

Enquiries to:

Tower Hamlets Commissioners
Tower Hamlets Town Hall
6th Floor Mulberry Place
5 Clove Crescent
London
E14 2BG

Rt. Hon. Sajid Javid MP
Secretary of State for Communities and Local Government
2 Marsham Street
London
SW1P 4DF

Commissioners@towerhamlets.gov.uk

www.towerhamlets.gov.uk

11 October 2016

Dear Secretary of State,

London Borough of Tower Hamlets – Directions under Section 15(5) of the Local Government Act 1999 – 2014 and 2015

Your predecessor as Secretary of State (now Sir) Eric Pickles MP authorised the imposition of a series of Best Value Directions on London Borough of Tower Hamlets in December 2014, and April and May 2015. The May 2015 Direction expired in October 2015 although there were some outstanding issues that had not been fully completed at that time and that have been carried forward under those powers. The original 2014 Directions expire on 31st March 2017 unless renewed or amended. The purpose of this letter is to provide you with your Commissioners' observations on the progress made by London Borough of Tower Hamlets (LBTH) and advice on a possible way forward. Even though the May 2015 Additional Directions have expired we have dealt with those first before commenting on each element of the original set of Directions.

Overview

At the outset LBTH was an authority in denial. Despite assurances that there would be full compliance with the Direction regime, in practice there was little corporate acknowledgement that anything was wrong and for most of the key elements of the activity there was inaction, obstruction or an attempt to justify the pre-existing position. Progress was restricted to those areas where individual officers had decided to move the Authority on in a sensible way, for example Procurement, or where Commissioners had comprehensive intervention powers such as grants. Even then it took a long time for a proper corporate response and full compliance with the scope of the Directions resulting in a number of unlawful grants payments being made.

Non-compliance was most evident in the inaction by the then Mayor, Lutfur Rahman, in making or allowing progress to be made in the appointment of a permanent statutory Head of Paid Service or Chief Executive. It was this key issue which triggered the April Directions and this coincided with the disqualification of Mr Rahman as Mayor by the Election Court (23 April 2015) and a by-election (11 June 2015) which returned John Biggs as Mayor.

The election of Mayor Biggs restored legitimate political control and provided a proper policy backcloth for the Council to move forward. Our responses to the Mayor, copied to your predecessors, reflecting on their required six monthly updates, recorded patchy progress across the board until the most recent submission. Commissioners attribute this more recent progress to a realisation by the incoming administration that things were not going to get better as a consequence of the election alone and that much lay under the surface; and the establishment of a permanent top officer team prepared to work in a corporate way to support the Mayor in his lawful endeavours and the start of the cultural change required to restore the basics of good local government practice to all parts of the Council.

Commissioners acknowledge the progress that has been made and in some areas the Council now demonstrates good practice, but there is still much to be done. Overall, our judgement is that the delays and inaction at the outset has cost the Council around 12 months on their journey back to the mainstream of London local government.

The 6th May 2015 Direction

This Direction provided the power for Commissioners to intervene in any Council function. Although the moral force of this Direction was recognised in all the Commissioners' requests and guidance during this period, a formal instruction under this Direction was only issued in a single instance relating to future financial and audit arrangements for the Boishakhi Mela. Eventually, the Council decided to bring the event in-house and run it in its original location in the Borough. This returned it to its original function as a local community festival and was by many accounts, well received.

There are no outstanding issues or actions now arising from this Direction.

The 29th April 2015 Direction

This Direction provided the powers to ensure the commencement and completion of the process to appoint a permanent post holder as Head of Paid Service, with agreed delegated powers.

A suitable job description was agreed and all parties represented on the Council fully participated in the appointment process resulting in the appointment of Mr Will Tuckley. It took much longer to proceed with the formal target setting, again on an all-party basis but this has now been completed.

Formal delegation of powers in a form approved by Commissioners was only agreed at full Council in September 2016. These powers provide a specific safeguard to

provide the Head of Paid Service a right to advise the Mayor (or Council or Committee as appropriate) to consider a report in public if it is considered there is a concern which goes beyond the powers of the Monitoring Officer or Section 151 Officer. This would have the effect of freezing any decision, action or failure to act until the report had been considered. The full text is attached as an Annex to this letter.

Commissioners consider this provides a suitable safeguard to deal with a rogue Executive Mayor in Tower Hamlets and may be applicable in other Mayoral administrations.

There are now no outstanding issues or actions required arising from this Direction.

The 17th December 2014 Directions Annex A

These contain the original suite of Directions and, as previously noted, will expire on 31st March 2017 unless renewed or amended.

Directions 1 and 2

These Directions require LBTH to produce an initial best value plan and submit 6 monthly updates to the Secretary of State.

LBTH has complied with this and our commentary on the various documents produced can be seen in our responses produced soon after each submission together with the minutes of discussions at the regular Best Value Boards, originally chaired by the Lead Commissioner but now chaired by the Mayor and attended by your officials. The documentation that supports these meetings provides the core evidence on progress and a real time check on Commissioners' views on the developing activity.

Directions 3 and 4

These provide the power to oversee and approve the appointment of the 3 Statutory Officers and any attempt to suspend or dismiss them without Commissioners' consent.

The initial recruitment process for the Monitoring Officer and the Section 151 Officer (Chief Finance Officer) went well with full participation in an appropriate way by all groups represented on the Council. The appointment of the Head of Paid Service/Chief Executive was ultimately overseen using the powers provided by the April 2015 Direction commented on earlier.

Outstanding issues relate to the establishment of a suitable form of appraisal for both the Statutory Officers and all other officers reporting to the Chief Executive which requires reworking the existing scheme to make it comprehensive.

Of concern is the absence due to long term sickness of the Monitoring Officer who has been absent for now over 12 weeks. Commissioners are not aware of a forecast

date for a return to work. A consequence of this absence is that establishment of a permanent structure below the Monitoring Officer has been delayed and involves a Deputy Monitoring Officer who, himself, is an interim appointment.

In the current circumstances Commissioners cannot recommend that the powers under this Direction be withdrawn and they should be continued at this stage.

Direction 5 Property

The action plan relating to this Direction is the most delayed from the original proposal. This is due to three main factors:

- i. an unrealistic timeline for the original plan which has not been achieved;
- ii. an initial unwillingness to accept the consequences of adopting best practice in holding all property as a corporate asset and acting accordingly; and
- iii. a desire by the Council to provide some discount to third sector groups occupying Council property under an approved property agreement at less than market value which is technically difficult to achieve and demonstrate best value principles. This policy is now in the process of being documented and going through the approval process. Implementation of the initial phase will take some 6 months to complete.

The Council properly seeks Commissioners' written consent for each disposal undertaken and has proved to handle these appropriately. However, without the policy framework in place and embedded there is no assurance that poor practice will not re-emerge. Commissioners can evidence these concerns with specific examples where their intervention was required to keep the Council compliant.

It is therefore not possible at this stage to conclude that all of the actions required under this element of the Directions will be completed by 31st March 2017.

Direction 6 Publicity

The initial approach of the Council was to seek to defend the pre-existing position. On arrival in LBTH it was clear to Commissioners that this was one of the two areas where the greatest abuse of powers and responsibilities had taken place. It was not clear that LBTH's communication team understood or followed the relevant codes and in any event the then Mayor's office had entered into contracts for communications advice and action which were clearly outside all local government rules. These contracts were terminated only when Commissioners became aware of them.

The financial justification for the continued publication of the weekly East End Life depended on a system of transfer pricing which was designed to meet the needs of the publication not the internal advertisers. Only after the election of Mayor Biggs and a very professional and helpful analysis by the Local Government Association was it possible for LBTH to produce a realistic plan to move forward. Even then it was necessary on 23rd December 2015 to direct the Council to adopt recommendations to ensure they were compliant with the Local Authority Code of Recommended Practice on Publicity.

Progress was then delayed by the time taken to recruit and get in post a new service head and the first fully costed business plan has only just been prepared.

LBTH is now fully in compliance with the Publicity Code in so far as publications are concerned but there is no permanent solution for the publication of Statutory Notices yet agreed, and the business plan needs to be underpinned by a detailed action plan and determined management to fulfil it.

At this stage Commissioners cannot conclude that it is appropriate for this element of the Direction to lapse.

Direction 7 Procurement

Compliance with this Direction has shown that LBTH can move to a best practice position quickly and effectively. A properly detailed action plan was prepared and followed. All appropriate action has been taken and detailed reports accompanied by relevant and auditable evidence has been supplied. As a consequence, LBTH has made savings on its activities and secured much better compliance with its financial regulations. Abuses of the past approach have been identified and are under investigation but going forward the required approaches have been embedded. No instances of seeking the Commissioners' consent to disagree with Statutory Officers' recommendations have occurred, demonstrating Members' acceptance of the new control processes.

This activity is one where routine external audit coupled with standard checks by internal audit provide appropriate assurance and in these circumstances Commissioners believe that continued inclusion in a Direction regime is no longer justified.

Directions 8, 10 and 11

These are administrative Directions relating to access to information, support for Commissioners and recoupment of costs which are required if the Direction regime is continued.

Direction 9 is dealt with in the next section on Annex B Directions.

The 17 December 2014 Directions Annex B

1 Grant making and Administration, including providing advice on individual grants

This Direction removed the power from LBTH to make or administer any grant other than defined categories such as disabled facilities grants. Direction 9, Annex A also provided a power to obtain advice on any grant Commissioners proposed to make. These powers were provided to prevent one of the worst abuses perpetrated by the Rahman administration, using grants for political and electoral advantage, a position confirmed by Lord Justice Lloyd Jones in his judgement in the High Court (26th January 2016) on the challenge to elements of the Election Court findings.

At the outset, it proved difficult for LBTH to produce a comprehensive schedule of the categories of grants awarded through the organisation, resulting in a number of grants being unlawfully authorised under previous rules.

Commissioners determined that they wanted to model good practice in decision making and established a public decision making meeting where, as far as possible, all decisions made by Commissioners were taken and recorded and where any representations made were formally considered. This was established from the outset and has proved both successful and well received. The public and interested parties have attended at all meetings to hear the presentations and discussions and note the decisions taken.

Commissioners also wanted to obtain the views of locally elected Councillors on a cross-party basis from the outset and requested that such a process be promoted on our first day in December 2014. This proved significantly more difficult for LBTH to contemplate and an agreed process involving a sub-committee of the Overview and Scrutiny Committee commenced operation a few months ago on 29th May 2016 and is starting to embed its processes.

Commissioners have wanted to map out a clear transition process which would enable decisions on grants to be returned to the Council, essentially the Executive Mayor as it is an Executive function. Commissioners have commenced this process by co-opting the Mayor and his Deputy Mayor with portfolio responsibilities in this area onto the Decision Making meeting so they can participate and be seen to participate in the decisions Commissioners make.

Commissioners consider that there now needs to be a transitional phase whereby the Mayor and his Cabinet, or a Cabinet sub-committee, take the decisions in public, and in the presence of a Commissioner who can either approve or reject the decision, in effect moving this Annex B Direction to an Annex A Direction. Commissioners have negotiated a suitable format with LBTH and in a position to recommend this to you now as a replacement for the current Direction.

However, it has come to light that some of the decisions Commissioners took were not acted upon by the administrative team in an appropriate way and they substituted their judgement for the direction they were given and then sought to obscure the action taken. LBTH is following through the appropriate procedures and have agreed with Commissioners the commissioning of a review of all the processes involved.

Commissioners believe that it may be necessary to decouple the two issues so that grant making may be returned to the Council before March 31 2017, with Commissioner oversight, but that controls remain on administrative matters until the outcome of the review is completed and the agreed outcome implemented.

2 Appointment and removal of a person to the statutory office of Electoral Registration Officer and Returning Officer

This Direction provides the power for Commissioners to appoint and dismiss the Council's Returning Officer, removing that power from the Council.

Commissioners approved the appointment of LBTH's Chief Executive, Mr Will Tuckley, as the Council's Returning Officer (RO/ERO) and acknowledge the successful delivery of both the GLA Elections and the EU Referendum in the Borough. However the biggest electoral challenge facing Tower Hamlets is the successful delivery of the local Mayoral and Council elections in 2018.

Much has come to light as a consequence of the Election Court hearing brought by private electors. However, not all those involved have had their actions fully investigated and been held to account. Commissioners have followed the Metropolitan Police Service's investigation closely and were disappointed to learn that, following the Election Court judgement, no new police interviews were undertaken and witness statements, although not relied on by the Court, were not followed up or reviewed. Further, the conclusions of the High Court hearing on the Judicial Review appear not to have been considered. It is also clear that, whilst the Crown Prosecution Service was involved, no file was produced for them to take a formal decision on prosecution. To the outside world the overall outcome of the investigations can only look like justice denied and a taint still hangs over specific election outcomes.

It is of importance to Commissioners that the forthcoming local elections be administered and conducted by the Returning Officer in a way which, as far as possible, provides confidence to electors that they are participating in a free and fair election where the result is a true reflection of the aggregate of each individual elector's ballot.

This requires the Returning Officer to select, train, deploy and utilise staff who can be trusted to act fairly and impartially at every stage in the process and be seen to do so. It will require vigilance in and around polling stations to prevent intimidation and undue influence which may run counter to some cultural norms and to accept that English is the only language permitted to be used in electoral transactions by the Returning Officer and his staff.

Many of the recommendations in Sir Eric Pickles' Review reflect changes that have already been put in place in the Borough. Commissioners have commended to the Returning Officer an approach which implements other recommendations, unless current law explicitly prohibits it, for the next elections. In particular Commissioners commend to the political parties and independent candidates who are standing a voluntary agreement on the handling of postal ballots and that the Returning Officer gives suitable publicity to those who adhere to such an agreement.

Commissioners would urge that Government gives full consideration to the recommendations in the Pickles Review and takes early action to implement them especially those capable of being introduced by secondary legislation.

Commissioners, on the basis of the evidence from Tower Hamlets, consider that designation the responsibilities of ERO and RO below Chief Executive/Head of Paid Service level is a warning signal, and councils should be discouraged from taking such decisions. It would be preferable to partner with another authority and designate their Head of Paid Service to act if it is not possible to secure an appropriate appointment in-house.

None of this can be controlled by Commissioners using the powers provided under the Directions. Commissioners therefore advise that there is no reason to continue the powers contained in the Direction.

Conclusion

A common thread running through the whole of this intervention process is the need to establish and embed an appropriate and consistent culture at both elected member and officer level to provide the basis for effective local government.

Although not explicitly covered by a specific Direction, Commissioners feel that culture change is as the essential element which will demonstrate that change has been embedded. One element of the culture change has been to establish a new whistleblowing policy that is trusted and widely understood. The Council implemented its new whistleblowing policy in September 2016 which has been welcomed by the Commissioners.

In addition, over the period of the Directions, the Commissioners have found themselves receiving allegations of malpractice in the Council from individuals who mistrust the previous reporting procedures. Commissioners have been able to deal with some aspects of these disclosures (whilst maintaining the anonymity of the whistle blower). However, in order to deal with such allegations fully the Council has agreed to initiate a "clear up project" as a time limited process to consider such allegations whilst in the future all such disclosures will be dealt with under the new policies.

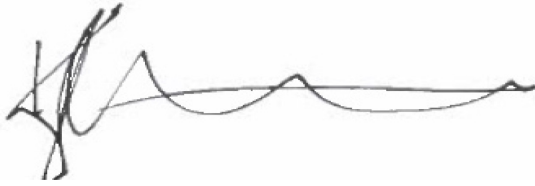
From the above it will be seen that LBTH is now making substantial progress. However, during the early period of the Directions under the previous Mayoral administration, little change was made to the previous practices identified in the Inspectors' (PwC) report leading to the intervention.

As a result, the above this letter identifies areas where the outcomes of Directions have been fulfilled and can be withdrawn. In others areas, whilst progress has been made leading to new policies been formulated, their outcomes have not yet been embodied into working practice and thus denying Commissioners sufficient evidence to assure you at this stage that actions arising from the Directions can cease.

It is however appropriate to recognise that due to the reduction in anticipated workload over the next period that the number of Commissioners can be reduced. The previous Secretary of State agreed to increase the number of Commissioners from 3 to 4 in April 2015. It is possible now to return to the original number without risk to the oversight and assurance that is now required.

If you feel there is anything in the above report that requires further clarification the Commissioners would be pleased to do so.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Ken Knight', with a long horizontal flourish extending to the right.

Sir Ken Knight CBE QFSM DL
Lead Commissioner

Three handwritten signatures in blue ink. The first is a stylized 'M' for Max Caller. The second is 'Chris Allison'. The third is 'Alan Wood'.

Max Caller CBE
Commissioner

Chris Allison CBE
Commissioner

Alan Wood CBE
Commissioner

Annex

Ensuring Overall correctness of decision making.

If the Chief Executive considers that any proposal, decision or omission would give rise to a significant concern on his/her behalf and which goes beyond either:

- (i) (Unlawfulness or if any decision or omission has given rise to maladministration (the responsibility of the Monitoring Officer); or
- (ii) Any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency, or if the Council is about to enter an item of account unlawfully (the responsibility of the Chief Finance Officer);

Then the Chief Executive will report in writing to the Mayor in relation to an executive function or to the Council in relation to a non-executive function and such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered. The report must be considered within twenty-one (21) days at a meeting of either Council or the Executive as appropriate. As soon as practicable after either the Council or the Mayor and/or the Executive has considered the Chief Executive's report, it shall prepare and publish a report that will include;

- (i) what action it has taken in response to the report;
- (ii) what action it proposes to take in response to the report and when it proposes to take that action;
- (iii) the reasons for taking that action, or the reason for not taking any action.

(Approved at Council 21st September 2016)