



HEAD OF PAID SERVICE

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Private and Confidential

Sent via email: Paul.Rowsell@communities.gsi.gov.uk

06th May 2015

Dear Mr Rowsell,

I am writing in response to your letter dated 29th April 2015 in my capacity as the Councils Head of Paid Service.

I write to assure you that Council officers will continue to ably assist the Returning Officer in delivering the mayoral election and the by- election in the Ward of Stepney. The Council, as it did before the last election, continues to work closely with the Electoral Commission to prepare effectively for the running of the forthcoming elections which will, once again, present the Returning Officer and electoral staff with a very challenging political environment.

I am very pleased to note that Mr John Williams, the Acting Returning Officer for the Borough, has received a public acknowledgement from the Petitioners to the Electoral Court that they accept and maintain that he and his officers acted fairly throughout the election and showed no partiality to any party or candidate, that he acted entirely professionally throughout the election and that neither he nor his officers is either able or required to police or monitor the conduct of an election campaign. In particular I would like the Secretary of State to note the latter point. All proceedings against him were dropped and the Electoral Court Ruling made it clear that he was completely exonerated of any wrong doing at the last election.

That such an obviously exemplary and dedicated council official had to face such unfounded criticism and be put through such an ordeal is regrettable and will be a matter of concern for all returning officers across the Country. I further note and applaud the fact that the Commissioners re-appointed him as the Returning Officer for the coming elections. It is testimony to his sense of civic duty and public service that John has accepted. Mr Barry Quirk, who as you know has been appointed in an advisory support role, knows John Williams well and holds him in high regard.

I must however draw your attention to a number of factual inaccuracies and unsound assumptions contained within your letter.

These are set out below

Comments on the basis for the proposed additional directions.

It is factually incorrect to state that, as part of the third reason for considering additional directions, the current statutory officer interim appointments were in place during the period of poor governance and mismanagement identified in the PWC report. None of the interim statutory appointments were in place

during the period where the substantive criticism was made. Council business has continued very effectively over a challenging 18 months and a sequence of events that would reasonably be expected to completely destabilise the operational ability of many Councils. Council services continue to run effectively and this has been achieved with the commitment and professionalism of public sector staff at every level and with minimal delegated authority from the Mayor to statutory officer functions. There is no good reason to suppose that these appointments 'may not be well placed to handle the current situation in the Cabinet'. The inference is unfounded and based on inaccurate assumptions providing no sound basis for further directions.

The fourth reason cites a provisional view of a cultural acceptance of actions that are incompatible with the best value duty and reluctance on the part of the Authority to address such incompatibility. I would point out that the Secretary of State's Commissioners have approved a cultural improvement programme as part of the BVIP several weeks ago. All of the findings within the Best Value Review and the Election Court Judgement make it very clear that executive delegations from the Mayor were very limited from the point that an Interim Head of Paid Service was appointed and executive authority almost entirely centred on Mr Lutfur Rahman and that the Constitution allowed limited challenge if decisions were properly taken. The notion that those without authority therefore 'accepted' and continue to 'accept' unspecified actions incompatible with the Best Value Duty and that this might exemplify a wider cultural problem appears to reflect a reluctance on behalf of DCLG to acknowledge the limited root causes of the best value failings or the fact that cultural matters have already been the subject of a DCLG approved improvement plan.

'The authority is not fully complying with the Directions of 17th December 2014. In particular, the Authority still has not responded to the Commissioners request for arrangements to give its view on proposed grants'.

This statement is factually incorrect as it relates to grants. Political arrangements to provide a forum for Member feedback on impending Commissioner Decisions have been put in place. Whilst this forum may need to evolve in the opinion of the Commissioners the statement that the Authority 'still has not responded' is not fair comment and disappointing given that the Commissioners are fully engaged with the Council on all actions specific to grants and are aware of the practical challenges.

'Notwithstanding the Directions the Commissioners have discovered that certain payments in respect of burial grants have been made after 17 December without their involvement, and hence contrary to the Directions and on its face therefore unlawful.'

This was an administrative error comprising individual payments of £225 to families suffering a bereavement, agreed under a previous administration, and totalling some £3,000. This was quickly addressed, and the Commissioners fully briefed. Whilst regrettable this does not amount to evidence of systemic failure to abide by the Direction in relation to grant payments.

'The commissioners have also reported that they have found inadequate, or an absence of records.'

The example given to exemplify this related to a search for a written record of a specific piece of legal opinion provided orally at a Committee meeting and referenced in the minutes. It has never been established that any formal written advice ever existed. It is very likely that the advice was only given orally at that meeting. It is, therefore, not so surprising that it was absent from the records and is not reflective of poor record keeping.

We have a comprehensive document retention policy that has been approved by the Information Commission with which we have been working closely since 2014. We had a consensual audit from the Information Commissioners Office in September 2014 and the Council's approach to document retention

was fully reviewed by the Information Commissioners Office at that time. As a result of this joint work the Council can be confident that it has robust data protection, records management and information security policies and procedures. Last year the Council renewed and refreshed its retention schedules which were subsequently ratified by the Information Commissioners Office and as a result it is probably one of the best and most up to date information governance frameworks in London. I would invite the Commissioners to engage with the Council's Information Governance Team who can bring them up to speed on relevant matters. Whilst there is always room for improvement the limited examples provided do not support a conclusion that the Council has poor governance in relation to document retention whilst there is strong evidence that shows significant improvement in this regard.

Furthermore I have maintained the instructions to staff requiring retention of all information relevant to the key areas of the Best Value Inspection and immediately extended this instruction to include all material relevant to the Election Court Ruling. The ability of Members to delete or destroy council records are very limited indeed and in the unlikely event that they attempted to do so we have electronic data backup procedures that would enable the Council to recover . So there was limited risk of any kind before the DCLG insistence on the emergency undertaking which now extends to all information in every format and on every matter of business (see also comments on immediate undertakings below).

'Moreover, in relation to certain planning matters the Commissioners have found the Authority as a policy of destroying all hard copy and incomplete electronic files'

All well run Councils have a policy of destroying hard copy and electronic files. It is unclear why this has come as a surprise to the Commissioners and to the DCLG which will have similar policies. The statement is factually incorrect in asserting that we destroy all hard copy files and all electronic files. We do not. We are clear about what we retain, why we retain it and for how long. It is not clear what is meant by 'incomplete electronic files' however I refer to my comments above.

Whilst I accept that the Council does not retain a full record of every decision or transaction it makes for eternity I do not believe that this sets the Council apart from the rest of government in this respect and it is patently not reflective of poor governance

'In addition the Commissioners have reported encountering a reluctance to provide them with ready access to certain files'

We have set up a Commissioner Action Log which provides the Commissioners with an opportunity to review, on a weekly basis, the progress of all outstanding actions should they be minded to do so. This is also reviewed regularly by the Corporate Management Team. The Commissioners have direct access to me at all times and they have a Single Point of Contact appointed for the express purpose of providing assistance to ensure timely access to requested material. If they have been encountering a reluctance to provide files then I am surprised that the commissioners have not made use of the comprehensive arrangements in place to quickly address such issues. I will invite them to do so.

I am concerned that none of the above references can safely be regarded as evidence of 'an underlying and continuing culture within the authority of an acceptance of actions plainly incompatible with the best value duty and a reluctance to address such incompatibility'. Tower Hamlets staff at every level continue to deliver some of the best services in the UK in the most challenging of political circumstances and some recognition of this fact from DCLG would be both appropriate and welcome.

Comments on the Immediate Undertakings

Instructions were issued on Thursday 23rd April 2015 for the cessation of access by the disqualified persons – this included physical access to the Council's properties and also to its ICT systems. The

Council is still operating under a non-destruction and retention of records instruction that was applied at the request of PwC in April 2014 – staff have been reminded of that last week. This was further extended to include all material that might be relevant to the Election Court determination. To this extent and to the extent that this information was either copied to or freely available to the Commissioners on request, the risk levels associated with the emergency undertaking may be considered to have been overstated by them.

As you are aware the Authority has agreed to the required undertaking that the Council will not destroy any information or records (electronic or otherwise) until further decisions are made by a Secretary of State.

However if, for whatever reason, the Secretary of State considered it necessary to maintain such a position in the form of a Direction or if it was the intention that this arrangement were to last more than a few weeks I would respectfully ask him to enter into dialogue with the Council on the technical challenges and cost implications of maintaining a blanket requirement for a council to retain all information on everything indefinitely. Given the excellent work we have been doing with the support of the Information Commission and the lack of any significant risk resulting from the timely measures that were indeed put in place, he may take the view that this measure is not necessary.

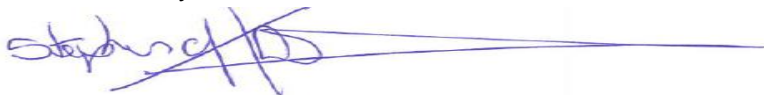
‘The commissioners have reported that following discussions with them , the interim head of paid service has made certain requests (but not instructions) about the retention of information, including requesting the chief financial officer to take immediate steps to safeguard against deletion the content of the Authorities e-mail accounts for Mr Rahman and Mr Choudhury.’

All necessary arrangements to isolate and protect the e-mail accounts of Mr Rahman and Mr Choudhury were put in place on 23rd April 2015 on the day of the Electoral Court Ruling. The Commissioners were copied in to my detailed request to the S151 Officer to reinforce and extend existing staff instructions to retain relevant documentation on 24th April 2015. The following week they received copies of the staff instructions. You make a particular point that I did not issue an instruction. You will be very aware that I do not have the necessary delegated authority to instruct another Statutory Officer (or indeed any Director). The Acting S151 Officer undertook the task of issuing an instruction to all staff. Instructions were highlighted on the Council’s intranet and emailed to all staff sent prior to receipt of your letter of the 29th April.

‘The commissioners have not seen the requests or had assurance that the requests are being acted on’.

See above. The Commissioners never asked for specific assurance that the ‘requests’ were being acted on. These were not requests but jointly agreed actions. The Commissioners were fully sighted on the activity of senior officers in establishing the necessary actions in a timely way. I am not able to provide assurances on matters where such assurances have not been requested.

Yours Sincerely



Stephen Halsey
Head of Paid Service & Corporate Director Communities, Localities & Culture