

**Private and Confidential**

06<sup>th</sup> May 2015

Dear Mr Rowsell

**Observations on wording of the proposed additional Directions by the Council's Executive.**

The following comments on the proposed additional Directions are provided by those Councillors who represent the Council's Executive Authority previously represented as Tower Hamlets First.

**Comments on the basis for the proposed additional directions**

**The first of four interconnected reasons** provided by the Secretary of State for providing the basis for further directions as set out in the 3<sup>rd</sup> paragraph of this section comprises matters that have already been dealt with. The Secretary of State has already dealt comprehensively with the allegations of inappropriate grant-making by the Direction B1 of 17 December 2014 which relieved the local elected politicians of any responsibility for grant-making and vested them in his Commissioners. It provides no new justification for additional directions and given the nature of Direction B1 the problem specific to grant making as defined by the DCLG no longer exists. The Election Court comments on Mr Rahman's 'wide' use of facilities and staff to carry out electoral activities on his behalf, are not based on any significant new information from that known when making the earlier directions. Much of the foundation for this statement is several years old and that which has not already been addressed is so addressed by the Best Value Improvement Plan. As Mr Rahman is no longer the Mayor and the Mayoralty is vacant it is hard to see how these matters can form a sound basis of a further direction.

**The second reason** as articulated in paragraph 4 of this section also lacks any substance. The basis for further directions as set out here seems to consist only of the fact that generalised comments were made at the Election Court about the capability of some members of Tower Hamlets First. These comments were not made specific to any individual and were not based on any structured or comprehensive assessment of capability of the Cabinet by the Election Court. Even if there had been it is not clear how this would justify a government Direction that would, in effect, run counter the express will of Parliament. The cascade of powers in the event of a vacancy in the Mayoralty is specified by statute. There are no statutory capability thresholds necessary to stand for or hold public office at any level of government. Furthermore the Mayor of Tower Hamlets has no more powers than any other Directly Elected Mayor (or indeed Leader of a Council): It is therefore not known how the Secretary of State can legitimately argue that 'The mayors powers in Tower Hamlets are very great (greater than any that of any other elected executive mayor in Britain)'. By law, the executive functions of Council's are vested in those individuals and it is a matter for them whether they delegate them at all or to whom. In any event Mr Rahman is no longer Mayor and new elections are planned so his propensity to delegate or not is entirely irrelevant and again provides no basis for the making of a further direction.

**The third reason** also fails to present any new circumstance that would justify further Directions. The matters identified here were covered by the original directions and has already subject to a revised direction. The time lines associated with appointments were all made clear by council officers to the commissioners early on in the intervention. There has been no criticism of the performance of the interim statutory officers in either the PWC Best Value report or the Electoral Court and there have been no capability issues raised internally. Nothing has materially changed in this regard since the original directions and it does not provide the basis for additional directions.

**The fourth reason** appears to try and argue that there is an acceptance culture of poor governance whilst offering no evidence to back this up. Government changes to legislation weakening the code of conduct arrangements for elected politicians and the Secretary of State's own assertions that local authorities no longer need Chief Executives, seem far more relevant here. This, combined with the more recent removal of protection for Statutory Officers making them more vulnerable to political influence and the inflexibility of the Mayoral system itself are all far more relevant than some poorly defined perception of cultural inadequacy in Tower Hamlets and all are the responsibility of Government. It would seem inequitable within this context to accuse the authority of a culture of 'acceptance' of poor decision making in such circumstances. If the Commissioners continue to raise such concerns with the Secretary of State and yet are not able to articulate clearly to the Authority exactly what those continuing concerns are it begs the question why this is the case and also why they approved a Best Value Improvement Plan which comprehensively addressed cultural improvement? This once again lacks any obvious basis for further directions.

### **Comments on the Wording of the proposed additional Directions**

There has been no evidence in the PWC Best Value Report, in the Election Court Ruling or from any objective assessments of service performance that there is a systemic failure to deliver sound council services in Tower Hamlets. Despite unprecedented political circumstances the Authority continues to deliver some of the best services in London and the UK and where failings are argued by Government these are limited to very specific areas of council business or election related matters unrelated to wider council business. No substantive operational criticism has been made of any other part of the Council not already addressed by the Best Value Improvement Plan approved by your Commissioners.

The Powers set out in the draft direction are extremely wide and embrace not only executive authority carried by the vacant role of Mayor but also the non- prescribed functions of the Council, all Full Council functions and activities carried out by sub committees of Full Council and the statutory officer functions such as the DCS and DASS,S151 and the Monitoring Officer. They allow for intervention in areas of council operational business most of which functions well (or very well) against any comparative measure and for which no evidence to support the proposed government directions has ever been presented or considered.

This is a substantial extension of the significant powers already granted to Commissioners by the Secretary of State and needs to be justified by cogent evidence and the objective exercise of statutory powers. The reasons given do not justify this.

If Commissioner Authority is confirmed as widely as is proposed the risk of legal confusion and potential failures resulting directly from the manner of the DCLG intervention will be considerable. Any such direction would need to be based on a clear and detailed understanding of the legal primacy of DCLG commissioners in decision making where these may conflict with the Statutory Authority of the Council or statutory functions being carried out by officers. As the legal and operational risks are significant the Secretary of State is requested to provide clarity on the following when issuing any such direction as

proposed.

- Will the Commissioners be able to appoint and remove Councillors on Cabinet and Council Committees?
- Will the Commissioners be able to set the Council's Budgetary and Policy Framework? What are the legal implications?
- Will the Commissioners comply with Access to Information and Freedom of Information regimes in respect of their activities?
- Will the Commissioners be required to be accountable to the Council or its Overview and Scrutiny Committee for the exercise of their functions?
- Will the Commissioners be able to change the Council's Constitution?
- Will the Commissioners have to comply with any Code of Conduct and be subject to sanction if in breach? Who would oversee that code of conduct?
- How would Commissioner Conflicts of interest be managed and by whom?
- Will the Commissioners be responsible for deciding whether Councillors have breached their Code of Conduct and if so what sanctions should apply?
- Will the Commissioners be subject to the oversight of statutory officers of the Council and external audit?
- What framework would exist to resolve technical disagreement between a statutory officer of the Council and a Commissioner ?
- Could the inspectors respond to statutory consultations on behalf of the Council removing the right of elected members to do so?
- Can Commissioners represent the Council on external Boards in the place of elected members?
- Will the Commissioners, Government or the Council be liable for the decisions made by the Commissioners and the outcomes of them in a court of law for example in a matter specific to child safeguarding?
- Will the Commissioners be bound by the Councils whistle blowing Policies in order to protect Whistle blowers? If not how is the Council to do so?
- Will the Commissioners be bound by a duty of care to council employees when making their decisions?
- Will the Commissioners accept statutory, contractual and tortious liabilities for the exercise of their powers?
- If the Direction remains as drafted will the Commissioners be required to deliver the manifesto pledges which will be the democratic mandate of the Tower Hamlets electorate of any democratically elected mayor of Tower Hamlets.

It is respectfully suggested that unless the Secretary of State has applied his mind to all these possibilities and taken appropriate advice as to how his actions will apply in the light of statutory provisions in all the above circumstances (and in all other relevant respects), he will be acting improperly in law and fairness to the elected representatives of the people of Tower Hamlets.

No guarantee is given by the Secretary of State that this direction would be lifted. As government is party political in nature this may be perceived to carry its own political risks nationally and locally. As the Direction is apparently being made in the name of preserving democratic accountability this is ironic. The powers are so wide that they potentially remove any local accountability to the community on any matter with no guarantee given that The State will give them back. As the Secretary of State fails to articulate the circumstances needed to prevail that would avoid the continuation of the indefinite suspension of local democratic accountability this is not a direction that would be understood by disenfranchised local residents. It lacks transparency and cannot be good for democracy.

The proposed Direction removes democratic accountability to a disproportionate and unjustified degree and is an inefficient and high risk way to address the circumstances resulting from the Election Court Ruling. As the primary concern of government appears to be the potential for Tower Hamlets First Councilors to make unsound key decisions between now and the election of a new Mayor we have been more than prepared to enter in to a concordat with all of the political parties represented on the Council that no key decision will be made by the Cabinet without securing a consensus position between all Council parties. We have been prepared to commit to this unilaterally even if the other local parties are not prepared to sign up formally.

We would suggest that a more proportionate and considered approach be adopted that would carry far less risk for the reputation of Government, the DCLG Commissioners and the Authority and would demonstrate a much higher level of respect for the legitimacy of local democracy and accountability than set out in the proposed draft directions. If the Secretary of State is minded to issue a direction, we would suggest a direction that prevents any executive key decision from being made by Cabinet or any Deputy Mayor that might be appointed by them between now and the point that a new mayor is elected, without the consent and approval of the group leaders of all political parties represented on the Council. Any non-key decisions would be adequately governed by the S151 statutory officer function and internal process and procedure that have not been the subject of criticism in any report.

### **Community Cohesion.**

Contrary to much of the coverage in the Media the Council has prevailed over a largely cohesive community. Independent research has consistently demonstrated that our diverse community remains largely very comfortable with its diversity as supported by our Annual Residents Survey in which 80% of our residents agree that diverse communities live well together. It has not, to date, been a divided community. The Council works very hard to maintain that balance and has been very successful in doing so. At a time when we must demonstrate to young people in particular that everyone from whatever faith background has a genuine stake in our country and has a vote that is equal to everyone else's the circumstances of the last few months will have had an adverse impact in some parts of our community. The council has a Community Cohesion Contingency Planning and Tension Monitoring Group representing the council, police and other enforcement services, faith and inter-faith groups, the local college and others working with young people. At its last meeting, it considered the very real concern about the impact on cohesion and tension of current events concerning the Mayoralty and council. A key element of the strategy that the group jointly agreed to address such concerns was the re-assertion of the importance of local democracy and democratic participation through the election campaign running up to June 11<sup>th</sup>. Any Directions which undermined the purpose of such democratic participation could have an impact on cohesion. If the Secretary of State is minded to give additional powers to Commissioners, we would respectfully request that he considers these concerns carefully which could have profound and very wide implications and time limit any proposed new Direction to when the new Mayor is elected.

Yours sincerely

**Clr Ohid Ahmed**  
**For and on Behalf of the Executive Cabinet**



