details related to the 2007 disposal process.

⁶⁴ As set out in the minutes of the Cabinet meeting dated 5 March 2008.

⁶⁵ It appears that this was a draft report.

⁶⁶ We understand from the Authority that residential options included C3 (residential) and C1 (hotels).

⁶⁷ We note that a property at Jubilee Street was also included in this Cabinet instruction.

used as a decant building as part of BSF⁶⁸ from Jan-10” and that the BSF initiative would vacate the building in 2011. We have been informed by the Authority that the BSF tenant at this time was the Ian Mikardo School. The estimated site value of PTH as stated in this report was £1.5 million⁶⁹.

- 5.41 We have seen email correspondence dated 14 January 2011 between the Service Head for Asset Management⁷⁰ and other Officers following the 12 January 2011 cabinet, which stated, in reference to the 12 January 2011 cabinet; *“A bit of an odd decision but I think, basically, they want to be seen to [be] making progress”* and the Service Head for Asset Management requested the officer draft a proposal of the *“method of sale and timescales, and also reflect the current use/operational interest”* in relation to the properties. The officer responded in respect of PTH that *“Planners may prefer for this property to be used for a D1 or B1 purpose first and before they look at alternative uses they would want to see evidence there is no D1/B1 interest in the property...”*
- 5.42 The Service Head for Asset Management also noted in a related email, which copied in the Corporate Director for D&R, that PTH had already been declared surplus to requirements and further Cabinet authority for sale was therefore not required.

Valuation and marketing

- 5.43 In March 2011, following a tender process, BNP Paribas were appointed⁷¹ to perform a *“Risk v Reward Development Options Appraisal”* which:
- a. Considered planning and development options of potential purchasers for the use as residential, offices, and community facilities;
 - b. Listed options in respect of sale (i.e. market now, pursue an auction sale, or hold the property);
 - c. Estimated that *“the property might attract interest in the region of £750,000 to £950,000 most likely from a D1 [community use] or B1 [office] type user”*; and
 - d. Recommended that the property is marketed *“at the earliest opportunity”*.
- 5.44 The leasehold sale of PTH has been the subject of adverse media comment, which has focused on the allegation that PTH was sold at under value. We have consulted with our PwC property valuation specialists, who have considered an indicative valuation of PTH on the basis of hotel use as at the date of the transaction. We note that, the value of the property based on use as a hotel is subject to a number of uncertainties given the unusual nature of the property, as well as the differing assumptions that might be made about the projected costs of redeveloping the property for such use, which would need to be taken into account in arriving at a market value. Based on our own analysis, we do not consider that

⁶⁸ Building Schools for the Future.

⁶⁹ We note that the £1.5 million valuation of PTH was included in the ‘restricted’ minutes of the 12 January 2011 Cabinet meeting. We have been informed that the valuation of £1.5 million was an internal estimate, rather than a formal, independent valuation.

⁷⁰ We note that the Service Head for Asset Management is no longer a role at the Authority, and the individual that held this role at the time of the PTH disposal has since left the Authority. This applies to all references to the Service Head for Asset Management.

⁷¹ We understand from a disposal briefing note that a competitive tendering exercise was undertaken in February 2011. BNP Paribas were subsequently appointed *“based on most competitive bids and most suitable agent”*.

there is conclusive evidence that the change of use to a hotel would have led to a material enhancement of the value of the property from the Authority's point of view at the time of the sale.

- 5.45 BNP Paribas were appointed on 30 March 2011 to be the sole agent to market PTH, and commenced marketing on 14 May 2011. The marketing campaign included advertisements in the Estates Gazette and the East London Advertiser.
- 5.46 The marketing particulars, which were given to potential purchasers, stated that offers (including, inter alia, details of "*financial evidence of their ability to complete the purchase*") were to be made via sealed bids on a subject to contract only basis, and were to be with the Authority by noon on 17 June 2011.
- 5.47 We have been provided with a list of viewings of the property, as prepared by BNP Paribas⁷², and note that:
- a. A total of eight individuals attended viewings of the property, which were undertaken between 8 June and 13 June 2011;
 - b. Three viewers were listed as being from companies that appear to relate to entities who ultimately went on to submit a bid;
 - c. One viewer was listed as [Redacted] ("Mr X") of Company A⁷³ (the company noted above that had expressed an interest in acquiring the property in 2007), who is also associated with the winning bidder (see paragraph 5.115 below);
 - d. Three viewers listed did not record a company name; and
 - e. Two viewers are listed as from a company that did not ultimately bid for PTH.
- 5.48 Sealed bids were received by the Authority⁷⁴ and were opened on the afternoon of 17 June 2011 at a meeting attended by two officers, the solicitor assigned to the PTH transaction ("the LBTH Solicitor"), and a representative from BNP Paribas. We were informed by the LBTH Solicitor that all bids were opened in the meeting. The LBTH Solicitor was a locum and is no longer contracted to the Authority.
- 5.49 A handwritten schedule of bids was used to document the ten bids opened on 17 June 2011 and was signed by those who attended the opening of the bids⁷⁵.
- 5.50 On 22 June 2011 BNP Paribas provided the Authority with a marketing report which set out an analysis of the bids received. Within this report BNP Paribas:

⁷² We note that this information was requested by the Authority from BNP Paribas in response to our request for a schedule of the viewings of PTH. This information details eight individuals that viewed the property nine times (i.e. one individual viewed PTH twice), however we note that in a letter from BNP Paribas to the Authority, it is stated that "*we conducted 11 viewings on site for Poplar Town Hall*". BNP Paribas have stated that two visits were not recorded in the viewing log at the time, hence the listing we have reviewed is not complete.

⁷³ We note that the organisation that is listed on the viewing records is not an exact copy of the full name of Company A, but we understand this to be the same company.

⁷⁴ We note that one bidder (PTH Bidder 3) submitted its bid to BNP Paribas, rather than to the Authority directly (as prescribed), in advance of the deadline, and was asked to re-submit using the prescribed process.

⁷⁵ With the exception of the LBTH Solicitor, who does not appear to have signed the schedule of bids. We note from our discussion with the LBTH Solicitor that he confirmed his attendance to us.

- a. Stated that the offer received from PTH Bidder 7, which consisted of annual payments of £60,000 over a 20 year period, equated to a net present value of £561,895 and recommended that that this offer was not pursued;
- b. Recommended that the offer from PTH Bidder 4 that was “*subject to planning*” was rejected; and
- c. Recommended that the six highest remaining bidders be invited to submit a BAFO in relation to the property.

5.51 The Authority concurred with BNP Paribas’ recommendations and the six highest bidders were invited to submit a BAFO bid to the Authority in a sealed envelope by Friday 8 July 2011 at close of business. The bidders were also asked to include with their bids answers to certain clarification questions, which, although tailored to each bidder, asked all the bidders to provide:

- a. Evidence of funding;
- b. Proposed timescales to complete the transaction; and
- c. Proposed use of the building.

Dreamstar

5.52 In this first round of bids, a bid of £850,000 was received on 16 June 2011 on Dreamstar letter-headed paper. A footnote to this bid detailed the company registration number, which was 05143980. According to Companies House, this registration number refers to an entity called “Dreamstar Advertising Limited” (formerly known as Dreamstar Pictures Limited⁷⁶) (“Dreamstar Pictures”).

5.53 We note that the BAFO bid that was received on Dreamstar letter-headed paper also stated the company registration number of Dreamstar Pictures. We further note that the bank statement that was attached to the BAFO bid to evidence the availability of funds to complete the purchase was in the name of Dreamstar Pictures.

5.54 As noted below at paragraph 5.88 the lease for PTH was signed by Dreamstar Limited (“Dreamstar Ltd”). This company’s registration number is 07773327, and it was incorporated on 14 September 2011.

Best and final offer stage

5.55 BAFO bids were scheduled to be opened at a meeting at 10am on Monday 11 July 2011. We have been informed that this meeting took place on schedule, however the bid from Dreamstar Pictures⁷⁷ had not been received prior to the opening of the other bids. In relation to that meeting we have been informed that a signed schedule of bids was not prepared during the meeting (as had been prepared for the first

⁷⁶ According to Companies House, Dreamstar Advertising Limited changed its name from Dreamstar Pictures Limited on 9 August 2012.

⁷⁷ We understand from the LBTH Solicitor that this entity was referred to as “Dreamstar” at the time, however a review of the bid letter received by the Authority indicates that this carried the registration number of Dreamstar Pictures.

round of bids and was required⁷⁸). However, the LBTH Solicitor who was present took notes at the meeting which noted basic information in relation to five received bids⁷⁹. We also note that:

- a. The LBTH Solicitor's note of the meeting included the statement that "*Dreamstar have said they have written but it hasn't reached us yet*" however the LBTH Solicitor has stated that this note may have been in relation to the bids for Limehouse Library, and that he is unable to recall who said this in the meeting;
- b. The noted attendees of the meeting were two officers, the LBTH Solicitor and a representative from BNP Paribas; and
- c. The Authority has not been able to explain why the bids were opened, when a late bid was expected.

5.56 At 11.28 on 11 July 2011, an officer emailed the Corporate Director for D&R, copying in the Service Head for Corporate Property and Capital Delivery⁸⁰ and the Service Head for Asset Management, and informed him that the BAFO bids had been opened. In this email, it is stated that the "*preferred bidder for Poplar Town Hall will be [PTH Bidder 8]*" and that a late bid is expected from Dreamstar Pictures; "*we are still awaiting a best and final offer from Dreamstar who advised the agents that they posted their revised offer on Thursday*⁸¹. *An electronic copy has been requested*". The Corporate Director for D&R responded directly to this email (i.e. not copying in any other individuals) at 15.42 on 11 July 2011, asking "*who are Dreamstar. [sic] Please call*".

5.57 At 16.56 on 11 July 2011, the officer responded to the Corporate Director for D&R "*I have left a message on your voicemail. The bid was put in by [redacted] at Dreamstar Pictures Ltd...*" which suggests that the Dreamstar Pictures bid was received between 11.28 and 16.56 on 11 July 2011 (i.e. the day of the opening of the BAFO bids). This is consistent with the Dreamstar Pictures bid letter which was date stamped as received by the Authority on 11 July 2011.

5.58 We note that our review of the original BAFO bid submitted by Dreamstar Pictures indicates that the original was received by the Authority (i.e. rather than an electronic copy which could have been subsequently printed and filed). The original BAFO bid is dated 8 July 2011, but we note that the envelope was not retained in the PTH property file⁸², as required by the Financial Instructions. We are therefore unable to verify when the Dreamstar Pictures BAFO bid was sent to, or at what time it was received by the Authority.

5.59 On 12 July 2011 BNP Paribas provided the Authority with their analysis of the bids received. We note this was sent to an officer and recommended that the Authority proceed with the highest bidder (PTH Bidder 8 - £876,000). This recommendation was subject to PTH Bidder 8 providing "*satisfactory*

⁷⁸ As noted above at paragraph 5.9 above.

⁷⁹ The details of five bids were recorded, as the BAFO bid from Dreamstar Pictures had not been received by that stage.

⁸⁰ We note that the Service Head for Corporate Property and Capital Delivery was not in post until the end of July 2011.

⁸¹ We note that the original copy of this offer was dated 8 July 2011, which was a Friday.

⁸² We note that none of the envelopes that contained BAFO bids for PTH were retained by the Authority.

details of his ability to finance the deal”, and that Dreamstar Pictures be told they were unsuccessful “*in order to focus their attention on Limehouse Library*⁸³”. The email also noted that “*the proof of finance provided by Dreamstar suggests that they would only be able to pursue wither [sic] Poplar Town Hall or Limehouse Library and at present they are stand out top bidder on Limehouse Library*”.

- 5.60 BNP Paribas contacted the bidders for Limehouse Library and PTH on or around 15 July 2011 for clarification of points relating to the due diligence, and informed the Authority by email on 21 July 2011 that they had received “*the last piece of information we have requested*” and noted that “*We do not have any outstanding information regarding PTH Bidder 8 bid.*”
- 5.61 Following the request from BNP Paribas on 15 July 2011 for additional information to evidence the financial viability of their offer, Dreamstar Pictures withdrew their bid⁸⁴ for Limehouse Library and stated that their intended use for PTH was as offices.
- 5.62 BNP Paribas’ email to the Authority on 21 July 2011 recommended that:
- a. PTH Bidder 8 be issued with heads of terms;
 - b. Three “*underbidders*” for PTH be retained; and
 - c. The “*selected purchasers are given strict timescales in which to perform*” and suggested 20 days for completion.
- 5.63 In addition to the above recommendations, the email set out a further recommendation in respect of both PTH and Limehouse Library, which referred to instructions not to go to any parties in either transaction without the Authority’s instruction to do so.
- 5.64 The Authority replied to BNP Paribas’ email on 21 July 2011 and stated that “*the recommendations... seem acceptable and we agree in principle. Prior to actioning anything, [the Officer] must meet with our Director to discuss the position.*” The email suggested that this meeting would occur within a week.
- 5.65 On 28 July 2011, an officer emailed the Corporate Director for D&R, to recommend that the highest bidder (i.e. the bid of £876,000 received from PTH Bidder 8) for PTH was accepted. We note that this email also sets out the recommendations in respect of Limehouse Library, and asks for the authority to proceed.
- 5.66 However, on 2 August 2011, BNP Paribas wrote to the officer to set out their understanding that there could be “*a considerable delay... potentially over a month*” in relation to PTH, although BNP Paribas suggested that a decision on Limehouse Library could be made within a week. Within this email BNP Paribas also stated in relation to the delay that:

⁸³ See paragraph 5.243 for our review of the disposal of Limehouse Library, which was marketed by BNP Paribas at the same time as PTH.

⁸⁴ In an email dated 19 July 2011 to BNP Paribas.

- a. *“it raises considerable risk that the current bidders could fall away... we note that Poplar Town Hall has already experienced one aborted marketing campaign, and if this were to be repeated their [sic] would be a significant risk of blighting the property as purchasers would be unwilling to take any future marketing campaigns seriously,”;*
- b. *“we are happy to draft a response to the current bidders in an attempt to hold them in place during any delay. However, there is no guarantee that we will be successful in doing so.”;* and
- c. *“a failed or aborted marketing campaign will incur costs for the Council without generating a receipt.”*

5.67 The officer responded to BNP Paribas on 3 August 2011 as follows:

“I am fully aware of the ramifications although I hope to be in a position to give the go ahead in respect of Limehouse Library once I have had an audience with the Mayor to brief him on the position. In regard to Poplar High Street, I am afraid this needs to stay on hold for the moment regardless as I am not in a position to instruct you to proceed until it is cleared at this end⁸⁵.”

5.68 On 23 August 2011, the Service Head for Corporate Property and Capital Delivery wrote to an officer to request an update on the disposals of PTH and Limehouse Library in advance of a meeting between the Corporate Director for D&R and the Mayor on 25 August 2011. That meeting is also referred to at the Capital and Asset Management Board meeting on 25 August 2011 and the minutes state that *“there will be progress on this after [the Corporate Director for D&R] has met with the Mayor today”*. We note that the Corporate Director for D&R has stated to us that he has no recollection of this meeting having occurred. As noted at paragraph 5.110 below the Interim Monitoring Officer stated that neither the Corporate Director for D&R nor the Mayor could recall this discussion, as noted in the Mazars report.

5.69 We have seen further correspondence between the Service Head for Corporate Property and Capital Delivery, an officer and/or the Corporate Director for D&R during the period between 23 August 2011 and 15 September 2011 in relation to the next steps of the PTH disposal process. This correspondence is summarised below:

- a. 23 August: Service Head for Corporate Property and Capital Delivery sent an email to the Corporate Director for D&R, which stated *“...custom and practice is to accept the top bid regardless. My concern is that we also need to be able to balance that against ability to close contracts quickly and also to offer some added value for the Authority as part of the assessment”;*
- b. 24 August: An officer emailed the Service Head for Corporate Property and Capital Delivery to recommend that the highest bid be accepted, but that the Authority should *“require exchange within a strict timescale”;*

⁸⁵ We have been informed by the Service Head for Corporate Property and Capital Delivery that the Corporate Director for D&R was on leave at the time, and as he had the delegated authority, this may have led to a delay in the approval process.

- c. 24 August: Service Head for Corporate Property and Capital Delivery forwarded the email referred to above to the Corporate Director for D&R stating that *“the range of returns is very narrow, which looks a bit odd to be honest. My personal preference is to proceed with [an officer’s] advice⁸⁶”* and suggested a timescale of three weeks to exchange and a further week to complete the transaction;
- d. 8 September: Service Head for Corporate Property and Capital Delivery emailed the Corporate Director for D&R and an officer and suggested; *“though it is at odds with the valuation report, that due to the closeness of the 2 top bids.....that we now put them into a race to complete the quickest”*;
- e. 15 September: the Corporate Director for D&R emailed the Service Head for Corporate Property and Capital Delivery to approve the use of a contract race between the two highest bidders. The Service Head for Corporate Property and Capital Delivery subsequently forwarded that email to an officer with the instruction to proceed on that basis; and
- f. 16 September: An officer emailed the Service Head for Corporate Property and Capital Delivery, to set out his concerns with regards the option to proceed with a contract race. In particular, he was concerned that there was a risk that one of the bidders could decide to withdraw from the process, which *“presents us with a problem around being able to demonstrate that we have obtained best consideration”*.

5.70 We note that the authorisation to proceed with a contract race⁸⁷ was granted by the Corporate Director for D&R on 15 September 2011, one day after Dreamstar Ltd was incorporated.

Contract race

5.71 We have seen an attendance note written by the LBTH Solicitor⁸⁸ dated 15 September 2011, relating to a conversation between officers, that stated:

- a. *“I said “My heart sinks”. How can we possibly have a race for a property of this type which we are selling off on a long lease? It’s bound to end in dispute and litigation...”*;
- b. *“However, [an officer] is only doing as he’s told, this has come from the Mayor”*; and
- c. An officer *“said he had made it clear in his report that £876 beats £875, and [the Corporate Director for D&R] agrees but it has come from the very top”*.

5.72 We have discussed this attendance note with the LBTH Solicitor, who stated that his main concern with the contract race was that it put him in a potentially difficult situation. As he would be the main point of contact for the two interested parties, then should either party submit a complaint that they had not been treated fairly, he believed that he would be blamed for any breakdown in the process. In addition, the LBTH Solicitor stated to us that he understood that his reference to *“from the very top”* referred to the Mayor.

⁸⁶ I.e. to accept the highest bidder with strict timescales.

⁸⁷ The winner of the contract race being the first bidder to exchange contracts and pay a 10% deposit to the Authority.

⁸⁸ We note that the solicitor was engaged as a contractor by the Authority as a locum.

- 5.73 The two highest bidders, PTH Bidder 8 and Dreamstar Pictures were contacted by BNP Paribas on 20 September 2011 and asked to confirm that they were still interested in purchasing PTH and, if so, whether they would be willing to enter into a contract race. Both bidders responded on 20 September 2011, confirming their willingness to proceed on that basis, and their solicitors were issued with heads of terms on 21 September 2011.
- 5.74 We note there was internal correspondence on 20 September 2011 that suggests that the LBTH Solicitor identified that Dreamstar Ltd was not registered at Companies House. This does not appear to have been discussed further until an email on 29 September, as set out below at paragraph 5.76.
- 5.75 The two highest bidders were issued with a draft contract during the afternoon of 28 September 2011. The LBTH Solicitor stated in an email to officers on 28 September at 16.56 to note “*I have issued the draft contract with a copy of the draft Lease to both parties by email this afternoon...*” and at 17.06 Dreamstar Ltd’s solicitor informed the LBTH Solicitor that Dreamstar Ltd was in a position to exchange. The LBTH Solicitor responded to state that he could not get the contract signed until the following day and requested Dreamstar Ltd’s solicitor to confirm that funds were available for the deposit.
- 5.76 We note that, on 29 September 2011, the LBTH Solicitor asked Dreamstar Ltd’s solicitors “*what Dreamstar UK [sic Ltd] is, constitutionally*” as it was noted that Dreamstar Ltd was not registered at Companies House. Dreamstar Ltd’s solicitor confirmed the company number of Dreamstar Ltd⁸⁹ and that the company was formed for the purchase of the property. Our understanding of the two Dreamstar entities involved in the bidding for PTH is summarised above at paragraph 5.52 et seq.
- 5.77 Following that correspondence an Agreement for Lease contract⁹⁰ was exchanged at 12.42pm on 29 September 2011 between Dreamstar Ltd and the Authority, with a completion date stated as 28 October 2011.
- 5.78 The solicitors of PTH Bidder 8 were informed by the LBTH Solicitor that they had been unsuccessful in the contract race at 12.50pm on 29 September 2011. We have been informed by the LBTH Solicitor that he received no response to that email and no further communication from the losing bidder was received.

Period between exchange and completion

- 5.79 Approximately two hours after the exchange of the Agreement for Lease, Dreamstar Ltd requested access to PTH to conduct a survey of the property. We have seen further correspondence from BNP Paribas to the Authority on 12 October 2011 which referred to a conversation that BNP Paribas had had with a finance provider which stated:

a. “it appears that Dreamstar [Ltd] are still seeking to get their finance in place”;

⁸⁹ The company registration number of Dreamstar Ltd is 07773327. This entity was incorporated on 14 September 2011.

⁹⁰ Note that this is distinct from the “Lease” document which is entered into at the completion date.

- b. *“with finance apparently not yet in place, there is a risk of delay and/or failure to perform at the completion date”*;
- c. *“No doubt the reason they are looking to inspect the property is so that their finance provider can conduct their valuation”*; and
- d. *“Dreamstar [Ltd] are looking to use the property to accommodate a Bangladeshi TV station and associated offices.”*

- 5.80 We note that the initial application that was received from Dreamstar Pictures indicated that the purchase of PTH would be in cash, and therefore no external funding would be required. To evidence the ability to fund the transaction with a cash payment, Dreamstar Pictures submitted a bank statement to evidence that they had the funds in place. The subsequent dialogue (as referred to above) that referred to delays in the completion of the acquisition due to the arrangement of external finance is therefore not consistent with the initial application received from Dreamstar Pictures.
- 5.81 On 19 October 2011, Dreamstar Ltd’s solicitors requested a four week extension of the completion date. Contemporaneous correspondence within the Authority suggested that this request was considered by an officer and the Service Head for Corporate Property and Capital Delivery with a view to grant the extension. Further, an attendance note⁹¹ of a conversation between an officer and the LBTH Solicitor at 10.09 on 21 October 2011, stated that *“[the officer] has spoken to [redacted] (or was it just an exchange of emails?). We need to be mindful of the connections, take soundings, as a public body, what fall-out, no sharp practice, it would be not unreasonable to grant an extension...”*
- 5.82 We note that the LBTH Solicitor was not able to recall to us what “connections” he was referring to in this attendance note.
- 5.83 An attendance note of a further conversation on 21 October 2011 (at 11.12), as documented by the LBTH Solicitor, suggests that the Corporate Director for D&R instructed that the Notice to Complete be for *“10 working days (or whatever it is in the contract)”*.
- 5.84 In response to Dreamstar Ltd failing to complete the acquisition of PTH by the agreed deadline⁹², the Authority served them with a Notice to Complete on 31 October 2011 (requiring completion by 14 November 2011⁹³), which required Dreamstar Ltd to complete their purchase of PTH within ten working days, or risk losing the 10% deposit paid to the Authority. We have obtained an attendance note dated 31 October 2011 that indicates that the LBTH Solicitor was instructed to serve notice at 4pm the working day before the deadline, in order that the ten days started from the first day of default. This attendance note also stated that the LBTH Solicitor asked the officer *“...why was it essential to save one day?”* The attendance note further noted that *“This has come right from the top “there’s a lot of political focus on this”. [The Officer] was told not to give them [Dreamstar] a single day.”*

⁹¹ Written by the LBTH Solicitor.

⁹² 28 October 2011.

⁹³ I.e. Ten working days from the day after the Notice to Complete was served.

- 5.85 In addition, there is an additional file note also dated 31 October 2011 written by the LBTH Solicitor which documented the events surrounding the issue of the Notice to Complete. That file notes stated:
- a. “At no time was I given any information about why it became necessary to serve the Notice to Complete before 4.00pm to make the 10 working days of the Notice to Complete run from one day earlier...”;
 - b. “I got the impression that there was stuff going on in the background which had nothing to do with the need to get this “sale” completed pursuant to [the] contract”;
 - c. “the objective seemed to be to ensure that the Buyer defaulted rather than completed”; and
 - d. “We had a senior officer personally checking at reception to see that the Courier had done his job”.
- 5.86 We discussed this note with the LBTH Solicitor who stated that his recollection was that the “senior officer” referred to was the Corporate Director for D&R in his role as Acting Chief Executive at the time. We further note that the Corporate Director for D&R has provided evidence to indicate that he was on annual leave on the day being referred to by the LBTH Solicitor.
- 5.87 Dreamstar Ltd completed the transaction on 11 November 2011. We note that a substantial element of the total paid by Dreamstar Ltd was provided by an external lender. The lease⁹⁴ was signed on this date.

Lease agreement variation

- 5.88 On 28 November 2011, after the completion of the transaction to acquire PTH, Dreamstar Ltd’s solicitor wrote to the Authority to request a change in the lease, which would allow Dreamstar Ltd to assign or sublet the lease. The Authority subsequently agreed to this request, as noted in a signed variation dated 16 February 2012.

Planning application in relation to “change of use”

- 5.89 On 6 December 2011 the Authority’s Planning department received a formal pre-planning application request to obtain planning advice from the Authority on a proposed redevelopment of PTH as a boutique hotel. This was followed by a meeting at PTH on 18 January 2012 with Dreamstar Ltd’s architect, attended by two Planning officers and an officer from the Design and Conservation team. Following this meeting, on 28 March 2012, Dreamstar Ltd’s architect was sent formal pre-planning application advice in a letter that stated that the Authority was “generally supportive of the proposal”.
- 5.90 A formal planning application and listed building consent seeking permission to convert the property into a boutique hotel was received by the Authority on 25 August 2012.
- 5.91 In relation to the decision making and delegated authority in respect of planning, the Constitution states that “*The Corporate Director, [for] Development and Renewal (or any officer authorised by her/him) has the authority to make decisions on planning matters with the exception of those*

⁹⁴ Distinct from the “Agreement for lease” referred to above.

specifically reserved to the Development Committee...”. Planning matters specifically reserved to the Development Committee include “...listed building or conservation area consent applications made by or on sites/buildings owned by the Council.”

5.92 In relation to Dreamstar Ltd’s application, we have been informed that:

- a. The planning application and the listed building consent were considered by Planning officers in tandem and were not referred to the Authority’s Development Planning Committee;
- b. The consideration of whether the listed building application should be referred to the Development Committee was undocumented;
- c. Notification of neighbours, and “*external statutory consultations*” were carried out from October 2012;
- d. A draft decision note and delegated report was produced on 18 June 2013; and
- e. The final decision notice granting planning and listed building consent was signed by an officer on 3 July 2013 under delegated authority to officers.⁹⁵

5.93 We have also been informed through our discussions with officers that they were aware at the time that the Authority was the freeholder of PTH. We have been informed that no further legal advice was sought prior to the granting of planning permission. Post that decision, oral legal advice was sought to confirm the process that had been followed, in light of questions concerning whether the Constitution had been applied.

Application to the Authority (as landlord) for change of use

5.94 Whilst Dreamstar Ltd obtained planning and listed building consent in July 2013, the Authority’s permission as the owner of the freehold of PTH was not sought by Dreamstar Ltd until 6 February 2014⁹⁶. The Asset Management team sought advice from the Legal department in relation to the proposed change of use. In response, it was advised by an officer within the Legal department that:

- a. The Lease included the following requirements:
 - i. *3.8 Use*
 - 3.8.1 Not to carry on upon the Property any noisy, noisome, offensive or dangerous trade or occupation;*
 - 3.8.2 Not to use the Property for any illegal or immoral purpose;*
 - 3.8.3 Without prejudice to the preceding covenants in this clause not to use the Property otherwise than for the Permitted Use*
 - ii. *3.9 Planning*
 - 3.9.1 Not to make any application for planning permission without first notifying the Council;*
 - 3.9.2 So often as occasion requires, to obtain all consents and permissions required to*

⁹⁵ It should be noted that PwC has not reviewed the planning / listed building consent decision.

⁹⁶ Letter from Dreamstar Ltd’s solicitor dated 6 February 2014.

authorise the use from time to time of the Property and the carrying out of any development (within the meaning of the Planning Acts) on the Property;

3.9.3 To pay and satisfy any charge that may hereafter be imposed under the Planning Acts in respect of the carrying out or maintenance of any such development;

3.9.4 To give written notice to the Council of the granting or refusal of any planning permission within twenty days after its receipt by the Lessee.”;

- b. *“The permitted user would have to be approved by the Council as landlord once planning consents have been obtained”;*
- c. *“The Council would be entitled to withhold approval for use as a Hotel”;* and
- d. *“If the Tenant did not notify the Council of his planning application, then there has been a breach of clause 3.9.”*

5.95 The Authority subsequently responded to Dreamstar Ltd’s request on 12 March 2014 stating that *“Where a change of use might result in uplift in value to Poplar Town Hall the Council will expect a consideration to be paid for the change of use”*.

5.96 The Authority received a response to that letter from Dreamstar Ltd’s solicitor on 24 March 2014⁹⁷ which stated that Dreamstar Ltd’s view was that to expect a premium for granting a change of use was *“extremely unreasonable”* and the request would be *“vigorously contested”*.

5.97 We have been informed that legal correspondence, discussions and negotiations have continued between the Authority’s Asset Management team and Dreamstar Ltd’s solicitor in relation to this matter, and the position remains unresolved.

5.98 In addition to the withholding of permission for the change of use, the Authority have also made reference to safeguarding value via the *“clawback”* provision within the Agreement for Lease. This provision allows the Authority to claim 50% of any profit on disposal of the lease undertaken in the first three years of the lease. The *“clawback period”* is defined with reference to the planned completion date of 28 October 2011.

The Full Council resolution of 22 January 2014

5.99 At a meeting of the Full Council on 22 January 2014, a motion calling for an investigation into the disposal of PTH was tabled. The Full Council resolved:

- a. *“To instruct the Head of Paid Service, Monitoring Officer and Section 151 Officer, in conjunction with the District Auditor, to undertake an immediate investigation into the marketing and sale of the former Poplar Town Hall”;*
- b. *“That this investigation should include details of all meetings and correspondence between officers of the council, councillors, the Mayor, bidders, and those responsible for publicising the sale; and that these details should be published.”;*

⁹⁷ We note that the letter is dated 19 February 2014, however it is date stamped as received on 24 March 2014. The letter makes reference to the Authority’s letter dated 12 March 2014.

- c. *“The investigation should pay particular attention to any potential conflicts of interest, etc. not properly disclosed.”;*
- d. *“That the investigation should appoint an independent property valuer to establish the 2011 valuation of the building with B1 office use and C1 Hotel use, and the 2014 valuation of the building with C1 Hotel use.”;* and
- e. *“That the investigation should, in view of the seriousness of this situation, produce a report to be considered by [the] O&S [Committee] on March 4th and the full Council at their meeting on March 26th”.*

5.100 We have reviewed the following documentation in relation to the Authority’s response to the resolution of 22 January 2014:

- a. Mazars LLP (“Mazars”) report dated July 2014 (“Mazars’ report”);
- b. Report of the Interim Monitoring Officer to the O&S Committee; and
- c. 2014 Valuation by BNP Paribas dated 24 July 2014.

Mazars’ report

5.101 Mazars, the Authority’s outsourced Internal Audit providers, were engaged by the Authority’s statutory officers to conduct the investigation requested by the Full Council on 22 January 2014.

5.102 Mazars provided the first draft of their report to officers on 27 February 2014, with further drafts provided on 4 March, 21 March, 2 June, 10 June and 3 July 2014. In each instance, officers were given the opportunity to provide comments on the draft reports.

5.103 Mazars’ report was issued to us on 4 July 2014 (and is dated “July 2014”), and was appended to the report of the Interim Monitoring Officer for the O&S Committee (discussed at paragraph 5.110 below). Mazars’ report presented a summarised timeline of events in relation to the disposal of PTH, and the report’s conclusions stated that, inter alia:

- a. *“...the explanation provided... as to why Dreamstar [Picture]’s bid was accepted late was in relation to achieving ‘best consideration’. However, this is in contravention of the Council’s Financial Instructions regarding the disposal of assets.”;*
- b. *“There is not a clear record of the decision making process to embark on the contracts race, nor the reason for the delay between 12 July 2011 and 15 September 2011”;*
- c. *“The Council’s Financial Instructions state ‘the highest offer must be accepted unless the prior agreement of the Cabinet (and the Secretary of State where necessary) has been obtained to accept other than the highest offer’...the Council did not note, at that time, the reason for its decision not to accept the highest offer.”;*
- d. *The highest bidder’s offer was “...subject to survey and there were considerations around the highest bidders finances; however, it was established that [PTH Bidder 8] had net assets sufficient to complete the purchase.”;*

- e. *The highest bidder’s accountant “also submitted a bid; however concerns around this were not articulated with regard to the entering in to a contract race. We noted that Dreamstar Limited was incorporated on 14 September 2011.”; and*
- f. *“We have seen evidence that the correct process for planning permission has been followed”.*

- 5.104 We note that the terms of reference for the Mazars’ report stated they there were instructed to undertake the following work in respect of conflicts of interest; *“We will seek to examine any documentation supporting the... arrangements for the disclosure and control of conflicts of interests from bidders, those involved in the sale and the change of use process.”*
- 5.105 The above wording appears to be a narrow interpretation of the Full Council’s resolution that the investigation should; *“pay particular attention to any potential conflicts of interest, etc. not properly disclosed.”* As a result, it does not appear that Mazars have conducted a further investigation of the potential conflicts of interest, e.g. by considering the ownership of the bidding companies and the extent to which relationships may exist with Members or officers.
- 5.106 In our meeting with the Interim Monitoring Officer, he noted that; *“we were very concerned about whether there had been anything untoward that had gone on around those two decisions⁹⁸, and particularly whether there had been any political involvement”*. However, the Interim Monitoring Officer stated that Mazars’ report found *“no evidence of that sort of improper involvement by anybody”*. We also note that the Interim Monitoring Officer, having made his own enquiries, *“found nothing to substantiate the concerns”* being expressed publicly at the time of his appointment⁹⁹.
- 5.107 In our discussion regarding the circumstances that would have led to an interest being declared on the purchase of PTH, the Interim Monitoring Officer stated that *“the requirement to declare the interests is dependent on there being a meeting at which interests would have been declarable.”* In this regard, as the authority for the disposal of PTH was delegated to the Corporate Director for D&R, he considered that the need for the Mayor or Members to disclose an interest did not arise.
- 5.108 The Interim Monitoring Officer further stated that the Mayor and Members:
- “weren’t involved when it became clear as to who the competing bidders were so there was no requirement on any of them to declare an interest in any event. So it would have been a waste of time of Mazars to pour over the shareholders and directorships and all the bidders to see if there was anything that was untoward there.”*
- 5.109 Notwithstanding this, and in light of the results of our Corporate Intelligence research (as detailed below at paragraph 5.114), the Interim Monitoring Officer suggested that he would have advised the Mayor to declare his relationship with Mr X as part of the PTH disposal process:

⁹⁸ The “two decisions” being to accept the late bid from Dreamstar Pictures, and to then initiate a contract race between Dreamstar Pictures and PTH Bidder 8.

⁹⁹ We understand that the concerns referred to in this context were those included in a Telegraph online article dated 18 January 2014.

“That degree of involvement with the Mayor’s political campaign would be the sort of thing that, had I been asked for advice as to “do I declare an interest for this?” I’d say “yes, Mr Mayor, you certainly do”.”

Report of the Interim Monitoring Officer to the O&S Committee

- 5.110 The Interim Monitoring Officer presented a report to the O&S Committee on 22 July 2014 on the *“outcome of the investigation mandated by the Council at its meeting on 22 January 2014”*. As the Interim Monitoring Officer noted during his oral presentation, the report did not include the independent valuation that Full Council had requested (see below). The Interim Monitoring Officer’s report stated the following:
- a. *“Apart from as listed below, each of the above activities of the Council were carried out as a result of proper exercises of the Council’s powers whether by elected individuals or officers exercising delegated powers. The processes undertaken were in accordance with the Council’s Constitution, Financial Procedure Rules and Schemes of Delegation. The auditors have not been able to access the relevant records so it appears that there may have been the following breaches of Financial Procedure Rules:*
 - i. *“Failure to record reasons for admitting a late bid by Dreamstar Limited at the opening of the bids”; and*
 - ii. *“Failure to formally record reasoning for commissioning a “contract race” between top and second best bidders”.*
 - b. *“In respect of the second issue above, Mazars have found an indication that in deciding whether to proceed with a contract race or accept the highest bidder, the Corporate Director for Development and Regeneration Renewal consulted with the Mayor of the Borough. They have been interviewed but neither of those individuals has any recollection of such discussion taking place and have no records that would assist”;*
 - c. *“At the time of the marketing the Council along with its professional advisor, BNP Paribas, considered a range of potential uses, including an hotel to maximise the capital receipt for the site, whilst considering the risk profile. At the time B1 was considered the preferred use.”;*
 - d. *“Delegated powers were used to resolve the planning applications for change of use in accordance with the usual and Council approved scheme of delegation after publication. Resident communications had not prompted sufficient numbers of objections to justify a referral of the matter to the Planning Committee.”;*
 - e. *“Apart from as detailed in their report, Mazars have found no evidence that the Mayor of the Borough or his administration had any involvement with the processes that resulted in the grant of a long lease of the property to Dreamstar Limited.”; and*
 - f. *“No evidence of illegality or maladministration causing injustice is revealed by the Investigation Report. No elected individuals have been involved in the processes investigated except when they have attended Council meetings which have received reports and been publicly minuted in accordance with the Local Authority Access to Information regimes. The*

planning applications were quite properly considered and resolved by officers of the Council. For the avoidance of doubt, it should be remembered that the determination of planning applications is not an executive function that falls within the Elected Mayor's remit; Mazars have found no evidence of any involvement of the Mayor in the matters which are outside his powers to influence or determine."

2014 Valuation by BNP Paribas

- 5.111 As noted above at paragraph 5.99 the Full Council required the statutory officers to engage "an independent property valuer to establish the 2011 valuation of the building with B1 office use and C1 Hotel use, and the 2014 valuation of the building with C1 Hotel use". However, the Interim Monitoring Officer reported to the O&S Committee that this requirement had been overlooked until early July 2014. We have been informed that the statutory officers instructed the Service Head for Corporate Property and Capital Delivery to procure the valuation on 3 July 2014, with the aim to have the finalised report in advance of the O&S Committee meeting on 22 July 2014.
- 5.112 We have been informed by the Service Head for Corporate Property and Capital Delivery that the option to instruct BNP Paribas to undertake the requested valuation was shared with the Authority's statutory officers in an email dated 3 July 2014. On 7 July 2014, the Section 151 Officer responded to request the Service Head for Corporate Property and Capital Delivery to proceed to instruct BNP Paribas to conduct the valuation.
- 5.113 BNP Paribas were engaged to conduct the valuation on 9 July 2014 and their report is dated 24 July 2014¹⁰⁰. We were provided with a copy of that valuation report, however, as the contents are commercially sensitive¹⁰¹ we have not set out their findings in this report. However, we note that:
- a. The report was prepared by two MRICS¹⁰² valuers, who were involved with the 2011 valuation and sale process; and
 - b. The valuations included in the report are necessarily based on a number of assumptions, in particular the report stated that "*We would strongly recommend that our assumptions in terms of build costs are confirmed by an appropriate qualified building surveyor or cost consultant, as any difference may have a significant impact on our opinion of value*".

Corporate Intelligence research

- 5.114 We have performed Corporate Intelligence searches of open source databases in order to establish what, if any, relationships exist between the bidders for PTH and the Mayor or Members. No such relationships were identified in relation to any of the bidders with the exception of Dreamstar Ltd.

¹⁰⁰ We note that the date in the introduction of the report is 14 July 2014, however elsewhere in the report 24 July is referred to.

¹⁰¹ We have considered these findings to be commercially sensitive in light of the ongoing negotiations between Dreamstar Ltd and the Authority regarding the authorisation of a change of use to a hotel.

¹⁰² Member of the Royal Institution of Chartered Surveyors.

- 5.115 Our findings in relation to the shareholders and directors at various times of Company A, Dreamstar Pictures and Dreamstar Ltd are summarised below:
- a. All the above named companies appear to have individual shareholders (i.e. none appear to have been part of a corporate group);
 - b. There have been multiple changes of directors and shareholders of these companies during the Period;
 - c. Mr X has been either a shareholder or director (or both) of each of these companies, however it should be noted that he ceased to be director of Dreamstar Pictures on 20 August 2010 and was not appointed as a director and listed a shareholder of Dreamstar Ltd until 2013; and
 - d. [Redacted] (“Mr Y”) ¹⁰³ has been a shareholder and director of Dreamstar Ltd and Dreamstar Pictures during the Period including at the time of the PTH transaction.
- 5.116 The Mayor confirmed to us that he knew Mr X and stated that Mr X had “*helped me in my campaign*” in relation to the 2010 mayoral election. In addition the Mayor also stated that the relationship changed post-election in 2010 and that he “*hardly [has] any relationship with him [Mr X] now*”. We note, as referred to above at paragraph 5.33 that Mr X is connected to Company A, which submitted the second highest bid when PTH was marketed in 2007.
- 5.117 The Mayor stated that Dreamstar Ltd was mentioned to him “*when the director¹⁰⁴ decided and they’d agreed to sell to the bidder*”, however, it “*meant nothing to me at the time and no other names were mentioned*” and that it was not until the Full Council resolution dated 22 January 2014 that the Mayor became aware of “*who Dreamstar [Ltd] was*”, and therefore the link to Mr X.
- 5.118 In our meeting, the LBTH Solicitor stated that, whilst he was not able to confirm the name of the individual concerned, he could recall that it was “*common knowledge*” that the Mayor was familiar with the person behind Dreamstar Ltd. The LBTH Solicitor added that he was not able to recall the name of any Authority employees that he had in mind when making the statement to whom this matter would have been “*common knowledge*”. The LBTH Solicitor has more recently stated that he “*cannot substantiate that it was “common knowledge” that the Mayor was familiar with the person behind Dreamstar Limited, that will appear to be gossip rather than information so it would be beyond the scope of my waiver of confidentiality to say that*”. We note that a contemporaneous file note written by the LBTH Solicitor refers to the need to be “*mindful of connections*”.
- 5.119 In interview, the Mayor stated that he did not connect Mr X with Dreamstar Ltd at the time of the PTH transaction because “*I didn’t know who Dreamstar [Ltd] was at the time*”.

¹⁰³ We note that Mr Y is also a director of an entity that is based in an Authority owned property at 30 Hanbury Street.

¹⁰⁴ Corporate Director for D&R.

Sutton Street Depot

Introduction

- 5.120 The disposal of Sutton Street Depot was considered by Cabinet on 3 August 2011. At this meeting, the Mayor agreed to the recommendation that Sutton Street Depot and one other property¹⁰⁵ be declared surplus to requirements, and their sale be authorised.
- 5.121 The Cabinet report dated 3 August 2011 noted that Sutton Street Depot was being used as a base for the Authority's "vehicles and street-based staff as well as for storage and workshop facilities". This report further noted that "the Depot neither provides a suitable locality base for the future nor is it of an adequate size to consolidate depot operations for vehicles". The Sutton Street Depot was operational for Authority use until early January 2012¹⁰⁶.

Marketing and valuation

- 5.122 The property was initially marketed by GVA Grimley in the period from 28 January 2012 to 9 March 2012 and 17 bids were received on 9 March 2012, with the highest bid being a £3.05 million conditional offer, for a proposed residential use.
- 5.123 These bids were communicated to the Authority in a letter from GVA Grimley dated 13 March 2012. In this letter, GVA Grimley noted the requirement for a "change of use" planning application for the four highest bidders¹⁰⁷, and therefore recommended that the Authority consult with the planning team "before an informed decision is made".
- 5.124 As noted at an AMCSB meeting on 7 August 2012:
- "In discussion with Members, the direction of travel for the site was for it to be retained as an employment/creative hub provision, rather than housing."*
- 5.125 In the same meeting, it was stated:
- "The planning brief for the site was to retain it as an employment site, rather than a residential disposal."*
- 5.126 It was noted in the AMCSB August 2012 meeting that the Asset Management Board agreed on 17 April 2012, that the "disposal should not be endorsed and that marketing for a short lease for the site" should be undertaken. This enabled the Authority to explore further potential options for the longer term use of the site, whilst also ensuring the building was in use in the short term.

¹⁰⁵ 31 Turner Street.

¹⁰⁶ AMCSB meeting minutes 7 August 2012.

¹⁰⁷ These offers were for residential purposes, hence the requirement for a 'change of use' application.

- 5.127 In May 2012, Strettons Ltd¹⁰⁸ were engaged to manage the disposal of the property. We note that, at that stage, Strettons Ltd advised that the property would attract a rent in excess of £155,000 per annum for a ten year lease, and that a shorter lease period of 18 months would lead to a 50% to 70% discount on rental income.
- 5.128 Strettons Ltd advertised the property for a period of eight weeks on an “*as seen*” basis, after which six bids were received, as summarised in the following section of this report.

Initial bid submissions

- 5.129 The bids received for Sutton Street Depot (and the value of annual rent proposed), as opened by the Authority on 10 July 2012, were as follows:
- a. Social, media, car rental - £[redacted] (“SSD Bidder A”);
 - b. Cash and carry warehouse - £[redacted] (“SSD Bidder B”);
 - c. Cash and carry - £[redacted] (“SSD Bidder C”);
 - d. Ground transport - £[redacted] (“SSD Bidder D”);
 - e. Home to school transport - £[redacted] (“SSD Bidder E”); and
 - f. Employment and education - £[redacted] (“SSD Bidder F”).
- 5.130 As noted above, the highest bid was £[redacted], as received from SSD Bidder F. However, Strettons Ltd noted in an email dated 17 July 2012 that SSD Bidder F had not provided financial records, and therefore it was not possible to confirm their ability to pay the rent. Further, and as noted below at paragraph 5.142, SSD Bidder F does not appear to have submitted a business plan, as requested by the application form.
- 5.131 Strettons Ltd therefore recommended that the Authority accept the offer from the second highest bidder, being SSD Bidder D, on the basis that it is an existing trading company with good covenant strength and their proposed use would not require a change of planning permission.

Supplementary information received from SSD Bidder A

- 5.132 In a letter dated 5 July 2012, the sole shareholder and director of SSD Bidder A notified the Authority of the following information, stating that he had “*omitted to include*” this information in the “*main document*” dated 28 June 2012:
- a. His “*connections with Tower Hamlets... has given me a thorough understanding of the issues of concern to the residents and businesses in Tower Hamlets, and how the proposed use of the Sutton Street Depot could best serve the needs of the local residents*”;
 - b. “*I am intending to procure the majority of my supplies from the local area, by giving local businesses plenty of notice of upcoming contracts, so that these businesses, ethnic-minority*

¹⁰⁸ An external firm of Chartered Surveyors.

groups and voluntary organisations have ample opportunity to benefit from forthcoming projects”;

- c. *“I will endeavour to employ the majority of the work force from the local community, and with terms and conditions reflecting best practice, and to provide relevant training. By employing local residents, we will also gain a valuable knowledge resource from the local community, to help us target the business to local needs of the Tower Hamlets community”;* and
- d. *“... My intention is to broaden the communities’ awareness of the various local cultural traditions, and so to provide a unifying environment of equality within which to empower and strengthen the diverse rich cultural heritage of the area.”*

5.133 We note that the Authority does not appear to have requested or received any such similar information to clarify the proposed offer from any of the other bidders. Further, this additional information appears to have been used as the basis for the selection of SSD Bidder A as the preferred bidder, as further discussed below at paragraph 5.145.

Late offer submitted by SSD Bidder A

5.134 On 31 July 2012, 21 days after the bids summarised above at paragraph 5.129 were opened, a revised offer of £[redacted] (representing an increase of 11% on SSD Bidder A’s previous bid) was submitted to Strettons Ltd from SSD Bidder A (social, media and car rental per the above list). We note that this was two weeks after the initial email from Strettons Ltd to recommend that the Authority select SSD Bidder D as the winning bid. It is not clear from the information provided to us what prompted SSD Bidder A to submit this revised offer.

5.135 We have not been provided with any contemporaneous documentation to evidence the decision taken by the Authority to accept the late offer that was received from SSD Bidder A. Further, in seeking to understand why the Authority considered it appropriate to accept the late offer from SSD Bidder A, officers have been unable to recall why the late bid was accepted, and in the absence of any documentation, have been unable to provide us with any further explanation. We have also seen no evidence to suggest that any of the other bidders for Sutton Street Depot were asked to submit a further bid, for example by way of a BAFO bid.

5.136 We note that, in the meeting of the AMCSB on 7 August 2012 (as discussed below at paragraph 5.139), there does not appear to be any consideration of the fact that the winning bid was submitted by SSD Bidder A 21 days after the initial bids were opened. Further, in an email dated 17 July 2012, Strettons Ltd stated that:

“Having viewed the offers above, our view is that the most attractive offer is from [SSD Bidder D], whilst it is obviously not the highest offer in terms of rent it is the highest from a trading company background with a good covenant strength and their use does not require a change of planning permission.”

5.137 In this email, Strettons Ltd also noted the following concerns regarding the bid that was received from SSD Bidder A:

- a. A change of use would be required; and
- b. This is a new company with no financial records or trading background.

5.138 With regards the change of use, we note that this was requested on 20 December 2013 and granted on 13 February 2014. The planning permission required the change of use as:

“Council depot to a Rental Car Hire Business (sui generis) and associated office (B1 use) and the retention of a covered canopy for a car wash bay in association with the car-hire business only.”

Selection of preferred bidder

5.139 The rationale for recommending the bid from SSD Bidder A is documented in the minutes of a meeting of the AMCSB on 7 August 2012; which sets out the following reasons for recommending the SSD Bidder A bid:

- a. *“The bid was compliant and included a business case supporting their proposal, along with the partnership arrangement with Hertz”;*
- b. *“The bid is in line with the Borough’s aim to enhance employment and training opportunities for the residents; it also includes work with the local schools”;*
- c. *“It states an intention to recruit and employ local people”;*
- d. *“It is a new business to the borough which will bring a diversity to the range of opportunities that exist for the local community”;* and
- e. *“That the successful bidder commits to ensuring completion of the lease terms will [be within] six weeks of [terms being issued] to them”.*

5.140 In Appendix A to the AMCSB August 2012 meeting note, there is a schedule of the bids that were received. This document noted the following limitations of the two bids that were of higher value to the bid received from SSD Bidder A:

- a. SSD Bidder F, which bid £[redacted], *“did not fully comply with submission requirements. No business plan or complete financial information was provided. The covenant was assessed as poor”.* This bid was therefore marked as non-compliant; and
- b. SSD Bidder D, which bid £[redacted], *“complied with submission requirements”*, however no statement was made regarding employment opportunities and no business case was submitted.

5.141 We note that the application form specifically required a business plan to be submitted, however we have not identified any specific reference to the requirement for bidders to demonstrate how their bid will lead to local employment opportunities.

5.142 The assessment of the application received from SSD Bidder F, as summarised above, is consistent with the email sent to the Authority by Strettons Ltd on 17 July 2014. Our review of the application (and

supporting documents) submitted by SSD Bidder F has not identified any inconsistencies in this assessment, with the exception of the “*complete financial information*”.

- 5.143 In respect of SSD Bidder F, we note that it stated on the application form that annual accounts can be obtained from the charities commission website. As only two years of annual accounts are available on the charities commission website, Strettons Ltd have interpreted this as incomplete financial information.
- 5.144 We note that the Authority’s assessment of the application received from SSD Bidder D, as summarised above, is not consistent with the email sent to the Authority by Strettons Ltd on 17 July 2014, which recommended SSD Bidder D to the Authority and did not refer to the lack of statement regarding employment opportunities or business case.

Cabinet decision to not accept highest bidder

- 5.145 As a result of the Authority not proceeding with the highest offer, and in accordance with the Authority’s Financial Instructions referred to at paragraph 5.9 above, a Cabinet report dated 5 September 2012 was prepared to seek approval to accept the bid that was received from SSD Bidder A, for £[redacted]. This report set out the reasons as to why the AMCSB considered the bid from SSD Bidder A to be the best option for the Authority, which can be summarised as follows:
- a. “*Considered to be the best by reason of factors relevant to deliverability, whilst noting it is a new business*”;
 - b. Provision of access to training and employment opportunities, which will “*align with the Council’s enterprise strategy*”; and
 - c. “*The highest bidder did not provide business plan or cash flow proposals so the robustness of their proposal was not able to be established.*”
- 5.146 In the Cabinet report dated 5 September 2012, it is noted that: “*the Council may dispose of land for less than best consideration if the Secretary of State consents to the disposal*”. It is further noted that; “*provided the disposal is for a short lease i.e. less than 7 years no disposal consent is required*”.
- 5.147 As this property was leased for a period of five years, consent from the Secretary of State was not required.
- 5.148 We note that the report included the following errors:
- a. “*A number of bids were received and these ranged from £[redacted] to £[redacted]*” – We note that the highest bid received was greater than the upper range as reported to Cabinet;
 - b. “*The successful bidder offered the second highest price, £3,000 less than the highest bid*” – We note that [SSD Bidder A]’s winning bid of £[redacted] was £13,000 less than the highest offer. Whilst this bid was considered non-compliant, in accordance with the Internal Audit findings noted in the report titled ‘Asset Management and Disposal’, dated February 2011, “*all offers to be*

recorded and reflected in the final recommendations including those that are considered non compliant or unacceptable”;

- c. The specific factors considered in the evaluation of the bids are not consistent with the due diligence undertaken by Strettons Ltd, e.g. no mention of change of use; and
- d. The report did not mention that the winning bid was received 21 days after the initial bids were opened.

5.149 On 28 September 2012, the officer from the Asset Management team confirmed in writing to Strettons Ltd that the preferred bidder was SSD Bidder A, and that all other parties should be advised that they had been unsuccessful.

The Mayoral Executive Decision to grant a 12 month rent free period

5.150 After SSD Bidder A was notified that they were the preferred bidder for the Sutton Street Depot, they commenced negotiations regarding the terms of the lease, specifically seeking to secure a rent free period. As those negotiations were not concluded, a Mayoral Executive Decision (dated 28 March 2013) was required. The Mayor granted a 12 month rent free period¹⁰⁹ for SSD Bidder A, as documented in Mayoral Executive Decision Proforma Log number 20 (“Mayoral Decision 20”).

5.151 We note that details of the decision taken by the Mayor in respect of the rent free period that was given to SSD Bidder A was considered restricted (and therefore not published) as a result of the report containing financial information about the bids received.

5.152 As noted in Mayoral Decision 20:

“The property was marketed for a six week¹¹⁰ period on an “as seen” basis, in line with normal practice. This was done in the full knowledge of the condition of the building, including the expectation that no bidder would be expected to invest significant capital funds on a building with a five year lease”.

5.153 Mayoral Decision 20 claims that six offers were received for the property; *“with all of them being within the same range of bids¹¹¹”*. We note that this is an incomplete description of the bids that were received, as detailed at paragraph 5.129 above.

5.154 It is noted in Mayoral Decision 20 that:

“There is a risk that if favourable terms are awarded to the successful bidder, it could leave the council open to challenge under the requirement to ensure best value out of the use of its assets, as the Council

¹⁰⁹ We note that, in addition to the 12 month rent free period, the Mayor also agreed that the Authority would contribute £50,000 towards essential ‘Health and Safety’ works.

¹¹⁰ Note this appears to be an error. As noted at paragraph 5.128 Strettons Ltd marketed the property for a period of eight weeks.

¹¹¹ We note that we have not quoted the bid range, on the basis that such information is not in the public domain and is contained within “restricted” papers.

will be significantly reducing the return on the asset by [redacted] to [redacted] over the 5 year lease period against a possible [redacted] return with the second bidder.”

5.155 Further, it is documented in Mayoral Decision 20 that:

“It should be noted that any decision to offer more than the 6 months’ rent free period already granted will render the initially accepted bid too far apart from the original bid which was accepted. Other bids received at the time of marketing are more attractive than what the successful bidder has offered and should therefore be considered rather than agreeing to the successful bidders’ demands.”

5.156 It is noted that the bid received from SSD Bidder A had no condition precedents attached. As part of the negotiations of the final lease in November 2012, SSD Bidder A initially requested one year rent free, and the ability to sub-let part of the premises. The Authority initially agreed to the ability to sub-let, but offered a three month rent free period rather than a full year, which resulted in continued negotiations regarding the terms of the lease, and ultimately the requirement for a Mayoral Decision.

5.157 The following four options were put to the Mayor by officers. We note that, whilst the paper stated that *“all the options are acceptable to the Council”*, it is also stated that options ‘a’ and ‘b’ are the *“preferred routes”*:

- a. *“Advise the successful bidder that they have 5 working days to accept the Councils [sic] final offer on the lease, which includes a 6 month rent free period and the ability to sub-let (without capping their ability to secure profit arising out of the sub-let in line with the lease costs that they are paying)”*;
- b. *“If the successful bidder is not willing to accept the terms above, the property should be remarketed either for a capital receipt or for a short lease. If this option is followed it would mean that the building would remain empty for another 4-6 months with the council continuing to incur abortive costs”*;
- c. *“Agree to the successful bidders [sic] request for a rent free period of 1 year on the lease, with a capped sum of £50k to undertake the essential [Health and Safety] works to allow the buildings to be occupied. There is no requirement or commitment from the group to undertake any other works that they say are required. It is a short lease of 5 years, so the expectation would not be for any organisation to bid for the property on the basis of having to incur that level of funds”*; and
- d. *“Reduce the area of the site to be included within the lease, therefore reducing the annual lease costs and allowing a 6 month rent free period”*.

5.158 Against the *“preferred routes”*, the Mayor selected option ‘c’, with no clear documented rationale for why this decision was considered to represent best value when compared to the other options available. In our meeting with the Mayor, he stated that he chose this option as a result of the refurbishment works required; *“Once the company had gone in, there were some issues to refurbish with the work that... needed to be carried on... and I think some asbestos may have been found in the building”*.

Asbestos survey

- 5.159 An “*Asbestos Management Survey Report*” issued 29 November 2011, in relation to Sutton Street Depot refers to a survey undertaken by PL Consulting (UK) Limited between 17 November 2011 and 18 November 2011.
- 5.160 The initial inspection noted that no asbestos materials were found at this property. However; “*in accordance with the Health & Safety Executive Document HSG264, it must be assumed that asbestos materials are present within all rooms that have not been accessed during the survey, until it can be proven otherwise¹¹²*”. We note that the vacant gate house building could not be accessed for the purpose of this survey.
- 5.161 A follow up report issued 13 May 2013 was prepared following a visit of the property on 18 April 2013 to inspect the previously inaccessible vacant gate house. This follow-up did not identify any asbestos materials. We note that the absence of asbestos materials at this property, as reported by PL Consulting (UK) Limited, appears to contradict part of the Mayor’s rationale for the 12 month rent free period, as referred to above at paragraph 5.158.
- 5.162 As noted below at paragraph 5.172c, the presence of asbestos materials at this property was used by Councillor Choudhury to justify the Mayor’s decision to grant a 12 month rent free period to the O&S Committee. We note that the Mayor has stated that he was unaware of the report dated 13 May 2013 when he confirmed his original decision, as detailed above at paragraph 5.158. The topic of asbestos is not referred to in the documentation of the Mayoral Executive Decision.
- 5.163 We have not been provided with any evidence of asbestos removal works being undertaken in between the dates of the two asbestos surveys referred to above.

Refurbishment works required on the property

- 5.164 Clause 5.2 of the lease for Sutton Street Depot sets out the following:

“The Landlord covenants with the Tenant that upon completion of the Tenant’s Works¹¹³ to the Landlord’s reasonable satisfaction the Landlord will release the Capital Contribution¹¹⁴ to the Tenant”.

- 5.165 We note that Schedule 5 of the lease for the property sets out the proposed works to be undertaken as directed by SSD Bidder A to bring the property into an appropriate condition for use. Upon completion of those works, and in line with the Mayoral Executive Decision noted above, the Authority are obligated to make a contribution of up to £50,000 towards those works.
- 5.166 We note that the total value of the “Health & Safety” works, as detailed at Schedule 5 to the lease, is £12,000 less than the annual rent. This includes £15,000 in relation to “*Asbestos removal*”. We note

¹¹² “*Asbestos Management Survey Report*”, compiled by PL Consulting (UK) Limited, dated 29 November 2011.

¹¹³ Defined in the lease as “*That part of the works set out in the Fifth Schedule hereto headed “Health & Safety”*”.

¹¹⁴ Defined as “*the sum of £50,000*”.

that Schedule 5 to the lease also sets out refurbishment works to be undertaken by SSD Bidder A, which total £220,000 (i.e. in addition to the “Health & Safety” works of £105,000).

- 5.167 As noted above at paragraph 5.152, the property was marketed “*on an as “seen basis” ... in the full knowledge of the condition of the building, including the expectation that no bidder would be expected to invest significant capital funds on a building with a five year lease*”.
- 5.168 However, as a result of the Mayoral Decision 20, it was agreed that SSD Bidder A would be reimbursed up to £50,000 towards the Health & Safety works (totalling £105,000) required. We note that, in effect, Mayoral Decision 20 granted SSD Bidder A additional value that represented 92.7% of the agreed annual rent when compared to the six month rent free period recommended by officers. This represents a higher amount than the total cost of Health & Safety works, as detailed in Schedule 5 to the lease.
- 5.169 The total funding provided by the Authority to SSD Bidder A as a result of the Mayoral Decision 20 was £[redacted], being 142.7% of the agreed annual rent. We note that no other bidder stated that their offer for the property was dependent on a capital contribution from the Authority and/or a rent free period.

Response to the O&S Committee Call in

- 5.170 The O&S Committee, in a meeting on 7 May 2013, requested the Mayor give further consideration to his decision (as documented in Mayoral Decision 20 at paragraph 5.158 above) to the amendments to the terms of the proposed lease, being the offer of a 12 month rent free period and a contribution of £50,000 to SSD Bidder A.
- 5.171 The O&S Committee noted the following concerns regarding the Mayoral Decision 20:
- a. The Mayor had provided no rationale for his decision to go against officer recommendations;
 - b. The decision could result in a legal challenge from unsuccessful bidders that the Authority provided an unfair advantage to SSD Bidder A in a “*tender process required to be free and open*”;
 - c. The decision creates a precedent for future preferred bidders to “*move the goalposts*”; and
 - d. The decision to select a bidder with no financial records.
- 5.172 The Mayor was not in attendance at this O&S Committee meeting, and therefore the concerns of the O&S Committee were responded to by Councillor Choudhury, who noted:
- a. No “favourable terms” or unfair advantage was given to the successful bidder, that was chosen “objectively”, considering finance and proposed use;
 - b. Best value did not just relate to rental income, but should also consider legal, security and maintenance costs;
 - c. The rent free period was required to reflect “*major works were needed at great cost to the bidder: the site had 2 old listed gatehouses and the buildings/site was in disrepair, the site also comprised of a vehicle forecourt with potential contamination issues, and asbestos had now been identified which required removal. It could be argued the authority should have done the*

work prior to disposal but it had not. The Mayor's [sic] had considered an offer of a rent free year would enable the bidder to get up & running on site.”; and

d. No precedent had been set for the future, as the appropriate disposal process had been followed.

5.173 We note that the date of this O&S Committee meeting was six days prior to the date of the second asbestos report, as noted above at paragraph 5.161.

5.174 Councillor Choudhury was asked by the O&S Committee if the “*bidders had access to this information on the site condition when they made bids*”. However, Councillor Choudhury stated that he had not “*been part of the tender process*”, and was therefore unable to respond.

5.175 It is recorded in the minutes of this O&S Committee meeting that Councillor Choudhury had asked the Service Head for Corporate Property and Capital Delivery to not attend the meeting. In interview, the Service Head for Corporate Property and Capital Delivery stated that the reason for not attending was because “*it was a Mayoral decision*” and therefore they were unable to speak on behalf of the Mayor.

5.176 Following the request of the O&S Committee to reconsider his decision to grant a 12 month rent free period, the Mayor confirmed his original decision on 20 May 2013, without stating any further rationale as to why he considered this option to represent best value for the Authority. We note that this decision was confirmed 7 days after the date of the second asbestos report referred to above at paragraph 5.161.

5.177 The lease on the property commenced on 7 June 2013 for a five year period.

Corporate Intelligence research

5.178 We have undertaken Corporate Intelligence research on SSD Bidder A, which noted that this organisation was incorporated on 1 June 2012. There is one individual who is the sole shareholder and the only director, and this ownership and management structure has remained consistent since the incorporation date.

5.179 Our research has not identified any common business relationships between the owner/shareholder of SSD Bidder A and the Mayor or Members.

5.180 The Mayor, in interview with us, confirmed that he had no knowledge of SSD Bidder A, and nor did he have any knowledge that the bid from SSD Bidder A was received 21 days after the other bids were opened.

Mellish Street

Introduction

5.181 111 – 113 Mellish Street (“Mellish Street”) consists of “*all the portacabin premises and surrounding land¹¹⁵*” that were used by the previous tenant. The previous tenant paid the Authority £[redacted] per annum for the lease of Mellish Street until February 2013, being the end of their lease.

Initial approach to the Mayor

5.182 We note that a local community organisation first declared an interest in being able to occupy this property in May 2012. We have reviewed an email dated 15 May 2012 that was sent to the Mayor from [redacted] (“Consortium Member 1”), which referred to a previous meeting with the Mayor on 24 March 2011. In this correspondence, Consortium Member 1 referred to a conversation with the Mayor in which he had stated that he would instruct an officer to support Consortium Member 1 in locating premises for their purposes. Consortium Member 1 noted at the time that Mellish Street would be potentially suitable.

5.183 As per their email dated 15 May 2012, Consortium Member 1 noted that their previous premises from which they conducted activities for the local community were no longer available to them. The email states:

“our members have been searching for a suitable premise elsewhere and after some research we have identified a suitable venue where we believe the Council has the power to give us the access. The vacant portacabins on 111 – 113 Mellish Street, London E14.”

5.184 Following this initial approach, a petition was sent to the Mayor on 9 August 2012 to demonstrate the level of local public support for Mellish Street to be leased to Consortium Member 1 to allow for a range of services to be delivered to the local community. The Asset Management Board noted in an internal briefing note dated 29 August 2012 that a response to the petition should state that the property was subject to a lease that was scheduled to expire in February 2013, and the Authority was presently considering its options in line with its strategic priorities.

5.185 In an additional email dated 10 August 2012 we note the Service Head for Corporate Property and Capital Delivery sought an “*urgent*” answer on the planning status of the temporary buildings that were present at Mellish Street. This email referred to a meeting between an officer and the Mayor that day.

5.186 It is noted in this email correspondence that the planning permission for the temporary buildings situated on the land at Mellish Street had expired on February 2010. In a meeting with the Service Head for Corporate Property and Capital Delivery, it was confirmed that the previous tenant had therefore breached the planning regulations. However, the Authority did not pursue this any further, and instead sought to make sure that planning permission was in place before signing the new lease (see paragraph

¹¹⁵ Signed lease agreement for Mellish Street dated 26 July 2013.

5.223 below). In doing so, the Authority sought to ensure that any successful bidder would have access to facilities with the appropriate planning consent in place.

Marketing and valuation

Disposal of land in vacant possession

5.187 A valuation exercise was undertaken by Drivers Jonas Deloitte as communicated to the Authority in a report dated 2 October 2012, which indicated a potential valuation of £1.25 to £1.29 million if the site was sold for a social housing residential development with “30 residential mixed tenure flats”. An alternative valuation is also provided on the basis of a housing option to “deliver 12 townhouses”, which suggested a valuation of £1.21 to £1.37 million.

5.188 The above valuations assumed the following:

- a. “That the subject Site is available with full vacant possession”; and
- b. “An appropriate planning consent will be forthcoming for the proposed development scenario.”

5.189 We have been informed by the Service Head for Corporate Property and Capital Delivery that Mellish Street was considered by ESCW as not required for education use, and by the Asset and Capital Working Group for Authority use. Mellish Street was therefore allocated for third sector use in the short term whilst future residential use was considered.

Lease of property with existing units

5.190 On 20 February 2013 an internal valuation was undertaken by the Authority, which indicated a rental valuation of £55,000 per annum, assuming the existing property units at the site remained in place. The valuation was based on D1 (non-residential institutions), and referenced the rental values of four contemporaneous examples of comparable properties as a benchmark for the valuation.

5.191 The average value for the four referenced examples was £9.16 per square foot. The Authority applied a valuation of £10 per square foot for the temporary buildings at Mellish Street¹¹⁶, which indicated an approximate rental value of £55,000 per annum.

5.192 We note that the lease between the Authority and the previous tenant, which was due to expire on 28 February 2013, stipulated that the previous tenant should remove the temporary buildings at Mellish Street upon expiry of the lease. In a letter dated 7 March 2013, an officer wrote to the previous tenant to confirm that the Authority did not require the removal of the temporary buildings, on the understanding that this would be at no cost to the Authority.

Marketing of the property

5.193 The property was marketed for two weeks in March 2013, specifically targeting third sector organisations for a three year lease period. The deadline for bids was stated as 15 March 2013. We note

¹¹⁶ The area of the building at 111 – 113 Mellish Street is stated as 5,584 square feet.

that the Authority received three applications for the lease, as detailed in an email dated 19 March 2013 from an officer in the Asset Management team. These bids were received as follows:

- a. Mellish Street Bidder A (“MS Bidder A”)¹¹⁷, (application dated 15 March 2013);
- b. Mellish Street Bidder B (“MS Bidder B”), (application dated 14 March 2013); and
- c. Mellish Street Bidder C (“MS Bidder C”), (application dated 6 March 2013).

5.194 We note that none of the three bids included a proposed rental value for the premises in their application forms, and all bids were initially scored as failing the Stage 1 criteria, as set out in the Third Sector Allocation Process. The reasons for the bids failing the Stage 1 criteria included, inter alia, the failure to provide:

- a. Evidence that at least four members of the managing body reside in the Borough;
- b. A business plan; and
- c. Evidence to support the financial viability of the bids (e.g. 12 months of bank statements).

5.195 The Third Sector Allocation Process stipulates that the property should be marketed at a fixed market rent. However, our review of the advert that was created for Mellish Street indicates that no rental value was proposed in the advert. We discussed this with the Service Head for Corporate Property and Capital Delivery, who stated that the proposed value should have been included in the advert and this was missing in error.

5.196 Further, in our meeting with an officer who was familiar with the lease of Mellish Street, he agreed that it would be typical for organisations applying for such a property to put forward a suggested rent.

5.197 As detailed in email correspondence dated 11 April 2013, an officer of the Asset Management team at the Authority noted that; “*none of the applications received met the Third Sector criteria*”, and therefore queried whether the Authority can respond to a fourth applicant, which declared its interest in the property in an email dated 3 April 2013 (i.e. after the deadline for applications). We note that the fourth applicant did not submit an application, as according to an email from an officer dated 5 April 2013, they had; “*only just found out that the property was being marketed to rent*”.

5.198 In response to this query, it is stated that “*to consider a late application does not fall within the criteria set by cabinet*”. We note that the Third Sector Allocation Process does not make any specific reference to the requirement to reject all late applications.

Decision to progress MS Bidder A and MS Bidder B to stage 2

5.199 In a briefing note to the POE Panel dated 3 April 2013, it is stated that:

“*None of the three applications received meet the Stage 1 Gateway Eligibility Criteria.*”

¹¹⁷ We note that MS Bidder A is also a consortium member of MS Bidder B.

5.200 This briefing note recommended that none of the three applications that were received be progressed to “Stage 2”, whilst also noting the following alternative options for consideration:

- a. Re-assess all applications against the Stage 1 criteria;
- b. Reject the recommendation and assess all applications at Stage 2;
- c. To invite the applicants in for further discussion; and
- d. Explore options for MS Bidder A and MS Bidder B to “*work together to resolve eligibility issues*”.

5.201 We have also obtained an undated briefing note, which sets out an alternative recommendation to that described above at paragraph 5.199. This note, which has the same author, recommends the following:

“That the applications from the following organisations have been assessed against the Stage 1 Gateway Eligibility Criteria and are recommended to be assessed at Stage 2:

- *[MS Bidder A]*
- *[MS Bidder B]*”.

5.202 We note that the recommendation outlined above is consistent with the fourth alternative option that was set out in the briefing note dated 3 April 2013, as detailed above at paragraph 5.200d.

5.203 In this briefing note, it is stated that:

- a. *“Although none of the three applications received met the Stage 1 Gateway Eligibility Criteria after the initial check... only one applicant, [MS Bidder C] failed the check in a way that could not be resolved by providing further information.”; and*
- b. *“Following a check with Electoral Services it was found that none of the managing body for the organisation was resident in Tower Hamlets.”*

5.204 In the proforma scoring sheet, question 1c relates to a check “*against the electoral roll register to demonstrate that the organisations’ board or committee has some local representation (minimum of four persons).*” The scoring sheet for the application of MS Bidder C that was provided to us has not been marked with a “yes” or a “no” in relation to this question. Further, the comments section of the scoring sheet notes that:

“Q1c – 7 names and addresses of the managing body submitted. 4 have Tower Hamlets post codes, 2 are outside Tower Hamlets and 1 does not provided [sic] a post code.”

5.205 It appears, however, that the scoring sheets were not updated to reflect the additional check that was performed against the electoral roll records. We have obtained a note from electoral services, which stated that the four individuals associated with MS Bidder C who had provided a Borough post code, could not be agreed to the electoral roll. As a result, the Authority considered that MS Bidder C had failed against the criteria as per the Third Sector Allocation Process. We also understand from an officer that the Authority made no further attempts to contact MS Bidder C to establish whether they could, in fact, meet the local residency criteria (for example to confirm residency in the case of those individuals

that had provided a commercial address). We understand from the Authority that such efforts are not undertaken as it is considered unlikely that further information could lead to a change in residency status or location.

- 5.206 We have been informed by the Authority that it is standard practice to leave the check against the electoral roll register until all other aspects of the Stage 1 scoring assessment have been considered.

Assessment of Stage 2

- 5.207 In the meeting of the POE Panel dated 10 May 2013, attended by five officers, the Stage 2 assessment of the bids received from MS Bidder A and MS Bidder B was discussed. In this meeting it was noted that MS Bidder B had achieved a higher score against the Stage 2 criteria of the Third Sector Allocation Process.

- 5.208 We have reviewed the scoring of the Stage 2 assessment, and we note that MS Bidder B achieved a score of nine, which was higher than the score of seven awarded to MS Bidder A, leading to the recommendation that MS Bidder B be selected as the successful bidder. We also note that, MS Bidder B achieved a higher score than MS Bidder A in the following categories:

- a. "Sound management arrangements" (MS Bidder A – 1, MS Bidder B – 2); and
- b. "Management structure and Accountability" (MS Bidder A – 1, MS Bidder B – 2).

- 5.209 The rationale for the score of "2" that was awarded to MS Bidder B in the category "Sound management arrangements" is as follows:

"Capacity within managing body for effective management of the premises – Chair and member have managed [MS Bidder A]. The Assistant Secretary has his own business (Takeaway) and has been managing his building for last 9 years".

- 5.210 In contrast, MS Bidder A was awarded a score of "1", with the scoring assessment stating:

"Application form doesn't give much detail of skills, experience and capacity within managing body to manage the asset."

- 5.211 As informed by the Stage 2 assessment, it was decided in the POE Panel that MS Bidder B would be selected as the successful bidder:

"the Panel felt that [MS Bidder 2] as a consortium was best placed to ensure maximum usage and "buy in" from the local community".

- 5.212 Further, the POE Panel noted its decision to provide further support to MS Bidder B:

"It was felt that there could be more support given to MS Bidder B to prepare a utilisation plan which could be incorporated into a Service Level Agreement ("SLA") to go alongside a lease".

5.213 We understand from the officer that was involved in this scoring exercise that he had doubts concerning the robustness of the allocation process for Mellish Street. Further, it has been stated to us that it was felt at the time of the scoring of the applications that MS Bidder B were the “*organisation that people wanted*”. The officer further stated that this had been referred to him by his Acting Head of Service, after a meeting with “*presumably Councillor Alibor Choudhury and / or the Mayor*”. We note that the Acting Head of Service referred to has no recollection of making this statement, nor of any meeting with Members that would have informed it.

5.214 We note that the following matters were discussed in the POE Panel:

- a. “*It was felt important that the services and activities proposed in the application be properly resourced and delivered to a high quality.*”; and
- b. “*A potential discount to the market rent could be an option if this guaranteed the delivery of services that meet the Council’s priorities.*”

5.215 As noted by the officer who is familiar with this allocation process;

“what came first, the actual amount of rent, or the calculation of what they ought to be doing and how that would be reduced I don’t know, but I think the market rent was £55,000 and it was £[redacted] or £[redacted] [for the rent], so you would hope that this [the SLA] has been costed out so that it warrants the reduction”.

5.216 As noted in an email from another officer, dated 11 July 2014¹¹⁸;

“The array of outputs appeared reasonable when considered against what mainstream grant funded organisations were proposing to deliver for a given amount of money. The outputs were not monetised as the Council did not have a formalised methodology readily available for this”.

Confirmation of successful bidder

5.217 We have been provided with a briefing paper to the AMCSB dated May 2013, which puts forward the recommendation to allocate Mellish Street to MS Bidder B, subject to MS Bidder B providing:

- a. “*a comprehensive utilisation plan for the building*”; and
- b. “*a satisfactory financial plan demonstrating the ability of MS Bidder B and its member organisations to meet the annual asking rent.*”

5.218 The comments of the Chief Finance Officer in this report state:

“The market rent determined by the valuations carried out by Corporate Property Services is £55,000 per annum.”

5.219 In the briefing paper dated May 2013, the Legal department also noted the following consideration:

¹¹⁸ In response to our request for further information on this matter.

“... any terms agreed for the letting of the premises will need to comply with the best consideration requirements of s123 Local Government Act 1972 or the General Disposal Consent 2003.”

5.220 In a letter dated 28 May 2013, MS Bidder B was notified by the Authority that:

“The board has come to the view that there is potential for the MS Bidder B to be granted use of the above premises. However, before a lease might be entered into a number of issues and requirements would need to be satisfactorily addressed.”

5.221 The requirements included the following:

- a. The need for a Financial Plan;
- b. A utilisation plan to show how the premises will be used; and
- c. Agreement to enter into an SLA, which details the services to be delivered using the premises.

5.222 In a letter dated 10 June 2013, MS Bidder B provided a response to the letter above, with the requested additional information.

Application for planning commission

5.223 As noted above at paragraph 5.186 the planning permission for the previous tenant expired in February 2010. In advance of the agreement of a lease with MS Bidder B, in an application for planning permission form dated 11 April 2014, a proposal was submitted for:

“Retention of the modular buildings on the former medical centre, 111 – 113 Mellish Street, London, E14 8PJ for 5 years as a community centre”.

5.224 In a letter dated 7 June 2013, the Development Management team (representing LBTH as Statutory Planning Authority) notified the Asset Management team of its decision to grant permission for the development referred to above. The letter is stamped as received on 12 June 2013.

5.225 The planning permission includes a number of conditions and reasons that relate to the successful applications, which includes inter alia:

- a. *“There shall be no public address system, music system or noise generating equipment used in any part of the premises so as to be audible outside the premises or within adjoining premises.”¹¹⁹;*
- b. *“The use hereby permitted shall only take place between the hours of 09:00 and 22:00 Mondays to Saturdays, and 09:00 to 17:00 on Sundays and Bank Holidays.”¹²⁰; and*
- c. *“The maximum capacity for the uses hereby permitted shall be 50 persons at any one time.”¹²¹.*

¹¹⁹ Condition number 3 of the planning permission dated 7 June 2013.

¹²⁰ Condition number 4 of the planning permission dated 7 June 2013.

¹²¹ Condition number 7 of the planning permission dated 7 June 2013.

5.226 We note, at paragraph 5.237 below, the third party information regarding the use of Mellish Street and how this compares with the planning conditions outlined above.

MS Bidder B

5.227 The preferred bidder for Mellish Street consisted of the following five organisations:

- a. Consortium Member 1;
- b. Consortium Member 2;
- c. Consortium Member 3;
- d. Consortium Member 4; and
- e. MS Bidder A.

5.228 As part of the application process for the lease of Mellish Street, MS Bidder B submitted the following information to support their application and to address the perceived shortcomings in the information requested as part of Stage 1 of the assessment:

- a. Details of the five organisations that make up the MS Bidder B;
- b. Bank statements of the consortium members;
- c. Financial accounts for each consortium member;
- d. Cash flow statements; and
- e. Funding strategy.

5.229 We note that, in interview, the Mayor stated that he'd "*heard of the [MS Bidder B]*", but that he had "*no involvement*" in the agreement of the lease with MS Bidder B for Mellish Street.

5.230 We have undertaken Corporate Intelligence research on MS Bidder B and its consortium members, but we have noted no relationships between their directors and shareholders and the Mayor or Members, e.g. in terms of any common business relationships.

Service Level Agreement

5.231 As stated above at paragraph 5.212 the MS Bidder B entered into a SLA in order to provide further value to the Authority, and in doing so, justifying the discount on the perceived market rent of £55,000 per annum. The SLA notes the following outputs to be achieved by MS Bidder B:

- a. Senior Peoples Lunch Club Services;
- b. Children and Families Services;
- c. Study Support Services;
- d. Economic Engagement;
- e. Referrals Achieved;
- f. Social Welfare Advice Services;
- g. General Reporting; and
- h. NHS/PCT Healthy living.

- 5.232 For each of the above outputs, the SLA typically requires “*beneficiary registrations forms and signed attendance registers*” to evidence that the requirements of the SLA are being met. It is clear from the SLA that if “*there is significant under-achievement in relation to the agreed activities, outputs or outcomes, the Council will review tenancy.*”
- 5.233 In accordance with the SLA, MS Bidder B are required to submit quarterly reports to the Authority to provide evidence that the agreed “*activities, outputs or outcomes*” are being met.
- 5.234 As noted above at paragraph 5.216 the SLA was used as part of rent negotiations, to allow the Authority to extract additional value in terms of community benefits, in return for a discount to the proposed market rent of £55,000.

Monitoring of the SLA

- 5.235 We have obtained the first quarterly monitoring report dated 14 April 2014 for the period from January to March 2014 inclusive. This report details the performance of MS Bidder B against the SLA outputs as noted above at paragraph 5.231. Attendance registers are attached to the report to evidence the outputs as required by the SLA. The SLA was established to enable the Authority to extract further social value from the lease, which was signed on 26 July 2013 and is due to expire on 7 June 2016, with a rental value of £[redacted] per annum, being significantly less than the Authority’s estimated market value of £55,000 per annum.
- 5.236 We note that performance against the SLA prior to January 2014 was not monitored, as the agreed services could not be delivered until the necessary repairs and maintenance works were undertaken on Mellish Street.
- 5.237 Whilst not the focus of the Inspection we are also aware of the following concerns expressed to us by local residents regarding the use of Mellish Street as a place of worship:
- a. There is a public address system in place;
 - b. The number of people using the property exceeds the planning limits; and
 - c. The property is used outside of the permitted hours of use.
- 5.238 We note that, if confirmed, each of the above concerns would be in breach of the planning conditions referred to at paragraph 5.225 above, in which case such breaches would be dealt with using the local planning authority’s enforcement procedures.
- 5.239 On 7 June 2013, the Authority’s planning department granted permission to allow D1 (non-residential institutions) use, which permits the use of the property as a place of worship. We note therefore that, whilst the use of Mellish Street as a place of worship is not in accordance with the proposed use as stated in the application, the existing planning use does not prohibit the use of the building as a place of worship.

- 5.240 To compensate for the repair works that were required when MS Bidder B took the keys for the lease, a three month rent free period was granted by an officer from the Authority's Asset Management team. The rental fee was therefore payable from November 2013.
- 5.241 We have discussed the rental income with the Corporate Director for D&R, who noted that the agreed rental income for Mellish Street was not considered to be below market value as a higher rental offer was not received¹²². The Corporate Director for D&R therefore considered the market had established the value that a tenant would be prepared to pay. We further note that the previous tenant paid an annual rent that represented 40% of the rent agreed with MS Bidder B.
- 5.242 As noted above at paragraph 5.190, the market rental value of Mellish Street was calculated based on a review of the rental values of four comparable properties. Further, and as noted in interview with an officer familiar with this transaction, the marketing period of two weeks was considered to be a short period of time in which to generate significant interest in the property.

Limehouse Library

Introduction

- 5.243 We have reviewed Authority records that relate to the disposal of Limehouse Library, which indicate that the property had been earmarked for disposal since at least 2001. As noted below, the property was closed in 2006, and as set out in a Cabinet report dated 11 February 2009, a decision was taken to delay the disposal of this property, whilst the *“future operational use is being investigated”*. This report also notes the recommendation to *“delay a number of disposals until market conditions improve”*. We note that this delay relates to the disposal of both PTH and Limehouse Library.
- 5.244 At Cabinet on 12 January 2011, it was agreed that the Corporate Director for D&R be authorised to arrange the sale of Limehouse Library, as a result of the property being declared surplus to Authority requirements. In a Cabinet report prepared by the Service Head for Asset Management for this meeting, it was stated that:
- “Limehouse Library was closed in 2006 following the opening of the Chrisp Street Idea Store. It appears the property was declared surplus in 2004, but the sale did not proceed. The building is Grade II listed and a key part of any terms of disposal will be to ensure it is restored and brought back into beneficial use. It is recommended that this property be declared surplus to operational requirements and that as a condition of sale, the purchaser is required to restore the building.”*
- 5.245 Our initial review of the property file for Limehouse Library identified the following apparent issues with this transaction:
- a. The disposal of the property to [Redacted] (“LL Bidder A”) did not complete, which led to a second round of bids;

¹²² We note that, as no rental offers were included as part of the initial application process, the only other rental offer was received from MS Bidder A, a consortium member of MS Bidder B.

- b. We had not been provided with any evidence concerning the second round of marketing; and
- c. The property was not sold to the highest bid received.

5.246 In light of the above initial findings, we undertook a further detailed review to further investigate the disposal process executed by the Authority.

Marketing and valuation

5.247 In March 2011, BNP Paribas prepared a “Risk vs Reward Development Options Appraisal” report, which included an indicative valuation of £400,000 to £950,000 for Limehouse Library. This report noted the poor condition of the property, and the potential for a wide range of uses, whilst it also noted that residential use is unlikely given the listed status of the building and the related restrictions on future use.

5.248 Limehouse Library was marketed at the same time as PTH by BNP Paribas, with the marketing of the property detailed above at paragraph 5.148. BNP Paribas noted there had been nine viewings of the property, with two of those being repeat viewings. As noted in this correspondence (dated 22 June 2011) *“For Limehouse Library, viewers were understandably concerned by the condition of the property... However, most appreciated the potential of the property for a variety of different uses, including C3 residential, B1 business space, and a number of D1 and D2 community and leisure uses.”*

5.249 The first round of bids was opened on 17 June 2011, with eight bidders for the property. BNP Paribas advised the Authority that six parties had submitted bids for both PTH and Limehouse Library. As recommended by BNP Paribas on 22 June 2011, the top five bidders were invited to submit a BAFO, with a deadline of 30 June.

5.250 In an email dated 12 July 2011, BNP Paribas noted that Dreamstar Pictures had submitted a late bid, however in a further email on 19 July 2011, the Authority was notified by BNP Paribas that Dreamstar Pictures had formally withdrawn their bid for Limehouse Library. As noted above at paragraph 5.61, we note that Dreamstar Pictures withdrew their bid for Limehouse Library after they had submitted their bid for PTH, but prior to them being told that they would be placed in a contract race for that property.

5.251 On 21 July 2011, BNP Paribas recommended to the Authority that they proceed with the offer of £[redacted] from LL Bidder A. This recommendation was made following the receipt of further information from LL Bidder A, which *“suggests they would have the funds in place to finance the transaction”*.

Aborted sale of the property

5.252 As noted at paragraph 5.243, our initial review of the documentation held on the Limehouse Library property file did not identify any evidence to explain why LL Bidder A did not complete their purchase of this property. However, we were subsequently informed through discussion with officers and a review of the corresponding legal file that the transaction with LL Bidder A did not proceed as a result of LL Bidder A failing to meet the agreed timeline for the completion of the sale.

5.253 We note that, following the decision taken by the Authority to remarket the property, the LBTH Solicitor received a letter on 16 March 2012 from LL Bidder A's solicitor stating that they were "*now in a position to proceed*". The LBTH Solicitor respond in writing on the same day, to inform LL Bidder A's solicitor that the contract was withdrawn as a result of LL Bidder A failing to meet the previously specified deadline for completion of 5 December 2011.

Second marketing period and disposal process

5.254 As a result of the transaction with LL Bidder A not proceeding, a second marketing period was managed by BNP Paribas in January 2012, with bids being opened on 24 February 2012. In correspondence dated 27 February 2012, BNP Paribas stated that the property was marketed for two consecutive weeks from 14 January 2012 in the Estates Gazette, in the East London Advertiser on 2 February 2012, and in East End Life on 13 February 2012. BNP Paribas recorded 22 viewings of the property, with feedback being "*mixed*" and concerns regarding the condition of the property, as had been the case in the first marketing period noted at paragraph 5.248 above.

5.255 We have reviewed the relevant bid schedule dated 24 February 2012, which records that the highest bid received was £[redacted]. We note that there were 12 bids received, with two of those bids marked as non-compliant because one had been sent directly to BNP Paribas rather than to the Authority, as instructed, and the other was received in the afternoon (i.e. hours after the deadline) of 24 February 2012.

5.256 In interview, the Service Head for Corporate Property and Capital Delivery confirmed that the bids marked as "non-compliant" were still considered as part of the bidding process, as the nature of the non-compliance was not considered to be sufficiently material to warrant exclusion from the process. We note that the bid received after the deadline was for £[redacted], and was ultimately unsuccessful in the bidding process.

5.257 In the marketing report dated 27 February 2012, BNP Paribas also noted that the preferred bidder (LL Bidder A) had stated that they were willing to proceed with their previous offer of £[redacted]. BNP Paribas recommended that the Authority should respond to the top four bidders (after excluding one party which appeared to be related to the LL Bidder B bid).

5.258 As stated in the Authority's Financial Instructions as noted in paragraph 5.9 above, "*the highest offer must be accepted*", which in this case ought to have been the bid of £[redacted], received from [Redacted] ("LL Bidder C"). However, the Authority was notified by BNP Paribas in its report dated 27 February 2012 that the top bidder had failed to provide proof of funding, and credit checks had indicated "very high risk".

5.259 In an email dated 7 March 2012, BNP Paribas set out their "*views and recommendations following the interviews of the top two bidders for the Limehouse Library*". In this email, BNP Paribas note their "*significant concerns over the legitimacy of the [LL Bidder C] offer, and have recommended progressing with [LL Bidder B], despite their offer being £50k less.*"

5.260 The concerns of BNP Paribas were further communicated to the Authority in an email dated 14 March 2012, in which it was noted:

“The following flaws are still true of [LL Bidder C]:

(a) We have still seen no evidence of any money on account or financial track record from [LL Bidder C];

(b) His loan facility remains extremely suspect...; and

(c) We have not been contacted by his valuers to arrange an inspection...”

5.261 On 15 March 2012, in an email from an officer to the Service Head for Corporate Property and Capital Delivery, it is noted that LL Bidder B and LL Bidder C were interviewed regarding their bids for Limehouse Library. This email seeks authorisation to proceed with LL Bidder B as the preferred bidder, which is granted by the Service Head for Corporate Property and Capital Delivery on the same day.

5.262 The 199 year lease was signed with LL Bidder B on 12 April 2012. We note that the price paid by LL Bidder B was £5,000 less than the top of the valuation range that was suggested by BNP Paribas (as referred to above at paragraph 5.247).

Corporate Intelligence findings

5.263 We have undertaken Corporate Intelligence research in order to seek to identify any of the following:

- a. Common business interests between the directors and shareholders of LL Bidder B and the Mayor;
- b. Adverse media coverage of the successful bidder; and
- c. Any other linkages (e.g. common addresses) that might indicate connections between the successful bidder and the Authority.

5.264 Our Corporate Intelligence research has not identified any significant findings in this regard.

6. *Spending and the decisions of the Authority in relation to publicity*

Introduction

- 6.1 Publicity related expenditure is incurred by the Authority within:
- a. The Authority's Communications service;
 - b. Individual directorates; and
 - c. The Mayor's Office.
- 6.2 The Authority's Communications service "*manages the reputation of the council and facilitates communication about council and other services between the council and local people, media, opinion formers, partners and peers; and the publication of East End Life*"¹²³.
- 6.3 Individual directorates are responsible for identifying their publicity requirements in order to implement the Strategic Plan¹²⁴. The Authority's Communication Service seeks to advise on the most appropriate communications methodology in line with the key principles of the Code of Recommended Practice on Local Authority Publicity ("the Publicity Code") (dated 31 March 2011).
- 6.4 The Mayor's Office, which is funded by the Authority, provides support to the Mayor and Cabinet Members in their executive functions and incurs expenditure on publicity related activities. This expenditure includes the cost of communications and media advisors engaged to support the Mayor. Additionally, within the Mayor's Office, the Mayor's Political Assistant¹²⁵ is employed by the Authority and is permitted to act for the Mayor in a political capacity, including briefing the press on behalf of the Mayor in his individual political capacity.
- 6.5 The audited financial statements do not identify the level of publicity related expenditure in total or as incurred by the individual areas referred to in the preceding paragraphs. Given that publicity expenditure is also commissioned within individual directorates, we understand that total publicity expenditure cannot be readily identified from the Financial Data.
- 6.6 Against this background, and whilst it does not include figures relating to publicity expenditure relating to individual directorates or the Mayor's Office, for the purpose of illustrating what we would expect to be a significant element of total expenditure in this area, we show in the table below the budgeted spend

¹²³ LBTH Budget Book 2014-15.

¹²⁴ The Strategic Plan sets out the Authority's key priorities and activities for the year, http://www.towerhamlets.gov.uk/lgsl/800001-800100/800022_community_plan/strategic_plan_2014-15.aspx.

¹²⁵ A role defined in section 9 of 1989 Act.

of the Authority's Communications Service¹²⁶. It should be noted that these figures include budgeted spend relating to East End Life, the Authority's weekly publication (although this related expenditure is not separately reported in the budgeted data). East End Life has not been considered as part of the Inspection. As agreed with DCLG, this is due to the separate developing dialogue between DCLG and a number of local authorities (including LBTH) regarding local authority publications.

Communications service budgeted gross expenditure						
Year	Employees (£'000)	Supplies and Services (£'000)	Transport (£'000)	Third Party Payments (£'000)	Support Services (£'000)	Total (£'000)
2010 - 2011 ¹²⁷	1,229	1,134	6	383	476	3,228
2011 - 2012	1,049	919	6	383	476	2,833
2012 - 2013	1,196	585	2	350	524	2,658 ¹²⁸
2013 - 2014	1,196	515	2	350	524	2,588 ¹²⁹
2014 - 2015	1,231	515	2	350	477	2,575

- 6.7 We have been informed that in 2011-2012 the Authority's Communications service was centralised and Communications related posts across directorates were merged into the Authority's Communications service. The Authority has informed us that the reduction in the level of publicity related expenditure between 2010-2011 and 2011-2012 shown above reflects this centralisation.
- 6.8 As noted in a Mayoral Executive Decision dated 26 March 2013 the total budget (for the financial year ended March 2014) for the Mayor's Office, including publicity costs, was amended to be £700,000 (see also paragraph 6.65 below). We understand that this was included in the revised annual budget for Democratic Services of £3.2 million¹³⁰.
- 6.9 All of the aforementioned expenditure is subject to authorisation in accordance with the Procurement Procedures, see paragraph 7.5 et seq.
- 6.10 Notwithstanding the absence of an overall view in totality of publicity related expenditure, to assist in focussing our work in relation to publicity expenditure we requested a complete list of all payments to media organisations, including without limitation film, television, radio, internet and print media (such as newspapers, magazines, etc.). The Authority provided two spreadsheets in response to this request

¹²⁶ LBTH Budget Books 2010-11, 2012-13 and 2014-15.

¹²⁷ The Authority informed us that a comparative budget number from the 2010-2011 Budget Book can be achieved by adding C14 Communications and C13 Commercial Operations.

¹²⁸ Numbers exactly as per the LBTH Budget Book, we note that this adds to £2,657,000, the difference is most likely due to rounded numbers being presented.

¹²⁹ Numbers exactly as per the LBTH Budget Book, we note that this adds to £2,587,000, the difference is most likely due to rounded numbers being presented.

¹³⁰ LBTH Budget Book 2014-15.

showing total expenditure of £1.8 million across the Period. To identify any further publicity expenditure, we conducted detailed analysis of the Financial Data provided to us with a view to identifying media organisations that the Authority had used in the Period.

Demarcation of publicity expenditure between Authority activities and for the Mayor in his political capacity

- 6.11 It is an important point of principle that there should be a clear distinction between publicity related matters which are dealt with by the Authority's Communications service (i.e. relating to Authority services), and those matters which are political in nature and are therefore a matter for the Mayor in his political capacity. In interview the Mayor himself stated "*Demarcation is necessary, we're talking about public resources here, public money here and public money should not be used for political means*".
- 6.12 The Service Head for Communications and Marketing gave us further detail on this point, referring to the fact that the Publicity Code allows for the use of a logo or the image of a directly elected Mayor in Authority publications. The Authority's Communications Protocol ("the Communications Protocol") (dated November 2013), which we understand was prepared in order to provide guidance concerning the application of the Publicity Code, is clear that no communications should "*be designed to affect public support for a political party*".
- 6.13 We also note that subsequent to the Period, in August 2014, a further document was produced, namely the Authority's Media and Branding Protocol. This document stated the need for the Mayor's Office to be involved in dealing with any enquiry of a political nature. It stated "*If the [media] enquiry is controversial, political or requires Executive input, you should also contact the Mayor's Office as a Member quote or political statement may be required. Political statements should not be issued from the press office and can only come from the Mayor's office*".
- 6.14 Against the above background, and with particular reference to consideration of the risk that the principles of the demarcation explained at paragraph 6.11 may not have been appropriately applied, we have considered the following matters:
- a. Expenditure of the Mayor's Office on media and communications advisors;
 - b. Response to the BBC Panorama programme;
 - c. Rulings of relevant regulatory bodies on advertisements featuring the Authority and the Mayor;
and
 - d. Virement from general reserves.

Expenditure of the Mayor's Office on media and communications advisors

- 6.15 We have been informed by the Authority that media and communications advisors in the Mayor's Office provide the following services:
- a. Advising and assisting the Mayor with media related matters;
 - b. Training the Mayor and others in their roles as media spokespersons; and
 - c. Building relationships with media outlets and correspondents.
- 6.16 We were provided with a list of Mayoral advisors as at April 2014 by the Mayor's Office. This showed that at that time the Mayor's Office employed six external advisors, two of whom supported the Mayor on media and communications. Of the remaining four advisors, one is a researcher and the other three advise the Mayor concerning, respectively, the Somali community, regeneration and development and disability related services.
- 6.17 We reviewed the payments to the two media advisors in the listing provided by the Authority in the Agresso Financial Data and determined that they were predominantly paid through the Commensura system¹³¹. Against this background, to identify any additional external media and communications advisors used by the Mayor's Office across the Period, we reviewed payments to all individuals through the Commensura system in the Agresso Financial Data. We reviewed payments which were processed through the cost centres that appeared to be related to publicity related expenditure which identified further individuals who may have provided media and communications services on behalf of the Authority.
- 6.18 In light of this review we sought further clarification from the Authority which confirmed that three individuals are media advisors that have been used in the Period (the "three Media Advisors"). Two of these advisors were contracted by the Authority as at April 2014 (as per the list provided by the Authority referred to above at paragraph 6.16) and one was contracted prior to this.
- 6.19 In response to our request for an explanation of the services provided by the three Media Advisors, the Mayor's Office provided the following response:
- "The justification for having media advisors is to advise and assist the Mayor on how to deal with the unusually high national media attention and local community media attention directed at the Mayor".*
- 6.20 For the three Media Advisors, we reviewed all transactions in the Financial Data, using keyword search terms, to identify all recorded payments to those three Media Advisors. The total value of payments we identified in the Period is as follows:

¹³¹ Commensura is the system through which the Authority pays external advisors and other temporary staff.

Payee Name	Total payments (£)
Media Advisor 1	151,650
Media Advisor 2	112,900
Media Advisor 3	48,950
Total	313,500

- 6.21 The Mayor's Office confirmed that the procurement of the services of the three Media Advisors was subject to the Procurement Procedures (see paragraph 7.5 et seq.). We therefore undertook further testing to consider the extent to which the Authority followed its Procurement Procedures for each of the three Media Advisors.
- 6.22 For each of the three Media Advisors we asked the Mayor's Office to provide the following information:
- A detailed explanation of the services procured;
 - Details of the procurement process followed with supporting documents;
 - Copies of the contracts entered into; and
 - An explanation of the outputs of each advisor's work with supporting documents¹³².
- 6.23 In the following paragraphs we set out the results of our review of the information we received for each of the three Media Advisors. As a general point we note that we have been provided with contracts for each of the three Media Advisors. These all state that they were "*appointed to serve the Mayor and not the Council as a whole or any political group*".

Media Advisor 1

- 6.24 Media Advisor 1 was awarded Lot 1 (Communities' Communication and Media) of contract CE4165 (Advisor to the Mayor). We have been provided with the following information in relation to this tender:
- The invitation to tender;
 - The quotation information;
 - The assessment of the tender received by the Head of the Mayor's Office; and
 - The approval of the selection of Media Advisor 1.
- 6.25 The invitation to tender anticipated that Lot 1 of contract CE4165 would have an annual budget of £30,000. In accordance with the Procurement Procedures this is therefore a Level Three contract which, as noted in paragraph 7.5, requires at least four tenders to be sought and three to be received. The Procurement Procedures state that "*a minimum of four tenders must be invited unless fewer than this have expressed an interest or are deemed suitable*".

¹³² The outputs reviewed consist of timesheets and invoices.

- 6.26 The information provided by the Authority indicates that only one quote was received (although the invitation to tender was sent to 26 parties). This is acknowledged on the assessment of the tender with the rationale given as “*reflects the niche market*”. We understand from the Head of the Mayor’s Office that Media Advisor 1 was hired as they are able to operate in English and Bengali. We have been informed that this is critical to be able to represent the Authority in its dealings with the local Bengali media outlets. The awarding of this contract to Media Advisor 1 was approved by the Service Head for Democratic Services on 6 February 2012.
- 6.27 We performed a check of publicly available sources at 18 June 2014 which indicated that Media Advisor 1 is a director of four companies. We note that they all appear to be publicity related. We have not identified any payments by the Authority during the Period to any of the companies associated with Media Advisor 1.
- 6.28 To consider the extent of relationships between Media Advisor 1 and the Mayor or Cabinet Members we undertook a review of publicly available information in order to:
- a. Identify the shareholders and directors of the companies associated with Media Advisor 1;
 - b. Identify the addresses of the companies associated with Media Advisor 1; and
 - c. Cross-reference the information identified by a) and b) to the shareholders, directors and addresses of organisations which, from our review of publicly available information, the Mayor or any Cabinet Members are a shareholder, director or member.
- 6.29 This work did not identify any common shareholders, directors or addresses between the companies associated with Media Advisor 1 and the Mayor or Cabinet Members. In interview the Mayor confirmed that Media Advisor 1 was also an employee of a local television broadcaster catering for the Bangladeshi community. We note that the contracts between the Authority and Media Advisor 1 do not explicitly preclude Media Advisor 1 from involvement in any broadcast for this television channel featuring the Mayor or Cabinet Members.

Media Advisor 2

- 6.30 Media Advisor 2 was awarded Lot 1 (Communications and Media) of contract CE4196 (Advisor to the Mayor) on 21 May 2012. We have been provided with the following information relating to this tender:
- a. The invitation to tender;
 - b. The assessment of the six tenders received by the Head of the Mayor’s Office;
 - c. The approval of the selection of Media Advisor 2; and
 - d. The draft outcome letters sent to each of the six applicants dated 21 May 2012.
- 6.31 The invitation for tender indicated that Lot 1 of contract CE4196 would have an annual budget of £30,000. As such this was a Level Three contract (see paragraph 6.25 for details of the Level Three procurement process). Information provided by the Authority shows that six quotes were received and assessed by the Head of the Mayor’s Office, with Media Advisor 2’s quote achieving the highest score.

The award of the contract to Media Advisor 2 was approved by the Service Head for Democratic Services on 18 May 2012.

- 6.32 We performed a check of publicly available sources at 18 June 2014 which indicated that Media Advisor 2 is a director of four companies. We have not identified any payments by the Authority during the Period to any of the companies associated with Media Advisor 2.
- 6.33 In order to identify the extent of relationships between Media Advisor 2 and the Mayor or Cabinet Members we followed the process set out in paragraph 6.28a to 6.28c above. This work did not identify any common shareholders, directors or addresses between the companies associated with Media Advisor 2 and the Mayor or Cabinet Members.

Media Advisor 3

- 6.34 Media Advisor 3 was awarded the contract as a communications advisor in December 2013, replacing Media Advisor 2, for a period of five months (January to May 2014 inclusive). We have been provided with:
- a. The four responses to the invitation to tender from the Head of the Mayor's Office;
 - b. Documentation dated December 2013 to evidence the four tenders received being assessed;
 - c. An email dated 18 December 2013 outlining the recommendations of the assessment panel; and
 - d. An email dated 19 December 2013 approving the selection of Media Advisor 3 for the role.
- 6.35 The value of the contract with Media Advisor 3 is capped at £25,000¹³³. In accordance with the Procurement Procedures this is therefore a Level Two contract which, as noted in paragraph 7.5, requires at least three quotes to be obtained. The procurement process followed appears to be consistent with these regulations as four quotes were obtained. The assessment of the four quotes received was performed by three members of the Mayor's Office team (the Mayor's Political Assistant, the Mayor's External & Public Liaison Advisor and the Head of the Mayor's Office). The documentation provided to us indicates that Media Advisor 3's tender achieved the highest score when compared to the other three applications received, and the final recommendation to award the contract to Media Advisor 3 was made by the assessment panel on 18 December 2013. This was approved by the Service Head for Democratic Services on 19 December 2013.
- 6.36 We performed a check of publicly available sources at 18 June 2014 to identify any companies associated with Media Advisor 3, which indicated that Media Advisor 3 is the founder of a company which appears to be publicity related. We note that we have not identified any payments by the Authority during the Period to the company associated with Media Advisor 3.
- 6.37 In order to identify the extent of the relationships between Media Advisor 3 and the Mayor or Cabinet Members we followed the process as set out in paragraph 6.28a to 6.28c above. This work did not

¹³³ Maximum of 50 days at a rate of £500 a day.

identify any common shareholders, directors or addresses between the company associated with Media Advisor 3 and the Mayor or Cabinet Members.

Review of services delivered by the Mayor's media advisors

- 6.38 To further consider the matter of demarcation of activities of the Mayor's media advisors, we have sought to establish the nature of the services they provided and to review supporting information to substantiate the outputs of the services provided.
- 6.39 The Head of the Mayor's Office referred us to a Freedom of Information Act 2000 request¹³⁴ for information on the monitoring of the work of the three Media Advisors. The information relating to this request consisted of the timesheets for several advisors to the Mayor, including timesheet data for Media Advisors 1 and 2, but not for Media Advisor 3¹³⁵. We subsequently requested all documentation to show the outputs of the work of the three Media Advisors. The information received pertaining to this request consisted of:
- a. Approved timesheet records for the three Media Advisors;
 - b. In the case of Media Advisor 1, approved invoices; and
 - c. In the case of Media Advisor 2, invoices with approved flexitime record sheets.
- 6.40 We note that the timesheet records provided for Media Advisors 2 and 3 and the invoices with flexitime records for Media Advisor 2 do not include any narrative description of the services provided. We were provided with four invoices from a company associated with Media Advisor 1 for its services, which provided a brief narrative explanation of the tasks undertaken on a daily basis. These invoices do not cover the whole period for which Media Advisor 1 provided services under the contracts we have been provided with. The narrative explanation gives details of meetings attended and work undertaken by Media Advisor 1, for example:
- a. *"Making special Supplement on Mayor (oldest BANGLA paper JONOMOT)";*
 - b. *"Attending meetings with mayor. Advising mayor about Community Media";* and
 - c. *"Coordinating Community Media about Battle of Cable street Events".*
- 6.41 We note that the narrative description only refers to work being undertaken on behalf of the Mayor or elected Members. There is no indication of whether these services were provided to assist the Mayor or Members in their political, as opposed to the Mayor's executive capacity.
- 6.42 In interview, the Head of the Mayor's Office stated that monitoring of the work of the three Media Advisors was through ongoing review rather than any formal documented process. We understand that the timesheets of the three Media Advisors are reviewed (the number of days invoiced is sense checked) and approved in hard copy by the Head of the Mayor's Office or the Mayor's External & Public Liaison Advisor, before being processed by the Business Support Team. All of the timesheet documentation

¹³⁴ Reference 8916.

¹³⁵ As the Freedom of Information Act 2000 request (dated August 2013) pre-dated Media Advisor 3's contract with the Authority.

provided to us by the Authority pertaining to our request for supporting documentation to evidence the review of the outputs of the three Media Advisors has been signed as approved¹³⁶.

6.43 We have compared the period of time over which services were provided by the three Media Advisors and the fees paid to the three Media Advisors per the following sources:

- a. The contract information we were provided with;
- b. The timesheets and other supporting documents we were provided with; and
- c. The Financial Data.

6.44 For Media Advisor 2 we have been provided with timesheets and three flexitime record sheets which relate to periods outside their contract period as advised by the Authority. For Media Advisor 3 we have identified payments in the Financial Data outside of their contract periods as advised by the Authority. For all three Media Advisors we identified total transactions in the Financial Data which were greater than the total value of the timesheets we have been provided with as shown in the table below:

Advisor	Total payments per time sheet data (£)	Total payments per the Financial Data (£)
Media Advisor 1	129,850	151,650
Media Advisor 2	107,400	112,900
Media Advisor 3	14,500	48,950
Total	251,750	313,500

Response to the BBC Panorama programme

6.45 In interview the Service Head for Communications and Marketing explained how, in practice, the Authority distinguishes between services for the Authority and services for the Mayor as a politician. The Authority's Communications team is responsible for promoting Authority services and are permitted, as set out in the Publicity Code, to utilise the Mayor in his executive capacity as the face of a campaign. This could involve imagery or direct quotes from the Mayor on matters of local relevance. Whilst not explicitly political the quote might explain the political rationale behind local policies and service delivery. However, if the services are explicitly political, they are passed to the Mayor's Office for a direct quote and do not represent the views of the Authority.

6.46 The Service Head for Communications and Marketing noted that, as an example, prior to the broadcast of the BBC Panorama programme aired on 31 March 2014, the BBC submitted a set of questions for the Authority's response. The BBC Panorama programme made various allegations about the Authority and the questions appeared to be designed to request comments from the Authority and the Mayor on a number of the programme's findings. The Authority undertook an assessment of whether those

¹³⁶ With the exception of one timesheet for Media Advisor 2 which was approved by email rather than in hard copy.

questions should be responded to by the Authority's Communications service or the Mayor's Office and marked up the questions with comments accordingly.

- 6.47 The Authority subsequently engaged Taylor Wessing, an external law firm, and Champollion, an external public relations company to advise it on its response to the BBC Panorama programme. The Authority decided it was necessary to engage specialist external advisors, despite the experience of the Interim Monitoring Officer in dealing with sensitive situations and the fact the Mayor is an experienced politician and therefore experienced in tackling difficult questions. This decision was taken as the Authority considered it did not have the level of expertise required internally.
- 6.48 In the briefing document sent to Champollion where "*support in producing FAQs*" is given as part of the scope, the Authority set out that assistance is sought solely for the Authority, stating; "*In working on this contract it is absolutely essential that the agency understands the distinction between political and corporate activity. Employment under this contract will be with the council and will not further any political aims*".
- 6.49 In the briefing document sent to Taylor Wessing the Authority set out that they wanted to engage a specialist media law firm to provide advice on whether the BBC acted within their own guidelines in terms of their duty to "*provide for fair comment and balance in a single programme*" and their sole focus on the Authority, the legal status of the BBC's editorial guideline, whether a breach could "*be subject to a Judicial Review prior to broadcast*" and the BBC's compliance with various legislation in the making of the Panorama programme. Taylor Wessing's engagement letter states that their "*duty is to LBTH and not to the Mayor*".
- 6.50 The invoices submitted to the Authority by Taylor Wessing and Champollion are in the public domain owing to an Freedom of Information Act 2000 request. They show a total of £34,287 invoiced by Champollion and £67,192 invoiced by Taylor Wessing (both net of VAT).
- 6.51 To consider the Authority's approach in responding to the BBC Panorama programme, we obtained a record of the questions submitted by the BBC and the finalised responses. We have reviewed the questions and responses to consider whether the demarcation between the Authority's Communications service and the Mayor's Office appears reasonable. There is no evidence to demonstrate how the questions for the Mayor's Office were then split between questions which related to the Mayor as a politician and those which related to the Mayor as the elected Executive Mayor of LBTH. In interview, the Service Head for Communications and Marketing explained that the questions which were deemed for the Mayor in his political capacity were not sent to Taylor Wessing or Champollion for their consideration, which is consistent with the briefing document referred to in paragraph 6.48 above.

Rulings of relevant regulatory bodies on advertisements featuring the Authority and the Mayor

- 6.52 The Office of Communications ("Ofcom") publishes periodic Broadcast Bulletins which detail the results of their investigations into complaints about radio or television broadcasts. Such investigations seek to

assess compliance with the Ofcom Broadcasting Code as applicable at the relevant time. We have reviewed these Broadcast Bulletins for reference to Tower Hamlets or the Mayor to determine if there are any instances in the Period where a broadcast funded by the Authority had been found in breach of the Ofcom Broadcasting Code.

- 6.53 Whilst Ofcom does not have any regulatory powers over the Authority (as it is not a broadcaster), payment for broadcasts which are deemed by Ofcom to be unlawful might in principle constitute a failure of governance and/or a breach of the Publicity Code. Paragraph six of the Publicity Code states *“Part 3 of the Communications Act 2003 prohibits political advertising on television or radio. Local authorities must ensure that their publicity does not breach these restrictions”*.
- 6.54 We identified four Ofcom Broadcast Bulletins in the Period which refer to Tower Hamlets and the Mayor as follows:
- a. Ofcom Broadcast Bulletin 177, dated 7 March 2011, regarding election coverage broadcast by Bangla TV;
 - b. Ofcom Broadcast Bulletin 208, dated 25 June 2012, regarding a news report broadcast by Channel S;
 - c. Ofcom Broadcast Bulletin 222, dated 21 January 2013, regarding an advertisement broadcast by ATN Bangla, Bangla TV, Channel S, Channel i (Prime Bangla) and NTV; and
 - d. Ofcom Broadcast Bulletin 249, dated 3 March 2014, regarding an interview with the Mayor in a news bulletin broadcast by Bangla TV.
- 6.55 We searched the Financial Data for payments for the broadcasts which were the subject of these four Ofcom Broadcast Bulletins by reviewing all transactions to the television channels which aired the relevant broadcasts. For three¹³⁷ of the Ofcom Broadcast Bulletins, we were unable to identify any contemporaneous payments made to the relevant television channels, therefore it does not appear that the Authority contributed financially towards these broadcasts. The remaining Broadcast Bulletin (Ofcom Broadcast Bulletin 222) does appear to have a related payment, which is considered further below.
- 6.56 We note that there was a further Broadcast Bulletin¹³⁸ dated 18 August 2014, which relates to an interview with the Mayor during the Period. We did not identify any contemporaneous payments to the broadcaster¹³⁹ who aired the interview in the Period.

Ofcom Broadcast Bulletin 222

- 6.57 On 21 January 2013 Ofcom published a Broadcast Bulletin ruling that an advertisement about housing in the Borough, featuring the Mayor, was in breach of section 321(2)(b) of the Communications Act 2003 (“the Communications Act”) and Rule 7.2.2(g) of the Code of Broadcast Advertising. Section 321

¹³⁷ Ofcom Broadcast Bulletin 177, 208 and 249.

¹³⁸ Ofcom Broadcast Bulletin 260.

¹³⁹ The Islam Channel Limited.

of the Communications Act sets out that an advertisement is deemed to be political advertising if it “is directed towards a political end”¹⁴⁰.

- 6.58 The advertisement was screened on five television channels from 1 January 2012 to 14 January 2012 and featured both the housing campaign referred to above and a police campaign. Following its investigation of this particular housing awareness campaign, Ofcom concluded “*we considered that the advertisement served to portray the Mayor of Tower Hamlets, Lutfur Rahman, in a positive light*” and that the advertisement served to “*promote the image and reputation of the Mayor*”. Ofcom therefore ruled that the advertisement was in breach of Part 321(3)(g) of the Communications Act and rule 7.2.2(g) of the Code of Broadcast Advertising.
- 6.59 The Publicity Code, which references the Communications Act (see paragraph 6.53), is the relevant guidance to be applied for any local authority use of publicity. The Service Head for Communications and Marketing has confirmed that this is the guidance that is used by the Authority when considering publicity expenditure on behalf of the Authority.

Payment for the commercials subject to Ofcom Broadcast Bulletin 222

- 6.60 In response to the release of Ofcom Broadcast Bulletin 222, a LBTH councillor submitted a Members Enquiry, which requested the advertising costs of the housing and police campaigns. We have been provided with the response to this Member’s Enquiry from the Service Head for Communications and Marketing¹⁴¹ which sets out the Authority’s expenditure on the two advertisements. The letter includes a schedule of costs for both printed advertisements and television advertisements. The television advertisements per this letter for the housing advertisement are as follows:

Company Name	Amount (£)
ATN Bangla	1,000
Bangla TV	1,000
Channel i (Prime Bangla Ltd)	1,000
Channel S	1,500
NTV	1,000

- 6.61 As indicated by the response to this Member’s Enquiry from the Service Head for Communications and Marketing (dated 14 February 2012), Authority funds were used to pay for the advertisement to be aired on all five channels stating “*...the decision to proceed was based on the council’s community plan priorities. Funds were identified accordingly*”.
- 6.62 We have also been provided with five letters from the Service Head for Communications and Marketing dated between 22 February 2012 to 1 March 2012, one to each of the five television channels who

¹⁴⁰ Communications Act 2003, section 321, paragraph 2(b).

¹⁴¹ Letter dated 14 February 2012.

screened the advertisement. These letters were to set out the Authority's comments on the advertisement subject to Ofcom Broadcast Bulletin 222 in response to Ofcom. In these letters the Service Head for Communications and Marketing sets out the Authority's view that the advertisement was to promote Authority services and inform residents about the Authority's plan to build more social housing in the Borough. In these letters, the Service Head for Communications and Marketing sets out a more detailed rationale for the advertisements than in the response to the Member's Enquiry referred to above.

- 6.63 We note that the Authority introduced a Communications Protocol in November 2013. In interview the Service Head for Communications and Marketing stated that in response to Ofcom Broadcast Bulletin 222; *"what we did is we... updated our own rules, so that was another spur to bringing in the comms protocol"*. In interview the Service Head for Communications and Marketing stated that although the Communications Protocol was launched in November 2013 it had been applied in principle before this date. The Communications Protocol sought to set out the Authority's responsibilities in abiding by the seven principles of the Publicity Code, namely publicity issued by local authorities should be lawful, be cost effective, be objective, be even-handed, be appropriate, have regard to equality and diversity and be issued with care during periods of heightened sensitivity.

Virement from general reserves

- 6.64 As noted above in paragraph 6.15 the Authority's publicity spend includes the services of external media advisors to assist with media related matters, including training the Mayor and others in their roles as media spokespersons and building relationships with media outlets and correspondents. The Mayor also uses other advisors where necessary to supplement the expertise of employees of the Authority, as demonstrated by the listing of Mayor's advisors provided to us by the Authority discussed at paragraph 6.16.
- 6.65 The 2013-2014 budget proposals of the Mayor and Executive included an amount of £296,000 for Mayor's Advisors¹⁴². In a meeting of the Full Council on 27 February 2013 it was resolved *"To delete the funding of £296k for Mayor's Advisors"* stating *"It is wrong for the Mayor to increased [sic] spending on his office by 65% to £700,000, including £296k for advisors, when cuts to frontline staffing budgets elsewhere in the organisation are taking place. Particularly as he has a Cabinet that is supposed to advise him on these issues"*.
- 6.66 On 26 March 2013 the Mayor made a Mayoral Executive Decision ¹⁴³ to vire £296,000 from general reserves to the Mayor's Office budget to replace the funding for Mayor's advisors rejected by the Full Council. In this Mayoral Executive Decision, the Mayor stated that the decision was taken to *"ensure sufficient resources are available to continue the current arrangements in the Mayor's Office whilst I [the Mayor] consider all options for the service and implications of reducing the expenditure"*. This decision was subject to Call in by the O&S Committee on 9 April 2013.

¹⁴² As referred to in the Full Council Meeting on 27 February 2013.

¹⁴³ Reference 0022.

- 6.67 The Mayor determined that this decision was not a Key Decision. The O&S Committee¹⁴⁴ determined that this decision must be key as Councillor Choudhury, on behalf of the Mayor, had stated that he “*considered the amendment to the Budget at Budget Council to have been politically motivated*” therefore “*To take a decision to change that would have political ramifications, and it must therefore be a ‘key’ decision*”. In his response to this Councillor Choudhury stated that “*he had not used the word political in its literal sense in the previous discussion*”. The O&S Committee went on to discuss the legality of the change made to the budget stating “*the decision was in contravention of the Budget and Policy Framework, agreed by a two thirds majority of full Council, and for the Mayor to attempt to work around this through the virement was unconstitutional and made a mockery of the Budget setting process*”. The O&S Committee resolved to refer the Mayor’s decision back to him for further consideration. In his response to this Call in, on 17 April 2013, the Mayor maintained his decision to transfer £296,000 from reserves.
- 6.68 This was discussed with the Mayor, who stated that, in his opinion, the budget of the Mayor’s Office was comparable, if not less than that of other London boroughs with directly elected Mayors, stating “*their budget is far more*”.

¹⁴⁴ On 9 April 2013.

7. *Processes and practices for entering into contracts*

Introduction

- 7.1 The area of contracting is a very significant one in terms of the Authority's overall budget, as it is for other local authorities and most commercial organisations. It is difficult to be precise as to the total value of contracts entered into in a given period, as the Authority does not have one centralised database of all contracts. Nor do contracts equate exactly to money spent in a given period, as many contracts straddle more than one period and there will be a time lag between the procurement and inception of a contract and payments made in relation to that contract, with many contracts paid for in multiple instalments over the period of the contract. We have focused on contracts with a value in excess of £25,000 entered into during the Period which, according to the Authority's own listing, (the "Contracts Listing") amount to some £406.5 million in aggregate. The Contracts Listing included 208 that were entered into during the Period¹⁴⁵.
- 7.2 Contracting takes place within a highly structured and regulated environment, governed as applicable *inter alia* by EU procurement rules, the Authority's Constitution and its documented procurement procedures¹⁴⁶ ("the Procurement Procedures"). There are various sets of rules and procedures that apply, largely depending on the value of a particular contract. The higher the value, the more stringent the requirements and, typically, the more stages there are in the procurement process.

Approach

- 7.3 Given the volume of contracts, the multiplicity of contracting arrangements and applicable sets of procedures, along with the difficulties of obtaining a comprehensive list of contracts, we have taken what we consider to be a pragmatic and proportionate approach to this area. This has broadly comprised:
- a. A review of the Authority's procurement documentation and discussions with relevant officers to gain an understanding of how procurement and contracting work in principle;
 - b. A detailed review of reports concerning both the procurement and operation of contracts produced by the Authority's Internal Audit function; and
 - c. A detailed review of a limited sample of contracts selected by us on various risk-based criteria, including in some cases specific concerns raised by individuals within the Authority, or through the Authority's own governance procedures, such as Call ins by the O&S Committee. The purpose of this sampling was to obtain first-hand insight into the way procurement procedures have operated in practice and thereby a more direct understanding of the basis for the findings and

¹⁴⁵ I.e. contracts that were ongoing at the start of the Period would not have been included in the Contracts Listing.

¹⁴⁶ We have been provided with two versions, those applicable in 2009-2013 and the revised version dated January 2014.

recommendations made by the Authority's Internal Audit function. Where specific concerns have been raised, we have also sought to follow these up.

Review of procurement process

The Procurement Procedures

- 7.4 The Procurement Procedures which “*are derived from the provision contained in the Council’s Constitution and Financial Regulations*”, provide a framework for all officers involved in procurement on behalf of the Authority. The Procurement Procedures also state their applicability to “*all expenditure by the Council on supplies, services and works, provided by external organisations*”.
- 7.5 The Procurement Procedures identify the following financial thresholds that dictate the process to be followed by the Authority. We have summarised the procedure to be followed for each of the identified thresholds below¹⁴⁷:
- a. “*Level 1*” (up to £10,000¹⁴⁸) – If a local supplier¹⁴⁹ is used then no competitive tendering process is required. If a non-local supplier is to be used, two quotations should be obtained and the procurement decision documented;
 - b. “*Level 2*” (£10,000 - £25,000¹⁵⁰) – Three quotes should be sought, and two quotes must be received. Records of quotations should be retained for 12 months. Local suppliers should be used with documentation of any reasons to deviate from a local supplier;
 - c. “*Level 3*” (£25,000 to EU threshold¹⁵¹) – A procurement initiation form must be completed and four tenders should be invited, with 3 submissions subsequently received. If possible, local suppliers should be selected; and
 - d. “*Level 4*” (above EU threshold) – The procurement process must adhere to the EU and Public Contracts Regulations 2006. In addition to adherence to EU Regulations, contracts above £250,000¹⁵² also require Cabinet approval and must include a tollgate process¹⁵³.
- 7.6 We understand that the Authority devolves procurement responsibilities to individual directorates. The following directorate references appear within the Contracts Listing (we have included references as defined in section 3 below for ease of reference):
- a. Adults, Health and Wellbeing (“AHWB”);
 - b. Chief Executive’s office (“CHE”) which we understand includes Democratic Services;
 - c. Communities, Localities and Culture (“CLC”);
 - d. Children, Schools and Families (“CSF”);

¹⁴⁷ These are set out in detail from paragraph 5.1.1 in the Procurement Procedures.

¹⁴⁸ £5,000 between 2009 and 2013.

¹⁴⁹ The Procurement Procedures stated that “*to be classified as local, a supplier must be based in one of the following postcodes: E1, E2, E3, and E14*”.

¹⁵⁰ £5,000 - £25,000 between 2009 and 2013.

¹⁵¹ As at 1 January 2014 this was approximately £172,514 in respect of “services”, £5 million threshold applies to “works” contracts.

¹⁵² This threshold is for services, a £5 million threshold applies to “works” contracts.

¹⁵³ This requires approval of “project appraisals” at milestones within the procurement.

- e. Development and Renewal (“D&R”);
- f. Education, Social Care and Wellbeing (“ESCW”);
- g. Resources (“RES”¹⁵⁴); and
- h. Housing¹⁵⁵.

7.7 We have analysed in the two tables below, the contract value and number of contracts by directorate as stated within the Contracts Listing with reference to the 2014 thresholds identified in the Procurement Procedures.

Directorate / procurement reference	Level 1 £	Level 2 £	Level 3 £	Level 4 (up to £250,000) £	Level 4 (greater than £250,000) £	Total £
AHWB ¹⁵⁶	-	-	1,028,000	593,000	124,293,971	125,914,971
CHE ¹⁵⁷	-	49,871	640,000	402,000	4,090,000	5,181,871
CLC	-	67,500	1,765,058	405,000	14,172,716	16,410,274
CSF	41,889	68,127	1,086,555	-	10,082,785	11,279,356
D&R	7,402	95,000	1,268,125	200,000	10,351,000	11,921,527
ESCW ¹⁵⁸	-	30,853	1,053,200	-	5,100,451	6,184,504
Housing	-	-	129,000	400,000	104,500,000	105,029,000
RES ¹⁵⁹	-	25,000	609,600	702,000	123,280,000	124,616,600
Total	49,291	336,351	7,579,538	2,702,000	395,870,923	406,538,103

¹⁵⁴ Appears to be referenced as “R” in the Contracts Listing.

¹⁵⁵ Appears to be referenced as “H” on the Contracts Listing.

¹⁵⁶ Note this includes 13 contracts that contain both ‘ESCW’ and ‘AHWB’ in the procurement reference.

¹⁵⁷ Note this relates to the Chief Executive’s Office which appears to include Communications Facilities and Democratic Services.

¹⁵⁸ Note, all of these contracts include additional references within the procurement reference; ‘CSF’ (7 contracts), ‘PH’ (8 contracts), and ‘A’ (3 contracts).

¹⁵⁹ Note, this includes a single IT contract with a value of £66 million.

Number of contracts Directorate / procurement reference	Level 1	Level 2	Level 3	Level 4 (up to £250,000)	Level 4 (greater than £250,000)	Total
AHWB ¹⁶⁰	-	-	8	3	23	34
CHE ¹⁶¹	1	2	8	2	4	17
CLC	1	3	27	2	16	49
CSF	6	4	13	-	7	30
D&R	1	4	13	1	5	24
ESCW ¹⁶²	-	2	10	-	8	20
Housing ¹⁶³	-	-	2	2	9	13
RES	-	1	7	3	10	21
Total	9	16	88	13	82	208

7.8 The Procurement Procedures include the following statements (including the emphasis of certain points in bold) regarding process¹⁶⁴:

- a. *“The criteria for award of contract must be defined and published in the tender documents prior to inviting Tenders for all contracts over £25,000.”;*
- b. *“Tenders should be invited electronically, using an appropriate secure e-tendering system¹⁶⁵ operated by the Procurement Service.”;*
- c. *“The Council uses an e-procurement system and, unless exceptional circumstances applied [sic], all tenders above £25,000 will be managed electronically.”;*
- d. *“It is not generally acceptable to allow oral queries for quotations, and all queries **should** be in writing or where used placed through the e-tendering portal¹⁶⁶. Any information which clarifies or amends the bid documentation **must** be confirmed in writing to the relevant bidder and also circulated to the other bidders at the same time. All questions must be rendered anonymous with the questioner’s identity kept confidential.”;*
- e. *“Late bids **must** be marked “received late”. In any event they **must not** be considered if they arrive after all the other bids have been opened.”;*
- f. *“Electronic tenders are automatically marked as “Late” by the e-tender system.”;*

¹⁶⁰ Note, this includes 13 contracts that contain both ‘ESCW’ and ‘AHWB’ in the procurement reference.

¹⁶¹ Note this relates to the Chief Executive’s Office which appears to include Communications Facilities and Democratic Services.

¹⁶² Note, all of these contracts include additional references within the procurement reference; ‘CSF’ (7 contracts), ‘PH’ (8 contracts), and ‘A’ (3 contracts).

¹⁶³ Appears to be referenced as “H” on the Contracts Listing.

¹⁶⁴ These relate to the Procurement Procedures implemented in January 2014.

¹⁶⁵ Alternative term used to describe the e-tendering portal.

¹⁶⁶ The public sector procurement portal for the London boroughs.

- g. *“Late bids received before all the other bids have been opened may only be considered where written legal advice is given after consideration of a report by the Head of Corporate Procurement.”;*
- h. *“During the bidding process, should any bidder raise a query, the answer will be issued to all bidders, for e-tenders this will be through the portal.”;*
- i. *“It is usually acceptable to clarify arrangements with bidders following the opening of bids. This might include areas of ambiguity, assumptions or possible errors. Any communication with tenderers **must** be documented on the bid file. A clarification is a request for information which in itself would not materially affect the price submitted by other bidders”;*
- j. *“Unless expressly allowed for, and with the agreement of the Head of Corporate Procurement. Negotiations **must not** be conducted during the bidding process”;*
- k. *“Any unacceptable late bid **must** not be opened unless it is purely to determine the sender’s details, so that the bidder can be advised of the reason for rejection by the Corporate Director or the Head of Corporate Procurement.”;*
- l. *“Corporate Directors **must** ensure that all contracts over £25,000 are registered with Corporate Procurement and are entered into the Central Contracts Register.”;*
- m. *“All contract awards **must** be awarded on the basis of best value for money, which will normally be the most economically advantageous tender or quotation.”; and*
- n. *“Every Contract **must** be confirmed in writing, detailing a description of the supplies, works or services to be provided, the price to be paid and any discounts or adjustments to be applied, and the times for completion or delivery”.*

7.9 We also note that the Constitution sets out certain responsibilities and requirements concerning procurement, including:

- a. *“Chief Officers must ensure that audit trails are in place for all procurement activity in accordance with the Procurement Procedures”;*
- b. *“Chief Officers must ensure a register of contracts is kept within the Department for all contracts”;* and
- c. *“Every contract made by the Council shall be in writing and will comply with the Contracts Procedure Rules set out in Part 4 of this Constitution.”*

7.10 The Procurement Procedures also stated that in certain circumstances, in contracts with a value less than £250,000, the Procurement Procedures may be waived by a Corporate Director’s Action (“CDA”) in liaison with the Head of Corporate Procurement and the Head of Legal Services. We understand that CDAs can also be used for capital estimates adoption or virements. CDAs relating to the waiving of the Procurement Procedures are only permissible in the seven circumstances listed in section 12 of the Procurement Procedures and a record of the waiver, including the reasons, must be kept within a departmental register.

7.11 Based on our review of the Procurement Procedures and our initial discussions with the Authority we understood that CDAs were used in exceptional circumstances. However, during the later stages of our

work, it became apparent that CDAs were being used by the Authority on a regular basis. We requested copies of the Record of Corporate Director's Actions ("RCDA") for each directorate for the Period. We note:

- a. That there were 530 CDAs (including CDAs that are not related to waiving Financial Regulations) listed on the RCDA provided to us with a total value of £35,742,753¹⁶⁷;
- b. There were 36 instances of CDAs where a value of the CDA is not recorded;
- c. There were Six CDAs where the value exceeds £250,000; and
- d. There was inconsistent recording of dates between the RCDA across the directorates.

Decision making in the procurement process

- 7.12 Part 3 of the Constitution states that *"The purpose of procurement activity shall be to achieve best value for local people in accordance with the Council's statutory or approved objectives. Officers with responsibility for procurement shall ensure that they are able to demonstrate achievement of best value by having regard to a combination of economy, efficiency and effectiveness."*
- 7.13 Part 3 of the Constitution delegates responsibilities to Corporate Directors and senior officers. In respect of purchasing and procurement, the delegations include (subject to the Procurement Procedures):
- a. Seeking tenders and quotations within approved limits;
 - b. Awarding contracts within approved limits;
 - c. Placing orders; and
 - d. Terminating contracts.
- 7.14 We note that Part 3 of the Constitution also requires that *"The contracting strategy and/or award of any contract for goods or services with an estimated value exceeding £250,000, and any contract for capital works with an estimated value exceeding £5,000,000, shall be approved by the Cabinet¹⁶⁸ in accordance with the Procurement Procedures. Contracts for goods or services with an estimated value of less than £250,000 and contracts for capital works with an estimated value of less than £5,000,000 shall be approved by the relevant Chief Officer, in accordance with the Procurement Procedures."* The Procurement Procedures refer to this section of the Constitution and state that *"In order to comply with this requirement, the Head of Corporate Procurement will submit a quarterly report to Cabinet, laying down a forward plan of contracting exercises across the Council for the forthcoming 12 months. This report will identify all revenue contracts exceeding £250,000 during the period in question, and will seek Cabinet's approval to the outline contracting strategies. Cabinet will be invited to identify those contracts they consider to be key decisions, and about which they will therefore wish to receive further reports prior to contract award"*.

¹⁶⁷ Note as stated at d, the dates are inconsistently recorded and the precise date range of the RCDA provided is unclear e.g. CSF and ESCW's RCDA are merely dated with the year in respect of CDAs in 2010.

¹⁶⁸ The 2014 Constitution states *"the Executive"* rather than *"Cabinet"*.

- 7.15 We have discussed the procurement process with the Interim Monitoring Officer, the Mayor, and officers.
- 7.16 In our meeting, when discussing involvement of Members in procurement the Mayor stated that *“it’s within our right to set the parameters for tendering process at the beginning..... we will say what our expectations are”*. The Mayor included examples of such expectations including apprenticeships, or community benefits.
- 7.17 The Mayor also stated that *“...we would set our specification, the criteria, what we expect and let the officers get on with it. At the end of the process we will not know again who the bidders are....the officers will let us know”*. We note that the recommendation of this information by officers would be via an anonymised restricted Cabinet report which would include the other bid information (e.g. price).
- 7.18 An officer confirmed that determining the need to procure a service is the responsibility of the directorate, because that *“part’s technical, you wouldn’t expect [it from] members”*. The officer added that agreeing the strategy for the procurement was the responsibility of Members, however, *“The Mayor makes all the decisions”* and the *“Contract award is the Mayor’s decision. There is no basis in our [financial instructions] or standing orders for members to have an input into decisions as to...the process of selection of who the contact award can be for”*.
- 7.19 Further, the officer commented that the Executive Mayoral Decision is a binary decision being to accept the result of the process and award the contract or *“scrap the procurement [and] we do it again”* However the officer also stated that *“you’ve got to have reasons for that second decision [i.e. to restart the tender] that will withstand legal challenge from a provider”*.
- 7.20 We discussed this process with the Interim Monitoring Officer who stated that, in relation to input by the Cabinet *“If you want to put a criteria in you have to put it in at the beginning”* and *“give the officers the authority to go through the process they need to go through... to get the contract out”*. The issue that they were *“concerned about is Cabinet getting to the outcome of a tendering exercise and then saying “we don’t like the answer”, ...if you wanted a different answer you should have set different questions; you are where you are now [so] either accept this or go back to the start and start again.”*
- 7.21 The Interim Monitoring Officer also stated that decisions are being delegated to officers *“in consultation with the Mayor”* rather than being straightforwardly delegated to officers or retained by the Mayor. The Interim Monitoring Officer stated that this practice was historical, but was no longer necessary under the Mayor and Cabinet model. Consequently, unnecessary delay and inefficiency was introduced into the process and that the options are to delegate the decision or retain the authority and in doing so the decision comes back to the Cabinet.
- 7.22 In interview the Corporate Director for ESCW outlined the process in a similar manner as above, and that decisions delegated to him are usually *“in consultation with the Mayor”*.

- 7.23 He also commented that Members challenge officers as the Members sometimes “*lack the confidence that [officers] have actually applied the criteria*” that Members set out at the start of the procurement process. He added that consequently “*officers will complain about the Members*” however ultimately the Members “*are lay people, [who] don’t understand all the mechanisms*” and that “*...our officers need to be much more demanding of them*” to ensure Members understand that officers have applied the criteria set by Members.

Review of Internal Audit reports

- 7.24 We have been provided with 29 reports produced by Internal Audit concerning reviews conducted by them during the Period relating to the Authority’s contracting processes. Seven of these reports focused on either the general contract procurement process within a directorate, or the procurement process within one of the financial thresholds defined at paragraph 7.5. The remaining 22 reports focused on the operation, delivery and monitoring of individual contracts, of which nine included comments that are related to the process and practices for entering contracts. We summarise below the key matters arising from our review of the reports. We note that Internal Audit have identified certain weaknesses in relation to contracts that appear to be consistent with issues we have encountered, in particular a lack of audit trail and/or gaps in tender process documentation and an absence of signed contracts.

Audits of the procurement of goods below EU thresholds (March 2011)

- 7.25 In March 2011, Internal Audit issued four reports of audits conducted on the procurement of goods, services and works below the EU threshold in relation to the CLC, CSF and D&R directorates and a further consolidated report in relation to all three directorates. The scope of these audits was stated as:
- a. “*Policy and procedures; ensuring that the Council has a clear strategy and procedures in place for the control and administration of Procurement below EU thresholds.*”
 - b. “*Tendering/Quotation arrangements; ensuring that there are sound procedures in place at Directorate level to receive, secure, evaluate and accept competitive offers for goods, services and works below EU thresholds.*”
 - c. “*Contract documentation, ensuring that the contract documentation with the winning supplier/contractor is sound and secure to protect the Council’s interests.*”
 - d. “*Management information, ensuring that adequate management information is collected and reported to an appropriate level of management to monitor compliance with procurement procedures in relation to procurement of goods, services and works below EU threshold*”.
- 7.26 The findings of the reports of CLC, CSF and D&R concluded that there was “*substantial assurance*”¹⁶⁹ and that there were “*clear procedures in place*”. These reports also noted inter alia that:

¹⁶⁹ Defined by Internal Audit as “*While there is basically a sound system there are weaknesses which put some of the control objectives at risk*”.

- a. Issues were identified in the operation, and training and support of staff in relation to the procurement IT system;
- b. Officers were unaware of the requirement to complete declaration of interest forms;
- c. From a sample of six tenders in CSF, quotations were not sought for two, one had only one quotation and one had been “*enacted under the Record of Corporate Directors Actions*”. Internal Audit recommended that before orders are placed there is clear evidence available that the criteria for placing orders have been followed and that senior management should also remind staff of the requirement to comply with the Procurement Procedures;
- d. From a further sample of three tenders in CSF, there was a complete set of contract documentation (including signed contracts) “*to support compliance with the Procurement procedure and the Council's Financial Regulations*”;
- e. From a sample of six tenders in D&R, three were found where officers approved orders without evidencing whether quotations have been received and/or whether the Procurement Procedures have been complied with. Internal Audit recommended that “*Clear instructions should be issued to relevant staff to remind them of the requirement to comply with the Council Procurement Procedures*”;
- f. From a further sample of three tenders in D&R Internal Audit stated “*we found significant pre-contract governance issues in most of these cases*”, and in one case the contract was awarded to a company which had put in the highest bid. Internal Audit recommended that “*Senior management must ensure that correct quotation/tendering process is followed in all cases*”;
- g. From a sample of six tenders in CLC, one had been initiated without written instructions, one had not obtained any quotations, two had no record of evaluation and 1 had not been signed off by the “*Head of service*”. Internal Audit recommended that “*Clear instructions should be issued to relevant staff to remind them of the requirement to comply with the Council Procurement Procedures*”; and
- h. From a further sample of two tenders in CLC, both were found to have had the correct number of tenders, however the winning bidder of one was advised their bid was successful before the formal evaluation was undertaken and it “*...was asserted that the contract was awarded following an initial evaluation which was undertaken by the Development manager and Project manager. Audit were unable to locate any documentation relating to the initial evaluation. Although both evaluations reached the same conclusions there was a risk that this may have not been the case*”. Internal Audit recommended that “*Management must ensure that the procedures in place for evaluating contractor bids are strictly adhered to*”.

7.27 Management’s response suggests that Internal Audit’s recommendations were accepted with the intention of implementing recommendations by November 2011. We have been provided a further Internal Audit report that related to a follow up audit in respect of CLC (our review of which is set out below). We have been informed that Internal Audit did not perform follow up audits in respect of CSF or D&R between March 2011 and September 2014.

Audit of Competitive Tendering (January 2012)

- 7.28 Internal Audit conducted an audit of “*Competitive Tendering*” during 2011 and “*examined the systems and procedures in place over the management and monitoring of the procurement and tollgate processes*”. We note that the audit appears to consider the process across the Authority rather than an individual directorate and considered contracts above £5,000.
- 7.29 The report concluded that there is “*Limited Assurance*”¹⁷⁰ in respect of the areas considered. The findings of the audit included the following statements:
- a. “*The Council has a comprehensive Procurement Procedures Manual, which sets out the different stages of the procurement process for the purchase of Goods, Services, and Works covering all contract values.*”;
 - b. “*Schemes within the “250,000 (revenue) and £5,000,000 (capital) thresholds are required to complete the forms “Tollgate 1 – Business Justification and Contracting Strategy” and Tollgate 2. Examination of 26 contracts....confirmed that the process was not being adhered to as 11 cases were identified where only a Tollgate 1 or Tollgate 2 form was completed, when both processes were required”, a further nine cases where neither was completed and “some contracts awarded were not approved by Procurement and Corporate Programmes as prior approval was not sought*”;
 - c. “*...the Contracts Register and Tollgate Schedule confirmed that they are not being monitored and reconciled on a regular basis and the Tollgate Schedule appeared to be incomplete*”;
 - d. Where completed, the Tollgate 1 or Tollgate 2 forms “*were assessed by the Corporate Procurement Category Manager in 14 of 15 cases*” and in all cases approved by the Service Head for Procurement;
 - e. “*...tender evaluations were not located for six of the 15 tenders examined*”; and
 - f. “*For 26 contracts selected for examination, we are unable to confirm whether signed contracts are in place between the contractors and the Council as these were not provided despite numerous requests*”.
- 7.30 Internal Audit gave five separate recommendations within the report, which we have summarised below. We note that all recommendations appear to have been accepted and have been assigned implementation dates of between 31 January and 29 February 2012:
- a. Management should formally remind staff of the requirement to obtain approval of the Service Head for Procurement and Corporate Programmes et al where goods and services are in excess of the tollgate thresholds and the tollgate schedule is to be updated at the start of every month and reconciled to the “*Central Contracts Register*” with any incomplete information “*followed up and addressed*”;
 - b. Ensure that the tollgate forms are assessed (and evidenced as such) with a copy retained;

¹⁷⁰ Defined by Internal Audit as “*Weaknesses in the system of controls are such as to put the systems objectives at risk*”.

- c. Ensure that the procedure note specifies which tollgate forms are required and that any incomplete tollgate forms will be returned to the contract owner;
- d. Formally remind contract owners of the importance of complying with the Procurement Procedures relating to evaluation of tenders; and
- e. A copy of the signed contract for each contract on the Contract and Tollgate Registers be obtained and retained by the Legal department, and where signed contracts cannot be obtained corrective management action should be taken to resolve the issue.

Audit of Competitive Tendering (September 2013)

- 7.31 Internal Audit conducted an audit of “*Competitive Tendering*” dated September 2013. The scope of work appears to have been similar to that set out in the audit dated January 2012 (see paragraph 7.28) however focused on procurement process in relation to contracts above the EU thresholds. The report concluded that there is “*Limited Assurance*” in respect of the areas considered. Findings reported included the following:
- a. *“There was a need for comprehensive and coherent procedures and process for both Directorate staff and for procurement staff”;*
 - b. *“We found audit testing difficult in some areas as clear audit trails were not present”;*
 - c. *“Although Directorate staff had devolved responsibility for managing the tendering process, there was no monitoring by Procurement as to whether procedures are actually being complied with by Directorate staff”;*
 - d. *The “...Tollgate reviews could not in all cases be evidenced and decisions made from those reviews had not been documented or retained within the contract files..”;*
 - e. *“...both PQQ¹⁷¹ and tender evaluations had been undertaken however, it was not always apparent which officers were included within the evaluation panel as there were no reports of the evaluation exercise documented to record their outcome”;*
 - f. *“We identified that tenders were received through a secure portal that included an audit history facility, this enables a record of when documentation is sent, received and which officer had opened tenders. However, no record existed of the officers who witnessed the tender openings in compliance with internal procedures”;*
 - g. *Two contracts were identified “...which had been tendered by external consultants, however there were no Council Procurement Officers present at the tender opening stage to ensure transparency and compliance with LBTH tendering procedures”;*
 - h. *A late tender had been accepted without appropriate authority; and*
 - i. *“Of the three contracts that had been awarded only one contract was found to have been signed and sealed by the Council”.*

- 7.32 Internal Audit also noted the following areas of good practice within this report:

¹⁷¹ Pre-Qualification Questionnaire (“PQQ”).

- a. *“Contracts were generally being tendered in accordance with EU Regulations and forward plans were being presented to the Cabinet on a regular basis”;*
- b. *“Advertisements had been placed on the OJEU¹⁷² and councils web pages, as required by Council procedures and EU Regulations”;*
- c. *“Pre-Qualification procedures were in place and Questionnaires were being assessed”;*
- d. *“Tenders were being sent out and received through a secure tendering portal”;*
- e. *“The electronic portal had audit history functionality”;* and
- f. The *“10 day standstill period was being complied with”*.

7.33 We have summarised the recommendations made by Internal Audit in respect of their findings below (we note that all have agreed management actions listed against them and the report stated that these action have either been completed or will be completed by December 2013):

- a. *“There should be an ‘end to end’ complete review of the Council’s Procurement Procedures to ensure that they are clear, robust, current and coherent to meet Council’s objectives and control requirements” and “a clear control/mechanism at the Centre should be introduced for the Director of Resources through Service Head Procurement to monitor the application and compliance with the Procurement Policy throughout the Council” as a monitoring control “... against the risk of errors, omissions, irregularity, fraud and corruption”;*
- b. *“The standard of filing electronic documents in files and folders should be reviewed to ensure that a full audit trail is preserved... for each contract. There should be a clear file index and referencing system in place for each contract procured”;*
- c. That *“...all documentation relating to the tollgate 1 reviews are complete, accurate and retained within the contract files to ensure that a complete audit trail is maintained”;*
- d. A record of the tender opening to be maintained on the file;
- e. *“A full tender report detailing the full tender outcome should be prepared for each contract procured by the Council. The report should include a complete review of the tendering strategy, methods used, details of bids received, justification to open any late tenders, approval for opening late tenders, detailed tender evaluation and recommendations”;*
- f. *“The Contracts Team Leader (Legal Services) should ensure that contracts are signed and returned within 30 days to minimise the possible risk of litigation that may arise”;* and
- g. *“The Head of Procurement should ensure that the PQQ assessment template should include the name for each panel member carrying out the assessment along with the scoring they have given against the set criteria” and that “a PQQ summary report is prepared for each assessment...”*

7.34 The Authority has informed us that all the recommendations have been implemented through the introduction in the update to the Procurement Procedures dated January 2014. We have not tested this assertion.

¹⁷² Official Journal of the European Union.

Follow up report in relation to procurement of goods, services and works below EU thresholds in respect of CLC (November 2013)

- 7.35 Internal Audit conducted a follow up review in relation to procurement of goods, services and works below EU thresholds in CLC and issued their report in November 2013 (we note the report suggests that the review was ongoing in November 2012).
- 7.36 The report concluded that there is “*Limited Assurance*” in respect of the areas considered. Internal Audit stated that “*out of three priority 2 recommendations made at the conclusion of the original audit, one was implemented and two needed to be fully implemented and embedded into the business operation. These were in relation to: i) reminding officers involved in contract assessment to declare an interest where necessary, ii) ensuring procedures for evaluating bids were strictly adhered to, and iii) ensuring a standard form of documentation was introduced for all tendering and quotation exercises. The one priority 1 recommendation we followed up, which was in relation to documenting evidence of correct use of the R2P ordering system, was not fully implemented and embedded*”.
- 7.37 The following issues were also highlighted by Internal Audit:
- a. “*Evidence of sourcing and using pre-set criteria for selecting suppliers for quotations was not in place*”;
 - b. “*Evidence of prioritising and considering local suppliers needed to be retained*”;
 - c. “*Criteria for evaluating quotations were not formulated and made known to bidders at the time of invitation*”;
 - d. “*Evaluation of quotations received was not clearly documented and the basis of final selection of successful supplier was not transparent and clearly documented. In one case a contractor was selected without evidence of any market testing*”; and
 - e. “*No standard documents - such as award letters specifying conditions, requirements to have appropriate insurance and indemnity, compliance with the required quality standards and professional practices etc. were not in place*”.
- 7.38 Internal Audit made follow up recommendations which we have summarised below:
- a. “*Each Service Head should undertake a full review of the practices and processes deployed by their staff for procuring goods, services and works below EU threshold to identify any gaps and risk exposures, and then take any corrective action necessary to ensure compliance with the Council’s procedures*”;
 - b. “*Each Service Head should undertake a full review of the practices and processes deployed by their staff for inviting suppliers to quote, for receiving the quotations in a controlled and secure manner, for setting evaluation criteria to be used and applying these criteria in practice and for making an informed decision for selecting a particular supplier for the contract on price/quality basis...*”;and
 - c. “*The standard of documents and emails used for invitation, evaluation, contract award and contract conditions letter including the requirements to have appropriate insurances and*

indemnity, compliance with the required quality standards and professional practices etc. should be in accordance with the Council's prescribed forms and standard".

Other Internal Audit reports

- 7.39 As stated in paragraph 7.24 above, we also noted nine further Internal Audit reports that included comments that related to the procurement of the particular contracts being reviewed. The following points were noted from those reports:
- a. Inconsistencies in contractual documents, including one instance of a signed contract being in place without an agreed annual fee and four instances where a formal contract was not in place or could not be located; and
 - b. Inconsistent adherence to the Procurement Procedures, including one instance where Internal Audit commented that they identified *"fundamental control failures in relation to the procuring of both contractors and external consultants..."*

The Authority's response to recommendations made by Internal Audit

- 7.40 During the fact checking exercise, the Authority has informed us that in response to the recommendations made by Internal Audit the Authority stated that *"a programme of improvement measures has been implemented..Following the launch of the Council's Procurement Policy Imperatives, a number of projects were initiated to help transform the procurement service to deliver these imperatives"*. The Authority has supported this statement with the following further comments:
- a. *"In May 2013, the terms of reference for Strategic Competition Board and Competition Planning Forum were refreshed to reinforce and enhance their influence in the procurement process"*;
 - b. *"In June 2013, Tollgate 3 (Gateway Review) was introduced to review the performance of key strategic contracts"*;
 - c. *"With the support of Strategic Competition Board, an end to end review of the previous Procurement Procedures and governance process was completed to ensure new Procurement Procedures are clear, robust and coherent whilst potentially improving the pace of the procurement process"*;
 - d. *"The historically manual PQQ process has been fully automated and went live in November 2013 in line with a pan-London PQQ (Pre-Qualification Document) to support SMEs, increase compliance and further streamline our procurement process and address audit concerns"*;
 - e. *"In addition to the existing detailed audit trail, including date, time and names of person releasing the sealed bids as well as the officer verifying the release, a Contract Lawyer is also present to witness this tender release process"*;
 - f. *"All orders over £25,000 are channelled to the procurement service to ensure compliance; a standard procurement toolkit has been published on the Council's intranet for procurement below £25,000"*;

- g. “A list of all contracts over £25,000 awarded under the procedure is published on the London contracts Register”;
- h. “Since April 2014, the procurement service has been testing a spend analysis tool to examine all contract expenditure to drive compliance and greater transparency. An outcome of this has been the development of Directorate procurement dashboards”;
- i. A briefing paper on procurement of goods, services and works below EU thresholds was prepared and presented to Directorate Management Team on 9 January 2014, this included a number of recommendations and requested that Directorate Management Team ensure compliance by all staff; and
- j. The CLC developed a management action plan to ensure that recommendations are implemented.

7.41 We note that the revisions referenced by the Authority to the procurement procedures¹⁷³ to produce the 2014 procurement procedures include:

- a. More detailed guidance on the previous procedures;
- b. A request for quotation toolkit in respect of procurements below £25,000;
- c. Requirements for wider use of the e-tendering system (providing advantages such as electronic date stamps on actions within it);
- d. A requirement for a tender report to be prepared for each contract over £25,000 which must set out the narrative of the procurement from strategy to recommendations for award; and
- e. A requirement for Corporate Directors to be responsible for bids below £25,000.

7.42 Whilst the revised procedures suggest improvements in the procurement process, we have not performed any testing to confirm whether these revised procedures have been effectively implemented and if so whether the Authority has achieved improvements in relation to the quality of the documentation and audit trail in relation to procurement.

7.43 We also note, in relation to the Authority’s other responses that:

- a. The introduction of Tollgate 3 is not an initiative with direct impact on procurement as it relates to contract monitoring post award;
- b. There is no reference to a ‘Contract Lawyer’ within the new Procurement Procedures. The document states “*Corporate Directors must make arrangements for the receipt, custody, opening and witnessing of all quotations under £25,000*” and “*Head of Corporate Procurement must make arrangements for the receipt, custody, opening and witnessing of all tenders over £25,000*”; and
- c. The introduction of a new request for quotation toolkit for procurement of contracts below £25,000 does not address any of the issues of non-compliance identified from the testing of contracts in the Inspection, which were all of a value above this threshold.

¹⁷³ 2009-2013.

Review of a limited sample of contracts

- 7.44 We requested a complete list of contracts let during the Period with a contract value of £10,000 or more however, we were informed that the Authority could not produce a complete list of contracts below the £25,000 threshold. Subsequently the Authority provided us with the Contracts Listing.
- 7.45 We note that the Constitution and Procurement Procedures¹⁷⁴ stated that “*Keeping a register of all contracts*¹⁷⁵...” is the responsibility of “*Chief Officers*” and “*Corporate Directors*” respectively, therefore it is not clear why the Authority was unable to produce the listing as we requested.
- 7.46 We have been unable to reconcile the Contracts Listing to the Financial Data, consequently we are unable to determine whether the Contracts Listing provided to us was complete.
- 7.47 We selected eight contract tenders from the Contracts Listing and requested that the Authority provide us with all documentation that demonstrates the adherence to the Procurement Procedures that were extant at that time. The contracts were selected based upon value, third party information received, contracts subject to O&S Committee Call ins and included one contracts included on the Contracts Listing that had a nil value.
- 7.48 In addition, we considered two further contract tenders, AHWB 4396 and AHWB 4179, neither of which were shown on the Contracts Listing:
- a. We note that the tender in relation to AHWB 4396 was not complete when the Contracts Listing was provided and therefore was not included within the Contracts Listing.
 - b. Conversely, AHWB 4179 was awarded on 8 May 2013 and therefore the Contracts Listing provided should have included this contract. The officer responsible for this contract informed us that this was an oversight.
- 7.49 We set out a summary of information in relation to the contracts we have selected for review from the Contracts Listing in the table below.

¹⁷⁴ In the versions that were applicable from 2009-2013 and the revised versions dated January 2014.

¹⁷⁵ I.e. irrespective of value.

Reference	Contract title	Directorate	Contract start date	Contract end date	Estimated total value (£)
AHWB 4171	Domiciliary Care Service Spot	AHWB	26 November 2012	31 March 2013 ¹⁷⁶	7,000,000
AHWB 4396 Not on Contracts Listing ¹⁷⁷ -	Domiciliary and Personal Care PPF ¹⁷⁸	AHWB	Estimated November 2014 ¹⁷⁹	30 November 2015	6,933,000 ¹⁸⁰
AHWB 4154	New Dawn / First Start Day Services	AHWB	1 April 2011	31 March 2012	1,264,492
ESCW 4504	Mentoring Project	ESCW	1 June 2013	31 May 2016	151,200
AHWB 4179 Not on Contracts Listing ¹⁸¹	Community Hub PPF	AHWB	1 November 2012 and 1 February 2013	3 year PPF	2,410,000
AHWB 4220	Complex and High Needs Service (Learning Disability Day Options)	AHWB	19 December 2012	18 December 2015	900,000
AHWB 4221	Supported Employment Training and Enterprise Services	AHWB	23 May 2013	30 June 2016	822,000
CLC 4430	UCS Generic Youth Provision LAP 1.2.4.6.	CLC	26 March 2013	25 March 2016	60,000
CLC 4428	Victoria Park Commercial Event	CLC	1 January 2014	31 December 2017	zero
CSF 4394	Short Break Call Off Lot A	Care & Commissioning	1 November 2012	31 October 2016	1,222,980 ¹⁸²

¹⁷⁶ We note that the contract stated the end date as 25 November 2013.

¹⁷⁷ The tender process in relation to this contract has not yet been completed, consequently the information is not listed in the Contracts Listing.

¹⁷⁸ Preferred Provider Framework ("PPF")

¹⁷⁹ The start date listed is based upon information provided to us at interview.

¹⁸⁰ This is calculated from the original tender advert (which was £11m for 21 months) multiplied by 13 months (which is the period between the current estimated start date to the end date).

¹⁸¹ Data from Cabinet report 8 May 2013 as this contract was not listed in the Contracts Listing.

¹⁸² We note there was an apparent typographical error in the Contracts Listing provided which we have corrected in the table above.

- 7.50 We requested that the Authority provide us with all procurement documentation in respect of each of the selected contracts in order to test the adherence of the procurement to the Procurement Procedures. The length of time taken by the Authority to deliver the requested information to us suggests that this was not readily available which further suggests that the Authority's process for retaining and storing of the supporting information to demonstrate adherence to the Procurement Procedures is not well administered.

AHWB 4171 and AHWB 4396 – Domiciliary care AHWB 4171

- 7.51 The stated objective of the procurement AHWB 4171 was to source “*experienced organisations to be included in a PPF for the delivery of domiciliary care services*”¹⁸³.
- 7.52 The Procurement Procedures define the Tollgate Process as a “*project appraisal methodology*”. This is administered by Corporate Procurement on behalf of the Strategic Competition Board. Approval must be obtained from the Strategic Competition Board at three¹⁸⁴ points in the contracting cycle. The first approval required is of the contracting strategy prior to inviting tenders.
- 7.53 The Tollgate 1 for this contract was assessed on 5 October 2009 and the ‘Tollgate 1’ document stated that these services were being provided to the Authority by 16 suppliers and an in-house team. The procurement strategy set out in the Tollgate document was “*for the future delivery of services... to seek to procure a single supplier, or consortium of suppliers, to deliver Domiciliary Care services for each of four geographic areas*”¹⁸⁵ and reduce the number of external suppliers. We have been informed by an officer that the objective of reducing the number of suppliers was, in part, “*associated with [achieving] quite significant efficiency targets*”.
- 7.54 The officer also informed us that:
- a. Officers anticipated that this tender would “*be of particular interest to the administration*” (due to, for example, the values, volumes, size of the workforce, and the nature of the recipients of the service) and consequently provided Members with proposals in relation to the procurement strategy in advance of a meeting with the Mayor and Members¹⁸⁶; and
 - b. Following the submission of the procurement proposals, suggestions for changes were made “*by the administration that we subsequently adopted*”.
- 7.55 We note that the statement at b, above, is consistent with a briefing document dated 18 July 2011 for Councillor Robbani which was prepared by an officer which provided a “*high-level overview of the Directorate’s proposed strategy for the delivery of Domiciliary Care Services over the next four years*”. That briefing note also stated that:

¹⁸³ As per the Authority’s advertising for expressions of interest on the e-tendering portal.

¹⁸⁴ Only two consultations were required between 2009 and 2013, the third was introduced in January 2014.

¹⁸⁵ Within LBTH.

¹⁸⁶ Which occurred on 20 July 2011 and is discussed further below.

- a. *“Currently the Council has contractual arrangements with 16 external suppliers”;*
- b. *“The unit costs for externally purchased services is £2.08 per hour higher than the average for London Boroughs”;* and
- c. *“The model being pursued...involves two fundamental changes to current arrangements...”,* the first related to a change in the services delivered in-house and the second related to the externally commissioned services which the Authority *“...intend moving to a situation where we have a number (between 6 and 8 of block contracts covering the Borough as a whole...)”*.

7.56 We have been informed by an officer that on 20 July 2011 a meeting to discuss those changes was held between officers, the Mayor, Councillor Choudhury and Councillor Asad, and at that meeting Members stated that whilst procuring from only four suppliers provided the opportunity for *“economies of scale”* they had concerns that *“...it didn’t create an environment in which the local third sector and/or local small and medium enterprises might be able to bid competitively”* and the *“approach lent itself to large organisations without necessarily a local focus being successful”*. The officer has confirmed that this was not a formal meeting of the Cabinet.

7.57 As set out in the summary table above, the contract was ultimately awarded to 16 suppliers¹⁸⁷ under framework agreements which allowed the Authority to *“spot purchase”* services from any of the suppliers as required.

7.58 We have requested copies of all 16 framework agreements, however, the Authority has only provided six to us. The Authority has provided the explanation that *“Award letters dated 3 August 2012 were issued for all 16 contracts. These constitute binding contracts between the Council and the suppliers, incorporating the tendered documents which include the contract terms and specifications. In respect of signed written contracts, currently 6 have been returned by suppliers, all of which have been completed.”*

7.59 We noted that, in all six cases, the framework agreements provided were dated after the contract end date of 25 November 2013.

7.60 The retention of signed contractual agreements is a crucial part of good governance in relation to procurement and contracting. Absence of signed contractual agreements suggests that the Procurement Procedures requirement that *“Every Contract must be confirmed in writing, detailing a description of the supplies, the price to be paid and any discounts or adjustments to be applied, and the times for completion or delivery”* has not been followed, although the Authority has suggested that this is mitigated by the contract award letters (see paragraph 7.58). We also note that a lack of signed contract exposes the Authority to risk if terms were to be disputed at a later date by the supplier

7.61 The assessment of the Tollgate 1 form at 5 October 2009, indicates that the contracting strategy had been agreed at this date. It appears that Members have involved themselves in the procurement process

¹⁸⁷ We have seen the letters informing each supplier that their tender submission was successful.

after this date, i.e. during the tendering process before the final decision. As set out above (from paragraph 7.13 to 7.21) the Constitution delegates the authority in running procurement to officers, at the end of which the Executive may then only approve or reject the outcome, in either a minuted Cabinet meeting or documented Mayoral Decision. The Member involvement that appears to have occurred in this case appears, therefore, to be inconsistent with the relevant requirements of the Constitution.

- 7.62 We note that the Procurement Procedures also state that “*All contract awards must be awarded on the basis of best value for money, which will normally be the most economically advantageous tender or quotation.*” As informed by the officer involved, Members have instructed officers not to reduce the number of suppliers (which potentially would have delivered cost savings and efficiencies). In addition, the form of the Members’ involvement was via informal, un-minuted meetings which would be inconsistent with the Constitutional requirement to maintain an audit trail in relation to procurement.
- 7.63 The Authority has not provided us with the signed framework agreements in respect of 10 of the 16 awarded, although signed framework agreements were in place in respect of six, and for those six that were supplied to us the date of signing was after the contract end date.

AHWB 4396

- 7.64 During the course of our work, we noted that no replacement contract for AHWB 4171 was listed in the Contracts Listing, following the expiry of the AHWB 4171 contract. We were informed by officers that contract AHWB 4396 was to be the replacement contract for AHWB 4171, however the procurement of this contract had been delayed. Although this contract was not part of the population¹⁸⁸ from which we selected contracts to review, we augmented our selection to include this contract as we were informed of potential issues surrounding the procurement process undertaken thus far. We set out the chronology of this procurement below.
- 7.65 We have been provided with a briefing note for the Mayor, dated 20 September 2013, which sets out the anticipated timetable for this tender. The key dates listed were:
- a. 28 August 2013 – tenders advertised;
 - b. 25 October 2013 – evaluation of PQQs was due to be completed;
 - c. 28 October 2013 – invitations to tender were to be sent to bidders;
 - d. 3 January 2014 – evaluation of invitations to tender was due to be completed;
 - e. 29 January 2014 – award decision was to be made; and
 - f. 30 January 2014 – award decision was to be published.
- 7.66 However, the timetable set out above had slipped by December 2013. We have been informed that PQQs had been received¹⁸⁹ and evaluated by officers who, in mid-December 2013, were preparing the

¹⁸⁸ The contract is not listed in the Contracts Listing as the contract had not been awarded when this listing was produced.

¹⁸⁹ The tender having been advertised prior to December 2013.

invitations to tender to be sent to bidders. We understand that by December 2013, as a result of the slippage, officers were anticipating that the contract would be awarded by 1 April 2014.

- 7.67 This is consistent with our interview with the Mayor who indicated that there had been a number of delays in relation to this tender process prior to December 2013.
- 7.68 On 12 December 2013, an officer was asked to meet with the Mayor, Councillor Asad and Councillor Robbani in relation to this contract. Prior to this meeting, we have been informed that the Mayor had asked the officer responsible for a list of bidders that had submitted PQQs.
- 7.69 The officer has also informed us that, following the Mayor's request for a list of bidders, the officer consulted with the Legal department as to whether such a list could be provided to the Mayor. In interview, the officer stated that the advice they received from the Legal department was that "*I could show him the list but not give him a copy*".
- 7.70 The officer has provided us with the list taken to the meeting with the Mayor et al on 12 December 2013, and has informed us that during that meeting the Mayor annotated the hardcopy list of suppliers to indicate which suppliers he did not wish to be selected. The Mayor has informed us that "*whilst I do not specifically recall the meeting, I can say with absolute certainty that I would not have annotated any officer document listing of bidders*".
- 7.71 We have been informed that, following the meeting with the Mayor et al, the officer met with the Corporate Director for ESCW, to brief him about the meeting. We have been provided with the notes that officer took of the meeting with the Corporate Director for ESCW on 13 December 2013, which stated that:
- a. "*[I] found it impossible to challenge what the Mayor was asking me to do in front of 2 other councillors*";
 - b. The Mayor asked to see a copy of the schedule of providers and "*he [the Mayor] said that this was an 'informal meeting' at which he was 'trying to help me and my officers'*"; and
 - c. "*he [the Mayor] 'knew things about some organisation eg [sic] that some of them were shams just set up for the tender'. However he was also clear about some organisations that he on no account wanted put through to tender stage and this was totally inappropriate and outside procurement rules.*"
- 7.72 We were informed by an officer that a more senior officer verbally instructed them to put the procurement of AHWB 4369 on hold. The officer also informed us that "*the pause was at the direction of the Mayor*".
- 7.73 We have been provided with email correspondence, dated 24 December 2013, from the officer to other officers and a Legal officer that discussed how bidders were to be informed that there would be a delay in the process. That email correspondence stated "*I have drafted the wording below as the basis for a communication to the domiciliary care bidders. I am struggling to come up with a 'clean' explanation*

that avoids any possible challenge or unintended consequences, but this seems to me to be the path of least resistance as it were. I'm not completely sure it's defensible (or follows any train of logic)..."

- 7.74 The wording drafted by the officer stated that *"There has been an exceptionally high level of interest in this tender, with the Council receiving 50% more submissions in response to this tender than for the equivalent tender exercise conducted in 2012. As a result of this unexpectedly high level of interest in the tender the Mayor has asked officers to pause the current tender exercise and to review the current commissioning approach to identify whether there are opportunities to utilise the very high levels of interest generated in order to provide a better overall balance between offering organisations the opportunity to do business locally and providing high quality, good value personal care services to our residents. This review will take place during the early months of 2014, with a view to restarting the tender process during the year."*
- 7.75 The email chain proceeded to discuss the communication with bidders and the potential timeline of the process. The officer stated that *"Just so I'm clear therefore, the expectation is that we'll invite tenders in June 2014? I'm not sure what I can say about the revised process other than it involves long grass and the tender being kicked into it!!!!"*
- 7.76 We have discussed the reference to a *"clean explanation"* made by the officer (as referred to in paragraph 7.73) with them and they stated that *"what I meant was that in the absence of a clear rationale for pausing the process we clearly had to tell bidders something because bidders were expecting to be invited to tender or be told that they hadn't been successful and I needed to come up with an explanation that minimised the risk of challenge and minimised the risk of alienating potential providers"*.
- 7.77 On Friday 17 January 2014, a senior officer emailed the officer and the Legal officer stating that *"[the Corporate Director for ESCW] emailed me yesterday evening to let me know that the Mayor wants the above to be restarted urgently and the original timetable to be kept to (i.e. for contracts to be awarded pre Purdah). This will be a challenge and I need to know urgently if this is possible [-] the original timeline was tight."* The officer responded later on the same day setting out a proposed timetable to complete the procurement and publish the contract decision by 1 April 2014.
- 7.78 On Tuesday 21 January 2014 the senior officer emailed the Corporate Director for ESCW as follows: *"I'm just emailing to confirm the Mayor's instruction this afternoon to pause [the contract] (reversing the last decision to restart it back to the position agreed just before Xmas). This now does mean that if the Mayor were to change his mind again there is no possibility of contract award being made before Purdah starts. We were at the point of investigating with Legal what could/could not be done in the Purdah period."*
- 7.79 We discussed the decision to put the tendering process on pause in our interview with the Mayor. He stated that:

- a. He recalled having a “*discussion with the [Interim] Head of Paid Service to pause...*” because he was concerned “*that I would have been asked to make a decision within Purdah or leading up to the election period and I didn’t really want to make a decision...leading up to the election or within the Purdah period*”;
- b. He considered it to be an important contract as it concerned the care of the vulnerable and elderly and he “*wanted proper advice, proper information*” before making a decision, and that there had been a delay in the procurement;
- c. With reference to the delay, “*... there was a delay and the timing was wrong, it would have placed me in a really difficult position so... I sought advice, whether it would be possible just to pause it, not to stop it entirely, to pause it and we restart at the time same stage but not from the beginning, post-election and that’s what we did*”;
- d. He considered that it would have been “*wrong for me or any of my colleagues to take a decision leading up to election*”; and
- e. Ultimately “*...[he wanted to] make a proper decision, well informed decision, that’s why I had to pause*” the procurement.

7.80 We asked the Interim Monitoring Officer whether he had been consulted in relation to delays in contract procurement decisions, and he informed us that he did not recall having been consulted.

7.81 We note that guidance issued by DCLG stated that “*During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members*”¹⁹⁰. This year the last date for the publication of notice of election for the local elections was 14 April 2014¹⁹¹.

7.82 We asked the Corporate Director for ESCW whether he felt he could challenge the Mayor in relation to this delay. He stated that he had and “*asked why and I didn’t get an answer that I could understand*”. He has further added that he “*[understood] the Mayor’s questioning but felt we had answered them within the papers presented or in statements made during our meeting. If the Mayor did not understand sufficiently he would provide further questions to attempt to reach such an understanding. Whilst recommendations were not altered by such an exchange, significant delay was added to the process*”.

7.83 It appears that Members and the Mayor have sought to influence the on-going procurement process in relation to this contract at least by instructing officers to pause the process. In addition an officer has asserted that the Mayor sought to influence a shortlist of bidders, which the Mayor has denied. If the officer’s assertion accurately reflects the events then the involvement of the Mayor in an ongoing

¹⁹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5670/1878324.pdf.

¹⁹¹ <http://www.parliament.uk/business/publications/research/briefing-papers/SNO5262/election-purdah-or-the-preelection-period>.

procurement in this manner would appear to be inconsistent with the relevant requirements of the Constitution and the Procurement Procedures.

- 7.84 Officers have also expressed concern that by pausing the process the Authority has been left open to challenge, and has risked “*alienating*” suppliers. We note that the Mayor has cited concerns about having to make a decision within the pre-election period (or “*Purdah*”) as his rationale for pausing the procurement, however notwithstanding the slippage that had occurred in this contract (which the Mayor made reference to) at the time the Mayor paused this procurement, the officers were anticipating that the contract would have been awarded on 1 April 2014, whereas the pre-election period was due to commence on 14 April 2014.
- 7.85 We discussed the current status of the tendering process with an officer, who stated that:
- a. The procurement was effectively “*re-started at the beginning of June and.... we re-started with an advert¹⁹² on the basis of legal advice because there would be a shorter duration for the contract but it was made clear to existing bidders that they didn’t have to re-submit a PQQ*”; and
 - b. It was anticipated that, as a consequence of the re-start, the contract would now be awarded in November 2014.
- 7.86 The delay in the procurement process was not unique to this contract, and was the subject of an internal memo dated 8 May 2014. This memo had been sent to the Legal department requesting advice on how to proceed. We have been provided with this memo which refers to four contracts that had been delayed pending a decision to proceed being made by the Mayor. These contracts were:
- a. AHWB 4396 – Domiciliary care;
 - b. AHWB 4378 – Extra care sheltered housing;
 - c. ESCW 4468 – Direct payment support service; and
 - d. ESCW 4471 – Carers respite service.
- 7.87 Whilst we have not performed a review of the procurement of these contracts, we have been informed that the decision in relation to ESCW 4468 was published on 14 August 2014, however we note that this decision is subject to an O&S Committee Call in.
- 7.88 An officer has estimated cost savings lost as a consequence of delay in relation to ESCW 4468 of approximately £45,000 to July 2014 and approximately £11,000 per month going forward. The Authority estimates it has had to spend £55,000 more with the incumbent supplier than was necessary as a result of the delay which appears to be inconsistent with the objective of achieving best value.

¹⁹² We understand that effectively reverts the procurement process to the beginning.

AHWB 4154 New Dawn / First start day services

- 7.89 We have requested all the procurement documentation in relation to this contract, however to date, as set out below, we have not been provided with a full audit trail explaining the decision making in relation to the procurement of the services under this contract reference. In addition, the explanations received from the Authority have been inconsistent and have lacked clarity.
- 7.90 During the course of our work, we were informed that “*AHWB 4154 was not progressed, the Services being consolidated and awarded as part of AHWB 4220*”. However, when we reviewed the tender documents in relation to AHWB 4220 we did not identify any reference to AHWB 4154 within the documentation provided.
- 7.91 An officer has informed us that New Dawn and First Start are “*two different services*” and that the “*New Dawn*” portion of this contract was tendered as part of a wider exercise involving three tenders, references AHWB 4220, 4221, and 4179. However, the officer recollected that [redacted] (“*ND Bidder*”) “*were...too expensive so they were not recommended for award*” in relation to “*New Dawn*”. As noted above, we found no reference to ND Bidder referred to by the officer in AHWB 4220; in addition we also note that the contract awarded under AHWB 4179 was not awarded to ND Bidder.
- 7.92 From our review of the documents provided in relation to AHWB 4221, we note that ND Bidder was awarded the contract under AHWB 4221.
- 7.93 We have subsequently been informed in a written response from the Authority that:
- a. “*New dawn is included in the process for tender for a Framework for day opportunities AHWB 4179 and the First Start service was taken out of scope*”;
 - b. “*This means that AHWB 4154 was effectively cancelled*”;
 - c. “*[ND Bidder] (in respect of New Dawn) did not tender for inclusion on the Framework but in order to balance our statutory community care duties to provide services to meet eligible need with our requirements under Competition Law, and in order to avoid a scenario where a substantial number of existing service users were ‘forced’ to switch to alternative provision with providers on the [PPF] Framework it was decided to leave those placements with New Dawn and rely on the DASS’s¹⁹³ delegated authority to make placements to meet eligible community care needs.*”; and
 - d. “*The situation with First Start is an equivalent one in the sense that no competitive procurement process has been undertaken because, if I recall correctly (but I have no documentary evidence for this) it was felt there was unlikely to be a sufficiently competitive marketplace (it is a very specialist service) to make a competitive process worthwhile, hence placements continuing to be spot purchased*”.
- 7.94 During the fact checking exercise, the Authority further added:

¹⁹³ We have been informed that this refers to the Director of Adult Social Services.

- a. *“The First Start service...has low levels of service turnover: an average of one new referral per year in the last three years”;*
- b. *“The service was developed by [ND Bidder]...and individual packages of care have been spot purchased to meet the identified eligible social care needs for a number of years”;*
- c. *“No overarching contract has been awarded under which these individual packages have been commissioned – individual packages are commissioned using a Purchase Order, with the Care Plan for the individual service user forming part of that (Purchase Order).”;* and
- d. *“While the aggregate level of spend is above the EU threshold this aggregate spend is made up of individual care packages of community care funding. Were the Council to withdraw from this arrangement it is highly likely (based on previous similar experiences) that a significant portion of the service users would exercise their right to take their Personal Budget as a Direct Payment and continue to purchase the service directly from [ND Bidder].”*

7.95 We have been informed that procurements of this nature either follow the tender process or can be awarded via a CDA in specific circumstances (see paragraph 7.10).

7.96 We have been provided with the RCDA and note that there are two entries for ND Bidder:

- a. 11 March 2013: £142,089 - no description of the decision taken is provided; and
- b. 22 May 2013: £71,000 – the narrative stated *“Waiving Financial Regulations Under £250,000”*.

7.97 We have been informed that each CDA should have a supporting report. We have reviewed the reports associated with the above CDAs and note that they refer to the *“New Dawn”* service and that the purchase was in respect of existing users only, and that the departure from the procurement rules is *“justified as being in the best interest of service users”* whom we note are *“people with learning disabilities and/or complex needs”*. We note that both reports also included an approval from a Legal officer.

7.98 We note that the publically available audited financial statements of ND Bidder listed the line item *“LBTH – First Start”* under the heading of *“grants receivable for charitable activities”* in respect of the four years ended 31 March 2010-2013. The amounts disclosed ranged from c£472,000 to c£519,000 per annum. It appears therefore that these services are being procured by the Authority from this supplier and (as stated in 7.93) no competitive procurement process has been undertaken in respect of this, and the Authority has *“no documentary evidence”* to support this decision. During the fact checking exercise the Authority further commented that a *“RCDA is not required for spot purchases within the prescribed procurement levels.”*

7.99 We note that the Constitution and the Procurement Procedures stated that *“Keeping a register of all contracts¹⁹⁴...”* is the responsibility of *“Chief Officers”* and *“Corporate Directors”* respectively, and that the Procurement Procedures required that all contracts over £25,000 are captured on the Central

¹⁹⁴ I.e. irrespective of value.

Contract Register. Whilst a contract with the description “New Dawn /First Start Day Services” is listed within the Contracts Listing, the information is inaccurate as we have been informed that contract AHWB 4154 was “*effectively cancelled*”. This suggests that the required rigour has not been applied to the process of capturing the information, and it therefore appears that there is weakness within the Authority’s processes relating to the requirements to maintain a Central Contracts Register.

7.100 In addition, it appears that contracts that are awarded using waivers of the Procurement Procedures via CDAs are not captured in the Contracts Listing. Although the requirement to list a contract is derived from the Procurement Procedures, we would expect that ensuring a complete log of contracts would be required under a regime of good governance and would not be included in any waiver of the process. We also note that we requested a list of all contracts let by the Authority and therefore we would have expected the Contracts Listing provided to us to include such items.

ESCW 4504 Mentoring project

7.101 The stated objective of contract ESCW 4504 was to provide “*a mentoring service for children and young people between the ages of 10-16 years*”¹⁹⁵. The advertisement of the tender stated that:

- a. The contract start date was 1 December 2013;
- b. The anticipated duration was two years and four months, i.e. the contract end date was 30 March 2016, which we note is inconsistent with the Contracts Listing provided;
- c. The deadline for submission of the bids was 28 October 2013; and
- d. All communication in relation to the tender was to be via the e-tendering portal.

7.102 We understand that six bids were received by the deadline of noon on Monday 28 October 2013. One of the bidders, [redacted] (the incumbent provider) (“MP Bidder 1”) logged a concern, via email rather than via the e-tendering portal, at 6.25pm on Friday 25 October 2013, in relation to clarity of the information on price provided by the Authority. However, MP Bidder 1 subsequently submitted their bid at approximately 2am on Monday 28 October 2013, before the Authority would have had an opportunity to respond to MP Bidder 1 (via either medium) to the email query.

7.103 We have seen email correspondence between a Legal officer and officers, on 20 November 2013, where officers were seeking legal advice in relation to the “*costing queries*” of MP Bidder in advance of the Corporate Director’s meeting with the Mayor “*so that he can brief the Mayor on a tender we are in the process of trying to award*”. The legal advice being sought was in relation to whether there was “*sufficient [cause] to suggest that organisations would have been confused about the pricing schedule... and if so could we re-tender the service or would we be safe to award?*”.

7.104 We have seen no further reference to the Mayor or Members in relation to this contract, however it has been asserted by a third party that officers received queries from the Mayor’s Office in relation to the alleged confusion regarding pricing.

¹⁹⁵ As per the advertisement of this contract.

- 7.105 The email referred to in paragraph 7.103 above includes an attachment entitled “*Briefing Social Care mentoring Project Tender*”, which stated that:
- a. “*The incumbent provider did not score the highest score in the evaluation process. This was largely due to their pricing schedule and numbers of young people they could work with. In all other areas they scored exceptionally high.*”;
 - b. “*The organisation that scored highest overall did so in terms of quality and pricing. On this basis and in keeping with procurement rules it is proposed that the organisation that scored the highest in the tender evaluation be awarded the contract.*”;
 - c. “*The information provided in the tender pack clearly stated the total contract value...*”;
 - d. “*The incumbent provider did however send an email seeking clarification [less than one working day before the deadline] which indicated that they understood the above, but suggested there was another figure quoted in the tender documentation. There was no mention of another contract value in the tender pack but I would imagine they were referring to the advertisement which as required had to state the maximum that could be available*” and “*the documentation makes it very clear that all questions must be submitted through the tender portal system*”;
 - e. “*Another provider had asked for clarification [relating to the pricing]... and the response was posted onto the portal for all providers to see.*”; and
 - f. “*The incumbent clearly didn’t look at the portal and other organisations submitted tenders for a higher amount than that specified in the tender pack it could be taken that there was indeed on-going confusion regarding the contract value*”.
- 7.106 Officers therefore appeared to be of the view that MP Bidder 1, and indeed all the bidders, had the information they required when submitting bids through the Authority’s clarification on contract value published on the e-tendering portal. We have confirmed that MP Bidder 1 had used the e-tendering portal prior to this contractual tender.
- 7.107 The briefing note (referred to in paragraph 7.105) also introduces, within its concluding paragraph, the fact that the Authority had received multiple bids higher than the contract value. Officers appeared to be of the view that the combination of these bids with MP Bidder 1’s query meant that multiple bidders could have been confused about the contract value, despite the Authority’s prior clarification.
- 7.108 The Legal officer then provided advice that “*it would be feasible for you to tell all the bidders that it has become apparant [sic] that there could have been confusion as to the Council's requirements which may have affected the bids.....It is highly unusual and generally not recommended that you allow bidders to reprice but given that there does appear to have been genuine confusion amongst the bidders so it would be appropriate to deal with the point before we award...*”.
- 7.109 On 27 November 2013 all bidders were informed (via the e-tendering portal) that there had been potential confusion in relation to pricing, and requested to confirm that the bid submitted was correct by 29 November 2013.

- 7.110 We have been provided with detail of the responses, and note that:
- a. Two of the six bidders did not respond;
 - b. Two of the six bidders confirmed no changes to their initial bids;
 - c. MP Bidder 1 reduced their price from approximately £55,500 to £33,000 per year; and
 - d. [Redacted] (“MP Bidder 2”) reduced their price from £54,134 to £32,516 per year.
- 7.111 The information provided by the Authority illustrates that four of the bidders responded to the clarification point raised by the Authority. The Authority has also asserted that the supporting evidence provided “*clearly show that all re-submissions were received by 29 November 2013*”, however, the document provided does not indicate the date on which these were received.
- 7.112 MP Bidder 1 was also asked for further clarification on 4 December 2013 in respect of their revised bid which the Authority requested they responded to by 6 December 2013.
- 7.113 We have been provided with scoring of the revised bids and note that MP Bidder 1, the incumbent, scored the highest and was subsequently awarded the contract on 10 December 2013. This was in contrast to their earlier scoring, where they had not scored the highest “*largely due to their pricing schedule and numbers of young people they could work with*”.
- 7.114 In addition, we have seen email correspondence between officers dated 17 July 2014 which suggests that as at that date there was no signed contract in relation to this award, however we understand that the start date of this contract was 20 December 2013.
- 7.115 The retention of signed contractual agreements is a crucial part of good governance in relation to procurement and contracting. Absence of signed contractual agreements suggests that the Procurement Procedures requirement that “*Every Contract must be confirmed in writing, detailing a description of the supplies, the price to be paid and any discounts or adjustments to be applied, and the times for completion or delivery*” has not been followed in this case. We also note that lack of signed contract exposes the Authority to risk if terms were to be disputed at a later date by the supplier.
- 7.116 We note that it has been asserted by a third party that MP Bidder 1 were informed by someone at the Authority that the pricing of their bid was uncompetitive after the bid was submitted and that the logged concern was a means to allow MP Bidder 1 to re-submit their tender at a lower price. We have not seen any evidence to support this assertion.
- 7.117 The briefing note (referred to in paragraph 7.105) suggests that officers were of the view that MP Bidder 1 had all the information that was required, and officers were aware of the Procurement Procedures that “*during the bidding process, should any bidder raise a query, the answer will be issued to all bidders, for e-tenders this will be through the portal*”, and that MP Bidder 1 submitted their bid before a response (whether email or via the e-tendering portal) was sent by the Authority.

7.118 The legal advice that it was appropriate to re-open the tender was based on there being “*genuine confusion amongst the bidders*”, however this appears to be a stronger position than the view expressed by officers to the Legal officer within the email attachment referred to in paragraph 7.105 which suggests that “*it could be taken there was indeed on-going confusion*”. Therefore the reason given to re-open the tenders may be invalid particularly as Bidder 1 had all the information the other bidders had, however the Authority has done so.

AHWB 4179 – Learning Disabilities Day Opportunities - Community Hubs

- 7.119 As stated in paragraph 7.91, AHWB 4179 was procured as part the “*Learning Disabilities Modernisation Programme*” and was a two year framework contract¹⁹⁶ for provision of community hubs in which community based activities can be held for individuals with learning disabilities.
- 7.120 We note that this contract was not listed on the Contracts Listing provided to us, and consequently was not amongst the population from which we selected our sample. However, this contract was referred to in a meeting with an officer as an example of the Mayor influencing the procurement and therefore we have requested all procurement documentation in relation to this contract. We have been informed that the omission of this contract from the Contracts Listing was an error.
- 7.121 We note that the Constitution and Procurement Procedures stated that “*Keeping a register of all contracts...*” is the responsibility of “*Chief Officers*” and “*Corporate Directors*” respectively, and that the Procurement Procedures required that all contracts over £25,000 are captured on the Central Contract Register. As this contract has been omitted it suggests that the required rigour has not been applied to the process of capturing the information, and it therefore appears that there is weakness within the Authority’s processes relating to the requirements to maintenance of a Central Contracts Register.
- 7.122 We have been provided with the evaluation scoring schedule¹⁹⁷ in respect the submitted tenders which listed the ten bids and their evaluation scores, as scored by officers.
- 7.123 We note that two bidders [Redacted] (“DO Bidder 1”) and [Redacted] (“DO Bidder 2”) scored over 70% and two further bidders, [Redacted] (“DO Bidder 3”) and [Redacted] (“DO Bidder 4”) scored between 60% and 70%. We have been informed by an officer that “*Initially, we worked on a 70% threshold in order to be recommended to the preferred provider framework. This did not give us sufficient capacity and we sought advice from Procurement who advised that a threshold did not have to be set in this process as it can limit choice and capacity when you are looking at a number of services being put on a framework*”.
- 7.124 We have been provided with a document entitled “*Community Hub Preferred Provider List – Tender Evaluation*” and note that this document included comments in the bid evaluation that stated, in

¹⁹⁶ With an optional further year extension.

¹⁹⁷ Referred to as an “ITT Method Statement Score Breakdown”, and is not dated.

relation to [Redacted] (“DO Bidder 5”), (which scored 23% and was ranked ninth out of the ten bidders) that *“The following problems were identified from the accounts, audit report and report by the management committee supplied by the organisation[:]*

- a. *Payments by the finance manager without supporting documents and expenses payments.*
- b. *Management committee noted a lack of internal financial control.*
- c. *Issues raised with overcharging LBTH.*
- d. *There was a deficit of £28,455 in 2009/10 and £328,778 in 2010/11.*
- e. *Block contract with LBTH terminated.*
- f. *There is a cash flow problem.*
- g. *The auditors stated that the evidence available was limited due to lack of internal control in place generally, in specific control over sales and receipts, purchases, purchases [sic] payment of expenditure, bank transfers and wage systems”.*

7.125 It appears that officers were concerned with the situation where only two bidders scored over 70%. We have been provided with a document entitled “*Issues Log to support Contracts 4220/4221/4179*” which listed seven “*issues/risks*” in respect of AHWB 4179. These included:

- a. *“70% score enables two organisation through (both current providers)” which “doesn’t provide many more options and choices for service users”;*
- b. *“Reducing score to 60%” with the stated impact being “more services user choice however diluting the emphasis on quality but we would have concerns around providers. This compromise would engage [DO Bidder 3] and [DO Bidder 4], both local providers”;* and
- c. *“Current Provider [DO Bidder 5] not scoring enough to get onto PPL”;* and
- d. *“Challenge regarding those onto or not onto the PPL by providers/Members” with stated impact including “delay to decision for PPL and extension of contracts at current rather than new spec cost”.*

7.126 In addition, it appears that officers discussed these concerns with Members. We have reviewed notes¹⁹⁸ of a meeting on 28 September 2012 which state that:

- a. *“the meeting to discuss the recommendations for contract award going forward... at Cabinet on Wed 3rd October”;*
- b. The attendees of the meeting were Councillor Asad, Councillor Robbani, the former Monitoring Officer and an officer; and
- c. *“Agreed that contracts should be awarded to the following suppliers (in order of score rating):” [DO Bidder 1], [DO Bidder 2], [DO Bidder 3], and [DO Bidder 4].*

7.127 An officer has informed us that ultimately officers were of the view that DO Bidder 3 and DO Bidder 4 scored sufficiently highly to be considered for inclusion within the framework agreements.

¹⁹⁸ These appear to be informal and were prepared by an officer who has informed us that these were emailed to the attendees.

- 7.128 There appear to have been a number of Cabinet reports drafted in respect of this tender, with differing recommendations, however, not all of these reports appear to have been formally considered by Cabinet. It has been asserted by an officer that reports were “*pulled from the Cabinet*” on instructions from Members and/or the Mayor.
- 7.129 We have been provided with “*The restricted report to Cabinet of Corporate Director of Adults Health and Well Being*” dated 3 October 2012. We note that the report stated that “*all providers that score above 60 percent in the scoring exercise will be put onto the [PPF] list*” and requests that the Cabinet approve the award to the four highest scoring bidders.
- 7.130 However, minutes from the subsequent Cabinet meeting on 3 October 2012 stated that “*The Mayor deferred consideration of the recommendations until a later date*”.
- 7.131 The minutes of a subsequent Cabinet meeting, on 7 November 2012, stated that “*The public report [in relation to this contract] was withdrawn*”. We have seen that a restricted report was considered later on the agenda, however the minutes note that the Mayor deferred his decision.
- 7.132 The Cabinet report dated 8 May 2013 recommended that the contract be awarded to DO Bidder 1 and DO Bidder 2, and the minutes of the Cabinet meeting on that date resolved to approve that recommendation.
- 7.133 We have discussed the changes in the recommendations between the Cabinet reports, dated 3 October 2012 and 8 May 2013, which recommended four suppliers and two suppliers respectively, with an officer, who informed us that these changes were made as a result of discussions held between officers and Members between October 2012 and March 2013.
- 7.134 An email from an officer to the Interim Head of Paid Service¹⁹⁹, dated 26 October 2012, suggests that the Mayor was in discussion with officers in relation to the bidders on this contract. This email stated:
- a. “*the Mayor told me on Monday (21st) that he would not agree to contract award to [DO Bidder 3] or [DO Bidder 4] and that he wanted a strategy to support [DO Bidder 5]. I took advice from [a Legal Officer] and via Robbani made a proposal that contract awards are made but (with provider agreement) are issued with “conditions” that put in place tighter monitoring. This would also sort out [DO Bidder 5] issue.*
 - b. *Councillor C told me at HWBB²⁰⁰ on Tues (22nd) that the Mayor is not agreeable to this esp in the light of developments re [DO Bidder 3] and MSG²⁰¹...*
 - c. *Lot 3...to arrange mtg with Legal..with Cllr Assad [sic]. To note that there is a savings target on this and that delay costs approx. £50,000 per mth. We can absorb this for one mth but not beyond this must resolve mid Nov.”*

¹⁹⁹ We note that a Legal officer was also copied into this email.

²⁰⁰ Health and Wellbeing Board.

²⁰¹ Presumed to be a reference to the MSG Programme as DO Bidder 3 was initially recommended for two MSG awards by officers of approximately £36,000 and approximately £112,000 however ultimately received £nil and £80,000 respectively.

- 7.135 In addition, we have been provided with four documents dated 13 March 2013, which refer to meetings held on that date which relate to the tender of this contract:
- a. Two versions of a briefing note entitled "*Briefing note for the Mayor on "Modernising Learning Disabilities Day Opportunities – update"*" which had the stated purpose of "*Provide [sic] the Mayor with information about the procurement process and award recommendation for the two remaining competitive tender exercise....(block contract 4220 and...(spot contract 4179)*". The versions are identical except that one version concludes with various recommendations to the Mayor, including to "*support the award of the preferred provider spot contracts to the four providers who achieved the desired quality outcomes and value for money in the tender process*"; and
 - b. Notes of a briefing session attended by Councillor Choudhury, Councillor Asad, Councillor Robbani, and three officers, which stated that it was "*agreed that the top 2 scorers from the officers' evaluation [DO Bidder 1] and [DO Bidder 2] would be on the PPF. Existing users could carry on with [DO Bidder 3] up to a maximum spend of £100k (being the current annual spend) and existing users of other providers could continue to access their services by spot purchasing or a direct payment. New activity, where the user did not express a preference would be directed towards the two providers on the [PPF] framework.*"
- 7.136 DO Bidder 1 and DO Bidder 2 were awarded this contract on 8 May 2013. We note that DO Bidder 5 was not included in the contract award, and it is unclear why the Mayor sought a strategy to support them, particularly given the officer assessment of DO Bidder 5's bid, as set out at paragraph 7.124.
- 7.137 Whilst we have not discussed this specific contract with the Mayor, he stated clearly in interview that his involvement in procurement did not include influencing selection of bidders.
- 7.138 The chronology set out above indicates that Members involved themselves in the procurement process during the tender process before the final decision stage. As set out above (from paragraph 7.13 to 7.22), the Constitution delegates the authority in running procurement to officers, at the end of which the Executive may then only approve or reject the outcome, in either a minuted Cabinet meeting or documented Mayoral Decision. The Member involvement that appears to have occurred in this case appears, therefore, to be inconsistent with the relevant requirements of the Constitution.

Other testing

- 7.139 As set out in above, we selected five other contracts to review:
- a. AHWB 4220 – Complex and high needs service (learning disabilities day opportunities);
 - b. AHWB 4221 – Supported employment training and enterprise services;
 - c. CLC 4430 – Youth Service Delivery;
 - d. CLC 4428 – Victoria Park commercial event; and
 - e. CSF 4394 – Short break call off.
- 7.140 We note that, in relation to CSF4394, the signed contract stated the start date was 20 January 2013, whilst the Contracts Listing stated²⁰² the start date was 1 November 2012.
- 7.141 No further matters have come to our attention during our review of the five contacts listed above.

Items identified as part of our work on grants

- 7.142 As part of our testing on the awarding of grants in YCS, we were provided with a listing of 177 SLAs in the Period. We understand that SLAs were spot purchases of services and as such should have followed the Procurement Procedures, however, officers stated that they do not hold any procurement documentation in respect of any YCS spot purchases. Further testing identified that 15 SLAs were over £25,000 and we would therefore have expected them to be included on the Contracts Register. We noted that one organisation with an SLA of £40,000 in one year for “*working with and supporting Third sector groups*” was also listed on the Contracts Listing in respect of a contract valued at £30,000 in the same year for “*Third Sector Co-ordinator*”. We also noted that the remaining 14 SLAs over £25,000 (with a total value of £856,854) were not listed on the Contracts Listing.
- 7.143 In contrast during our discussions with officers in relation to contracts we were informed of a case where Corporate Procurement had identified that repeated “spot purchasing” was being used by officers to purchase the same type of equipment from different suppliers, and had required that their procurement should be “regularised” through the formal procurement process appropriate to the aggregate value of this repeated spot purchasing. However, officers stated that they had not discussed the aggregate value of YCS spot purchases with Corporate Procurement.

Corporate Intelligence findings

- 7.144 We have undertaken Corporate Intelligence open source searches to identify whether there are any formal relationships (e.g. common directorships) between the Mayor or Cabinet Members with the successful bidders. We identified one connection in respect of a directorship the Mayor held in one of the winning bidder organisations however this formal connection ended in 2003. No further connections were identified.

²⁰² We also note that the Contracts Listing appears to have included an error in the contract value listed.

Appendix



Department for
Communities and
Local Government

Will Kenyon
Partner
PricewaterhouseCoopers LLP
By email

Helen Edwards
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4 April 2014

Dear Will Kenyan

Letter of appointment

I am writing to inform you that the Secretary of State, in exercise of his powers under section 10 of the Local Government Act 1999 (as amended by the Local Audit and Accountability Act 2014), hereby appoints PricewaterhouseCoopers LLP (PwC) as the person to carry out an inspection of the compliance of the authority known as the London Borough of Tower Hamlets with the requirements of Part 1 of the 1999 Act in relation to the authority's functions in respect of governance, particularly the authority's functions under section 151 of the Local Government Act 1972.

In making this appointment and the directions set out below, the Secretary of State has had regard to certain documents that the Department has received about governance in Tower Hamlets, and the review of those documents undertaken by PwC, which recommends that appropriate further investigations are carried out to establish whether allegations about poor governance and possible fraud have any foundation. He has also had regard to the BBC Panorama programme broadcast on 31 March 2014, which made allegations about governance failures, poor financial management and possible fraud at Tower Hamlets, particularly in relation to grant payments.

The Secretary of State also, in exercise of his powers under section 10 (4) (b) of the 1999 Act, gives the following directions to PwC in relation to their undertaking the inspection.

First, PwC are directed that the matters to be covered initially by the inspection should in particular relate to: the authority's payment of grants and connected decisions; the transfer of property by the authority to third parties; spending and decisions of the

authority in relation to publicity, and the authority's processes and practices for entering into contracts.

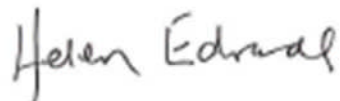
Second, PwC are directed that the inspection is to cover matters in relation to the period from the date at which the Mayoral form of governance was implemented in Tower Hamlets on Monday 25 October 2010 to the present.

Third, PwC are directed to report the findings of the inspection to the Secretary of State by 30 June 2014, or such later date as the inspector may agree with the Secretary of State.

The Secretary of State may following receipt of PwC's report or otherwise issue further directions to PwC.

Section 12 of the Local Government Act 1999 provides that the authority to be inspected must pay PwC's reasonable fees for carrying out the inspection.

Yours sincerely



Helen Edwards
Director General, Localism



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