

Commentary on the Authority's critique (the "Critique") of our Best Value Inspection report ("our Report") dated 16 October 2014

1. We set out below our comments on the points made by the Authority in its Critique of our Report. Except where otherwise stated we have adopted terminology used in our Report.
2. In summary, having carefully considered the Authority's comments, as explained more fully in the remainder of this document, we remain of the view that our Report is both balanced and materially accurate, and that the conclusions drawn therein are soundly based.
3. For ease of reference we set out our comments under the same headings as used by the Authority in its Critique. We note that the Critique also refers to the factual extracts (the "Extracts") we provided to the Authority on 11 September 2014 for the purpose of the Authority confirming the factual accuracy of those Extracts. As such we also deal with related comments made in the Critique concerning our approach to comments previously received from the Authority in relation to those Extracts.
4. This commentary 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 commentary.

A. "Major weaknesses in sampling methodology"

5. We reject the allegation that there were "weaknesses" in our approach to the selection of items for testing. We further reject the allegation that (following our receipt of the Authority's comments on the Extracts) we made an attempt in our Report to "disguise" such suggested weaknesses.
6. As noted above, the Extracts were provided for the purpose of the Authority having the opportunity to comment on the factual accuracy of those Extracts. As such it was not necessary for the Extracts to include all of the additional information, including discussion of our approach, that would be included in our Report. The purpose of including additional information concerning our approach in our Report was to assist the reader in understanding the context in which the findings set out in our Report had been developed. In summary, there was no attempt to "disguise" this or any other aspect of our approach to the Inspection. Rather, our overall approach to the selection of items for testing was set out clearly and transparently in Section 1 of our Report and in the subsequent sections of our Report dealing with particular areas of focus.
7. We note that the Critique asserts that the "*Extracts issued by PwC stated that the decisions associated with sampling and review were not driven by the essential Best Value review criterion of ensuring a representative sample, but instead were largely driven by third party information and other prior knowledge in relation to specific transactions*". This statement does not appear in the Extracts and is misleading. As explained in the preceding paragraph, our approach to selecting items for testing is set out in our Report. We consider that our approach to the Inspection was appropriate in the context of our instructions (as set out in the Appointment Letter), was properly tailored to the nature and scope of each area and represents a sound basis for the conclusions presented in Section 2 of our Report. Whilst the Critique does not make the point explicitly, if it is intended to suggest that a statistical sampling approach should necessarily have been adopted to the selection of items for testing, we disagree.

8. The Critique makes specific comments about our approach to our work concerning the Authority's payment of grants. The picture presented in the Critique is misleading.
9. As set out at paragraphs 4.8 and 4.12 of our Report, grant schemes selected for review were determined by taking into account their value, the level of discretionary decision making and the risks outlined in third party information received. In total, grant schemes representing 63% of the total value of approved awards in the Period were selected for detailed review. We consider that this level of coverage, together with the extent of matters arising from our work, was more than sufficient to form a robust foundation for our conclusions.
10. The Critique presents a particularly misleading picture when stating that: "*The risk of drawing unsound strategic conclusions was further compounded by instances where sampling has been carried out in very low numbers. For example, in relation to the Mainstream Grants Programme the total sample is 20 out of 431 applications. This equates to 1.8 grant files per MSG funding stream against which to make conclusions specific to the grant making function as a whole. Any strategic conclusion based on this sample size is inherently unsound and this was pointed out to PWC by the Council at the fact checking stage.*"
11. In fact, as set out in detail at paragraphs 4.13 – 4.83 of our Report, we completed extensive work to review the basis on which grants were awarded under the Mainstream Grants Programme. The Critique's reference to a sample of "*20 out of 431 applications*" in fact concerns the narrower matter of work undertaken by us in relation to the Authority's monitoring of grants after they have been awarded. Our work in this area is described at paragraphs 4.84 – 4.87 of our Report. These paragraphs state clearly that our work in this area comprised only "*a limited review of the available monitoring documentation against the output and reporting requirements for 20 applications*". We consider that the results of this testing justify the conclusions we draw concerning gaps in monitoring.
12. We set out at paragraph 2.7 of our Report the various matters arising from our work which led us to conclude that the Authority is failing to comply with its best value duty in the matter of grant making. It is clear that no conclusions were based solely, or even primarily, on the above sample size presented in the Critique. In relation to the monitoring of grants we noted that the matters arising from our testing, and the impact of spreading grant monies more widely, places more emphasis on the need for good governance around initial grant awarding procedures.
13. As regards Publicity, the Critique asserts that our Report "*fails entirely to set out a clear sampling methodology*". In fact Section 6 of our report is clear as to our approach and the nature of the work we have undertaken. In this context we note, and are surprised by, the statement in the Critique that our sampling comprised "*a check of timesheets for three temporary staff alongside a review of OFCOM rulings*". The full scope of our work is set out at Section 6 of our Report. At paragraphs 6.15 -6.44 we comment in detail on our review of expenditure of the Mayor's Office on media and communications advisors. In contrast to the picture presented in the Critique to the effect that our work was limited to a review of timesheets of "*three temporary staff*", these paragraphs explain that our work focussed on the utilisation of media advisors who were contracted 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*". In our view the use of the term "temporary staff" is a misleading one to use in the context of professional consultants engaged by the Mayor's office, and seems designed to play down the significance of these individuals and the activities they were involved in.

14. We also note the Authority's comments under this heading concerning the extent to which our Report takes account of relevant legislation, in particular section 123 of the 1972 Act. We note that s123(2) of the 1972 Act states: *"Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can be reasonably obtained."* We also note the Authority's reference to its internal processes and procedures relating to property transfers. We would expect these to take account of, and comply with, relevant legislation (including, without limitation, section 123 of the 1972 Act). Indeed we note that paragraph 3.4 of the Disposal Protocol states *"Members have both a fiduciary duty and statutory duty under S. 123 of the Local Government Act 1972 (see definitions) to the residents of the Borough to obtain best consideration"*. It should also be noted that, whether or not it is considered appropriate to accept the highest consideration, it is our view that the requirement for a robust governance process remains. In summary we remain satisfied that our work and the conclusions we present at paragraphs 2.8 to 2.11 of our Report concerning property transfers take appropriate account of the relevant legislative framework.
15. The Authority's final comments under this heading set out its view that our sampling would not inform: *"conclusions about actual performance, measured against the capacity for continuous improvement as one would expect in a Best Value inspection"*. In addition to our comments above referring to our approach to sampling, we also set out in our Report (at paragraphs 1.18 – 1.27) our views concerning the best value duty. As set out in those paragraphs, whilst continuous improvement is a factor, it is only one of a number of factors that need to be considered.

B. "Test of compliance with the best value duty against PwC definition"

16. Paragraph 10 of the Critique states that, in paragraph 1.25 of our Report, we say that *"failures need to be "regular or endemic as well as material in value and/or their wider implications" in order to constitute a potential failure to meet the Best Value duty"*.
17. Contrary to this assertion, we do not say that failures need to be regular or endemic in order for there to be a potential failure to meet the best value duty. The quote as cited in the Critique from our Report is incorrect and presented by the Authority misleadingly. What we actually say is that where errors, irregularities or fraud are found to exist, in order for there not to have been a failure in meeting the best value duty, *"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"*.
18. In light of the above, it is clear from our Report that the fact that an issue is isolated and exceptional does not, of itself, necessarily mean there will not have been a failure to meet the best value duty. Similarly, the fact that an item is immaterial does not, of itself, mean that there will not have been a failure to meet the best value duty. In addition to the need to take into account the above quote as it actually appeared in our Report, the other factors set out at paragraph 1.25 of our Report (as presented in the context of our overall discussion of the best value duty, as set out at paragraphs 1.18 – 1.27 of our Report), will also be relevant.
19. In summary, our view is that the conclusions in our Report are wholly consistent with a proper reading of our views concerning the best value duty.
20. We note that the Authority has repeated this misrepresentation of our views concerning the best value duty in other parts of its Critique. We refer to these misrepresentations as necessary in the remainder of this commentary.

21. At paragraph 12 of the Critique the Authority states that: *“PWC’s conclusion specific to processes and controls as they relate to property more widely is further flawed by its refusal to acknowledge or account for the ‘best consideration’ duty as set out by section 123 of the Local Government Act 1972. PWC also fails to demonstrate how the findings made in the three cases cited in the report had implications beyond the ‘immediate instance’ to suggest wider failings. The circumstances in each were demonstrably unique”*.
22. Contrary to the above statement, we do not present any conclusion specific to processes and controls as they relate to property *“more widely”*. Our conclusions relate to the four properties that we examined in detail. We set out our comments above concerning the significance of Section 123 of the Local Government Act 1972 to our work.
23. The Authority takes issue with our conclusions in the area of publicity spending at paragraphs 13 and 14 of its Critique. At paragraph 13 it states: *“In relation of [sic] publicity, PwC has failed to demonstrate ‘endemic or regular failure of material value or implication’ as required by its own criteria. Findings of alleged failure to comply with the Best Value duty are reduced to a lack of detail on timesheets of three temporary staff. At worst this indicated a failure of record keeping specific to three posts over four years. It is not evidence of an endemic or wider systemic failure or of a magnitude that have implications beyond the immediate instance or raise fundamental questions of a magnitude that justifies the conclusion of a failure in the best value duty”*.
24. Notwithstanding the impression created in the above text it is important to note that (as in the case of our conclusions relating to property transfers), we do not present an overall conclusion that relates to publicity spending as a whole. Rather we conclude in our Report that there has been a failure to comply with the best value duty in two areas. The first area concerns the use of media advisors in the Mayor’s office, specifically with reference to a lack of control around the monitoring of the demarcation of their activities between those which are genuinely of benefit to the Authority, and those which are of a party political nature. The second area concerns the findings set out in Ofcom Bulletin 222, the implication of which 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. As set out at paragraph 2.17 of our Report, we consider that this in itself constitutes a failure to comply with the best value duty in that instance.
25. In challenging our conclusions at paragraph 13 of its Critique the Authority repeats a number of the misrepresentations of our Report that it has raised earlier in the Critique.
26. In particular the Authority repeats the misquotation and misrepresentation of paragraph 1.25 of our Report. As discussed above, we do not say that failures need to be regular or endemic in order for there to be a potential failure to meet the best value duty.
27. The Authority also repeats its misleading description of media advisors as *“temporary staff”*. We have dealt with these issues in our earlier comments. We also note the Authority’s opinion that *“At worst this indicated a failure of record keeping specific to three posts over four years”*. We would not agree that a failure of record keeping is itself a matter of little significance in these circumstances. Our view remains that a lack of control around the monitoring of the demarcation of the activities of media advisors between those which are genuinely of benefit to the Authority, and those which are of a party political nature, is a significant matter.
28. In paragraph 14 of its Critique the Authority proceeds to make a number of misleading statements concerning our conclusions in relation to our review of Ofcom Bulletin 222. Specifically it states that: *“In any event, and in response to Ofcom Bulletin 222 the Council has updated and strengthened its Communications Protocol. This clearly demonstrates the*

Council's willingness and ability to review and improve its approach to matters. No further incident of such a nature has occurred demonstrating that controls are robust and the issue was an isolated [sic] rather than endemic or regular. These matters are not referred to by PWC."

29. By opening the paragraph *"In any event, and in response to Ofcom Bulletin 222 the Council has updated and strengthened its Communications Protocol"* it appears that the Authority is suggesting that there is a connection between the existence of the Communications Protocol and the matter of the demarcation of activities of media advisors that was discussed in the preceding paragraph 13 of its Critique. For the avoidance of doubt, there is no such link. The existence of the Communications Protocol has no bearing on the matter of the lack of control around the monitoring of the demarcation of the activities of media advisors.
30. As regards the remainder of the points made in paragraph 14 of the Critique:
 - a. It is incorrect to state that we do not refer to the existence of the Communications Protocol. We clearly refer to it at both paragraph 2.102 and at paragraph 6.63 of our Report. For example, at paragraph 6.63 we explain that the Communications Protocol was introduced in November 2013, and note that (in our interview with him) 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.
 - b. In suggesting that, because the issue was isolated rather than endemic or regular, the matter does not represent a failure of the Authority to comply with the best value duty in that instance, the Authority again repeats its mischaracterisation of paragraph 1.25 of our Report. As noted above, Paragraph 1.25 of our Report does not say that failures need to be regular or endemic in order for there to be a potential failure to meet the best value duty.
 - c. We do not consider that the issue of whether further incidents of such a nature as gave rise to Ofcom Bulletin 222 occurred between the relatively short period between November 2013 and 4 April 2013 (the end of the Period covered by our Inspection) affects our conclusion that there was a failure to comply with the best value duty as set out at paragraph 2.17 of our Report.

C. "Failure to properly acknowledge evidence demonstrating that the Council is meeting its Best Value duty"

31. In paragraph 16 of its Critique the Authority states that it provided us with a *"wealth of information concerning the evolution of its processes and procedures over the four year period covered by the inspection"*. It continues in paragraph 17 that *"The report does not refer to this evidence provided by the Council to demonstrate the systems and processes it has put in place to support continuous improvement"*. Paragraph 17 goes on to refer to evidence it provided to us in three areas and says that these are examples of matters that should have been referred to in *"A report that sought to draw strategic conclusions about the Council's ability to improve"*.
32. We would note that, in reaching our conclusions, we consider that we have taken appropriate account of all relevant information provided to us by the Authority. Similarly we have referred to information provided to us by the Authority in our Report where we considered it appropriate.

33. With reference to the Authority's suggestion that our Report "*sought to draw strategic conclusions about the Council's ability to improve*" we would note that we recognise in our Report (e.g. at paragraph 1.18 as part of our discussion of the best value duty) that the issue of continuous improvement is relevant to the question of whether the Authority is complying with its best value duty. However, it is only one of a number of factors.
34. We set out below our comments on the examples presented in the Critique at paragraph 17 as representing evidence of matters that the Authority considers our Report should have made reference to as evidence provided by the Authority to demonstrate the systems and processes it has put in place to support continuous improvement.

The Youth Service Improvement Programme

35. We refer at paragraph 4.181 of our Report to the "*YCS Business Plan*" that was provided to us during the course of our work. In the context of the Authority's reference to "*the evolution of its processes and procedures*" we note that we included in our Report reference in the plan to potential future change as regards the awarding of grants (e.g. the statement that "*The service will redesign the grants process in line with any corporate recommendations*"). We also referred to other improvements such as the introduction of an additional key performance indicator. In summary, we believe our Report was clear in referring to the existence of specific actions being taken in relation to grant awards made by the YCS.

Revised requisition templates addressing compliance issues with procurement below tender levels.

36. The Critique is incorrect to state that we made no reference in our Report to the above matter. At paragraph 7.41 we specifically refer to the revision to the procurement procedures in 2014, including the introduction of a request for quotation toolkit in response to procurements under £25,000.
37. It should also be noted that the reference in our Report to the above matter was included as one of many points within a section headed "*The Authority's response to recommendations made by Internal Audit*" (paragraphs 7.40 – 7.43 of our Report). In contrast to the wider point that the Authority seeks to make, the existence of this section itself is an example of our Report making appropriate reference to evidence provided by the Authority with a view to it demonstrating the evolution of its processes and procedures.

Needs assessments and geographical analysis in relation to MSG

38. The Authority also refers to "*clearly articulated needs assessments and geographical analysis in relation to MSG*" and cross refers to further comment on these documents later in its Critique. We set out our comments on these issues under Section G below.

Reference to the role of the Council's own audit and scrutiny processes in driving continuous improvement

39. The Authority refers to the above issue at paragraph 18 of its Critique as follows:

"The report neither recognises nor makes reference to the role of the Council's own audit and scrutiny processes in driving continuous improvement by failing to review the outcomes and learning resulting from them. Comment is limited to repeated quotation of the recommendations and the most critical parts of the Council's own findings. The report does not identify the actions taken by the Council to improve systems and processes in response to internal audit findings and there is no attempt to compare the arrangements adopted by the Council with the arrangements in other similar local authorities (essential

if seeking to justify intervention by exception). As part of the Council's fact checking response PwC was directed to relevant evidence and documents which had been provided to them during the inspection, and which supported the Council's ability to achieve progressive improvement through effective use of internal scrutiny and audit processes. PwC has failed to identify the significance of this or draw upon it in its final report".

40. The Authority does not state which audit and scrutiny processes it is specifically referring to in the above paragraph. However, we reject the assertion that our Report fails to consider the outcomes and learning from such processes to the extent that we have seen evidence of them during the course of the Inspection. The involvement of Internal Audit and of the O&S Committee in various matters within the scope of our Inspection is set out clearly in our Report. For example we discuss the role of the O&S Committee in relation to:
 - a. The MSG awards at paragraphs 2.22(a), 4.56 – 4.59 and 4.64 – 4.67 of our Report;
 - b. The sale of Poplar Town Hall at paragraphs 5.103 and 5.110 of our Report; and
 - c. The Sutton Street Depot at paragraphs 5.170 – 5.176 of our Report.
41. Similarly we refer to the work of Mazars (the Authority's outsourced Internal Audit providers) in undertaking investigation work concerning the sale of Poplar Town Hall at paragraphs 5.101 – 5.106 and at paragraph 5.110 of our Report.
42. Further we make reference to the involvement of Internal Audit in relation to the awarding of grants (at paragraphs 2.22(a) and 4.89 - 4.92 of our Report). In this regard we note that the evidence given to us indicates that Internal Audit has had limited involvement in this area. In the overall conclusions section of our Report, we note (at paragraph 2.7) that *"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"*.
43. We undertook significant review of the work of Internal Audit in the area of Contracting and presented our findings at paragraphs 7.24 – 7.43 of our Report. We included significant references to good practice reported by Internal Audit where we considered it appropriate and, as noted above, included a series of paragraphs under the heading *"The Authority's response to recommendations made by Internal Audit"*.
44. In summary we consider that we have indeed made appropriate reference to *"the role of the Council's own audit and scrutiny processes in driving continuous improvement"* and, by presenting appropriate detail in our Report, evidenced that we have considered the *"outcomes and learning resulting from them"*.

Reference to the Council's ability to achieve progressive improvement through effective use of internal scrutiny and audit processes

45. We note the comments towards the end of paragraph 18 of the Critique where the Authority states that *"As part of the Council's fact checking response PwC was directed to relevant evidence and documents which had been provided to them during the inspection, and which supported the Council's ability to achieve progressive improvement through effective use of internal scrutiny and audit processes. PwC has failed to identify the significance of this or draw upon it in its final report"*. We reiterate our view that we have taken appropriate

account of all relevant information provided to us by the Authority. We also draw attention to our comments at paragraph 2.22(b) of our Report where we state *“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”*.

46. In light of the above, we remain satisfied that we have made appropriate reference in our Report to information provided to us by the Authority concerning its use of internal scrutiny and audit processes. To the extent that the Authority has sought in its Critique to provide specific examples of the evidence and documents referred to in the above sentence we deal with them in the relevant part of this commentary.

Suggestion of need to compare the arrangements adopted by the Council with the arrangements in other similar local authorities

47. We note the Authority's statement that *“there is no attempt to compare the arrangements adopted by the Council with the arrangements in other similar local authorities (essential if seeking to justify intervention by exception)”*. However, the question of whether other authorities utilise similar governance processes to those adopted by the Authority, and whether other local authorities might be failing to comply with their best value duty, is not relevant to the issue of whether the Authority is itself complying with its best value duty.
48. Finally, for the avoidance of doubt, we note that we are not *“seeking to justify intervention by exception”*, nor indeed do we consider at all the matter of whether intervention is, or is not, justified on any basis. The question of whether intervention is justified is a matter solely for the Secretary of State to consider.

D. “The extent of the evidence base”

49. The Authority opens this section of its Critique by stating that *“It is clearly important to understand how heavily PwC have chosen to rely upon uncorroborated statements from a limited number of individuals to support wider conclusions about the Council.”* The Authority goes on to refer to requests put to us during the fact checking process to ensure that the report was clear whether sources were *“broad or narrowly based”*, and as to *“what corroborating evidence had been identified to verify the allegations referred to in the report.”* The Authority then states that *“PWC did not do these things”*.
50. Following the above statements, the Authority seeks to develop its argument further at paragraph 21 of the Critique by stating: *“It is not clear from the final version of the report whether (and if so to what extent) multiple allegations have come from the same person. There is no reason why this could not have been done while at the same time allowing PWC to preserve any confidence they believe existed. Thus allegations cited by PwC remain untested; they are stated without any evaluation of their validity. This gives a false impression. Moreover, the focus on concerns raised by only a small number of persons would have the consequence that any findings contained in the report would lack objectivity.”*

51. We reject the suggestion that our Report creates a false impression. We consider that our Report is appropriately clear as to the nature and extent of our evidence base. For example, in undertaking the Inspection, we have performed a number of interviews with existing and former employees of the Authority. Where relevant, we sought to corroborate information provided to us at interview by reference to relevant supporting documentation and referred to this in our Report. Where relevant supporting information has not been available, we have sought to make this clear in our Report. As regards the Authority's reference to whether sources were "*broad or narrowly based*", we do not consider this to be the only determinant of reliability. We also note that it is not a relevant issue when the situation concerns one person's recollection of a situation against another's. In such instances it is important to note that, as is clear from our Report, we have in all cases sought to portray contrary views and evidence fairly.
52. Additionally, as we state clearly in the Introduction to our Report, we have been conscious of the need to consider carefully the extent of weight that can appropriately be given to information provided by third parties. In this context we note that, as stated in our Report:
 - a. "*Over the course of the Inspection we have received 256 communications into [our dedicated] email address from 38 individuals.*" (Paragraph 1.37 of our Report).
 - b. "*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 provided much, if any, weight.*" (Paragraph 1.39 of our Report).
53. In summary, and for the avoidance of doubt, we have not made wider conclusions about the Authority on the sole basis of statements that have been made to us in the course of our work. However, where we consider it credible, we believe that it is appropriate to take into account all evidence provided to us in reaching our conclusions. To the extent that the Authority has sought to refer in its Critique to particular examples of situations where they consider our approach to have been inappropriate, our response is set out at the relevant section in this commentary.

E. "Failure to correct or remove significant factual inaccuracies or unsubstantiated allegations"

54. In this section of its Critique the Authority sets out its argument that we failed to correct or remove from our Report what the Authority considers to have been significant factual inaccuracies or unsubstantiated allegations. At paragraph 24 it sets out the instances that it presents in support of this argument.
55. Before considering the specific instances presented by the Authority in support of its argument, we also note that it states, in paragraph 23 of the Critique, that "*Notwithstanding that PWC might legitimately wish to demonstrate that they have taken in to consideration two or more opposing positions in the text of the report in such circumstances a conclusion is necessary.*" With reference to this general comment, we note that the Authority accepts that we might consider it necessary to take into consideration two opposing views. However we do not accept that, in the circumstances of this Inspection, it is necessary for us to reach a conclusion concerning which of the two opposing views we should accept. As set out above, where we consider it credible, we consider that it is appropriate to take into account all evidence provided to us in determining our conclusions.

56. Where we considered the Authority's responses during the fact checking process to be valid, we amended our wording accordingly. Our comments on the specific instances presented by the Authority are set out below.
- **First bullet: Evidence of the LBTH Solicitor concerning his recollection "that it was "common knowledge" that the Mayor was familiar with the person behind Dreamstar Ltd." (paragraph 5.118 of our Report)**
57. The Authority asserts in its Critique that "*PwC included an allegation that the witness has since clarified to them cannot be substantiated. During the fact checking exercise the Council questioned the LBTH Solicitors assertion that it was "common knowledge" that the Mayor was familiar with the person behind Dreamstar Ltd. PwC reverted to the LBTH Solicitor for further clarification. Paragraph 5.118 contains the same assertion and further states that the LBTH Solicitor has clarified more recently that he is not in a position to substantiate this assertion. Nevertheless, the unsubstantiated assertion remains in the report giving it greater legitimacy than is justified.*"
58. We note the Authority's comments. However, we consider that the LBTH Solicitor's evidence presented to us at interview (i.e. that it was "*common knowledge*" that the Mayor was familiar with the person behind Dreamstar Limited), was clear as to his personal recollection of the position. We also note that the LBTH Solicitor was a professionally qualified individual. As such we would expect him to be particularly mindful of his professional obligations during interview with us. Whilst the LBTH Solicitor was unable to provide evidence to substantiate this comment, he did not retract his comment. We also note that his evidence at interview was consistent with contemporaneous notes written by him in which he referred to instructions having come "*from the very top*" (namely the Mayor) and the need to be "*mindful of the connections*" (see, respectively, paragraphs 5.71 – 5.72 and paragraph 5.81 of our Report).
59. In summary, we considered it appropriate to include the LBTH Solicitor's evidence, but also to balance this by including his subsequent comments, as summarised above by the Authority. Alongside this, we set out clearly the contrary view expressed by others. We remain of the view that this was the correct approach. Indeed, we believe that to omit a balanced presentation of such evidence from the section of our Report dealing with a significant transfer of property would itself have been inappropriate.
- **Second bullet: Our view that the "Authority's response to the identification of issues in the above areas [i.e. the awarding of grants, the transfer of property, spending and decisions in relation to publicity, and procurement] suggests a tendency towards denial or obfuscation rather than an inclination to investigate concerns raised." (paragraph 2.22 of our Report)**
60. The Authority states that "*In support of this allegation PwC state in relation to the Mazars report into the sale of Poplar Town Hall, that "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)"*".
61. As regards this issue of the scope of instructions given to Mazars we note that the Authority considers our Report to be incorrect on the basis that "*the requirements of the Full Council motion were fully communicated to Mazars and formed part of their work*". In fact, as is clear from our Report, we do not suggest that the requirements of the Full Council motion were not communicated to Mazars. Our point is a simple one, namely that the instructions given to Mazars (as set out clearly in their terms of reference - attached as Appendix 1 to their report), do not reflect the scope of work as agreed by the motion passed at the full Council meeting. Specifically the terms of reference given to Mazars do not include the requirement that "*the investigation should pay particular attention to any potential*

conflicts of interest". We also note that there is no reference to the issue in the Mazars report, nor any other suggestion that Mazars paid "*particular attention to any potential conflicts of interest*" within the scope of their work.

62. In summary it is clear that the terms of reference given to Mazars were limited in scope compared to the motion passed at the full Council meeting. There is no inaccuracy in our Report and we remain of the view that this is an appropriate matter to reflect in support of the view expressed at paragraph 2.22 of our Report.
63. It should be noted that the above matter is only one of a number of issues that we present in our Report supporting our view that the "*Authority's response to the identification of issues in the above areas [i.e. the awarding of grants, the transfer of property, spending and decisions in relation to publicity, and procurement] suggests a tendency towards denial or obfuscation rather than an inclination to investigate concerns raised*".
 - **Third bullet: Our reference to the delay in contract completion in support of our conclusion that the Authority failed to meet its best value duty in relation to the sale of Poplar Town Hall "as the winning bidder needed to put financing in place" (paragraph 2.9b of our Report)**
64. The Critique asserts that "*Paragraph 2.9 cites the eventual delay to contract completion by the successful winner of the contract race as one of the alleged ways in which the Authority failed to meet [sic] its Best Value duty., [sic] This fails to acknowledge or consider the Councils [sic] "best consideration" duty under s123 of the Local Government Act 1972*".
65. The Authority then goes on to state that "*In addition, the Authority provided PwC during the fact checking stage with evidence that demonstrates that the Corporate Director – Development & Renewal was ensuring that his officers were behaving fairly and were clear that their decisions were being driven by their duty to achieve 'best consideration'. This evidence has been omitted by PwC.*"
66. In considering the comments in the Critique it is relevant to note the full text of the paragraph (2.9b) from our Report, from which the Authority cites only part. This reads as follows: "*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.*"
67. Our focus on the "*best consideration*" duty is clear from the opening sentence. The second sentence is similarly clear that our reference to the delay in completion of the disposal is presented in the context of the Authority's use of a contract race to determine the successful bidder.
68. With reference to material provided during the fact checking process, we believe that the Authority is referring to email correspondence in which the Corporate Director – Development & Renewal requested officers to ensure the winning bidder completed on time. We note that this correspondence does not itself specifically refer to the issue of "*best consideration*". In any event, notwithstanding this correspondence, completion was delayed. As noted at paragraph 2.70 of our Report, a number of factors (of which the failure to complete within the originally agreed timetable was one) "*call into question the fairness of the contract race*". We also draw attention to paragraph 2.9 (c) of our Report, where we note that "*The winning bidder also asked for and was granted changes to the contract it had signed*". In our view this further undermined the purpose and credibility of the contract race process.

69. We also note in our Report that the Corporate Director – Development & Renewal was aware of the need for focus on the issue of “best consideration”. At paragraph 5.69 of our Report we quote an email sent to him by the Service Head for Corporate Property and Capital Delivery, in the context of consideration of alternative offers received for Poplar Town Hall, which states that “...*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*”.
- **Fourth bullet: Alleged omission of context from our Report concerning reference in an Internal Audit report that staff had been advised by a manager that an organisation (whose application for grant monies under the MSG 2012-2015 scheme was being considered), “had the full support and backing of the Mayor” (paragraph 4.89 of our Report)**
70. We note that the Authority's Critique asserts that “*Paragraph 4.89 as drafted omits essential context provided to PwC by the Council and the absence of which from the report serves to give the impression that political pressure was being brought to bear on officers by the Mayor*”. The essential context referred to by the Authority appears to be its statement that “*There is no evidence that this assertion [by a senior manager] was indeed based on direction from the Mayor*”.
71. The response of the Authority, as part of the fact checking process, claimed that the wording included in the Factual Extracts “*concludes that “Members and the Mayor have sought to influence the ongoing procurement process”*” and that the Mayor “*has purportedly sought to influence a shortlist of bidders*”. In response, our wording of paragraph 4.89 was amended to state that “*staff were advised by a manager within their section that the organisation “had the full support and backing of the Mayor”*”. The wording of our report is therefore clear that “*a senior member of that team was asserting that the organisation had the full support of the Mayor*”. We therefore reject the assertion that paragraph 4.89 of our Report misrepresented how the role of the Mayor is referred to.
- **Fifth bullet: Involvement of Members in procurement process (paragraph 7.61 of our Report)**
72. The Authority's Critique asserts that “*Paragraph 7.61 incorrectly asserts that members involved themselves in the procurement process during the tendering stage of contract AHWB4171.*” The Critique further states that “*The tendering process for this procurement started on 13 January 2012 with the publication of the contract notice*”.
73. We have clearly set out at paragraphs 7.51 to 7.63 the timeline of this procurement and the background to our views. We do not agree that we have misrepresented the information provided by the Authority. We also note the wording of the sentence at the end of paragraph 7.61 where we conclude our discussion of the issue by stating “*The Member involvement that appears to have occurred in this case appears, therefore, to be inconsistent with the relevant requirements of the Constitution*”.
74. It is further stated by the Authority that “*Member engagement in a review of the Tollgate 1 procurement strategy for contracts which are not yet out to tender is in accordance with the Procurement Procedures and would be expected in any government context*”. As the Tollgate 1 process was completed in October 2009, and therefore the strategy was set, the involvement of Members in the procurement process beyond this date, without referral back to a formal meeting of the Cabinet, appears inappropriate. This view also appears to be consistent with our discussions with the Interim Monitoring Officer, the Mayor and officers as recorded at paragraphs 7.15 to 7.21 of our Report.

F. "Inclusion of narrative that implies wrongdoing where none has been evidenced"

75. We do not accept the Authority's assertion that we have sought to present or combine facts in our Report in such a way that they would be read as implying wrongdoing. We also reject the suggestion that facts should be omitted from the report on the basis that a reader may seek to draw conclusions which we ourselves have not made.
76. Our approach throughout the Inspection has been to present facts that we consider relevant to the areas subject to review in an objective, clear and transparent manner.
77. We set out below our comments on the specific examples that the Authority has presented in its Critique with a view to supporting the above assertion.
- **First bullet: The historical connection between the Mayor and the winning bidder for Poplar Town Hall**
78. The Critique introduces the above issue by stating that "*Paragraph 2.9 provides one of the main reasons why PwC considers the Council failed in its Best Value duty. It cites the historical connection between the Mayor and the winning bidder for Poplar Town Hall without providing any evidence that the Mayor was sighted on this fact at any time during the disposal process. Furthermore, it does not make clear that the process was sufficiently designed to ensure that the Mayor had no role in decision making and would not have known the identity of the individuals associated with the winning bidder.*"
79. Paragraph 2.9 of our Report sets out a number of factors concerning our conclusion that the Authority failed to meet its best value duty in relation to the sale of Poplar Town Hall. The point referred to by the Authority is one of those factors and the full text (from paragraph 2.9 (d)) of our Report presents our position as follows: "*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.*" It is therefore clear that we have not sought to conclude as to whether the relationship between Dreamstar Ltd and the Mayor was known within the Authority at the time.
80. With reference to the above extract from the Critique, and the Authority's other points under this heading, we also draw attention to our earlier comments (in Section E) concerning the evidence of the LBTH Solicitor during our interview as to his recollection "*that it was "common knowledge" that the Mayor was familiar with the person behind Dreamstar Ltd*" (paragraph 5.118 of our Report) and the consistency of this evidence with contemporaneous notes written by him in which he referred to potential involvement of the Mayor. Specifically, as we quote in our Report (paragraphs 5.71 – 5.72), the LBTH Solicitor's notes state that:
- a. "*However, [an officer] is only doing as he's told, this has come from the Mayor*"; and
 - b. "*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"*".
81. We also draw attention to paragraphs 5.115 – 5.119 of our Report where we set out details of the basis for our statement (as referred to above) that "*The winning bidder was, as a matter of fact, connected to a person with other business interests that had an association with the Mayor*". In these paragraphs we also present clearly the statement made by the Mayor that he had no role in the disposal. Against this background we have not sought to conclude one

way or the other whether the Mayor was actually involved in decision making concerning the disposal of Poplar Town Hall.

82. Finally, we note that, as set out at paragraph 5.109 of our Report, the Interim Monitoring Officer shared our view that, in light of the circumstances as they appeared at the time of the Poplar Town Hall disposal, if he had been asked, he would have advised the Mayor to declare his relationship with the individual connected with the winning bidder.

83. In summary, in light of all of the evidence available to us, we remain of the view that the facts concerning the above issue were presented fairly in our Report and that the reference at paragraph 2.9(d) of our Report under the heading of “*Overall conclusions*” was appropriate.

- **Second bullet: Inclusion of dates at paragraph 5.250 of our Report**

84. The Critique notes that “*There is no evidence that materially connects the dates set out in paragraph 5.250 or explains why PwC decided to place them together*”.

85. Dreamstar Pictures submitted bids for both Limehouse Library and for Poplar Town Hall. In light of this we considered it relevant to note at which stage it withdrew from the Limehouse Library bidding process. We do not we draw any conclusion on this factual matter.

- **Third bullet: Recommendations from O&S to the Executive as presented at paragraph 3.31 of our Report**

86. The full text of paragraph 3.31 of our Report reads as follows: “*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*”.

87. In commenting on the above paragraph, the Authority states that “*Use of the word “appears” suggests that the Authority may have chosen to structure its arrangements deliberate [sic] in order to achieve the outcome described by PwC. The arrangements are in fact they [sic] governed by legislation and are consistent with arrangement [sic] in other Mayoral administrations.*”

88. We confess to being perplexed as to the Authority’s interpretation of the word “appears” in this context. Our comments at Paragraph 3.31 of our Report do not seek to suggest that the Authority has, in some way, chosen to structure its arrangements or altered its Constitution to grant additional power to the Mayor not permitted in legislation.

89. Put simply, our comments are not concerned with the intention behind the arrangements, but their effect.

- **Fourth bullet: Date of incorporation of Dreamstar Ltd and authorisation to proceed with a contract race**

90. It is stated in the Critique that “*Paragraph 5.70 seeks to infer a connection between the date of incorporation of Dreamstar Ltd and the date the Corporate Director Development & Renewal approved the contract race. While the statement is factually correct, there is no rationale or evidence that connects these two events. It is questionable what place such a*

statement has in a Best Value report. This was highlighted to PwC at the fact checking stage.”

91. As noted above (when commenting on a similar point made by the Authority in relation to Limehouse Library), we considered it appropriate in drafting our Report to set out significant facts concerning the property disposal process.
92. The date of incorporation of Dreamstar Ltd (as the successful bidder for Poplar Town Hall) and the date on which the Corporate Director - Development & Renewal approved the contract race are, we believe, significant facts in presenting the chain of events as it occurred in relation to the disposal of Poplar Town Hall. As such we consider it appropriate to have presented the timing of those events in our Report. As is clear from paragraph 5.70, we do not conclude as to whether the proximity of those two events has any wider implication.

- **Fifth bullet: The RCDA analysis set out at paragraph 7.11 of our Report**

93. With reference to the above analysis the Authority states that *“The RCDA analysis contained in paragraph 7.11 is misleading as the total value of RCDAs does not distinguish between the different types of RCDA (waiver of procurement procedures, adoption of capital estimates and virements) as set out in the Financial Procedures provided to PwC at the outset of the inspection”*.
94. Paragraph 7.11 of our Report clearly states that the total number of [R]CDAs for the Period includes those that are not related to the waiver of Financial Regulations. Further, at paragraph 7.10 of our Report we note that [R]CDAs *“can also be used for capital estimates adoption or virements”*. In summary we do not agree that our analysis at paragraph 7.11 misrepresented the Authority's use of [R]CDAs.
95. We note the Authority's assertion that *“PwC assert that they understood that RCDA are used in exceptional circumstances and the volume they have (incorrectly) identified suggests that their use is not exceptional”*. Whilst we state at paragraph 7.11 of our Report that *“it became apparent that [R]CDAs were being used by the Authority on a regular basis”*, this is clearly in the context of the facts presented at paragraph 7.11 (a-d). Finally, as is clear from paragraphs 7.10 and 7.11 of our Report, we do not conclude that RCDAs have been used in contravention of the Authority's procedures.

G. “Grants: geographical distribution and needs analysis”

96. The Authority appears to have misunderstood the position presented in our Report. We deal with the points that it raises below under the headings presented in its Critique.
 - a. **“Failure of the Inspection Report to understand geographical distribution of grant awards”**
97. The Critique asserts in paragraph 26 that *“Significant weight is given by PwC to the idea that there should be some form of geographical balance when grants are made”*. This assertion is a misleading interpretation of the comments and analysis included in our Report.
98. At paragraph 27 the Critique continues: *“In order to achieve Best Value, funding must follow need and as such balanced geographical distribution is irrelevant. This is not understood by PwC. PwC has wrongly interpreted equity of grant distribution as being demonstrated by equality of distribution of grant award recipients per ward”*.
99. In fact we do not state anywhere in our Report that we consider *“equity of grant distribution as being demonstrated by equality of distribution of grant award recipients per ward”*. In

contrast to this misrepresentation of our views in the Critique, our Report is clear that we take no issue with the view that funding should follow need. For example, in setting out our conclusion (at paragraph 2.7 of our Report) that, in relation to the matter of grant making, the Authority is failing to comply with its best value duty:

- a. We make no reference to the *“idea that there should be some form of geographical balance when grants are made”*.
- b. However - we do focus on the need for transparency over the basis on which funding follows need. Indeed, the first point we make with reference to our conclusion that the Authority is failing to comply with its best value duty in this area is to note: *“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 CFBS 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”*. The focus on needs analysis, and the absence of reference to “geographical balance”, is clear.

100. We believe that the detail of our Report is similarly clear as to our views in this area. We note for example the following commentary at paragraph 2.31 of our Report, in which we refer to the *“significant changes to the officer recommendations”* made by Members:

“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... 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.”

101. Again, our focus is clearly on the lack of transparency and documentation of the process. We do not question the appropriateness of the above aims to spread grant monies across more organisations and seeking to better address key areas of need and promote a thriving third sector across the Borough. Similarly we do not make any point concerning an absence of focus on equality of distribution of grant award recipients per ward in isolation of the consideration of other relevant factors.

102. In this regard we would also draw attention to the context in which our geographical analyses are presented. We explicitly recognise in the Report that there are limitations in our approach, as *“the applicant organisations will vary in the geographical extent of their activities”*. Notwithstanding these limitations, we consider that our approach to presentation of the graphical “figures” (at paragraphs 4.69 et seq of our Report) was clear and appropriate for the purpose of the illustrative analysis presented.

103. We also note that, at paragraph 27 of the Critique, the Authority seeks to develop its argument by asserting that *“Paragraph 4.57 endorses the notion that geographical balance across the borough should be a measure to be employed when making grant decisions”*. This is a misleading presentation of what we say in this paragraph of our Report, the full text of which is presented here:

“A Councillor presented the reasons for the Call in to the O&S Committee [on 6 November 2012] 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.”

104. As is clear from the text, in contrast to the reference at paragraph 27 of the Critique, this paragraph is referring to the O&S Committee meeting in November 2012, from which we quote the comments of a Councillor who presented the reasons for a Call in to the O&S Committee and the response of Councillor Choudhury. The final sentence of the paragraph is clear in demonstrating our focus on the geographical balance of the distribution of grant monies in the context of need.
105. We also note that the quote from Councillor Choudhury reflects our understanding of the Equality Impact Assessments and the chronology of events, namely that various iterations of these documents were used to assess the impact of decision making (i.e. as distinct from being used to inform the process of developing award recommendations).
- b. “Failure of the Inspection report to acknowledge the existence of clearly evidenced grant related needs assessments”**
106. At paragraph 32 the Critique refers to the Authority having, during the fact checking process, *“highlighted to PwC that needs analysis underpinned the service specifications for the MSG.”* The Critique then goes on to quote paragraph 4.83 of our Report, in which we note *“the documentation purporting to constitute the Council’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”*. In response, the Authority has claimed that *“PwC was provided with relevant information in April 2014”*. (NB: To avoid confusion, we note that the Critique incorrectly references the wording as being from paragraph 4.88 of our Report).
107. The wording identified by the Authority above was not intended to suggest that we had not received any service specification documentation prior to the fact checking process. We were provided with the service specifications for all 11 MSG funding streams at the start of our Inspection in April. We note that we refer to the service specifications at paragraph 4.19 of our Report. Rather, we were referring in the above paragraph to the underlying data analysis that informed those service specifications.
108. In respect of the information provided in April 2014, the Authority asserts at paragraph 33 of the Critique that *“PwC failed to realise its significance or interpret it correctly. The statement in the report suggests that there is doubt as to whether or not this documentation did in fact inform grant recommendation and specifications. Such a suggestion is categorically rejected by the Council”*.
109. In fact, no such doubt is expressed in our Report. Paragraph 4.83 clearly states *“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”*. By way of background to this comment we note that we were provided with documented rationales for initial officer recommendations. We refer to this at paragraph 2.30 of our Report and note that discussion amongst officers resulted in *“a degree of adjustment to reflect their analysis of gaps in expected outputs or outcomes as defined in MSG grant Service Specification documents”*. As such, we have not expressed any doubt that officer recommendations considered the needs analysis that existed.

110. In contrast (and as reflected in our overall conclusions concerning the awarding of grants as referred to above), we were not provided with any documented rationale for Member changes to officer recommendations. By way of example we state at paragraph 4.83 of our Report *“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”*.
111. Similarly, we state at paragraph 4.37 of our Report *“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”*.
112. In summary, we reject the assertion that we failed to acknowledge the existence of the needs analysis that existed.

H. “References to Council Delay in the report”

113. As stated in the Critique at paragraph 35, the above matter is the subject of separate correspondence between ourselves and the Authority. As set out at paragraph 1.32 of our Report, we remain of the view that there were no material errors of fact in our 27 June 2014 letter to DCLG concerning the failure of the Authority to provide information on a timely basis, or at all, in relation to a number of important requests.
114. We note that the Authority has also referred to a number of matters under the above heading, including concerning the cost of the Inspection and the manner in which it has been undertaken. We also note that a number of the comments appear to be directed towards DCLG rather than ourselves.
115. These issues do not go directly to the content and conclusions set out in our Report. As such we do not consider it appropriate to deal with them in this commentary.
116. However, for the avoidance of doubt, we reject the suggestion that the Inspection was undertaken inefficiently or in a manner that was not independent.