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APPENDIX ONE

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London Borough of Tower Hamlets  
Legal Department  
Mulberry Place  
5 Clove Crescent  
London  
E14 2BG

**APPENDIX ONE**

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## APPENDIX ONE



**Private and confidential**

Stephen Halsey, Esq  
Head of Paid Service  
London Borough of Tower Hamlets  
Town Hall  
Mulberry Place  
5 Clove Crescent  
London E14 2BG

4 April 2014

Dear Mr Halsey

**Inspection under section 10 of the Local Government Act 1999 (amended)**

By a letter dated 4 April 2014 ("the Appointment Letter", copy enclosed), PricewaterhouseCoopers LLP ("PwC") has been appointed by the Secretary of State for Communities and Local Government to carry out an Inspection of the London Borough of Tower Hamlets ("LBTH") under section 10 of the Local Government Act 1999 ("the Act") (as amended by Schedule 10 of the Local Audit and Accountability Act 2014).

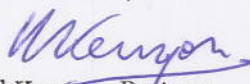
The focus of the Inspection is as set out in the Appointment Letter. We attach our initial information/documentation requirement to assist the early stages of our Inspection. We also attach a document and data preservation notice. We draw your attention to section 11 of the Act, which sets out certain provisions concerning the powers of Inspectors appointed under section 10 of the Act. These include (by way of summary):

- The right of access to premises and documents of the subject authority at all reasonable times;
- The right to require information or explanations to be given by relevant persons; and
- The requirement upon the subject authority to provide the Inspector with all facilities and information that the Inspector may reasonably require for the purposes of the Inspection.

In addition, section 11 of the Act makes it an offence for any person without reasonable excuse to fail to comply with a requirement of an Inspector. An Inspector is required to give three clear days' notice of any requirement.

Our aim will be to carry out the Inspection as efficiently as possible and with the least possible disruption to the day-to-day workings of LBTH. Inevitably, we will need to call on your people and resources to assist us in this and we thank you in anticipation of your co-operation.

Yours sincerely

  
Will Kenyon, Partner

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## **INITIAL INFORMATION/DOCUMENTATION REQUIREMENT**

Unless otherwise stated, requirements cover the period from 25 October 2010 to 31 March 2014. For the purposes of this requirement, the term LBTH includes any affiliated entity or agent of LBTH.

If there is other information not explicitly mentioned below but which is readily available and would assist the Inspectors in understanding LBTH's processes or the nature of specific transactions, please provide this also.

Where lists of transactions, contracts or other items are required, it would be most helpful if these could be produced in soft copy in Microsoft Excel for ease of analysis.

### **A. Grants**

1. A complete list of all grants made by LBTH to include:

- Full name of the recipient organisation;
- Amount of the grant;
- Purpose of the grant;
- Date of payment; and
- Any relevant reference numbers or unique identifiers that are part of the audit trail.

2. Documentation of policies and procedures pertaining to the receipt, processing, evaluation and approval of grant applications, and payment of grants.

### **B. Property disposals**

1. A complete list of all real estate properties (including without limitation land, commercial property and residential property) sold by or otherwise transferred out of the ownership of LBTH, to include:

- Full description and address of the property;
- Value of the property at the date of sale or transfer;
- Full name and details of the party acquiring the property;
- Date of sale or transfer; and
- Any relevant reference numbers or unique identifiers that are part of the audit trail

2. Documentation of policies and procedures pertaining to property disposals.

### **C. Contracts**

1. A complete list of all contracts let by LBTH with a contract value of £10,000 or more, to include:

- Date of contract;
- Nature of goods or services procured;
- Full name and details of the contract counterparty/(ies);
- Value of the contract; and
- Any relevant reference numbers or unique identifiers that are part of the audit trail.



2. Documentation of policies and procedures pertaining to the tendering, evaluation, approval and signing of contracts and the payment of suppliers and service providers.

**D Expenditures relating to publicity**

1. A complete list of all payments by LBTH to media organisations, including without limitation film, television, radio, internet and print media (such as newspapers, magazines, etc). This should include:

- Full name of the payee organisation;
- Amount of the payment;
- Date of payment; and
- Any relevant reference numbers or unique identifiers that are part of the audit trail.

2. An analysis of all costs incurred in relation to the publication of *East London Life*.

3. Documentation of policies and procedures pertaining to the tendering, evaluation, approval and signing of expenditures relating to publicity.

**E. Other**

1. An organisation chart for LBTH showing key roles and responsibilities and, in particular, those departments, committees and individuals relevant to the matters covered under A to D above.

2. Copy of LBTH document management and retention policy.



## **DOCUMENT AND DATA PRESERVATION NOTICE**

All records in the possession, custody or control of the authority relating to LBTH (including any affiliated entity or agent of LBTH) dating from 25 October 2010 to 31 March 2014 inclusive, which relate to the authority's payment of grants and connected decisions; the transfer of property by the authority to third parties; spending and decisions of the authority in relation to publicity, and the authority's processes and practices for entering into contracts.

The records that must be preserved include, but are not limited to, all originals or copies with annotations of letters, email, instant messages, drafts, informal files, desk files, handwritten notes, faxes, memoranda, forms, calendar entries, address book entries, and any records stored in hard copy or any electronic form (including records on desktop or laptop computers, on server back-up tapes, on a personal digital device such as an iPhone or Blackberry, or on removable media such as CDs, DVDs, USB memory sticks and external hard drives), whether at the office, home or anywhere else that relate in any way to the business activities of LBTH.

In light of the foregoing, please continue to preserve and take any additional steps necessary to preserve *all* records covered by this notice. Such records should be not altered, discarded or destroyed, even if they are in draft or preliminary form.

Records covered by this notice should be preserved even if they would otherwise be routinely discarded or deleted under applicable records retention policies and protocols.

The requirements of this notice should be distributed to those individuals who may, in your best judgement, have potentially responsive records.

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## *Agenda for meeting on 4 April 2014*

1. Introductions
2. Terms of reference
3. Initial Information Request
4. Working Arrangements & Data Access
5. Timetable
6. LBTH team
7. Any other matters





Department for  
Communities and  
Local Government

Mr Stephen Halsey  
Head of Paid Services  
Tower Hamlets Council  
Town Hall  
Mulberry Place  
5 Clove Crescent  
E14 2BG

Sir Bob Kerslake  
Permanent Secretary, DCLG  
and Head of the Civil Service

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4 April 2014

Dear Mr Halsey,

As you will see from the attached letter from Helen Edwards, Director General of Localism at the Department for Communities and Local Government, the Secretary of State has, in exercise of his powers under section 10 of the Local Government Act 1999, appointed PricewaterhouseCoopers LLP (PwC) as the person to carry out an inspection of the compliance of the authority known as the London Borough of Tower Hamlets with the requirements of Part 1 of the 1999 Act in relation to the authority's functions in respect of governance, in particular the authority's functions under section 151 of the Local Government Act 1972.

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

The Secretary of State has given certain directions to PwC in relation to their undertaking the inspection. PwC are directed that the matters to be covered initially by the inspection should in particular relate to: the authority's payment of grants and connected decisions; the transfer of property by the authority to third parties; spending and decisions of the authority in relation to publicity, and the authority's processes and practices for entering into contracts. PwC are also directed that the inspection cover matters in relation to the period from the date at which the Mayoral form of governance was implemented in Tower Hamlets, on Monday 25 October 2010, to the present.

It is envisaged that PwC will report the findings of the inspection to the Secretary of State by 30 June 2014, although a later report date may be agreed between PwC and the Secretary of State.

Finally, section 11 of the Local Government Act 1999 provides that an inspector has a right of access at all reasonable times to any premises of the authority and to any document, including electronic documents, relating to the authority which appear to the inspector to be necessary for the purposes of inspection. Statute also provides that the authority shall provide the inspector with every facility and all information which the inspector may reasonably require for the purposes of inspection, and that the authority being inspected must pay the reasonable fees of the inspector. I am sure that you will ensure full co-operation with the inspection.

A handwritten signature in black ink, appearing to read 'Rb Kerlake', with a stylized flourish at the end.

**SIR BOB KERSLAKE**



Department for  
Communities and  
Local Government

Will Kenyon  
Partner  
PricewaterhouseCoopers LLP  
By email

Helen Edwards  
*Director General, Localism*

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4 April 2014

Dear Will Kenyan

**Letter of appointment**

I am writing to inform you that the Secretary of State, in exercise of his powers under section 10 of the Local Government Act 1999 (as amended by the Local Audit and Accountability Act 2014), hereby appoints PricewaterhouseCoopers LLP (PwC) as the person to carry out an inspection of the compliance of the authority known as the London Borough of Tower Hamlets with the requirements of Part 1 of the 1999 Act in relation to the authority's functions in respect of governance, particularly the authority's functions under section 151 of the Local Government Act 1972.

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

The Secretary of State also, in exercise of his powers under section 10 (4) (b) of the 1999 Act, gives the following directions to PwC in relation to their undertaking the inspection.

First, PwC are directed that the matters to be covered initially by the inspection should in particular relate to: the authority's payment of grants and connected decisions; the transfer of property by the authority to third parties; spending and decisions of the

authority in relation to publicity, and the authority's processes and practices for entering into contracts.

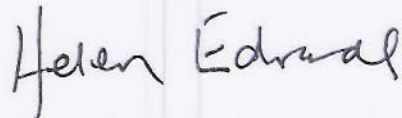
Second, PwC are directed that the inspection is to cover matters in relation to the period from the date at which the Mayoral form of governance was implemented in Towers Hamlets on Monday 25 October 2010 to the present.

Third, PwC are directed to report the findings of the inspection to the Secretary of State by 30 June 2014, or such later date as the inspector may agree with the Secretary of State.

The Secretary of State may following receipt of PwC's report or otherwise issue further directions to PwC.

Section 12 of the Local Government Act 1999 provides that the authority to be inspected must pay PwC's reasonable fees for carrying out the inspection.

Yours sincerely

A handwritten signature in black ink that reads "Helen Edwards". The signature is written in a cursive style with a large initial 'H'.

**Helen Edwards**  
**Director General, Localism**



## HEAD OF PAID SERVICE

Sir Bob Kerslake  
Permanent Secretary DCLG & Head of Civil Service  
Department for Communities & Local Government  
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10<sup>th</sup> April 2014

Dear Sir Bob

Thank you for your letter dated 4 April 2014 informing me of the Secretary of State's decision to cause an inspection to take place in exercise of his powers under section 10 of the Local Government Act 1999. As you may already be aware, I have now met with the inspectors from PwC, and they have commenced their work. May I assure you of the Council's intention to co-operate fully with PwC.

I am writing to seek further information in respect of the Secretary of State's decision. For the sake of clarity and brevity I will simply list the points that arise.

(1) You explain that in reaching the decision to exercise his section 10 powers the Secretary of State has had regard to "*certain documents*" received by the Department which concern governance in Tower Hamlets. Could you please provide me with copies of these documents.

(2) Your letter refers to "*allegations about poor governance and possible fraud*". I assume that these allegations are part of the basis for the Secretary of State's decision. Could you set out (a) the specifics of the allegations concerning poor governance explaining in each case what it is that is said to have constituted the poor governance and when the events relied on took place; and (b) the same details in respect of the allegations of fraud.

(3) You say that in reaching the decision to exercise his powers under section 10 of the 1999 Act, the Secretary of State had regard to matters referred to in the BBC Panorama programme broadcast on 31 March 2014. Could you identify which matters referred to in the programme the Secretary of State took into account.

(4) Your letter states the terms of reference which the Secretary of State has given to PwC (as also set out in Helen Edwards' letter to PwC dated 4 April 2014, see the fourth paragraph of that letter). The terms of reference are broadly stated; PwC have been instructed to inspect generally in respect of the period from 25 October 2010 to date, and instructed "*in particular*" to investigate "*the authority's payment of grants and connected decisions; the transfer of property by the authority to third parties; spending and decisions of the authority in relation to publicity, and the authority's processes and practices for*

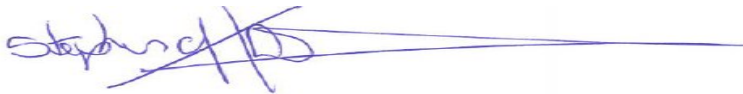
*entering into contracts*". Under section 10(1) the power to appoint an inspector is given in respect of whether a best value authority has complied "... *with the requirements of Part 1 of the 1999 Act in relation to specified functions*". I would be grateful if you could explain the way in which the terms of reference given to PwC correspond to the Secretary of State's power under section 10 of the 1999 Act. Which particular events have caused the Secretary of State to conclude that an inspection should be undertaken; in what respects have these matters caused the Secretary of State to suspect that (in the period since October 2010) Tower Hamlets may have failed to comply with requirements under Part 1 of the 1999 Act; which requirements under Part 1 of the 1999 Act are the ones material for the purposes of the Secretary of State's decision, and for the purposes of the inspection the Secretary of State has instructed PwC to undertake.

(5) You say that the Secretary of State has also passed "*certain material*" to the police for their consideration. Could you provide me with a copy of the letter (or other communication) sent to the police, and also identify the material that has been provided to the police.

May I make it clear that I make these requests only so that Tower Hamlets (a) can be properly informed of the reasons for the Secretary of State's exercise of his power under section 10 of the 1999 Act, and the factual basis on which the decision was taken; and (b) can understand the scope of the inspection including how it corresponds to the section 10 power. I confirm that information provided in response to the requests set out above will be used only for purposes connected with the section 10 inspection.

I would be grateful if you could provide the information requested as a matter of urgency. I look forward to hearing from you.

Yours sincerely



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



Department for  
Communities and  
Local Government

Stephen Halsey  
Head of Paid Service  
London Borough of Tower Hamlets  
Tower Hamlets Town Hall  
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Sir Bob Kerslake  
Permanent Secretary, DCLG  
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17 April 2014

Dear Mr Halsey,

**Tower Hamlets Council: best value inspection**

Thank you for your letter of 10 April. In that letter, you request certain information, material and explanations from the Department and provide an assurance of your Council's intention to co-operate fully with the inspection.

I welcome that assurance. The focus of all must now be on enabling the inspection to be effectively undertaken as efficiently and expeditiously as possible. The letter appointing the inspector, a copy of which I sent to you on 4 April, sets out clearly the basis of the Secretary of State's decision, the statutory powers which he exercised, and the scope and likely duration of the inspection, providing your Council with the information that it needs to fulfil its obligations in relation to the inspection.

As to your requests, it is clear from the appointment letter that the Secretary of State considered it appropriate, given the circumstances of Tower Hamlets, to exercise his powers under the Local Government Act 1999 to appoint an inspector to carry out a best value inspection of your Council. The appointment letter explains that in making the appointment, the Secretary of State had regard to certain documents that the Department has received about governance in Tower Hamlets, a review of those documents undertaken by PwC, and the Panorama programme broadcast on 31 March. Some of this material – the Panorama programme – is already in the public domain. Other material has been provided to the Department on a confidential basis and it would be a breach of confidence and risk impeding the ongoing inspection, and any potential future police investigation, to make this information more widely available, including to your Council.

Finally, I would add that I very much appreciate your efforts, and those of your senior officers and staff, to ensure that the inspection has to date run smoothly, and will continue to do so.

**SIR BOB KERSLAKE**



Sir Bob Kerlake  
Department for Communities and Local  
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Law Probity & Governance Directorate  
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8 May 2014

[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)

Our Ref: L/MSG  
Your Ref:

Dear Permanent Secretary

**RE: Tower Hamlets Council Best Value Inspection**

Thank you for your letter dated 17 April 2014. The Head of Paid Service has passed it to me and asked me to respond on the Council's behalf and to lead on the engagement of the Council with the Extraordinary Audit mandated by the Secretary of State on 4 April and being undertaken by PwC.

I regret to say that your letter is entirely unsatisfactory.

In his letter to you dated 10 April 2014, Mr. Halsey raised 5 points with a view to obtaining an explanation of the reasons for the Secretary of State's decision to initiate an inspection pursuant to section 10 of the Local Government Act 1999. I will not repeat those points in full, but by way of summary, Mr. Halsey (1) requested copies of the documents which the Secretary of State had said he took into account when reaching his decision; (2) asked for details of the "allegations about poor governance and possible fraud" which the Secretary of State had said should be investigated (but had not identified); (3) asked the Secretary of State to identify the matters referred to in the *Panorama* broadcast of 31 March 2014, which he said he had taken into account (but had not identified); (4) asked the Secretary of State to explain how the PwC terms of reference were consistent with the scope of the section 10 power, and to state the matters that had led him to suspect that in the period since October 2010 (the period specified by the Secretary of State) the Council may not have complied with its obligations under Part 1 of the 1999 Act; and (5) asked that the Secretary of State identify and provide copies of the material he said he had passed to the Police.

Your letter dated 17 April 2014 does not even attempt to address these matters. It does no more than – in the barest of outline – summarise the content of the letter dated 4 April 2014. It provides no further information at all.

In respect of some of the information you state that disclosure would *"risk impeding the ongoing inspection and any future police investigation"*. This reference to the possibility of police investigation is entirely speculative. As you know, on 16 April 2014 the Metropolitan Police stated publicly that the information provided to them (presumably by the Secretary of State) provided *"no credible evidence of criminality"*. As to the possibility that disclosure of some of the information relied on by the Secretary of State might impede the inspection, even if this concern is warranted, it does not prevent the Secretary of State providing the Council with copies of the remainder of the information he relied on. Nor does it prevent you from providing answers to the points summarised at (2) – (4) above, or prevent you from providing copies of the documents referred to at (5) above.

You also say that some of the material relied on by the Secretary of State was provided to him on a "confidential basis". To the extent that when taking the decision to exercise his section 10 power the Secretary of State relied on documents that were not provided to him on a "confidential basis", the points made in the last paragraph apply – i.e. as this condition clearly did not apply to all information relied on by the Secretary of State, it cannot provide a reason for refusing to provide that other information. However, there is also a more fundamental point. It is entirely inappropriate for a Secretary of State to exercise statutory powers of investigation and then simply assert that "confidentiality" prevents him saying why. While I can see that in some circumstances the legitimate requirements of an investigation may justify holding back some information, temporarily, this is not the point that you make in this part of your letter. Rather, you seem to be saying that because some information has been provided "on a confidential basis" the Secretary of State is unable to provide any reasons for his decision. With respect, that is not an appropriate or permissible approach to a matter of public importance. If you disagree, please explain why the public interest properly to understand the reasons for the Secretary of State's decision does not outweigh the condition of confidentiality that you rely on.

I invite you to reconsider your position, and to provide proper responses to the points set out in Mr. Halsey's letter dated 10 April 2014.

This is a matter of real importance. As you also know, the inspection that may take place is "an inspection of ... compliance with the requirements of [Part 1 of the 1999 Act] in relation to specified functions". The Secretary of State must have reasonable grounds for a decision to exercise his powers, and any decision to exercise the powers must itself be reasonable and proportionate. As matters presently stand it is far from clear that the Secretary of State's decision to exercise his section 10 powers was a lawful decision.

*First*, you have declined to provide any response to the matters raised by Mr. Halsey. For the reasons set out above, your approach is not justified.

*Second*, the conduct of the inspectors that the Secretary of State has appointed PwC suggests that there is no proper basis for the decision to inspect the Council's compliance with its obligations under Part 1 of the 1999 Act. For example, PwC have requested copies of all emails sent and received, in the period from October 2010 to date, by 27 of the elected members of the Council and 47 of its officers. The request covers all functions of the Council

– it does not distinguish between those functions of the Council that are overseen by Government Departments other than DCLG and it is not limited even to the functions mentioned in the Secretary of State's letter dated 4 April 2014. Such a blanket request strongly suggests that what is taking place is not an inspection in respect of specific concerns, but rather a trawl through vast quantities of information in the hope that something to inspect will crop up. Moreover, it is more than a little concerning that without any form of explanation, the request directed to the emails of elected members covers 13 of the 26 Labour Party Councillors, 12 of the 15 elected members who are not members of any political group, the sole Liberal Democrat Councillor, but no Councillor from any other political party. In this regard too the request is simply for every email sent and received in the course of almost 4 years; there is no attempt to focus the request. If these two matters (lack of explanation for selection of the class; unlimited scope of the request) are taken together, the appearance is of an investigation driven by political considerations, not one that is genuinely concerned with the Council's compliance with its obligations under Part 1 of the 1999 Act. The investigation is not focused even on the matters referred to in the Secretary of State's letter dated 4 April 2014; and if this is so then it strongly suggests that the reasons for the Secretary of State's decision are not the ones set out in that letter.

*Third*, even putting the reasons for the section 10 decision to one side, the scope of the inspection appears to be entirely disproportionate. To give just one example, even assuming that the Secretary of State is concerned with some of the property transactions undertaken by the Council since 2010, does that concern really include all the Right to Buy sales, all grants of tenancies and all decisions on commercial lettings? PwC have asked to review all those transactions. Based on what the Secretary of State's inspectors are doing, the Council is faced with a largely unfocussed and incoherent set of issues. This too is at odds even with what the Secretary of State said in his 4 April 2014 letter.

I would be grateful for a substantive response to the matters set out above. The Council has serious concerns as to the legality of the Secretary of State's decision to exercise his section 10 powers, and in respect of his decision as to the scope of the inspection now in progress. I would be grateful if you could provide that response as soon as possible.

Pending your response, please take notice that I shall be requiring PwC to specify how their current and any future data requests are directed towards the Council's compliance with Part 1 of the 1999 Act and also how they relate to the four areas of attention that the Secretary of State mandated in their Letter of Appointment of 4 April 2014. I shall be advising the Council that it has no legal obligation to respond to requests for data from PwC that are beyond both their statutory and mandated remit and certainly not to pay for any audit activity which is beyond their proper authority.

Yours sincerely



**Meic Sullivan-Gould**  
**Interim Monitoring Officer**



Department for  
Communities and  
Local Government

Meic Sullivan-Gould  
Interim Monitoring Officer  
London Borough of Tower Hamlets  
Via email  
Meic.sullivan-gould@towerhamlets.gov.uk

14 May 2014

Dear Mr Sullivan-Gould

**Re: Tower Hamlets Best Value Inspection**

Thank you for your letter of 8 May 2014 to Sir Bob Kerslake, to which I have been asked to respond. In your letter you explain that your Council has serious concerns about the legality of the Secretary of State's decision to exercise his section 10 powers, including about the legality of the scope of the inspection. You also ask Sir Bob Kerslake to re-consider the position he set out in his letter of 17 April in response to a letter of 10 April to him from Mr Halsey, your Council's Head of Paid Service & Corporate Director Communities, Localities & Culture.

In his letter of 10 April, Mr Halsey assured Sir Bob of the Council's intention to co-operate fully with PwC, an assurance which Sir Bob welcomed in his response of 17 April. In this context, I hope my comments below will assist your Council fully to fulfil its intention, enabling the inspection to be effectively undertaken as efficiently and expeditiously as possible – which should be the focus now for all, as Sir Bob highlighted in his letter.

The Secretary of State has appointed PwC to carry out a best value inspection (not an Extraordinary Audit to which you make reference in your letter) of the compliance of your Council with the requirements of Part 1 of the Local Government Act 1999 in relation to certain functions. These 1999 Act requirements include the general duty that an authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

As is stated in the letter of appointment to PwC, the current inspection is of compliance with the 1999 Act duties mentioned above in relation to your Council's functions "in respect of governance, particularly the authority's functions under section 151 of the Local Government Act 1972". These are the specified functions for the purposes of section 10(1) of the 1999 Act. The inspection is thus wide-ranging and the Secretary of State is clear that any matter relating to the arrangements your Council has made and operated for its governance is within scope.

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Tel 0303 44 42568

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It is a misreading of the appointment letter to see the scope of the inspection as being limited to the four particular matters mentioned. These four matters are referred to in a direction given to PwC pursuant to section 10(4)(b) of the 1999 Act, being the matters to which initially the inspection should in particular relate. If the inspectors consider that in order to fulfil their appointment relating to your Council's governance functions they need to cover other matters, it is appropriate for them to do so.

Best value inspections under the 1999 Act are the preliminary stage of a process which may lead to the authority concerned being directed by the Secretary of State to undertake a possible range of actions as provided for in section 15 of the 1999 Act. Specifically, section 13 of the 1999 Act provides that an inspector's report must both mention any matter in respect of which the inspector believes as a result of the inspection that the authority is failing to comply with the 1999 Act duties, and may recommend, if there is such a matter, that the Secretary of State gives a direction under section 15 of the 1999 Act.

As you say, the Secretary of State's decision to appoint a person to carry out an inspection must be reasonable and proportionate. Given that an inspection is a preliminary stage of a process designed to inform objectively any further stages of the process, it is reasonable and proportionate to instigate an inspection in circumstances where significant allegations have been raised, publicly or otherwise, which cast doubt on an authority's compliance with its 1999 Act duties. Moreover, any such inspection needs to be sufficiently wide and comprehensive to provide, as the case may be, either a robust assurance that in fact there is compliance, or both to identify matters of non-compliance, and if the inspector considers appropriate, for him to recommend the Secretary of State gives directions under section 15 of the 1999 Act.

In the case of your Council, as the appointment letter states, appropriate further investigations of your council were recommended by PwC, a well-respected audit firm, to establish whether allegations about poor governance and possible fraud, made in certain documents reviewed by PwC, have any foundation. Moreover, as also stated in the appointment letter, significant allegations have been made in the BBC Panorama programme about governance failures, poor financial management and possible fraud – these allegations alone being reason enough to instigate the inspection which is being carried out.

In short, the Secretary of State's reasons for appointing inspectors are as follows. Serious allegations have been made about governance at Tower Hamlets. A well-respected audit firm has recommended further investigation about certain allegations. In these circumstances, serious doubt has been cast on whether your Council is compliant with its 1999 Act duties in relation to the exercise of its governance functions. Accordingly, the Secretary of State believes an inspection is necessary to provide either assurance of compliance or to identify matters of non-compliance, and possibly appropriate remedial action. He is clear that without such an inspection the public could have no continuing confidence that your Council has in place arrangements to ensure it delivers value for money in its use of public resources.

Against this background, Sir Bob Kerslake has reviewed his letter to Stephen Halsey of 17 April and considered his position afresh. He remains of the view that the reasons for the Secretary of State's decisions as to the inspection and its scope are clear, and above

I have further articulated these and the approach the Secretary of State has adopted to the exercise of his section 10 powers.

Sir Bob also remains of the view that some of the material to which the Secretary of State had regard – the Panorama programme – is in the public domain, and that “other material has been provided to the Department on a confidential basis and it would be a breach of confidence and risk impeding the ongoing inspection and any **potential** future police investigation [my emphasis: in your letter you misquote Sir Bob as referring to “any future police investigation”], to make this information more widely available, including to your Council”. Moreover, he does not accept your suggestion that reference to the possibility of police investigation is entirely speculative; in their statement the Metropolitan Police Service stated that “it is appropriate for the material to be reviewed further by PwC and DCLG. We will continue to liaise with them should their audit uncover any evidence of criminality”.

Finally, you refer to certain matters relating to the conduct of the inspection. These are entirely matters for the inspector. I have explained the basis of the appointment and the scope of the inspection. How the inspectors discharge their remit is a matter for them. It is important, as you will appreciate, that whatever precise approach they adopt, for example in relation to obtaining documents and information, it will ensure the completeness and robustness of their conclusions, having regard to their remit to report your Council’s compliance with its duties under Part 1 of the 1999 Act in relation to its functions in respect of governance, particularly the authority’s functions under section 151 of the Local Government Act 1972.

Yours sincerely,

A handwritten signature in black ink that reads "P. Rowsell". The signature is written in a cursive style with a horizontal line underneath the name.

**Paul Rowsell**





Department for  
Communities and  
Local Government

Mr Chris Holme  
Acting Corporate Director, Resources /  
Section 151 Officer  
London Borough of Tower Hamlets  
Email: [chris.holme@towerhamlets.gov.uk](mailto:chris.holme@towerhamlets.gov.uk)

28 May 2014

Dear Mr Holme

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

Thank you for your letter of 12 May 2014 to Sir Bob Kerslake, to which I have been asked to respond. In your letter, you state that you are aware that section 12 of the Local Government Act 1999 provides that the London Borough of Tower Hamlets must pay the reasonable costs of the inspector and you ask to know "the principles which the Secretary of State intends to put in place for the purposes of determining how and by whom 'reasonable fees' will now be determined".

The statute makes no provision about any determination of fees, rather it places a duty on the authority concerned to pay the reasonable fees of the inspector for carrying out the inspection. In short, the authority must pay the fees charged by the inspector as long as these are reasonable.

In practice, the fees which the inspector, PwC, will charge are those in accordance with the competitive rates for which provision is made in an existing call-off framework contract which the Department entered into with PwC in April 2013. The amount of fees charged will of course depend on the work which the inspector considers it necessary to undertake, which will become clearer over the coming weeks. Our intention is that as soon as practicable – likely to be early June – we will be able to give you some indication of the aggregate amount of fees which your council will have to pay.

Yours sincerely

Paul Rowsell





The Rt.Honourable Eric Pickles MP  
Department for Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU

Via Email: [eric.pickles@communities.gsi.gov.uk](mailto:eric.pickles@communities.gsi.gov.uk)

2 June 2014

**Lutfur Rahman**  
Mayor of Tower Hamlets

Tower Hamlets Town Hall  
5 Clove Crescent  
London E14 2BG

Tel 020 7364 6971  
Fax 020 7364 3213

[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)  
[Mayor@towerhamlets.gov.uk](mailto:Mayor@towerhamlets.gov.uk)

Dear Mr Pickles,

You will be aware that Tower Hamlets' residents have re-elected me as their Mayor for the next four years. It continues to be an honour for me to serve all residents and I am sure you share my view that the best way to do so is for local, regional and national politicians to find common ground and work together.

My officers have updated me on your auditors' inspection which I continue to welcome. I trust you will agree that we have offered every assistance and I very much hope that they will report within the original timeframe, especially in light of the announcement by the Metropolitan police that they have received no credible evidence of criminality.

I am concerned about the mounting costs of the inspection, which as you will be aware, are paid for by Tower Hamlets' council tax payers. In a letter from your permanent secretary to my chief finance officer, it appears that Price Waterhouse Coopers will charge competitive rates with no upper limit on the costs.

We have asked your officials on several occasions for clarity regarding the evidence justifying the audit, the likely costs to be borne by local residents and the extent to which the audit remains within the parameters set by the legal powers you have used. To date we have not received a satisfactory response to the above.

In the context of national government cuts to local government requiring the council to find savings of over £100m over the next three years, it is incumbent upon both of us to ensure the inspection is carried out as efficiently as possible. This should of course be done without compromising Price Waterhouse Coopers' ability to thoroughly complete their deliberations. I would be grateful therefore if we could meet to discuss a way forward on this.

I would finally like to take this opportunity to invite you to visit the borough to meet officers, residents and our third sector partners to see first-hand our achievements over the past four years and our plans for the next four.

I look forward to your reply.

Yours sincerely,

Lutfur Rahman  
Mayor of Tower Hamlets

**Mr Paul Roswell**

Deputy Director - Democracy  
Department for Communities and Local  
Government  
3/J1 Eland House  
Bressenden Place  
London  
SW1E 5DU

By email in the first instance to:  
paul.roswell@communities.gov.uk

Directorate of Law Probity & Governance  
Legal Services  
Mulberry Place  
5 Clove Crescent  
London  
E14 2BG  
Tel **020 7364 4348**  
Fax **020 7364 4804/4861**  
Email  
david.galpin@towerhamlets.gov.uk  
DX Tower Hamlets Legal Department  
42656 Isle of Dogs

[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)

02 June 2014

Our Ref: STC.58/DG

Dear Mr. Rowsell,

**Re: Proposed claim for judicial review; letter before claim**

I act on behalf of the London Borough of Tower Hamlets. I write in response to your letter dated 14 May 2014 to Mr. Sullivan-Gould. Please note that this letter is a formal letter before claim, and follows the format of the pre-action protocol.

**1. To**

The Secretary of State for Communities and Local Government  
Eland House, Bressenden Place, London. SW1E 5DU

**2. The Claimant**

The London Borough of Tower Hamlets  
6<sup>th</sup> Floor Legal Services, 5 Mulberry Place, London, E14 2BJ DX 42656 Isle of Dogs

**3. Reference details**

Please send any correspondence in relation to this matter to me, at the above address, marked with reference STC.58/DG

#### **4. Details of the matter being challenged**

The Secretary of State's decision to appoint inspectors to undertake an inspection of the Council, pursuant to section 10 of the Local Government Act 1999, as set out in the letter to the Council dated 4 April 2014, and as further stated in the letter to the Council dated 14 May 2014.

#### **5. The issue**

In summary, the Council contends as follows.

*First*, the Secretary of State has unlawfully failed to provide the reasons (alternatively any sufficient statement of the reasons) for the decision to cause an inspection to take place in exercise of his powers under section 10 of the 1999 Act.

*Secondly* (and consequent upon his failure to state the reasons for his decision), the Secretary of State has unlawfully failed to provide responses to requests for information and for documents as set out in the Council's letter dated 10 April 2014. See further at (5) below.

*Thirdly*, the Secretary of State's exercise of his section 10 power is unlawful. In the absence of any proper statement of the reasons for the decision, there is no basis for a conclusion that the Secretary of State has exercised his power lawfully: there is no basis to conclude either that there is any sufficient rational grounds for his decision, or that he has exercised his powers under the 1999 Act in pursuit of a legitimate objective, or that the scope of the inspection directed by the Secretary of State is reasonable and proportionate.

The Secretary of State has failed to explain the connection between the four matters he has directed PWC to inspect (see at (2) below) and the purpose of the power under section 10 of the 1999 Act, which is to ensure compliance with obligations arising under Part 1 of the 1999 Act. Further, in his most recent letter (see below at

(8)) he has stated that the inspection covers all matters relating to the arrangements made by the Council for its own governance. The Secretary of State has provided no basis for a decision to undertake such a wide-ranging inspection (and had not previously stated that this was the scope of the inspection).

(1) The Secretary of State's decision is contained in the letter to the Council dated 4 April 2014. Pursuant to section 10 of the Local Government Act 1999 ("the 1999 Act") the Secretary of State appointed inspectors (Pricewaterhouse Coopers Plc – "PWC") to undertake an inspection relating to the Council's compliance with the requirements of Part 1 of the 1999 Act. The primary obligation under Part 1 of the 1999 Act is at section 3(1) and requires a best value authority to "*... make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness*". The Secretary of State's letter also stated that the inspection would relate to "*the [Council's] functions in respect of governance, in particular the [Council's] functions under section 151 of the Local Government Act 1972*". Section 151 of the 1972 Act requires every local authority to "*... make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has responsibility for the administration of those affairs*".

(2) The letter stated that the Secretary of State had directed PWC to consider (1) payment of grants and connected decisions; (2) the transfer of property to third parties; (3) spending and decisions in relation to publicity; and (4) processes and practices for entering into contracts (referred to together in this letter as "the four matters").

(3) The second paragraph of the letter stated as follows (so far as material for present purposes).

*"In making this appointment the Secretary of State has had regard to certain documents that the Department has received about governance in Tower Hamlets, and the review of these documents undertaken by PWC, which*

*recommends that appropriate further investigations are carried out to establish whether allegations about poor governance and possible fraud have any foundation. ... He has also had regard to the BBC Panorama programme broadcast on 31 March 2014, which made allegations about governance failures, poor financial management and possible fraud at Tower Hamlets, particularly in relation to grant payments."*

(4) Since 4 April 2014 there has been further correspondence between the Council and the Secretary of State: see, letters dated 10 April 2014, 17 April 2014, 8 May 2014, and 14 May 2014. For present purposes, the content of these letters may be summarised as follows.

(5) By its letter dated 10 April 2014 the Council: (a) asked the Secretary of State to identify the "*certain documents*" referred to in the letter dated 4 April 2014 and to provide copies of those documents; (b) asked the Secretary of State to identify the allegations of "*poor governance*" and "*possible fraud*" which he had taken into account when deciding to appoint the inspectors; (c) asked the Secretary of State to identify the matters referred to in the BBC Panorama programme which he had taken into account; and (d) asked the Secretary of State to explain the way in which the proposed inspection into the four matters corresponded to the Secretary of State's power under section 10 of the 1999 Act.

(6) The letter dated 17 April 2014 sent on behalf of the Secretary of State asserted that the 4 April 2014 letter "*sets out clearly the basis of the Secretary of State's decision*". The letter did not attempt to address the point at (d) above. As regards the matters at (a) and (c) above, the letter stated that "*some material*" was already in the public domain, but did not attempt to say what this was; it stated that other material had been provided on a "*confidential basis*". In any event, the Secretary of State did not provide copies of any documents relied on for the purposes of his decision under section 10 of the 1999 Act. The letter did not address the point at (b) above at all.

(7) By a letter dated 8 May 2014 the Council stated that the Secretary of State's response was unsatisfactory, and repeated its requests. The Council also stated that in the absence of further explanation it was not clear that the Secretary of State had acted lawfully either in deciding to appoint inspectors or in respect of the terms of reference of the inspection; and that this conclusion was supported by the actions of PWC who had made blanket requests for information, not directed to the four matters which the Secretary of State had referred to in his 4 April 2014 letter.

(8) The Secretary of State's letter dated 14 May 2014 stated that *"the inspection is ... wide-ranging and the Secretary of State is clear that any matter relating to the arrangements your Council has made and operated for its governance is within scope"*. The letter asserted that *"significant allegations"* had been raised that *"cast doubt"* on the Council's compliance with duties under the 1999 Act, and that *"serious allegations have been made about governance at tower Hamlets"* and that PWC had recommended *"further investigation about certain allegations"*; however the letter did not identify what the allegations were. So far as the conduct of the inspection was concerned, the Secretary of State asserted that such matters were *"entirely"* for PWC.

(9) The Council's proposed challenge is on the grounds summarised at the beginning of this section.

(10) The Secretary of State was under a duty to state the reasons for his decision. He has failed to provide reasons, and/or sufficient reasons for his decision under section 10 of the 1999 Act, and has therefore acted unlawfully. The Secretary of State should have addressed the questions posed in the Council's letter dated 10 April 2014 (see at (5) above). He has not done so. In the premises, (a) the Secretary of State has unlawfully failed to identify the allegations which caused him to exercise his powers; (b) the Secretary of State has unlawfully failed to identify or provide copies of relevant documents which he took into account when taking his decision; (c) the Secretary of State has unlawfully failed to state reasons which explain the connection between the four matters identified in his letter dated 4 April 2014 and the

purpose for which an inspection may be undertaken in exercise of the section 10 powers; and (d) the Secretary of State has unlawfully failed to provide reasons which explain the basis for the decision (referred to in his letter dated 14 May 2014) for a “*wide-ranging*” inspection concerning any matter relating to arrangements made by the Council for its governance.

(11) In the absence of any sufficient explanation of the reasons for the Secretary of State’s decision, the Council contends as follows. (a) The decision is unlawful because there is no rational basis for it. (b) The section 10 power is not a power to inspect or investigate at large. It is a power to inspect in relation to compliance with obligations arising under Part 1 of the 1999 Act. There is no relevant and rational connection between the four matters and the purpose for which the section 10 power to inspect may be used. (c) The Secretary of State has now made it clear that his decision is that there should be a “*wide-ranging*” inspection concerning any matter relating to arrangements made by the Council for its governance. There is no rational basis for a decision to undertake an inspection of that nature and scope.

## **6. Details of the action that the Secretary of State is expected to take.**

(1) The Secretary of State should, forthwith, make good his failure to state the reasons for his decision, and should address the matters summarised at (10)(a) – (d) above.

(2) The Secretary of State should direct that the inspection presently in progress should cease. He should agree to meet the costs of the inspection to date (i.e. the costs of the inspectors which will otherwise fall on the Council by reason of section 12 of the 1999 Act).

(3) In the event that proceedings are issued, as presently advised the Council is minded to seek the following orders: (a) interim relief in the form of an injunction preventing the continuation of the inspection pending determination of the application for judicial review; (b) a mandatory order requiring the Secretary of State to provide

reasons for his decision, and without prejudice to the generality of the foregoing, to address the matters summarised at (10)(a) – (d) above; (c) an order quashing the Secretary of State's decision under section 10 of the 1999 Act; (d) an order requiring the Secretary of State to indemnify the Council in respect of any inspection fees that may be imposed on it pursuant to section 12 of the 1999 Act; (e) an order for compensation in respect of the loss and damage caused to the Council consequent upon the Secretary of State's exercise of his section 10 powers.

**7. Details of legal advisers dealing with this claim**

As stated above, I act on behalf of the Council in respect of this claim. Please address all correspondence to me using the address and reference details stated at 2 and 3 above.

**8. Details of any interested parties**

The Council has not identified any interested parties

**9. Details of information sought; documents requested**

The Secretary of State is requested to provide the following information and documents.

(a) Identify the "*certain documents*" referred to in the letter dated 4 April 2014 and to provide copies of those documents, together with copies of all other documents relied on for the purpose of the decision under section 10 of the 1999 Act.

(b) Identify the allegations of "*poor governance*" and "*possible fraud*" and/or any other allegation which he had taken into account when deciding to appoint the inspectors, and/or caused him to take the decision he did in exercise of his powers under section 10 of the 1999 Act.



(c) Identify the matters referred to in the BBC Panorama programme which he had taken into account.

(d) State how the inspection into the four matters specified in the 4 April 2014 letter corresponds to the Secretary of State's power under section 10 of the 1999 Act.

(e) State the reasons which explain the basis for the decision (referred to in his letter dated 14 May 2014) for a "wide-ranging" inspection concerning any matter relating to arrangements made by the Council for its governance.

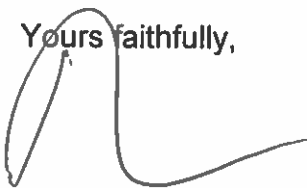
**10. The address for reply and for service of court documents**

The London Borough of Tower Hamlets  
6<sup>th</sup> Floor Legal Services, 5 Mulberry Place, London, E14 2BJ  
DX 42656 Isle of Dogs  
Reference: STC.58/DG

**11. Proposed date for reply to this letter**

A response to this letter is requested within 14 days of the date of this letter.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'David Galpin', with a long horizontal flourish extending to the right.

David Galpin  
**Service Head Legal Services**



Department for  
Communities and  
Local Government

Mr David Galpin  
Service Head Legal Services  
London Borough of Tower Hamlets  
5 Mulberry Place  
London  
E14 2BJ  
DX 42656 Isle of Dogs  
By email:  
[david.galpin@towerhamlets.gov.uk](mailto:david.galpin@towerhamlets.gov.uk)

11 June 2014

Your ref: STC.58/DG

Dear Mr Galpin

**Proposed claim for judicial review; letter before claim**

Thank you for your letter of 2 June, which is a formal letter before claim seeking to challenge the Secretary of State's decision to undertake an inspection of your Council pursuant to section 10 of the Local Government Act 1999.

You ask for a response within 14 days of the date of your letter. The letter was received in the Department on Thursday 5 June by hard copy. No email attaching the letter was received, presumably because the email address on the top of the letter is incorrect. In the circumstances I would be grateful if you could extend your deadline for a response to 14 days from receipt of your letter i.e. by close on Thursday 19 June.

Yours sincerely

**Paul Rowsell**

Paul Rowsell  
Deputy Director - Democracy  
Department for Communities and Local Government  
3/J1, Eland House  
Bressenden Place  
London SW1E 5DU

Tel 0303 44 42568

Email [paul.rowsell@communities.gsi.gov.uk](mailto:paul.rowsell@communities.gsi.gov.uk)

**Mr Paul Rowsell**

Deputy Director - Democracy  
Department for Communities and Local  
Government  
3/J1 Eland House  
Bressenden Place  
London  
SW1E 5DU

By email in the first instance to:  
[paul.rowsell@communities.gsi.gov.uk](mailto:paul.rowsell@communities.gsi.gov.uk)

Directorate of Law, Probity and Governance  
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Mulberry Place  
5 Clove Crescent  
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Tel **020 7364 4348**  
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[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)

16 June 2014

Our Ref: STC.58/DG  
Your Ref:

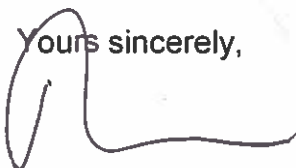
Dear Mr Rowsell,

**Re: Proposed claim for judicial review; letter before action**

Thank you for letter dated 11<sup>th</sup> June 2014.

We agree to an extension for you to respond to our Letter Before Action to close of business on Thursday 19<sup>th</sup> June 2014.

Yours sincerely,



David Galpin  
**Service Head – Legal Services**



Department for  
Communities and  
Local Government

Mr David Galpin  
Service Head Legal Services  
London Borough of Tower Hamlets  
5 Mulberry Place  
London  
E14 2BJ  
DX 42656 Isle of Dogs  
By email:  
[david.galpin@towerhamlets.gov.uk](mailto:david.galpin@towerhamlets.gov.uk)

19 June 2014

Your ref: STC.58/DG

Dear Mr Galpin

**Re: Proposed claim for judicial review; letter before claim**

1. We refer to your letter dated 2 June 2014. Because that letter was sent to an incorrect e-mail address, it was only received by us in hard copy on 5 June 2014, and consequently you have since agreed that we may reply to you by 19 June. In accordance with the pre-action protocol for judicial review, this is our response to your letter before claim.

***The proposed claimant***

2. The proposed claimant is the London Borough of Tower Hamlets ("the Council"), Legal Services, 6<sup>th</sup> Floor, 5 Mulberry Place, London E14 2BJ, DX 42656 Isle of Dogs

***The proposed defendant***

3. The proposed Defendant is the Secretary of State for Communities and Local Government.

Paul Rowsell  
Deputy Director - Democracy  
Department for Communities and Local Government  
3/J1, Eland House  
Bressenden Place  
London SW1E 5DU

Tel 0303 44 42568

Email [paul.rowsell@communities.gsi.gov.uk](mailto:paul.rowsell@communities.gsi.gov.uk)

***Reference details***

4. This matter is being dealt with by myself, Paul Rowsell, at the address on the first page of this letter.

***Details of the matter being challenged***

5. You are proposing to challenge the Secretary of State's decision of 4 April 2014 to appoint PricewaterhouseCoopers ("PWC") to carry out an inspection of the Council pursuant to s 10 of the Local Government Act 1999 ("the 1999 Act").
6. Although your letter purports to challenge this decision "as further stated" in my letter dated 14 May 2014 to your Council, for the reasons set out below, we do not accept that the letter of 14 May 2014 sets out anything materially different from the Secretary of State's letters of 4 April 2014.
7. Your letter sets out various proposed challenges to the Secretary of State's decision. Insofar as we understand them, they can be summarised as follows:
  - (1) The Secretary of State's decision was irrational. In particular:
    - (a) there is no rational connection between the four matters that the Secretary of State asked PWC initially to deal with on their inspection and the purpose of the power conferred by s 10 of the 1999 Act;
    - (b) there is no rational basis for conducting the type of "wide-ranging" inspection referred to in the Secretary of State's letter of 14 May 2014.
  - (2) The Secretary of State unlawfully failed to provide reasons (or, alternatively, sufficient reasons) for his decision. In particular:
    - (a) the Secretary of State did not identify the documents referred to in his letter of 4 April 2014 or provide copies of them;

- (b) the Secretary of State did not identify the particular allegations of poor governance and possible fraud that he took into account when reaching his decision;
- (c) the Secretary of State did not identify the particular matters referred to in the BBC Panorama programme that he took into account when reaching his decision;
- (d) the Secretary of State did not identify the connection between the four matters that the Secretary of State asked PWC initially to deal with on their inspection and the purpose of the power conferred by s 10 of the 1999 Act.

- (3) The Secretary of State has unlawfully failed to provide to the Council the information and documents that it requested in its letter of 10 April 2014.

***Response to the proposed challenge***

- 8. At the outset it is important to understand the scheme of Part I of the 1999 Act, and the place of s 10 within that scheme.
- 9. Section 10 of the 1999 Act is part of a legislative scheme that enables the Secretary of State to address failings in a local authority, specifically failings of an authority in its duty under s 3 of the 1999 Act to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness (“the best value duty”). The legislative scheme involves a power to commission an inspection of a local authority (pursuant to s 10) and powers either to require an authority to take certain actions or to require that specified functions of the authority are exercised by the Secretary of State or by a person nominated by him (pursuant to s 15).
- 10. The powers to intervene pursuant to s 15 of the 1999 Act arise where the Secretary of State is satisfied that an authority is failing to comply

with its best value duty. Except in cases of urgency, before intervening in a local authority the Secretary of State is required to give the authority an opportunity to make representations, including representations about any inspection report as a result of which the direction is proposed (see s 15(9)).

11. An inspection is, therefore, a preliminary step that is designed to inform a subsequent decision as to whether there should be an intervention. There are a number of important features to note about this preliminary step. First, it is part of the oversight function that Parliament has conferred on the Secretary of State with a view to ensuring that the interests of the residents of a local authority's area are safeguarded and the public purse is protected. Second, Parliament has not prescribed any preconditions that must be met before the Secretary of State may decide to commission an inspection and nor has it prescribed the matters to which the Secretary of State may (or may not) have regard when taking such a decision. Third, Parliament has not prescribed any particular procedural steps that must be taken in relation to such a decision. In particular, Parliament has not, unlike under s 15 of the 1999 Act, required that a local authority have an opportunity to make representations. Fourth, the purpose of an inspection is not to prove or disprove specific allegations, but is to ascertain whether or not a local authority has complied with the best value duty. Fifth, an inspection is embarked upon in order to obtain the full facts of a case, rather than because a particular view of the facts has already been reached. Sixth, it is a process that (in appropriate cases) leads to further stages where, if intervention is contemplated, there is specific provision for the authority concerned both to be provided with the information on the basis of which that intervention is proposed and to make representations on it.
12. In light of the above, it is clear that Parliament intended that the Secretary of State would be entitled to commission an inspection under s 10 of the 1999 Act in circumstances where significant allegations

have been raised, publicly or otherwise, which cast doubt on an authority's compliance with its best value duty. In such circumstances an inspection needs to be sufficiently wide and comprehensive to provide, as the case may be, either a robust assurance that in fact there is compliance with the best value duty, or both to identify any areas of non-compliance and (if the inspector considers it appropriate to do so) to enable a recommendation to be made to the Secretary of State as to what intervention would be appropriate (see s 13(2) of the 1999 Act).

13. Where there is a failure of governance, poor financial management, or incidents of fraud at a local authority, it is almost inevitable that appropriate arrangements have not been made to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Governance failure, poor financial management, and incidents of fraud are typically paradigm manifestations of an authority's failure to comply with its best value duty. Accordingly, where it is alleged that a local authority has suffered from poor governance, poor financial management and/or fraud, that ordinarily suggests that there has been a failure on the part of the local authority to comply with its best value duty.

*(1) Alleged irrationality*

14. The first ground on which you allege irrationality is that there is, you say, no rational connection between the four matters that the Secretary of State asked PWC initially to deal with on their inspection and the purpose of the power conferred by s 10 of the 1999 Act.
15. The four matters that were mentioned in the Secretary of State's letters to the Council and PWC dated 4 April 2014 are: (i) the Council's payments of grants and connected decisions, (ii) the transfer of property by the Council to third parties, (iii) the Council's spending



decisions in relation to publicity, and (iv) the Council's processes and practices for entering into contracts.

16. We confess to being somewhat surprised that you should suggest that there is no rational connection between these four matters and the purpose of the power conferred by s 10 of the 1999 Act. As explained above, the purpose of the s 10 power is to inform a subsequent decision as to whether there should be an intervention in a local authority on the ground that the authority has failed to comply with the best value duty. Again as explained above, the best value duty is a duty to make arrangements to secure continuous improvement in the way in which an authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
17. The four matters referred to above all relate to important aspects of the Council's financial management. In our view, it is obvious that if the Council is failing in such important aspects of its financial management, that could (at the very least) suggest that the Council is failing to comply with its best value duty. Accordingly, it is obvious that the report of an inspection which addresses those matters is likely to be relevant to any decision by the Secretary of State to intervene (or not to intervene) in the Council.
18. In this context, we note that your letter provides absolutely no explanation of why you say that there is no rational connection between the four matters referred to above and the decision to commission an inspection. Not only does this constitute a failure to comply with the letter and the spirit of the pre-action protocol, it also suggests to us that you have no such explanation. For the reasons set out above, we find this unsurprising.
19. The second ground on which you allege irrationality is that, you say, there is no rational basis for commissioning the type of "wide-ranging" inspection referred in my letter to the Council dated 14 May 2014.

Before responding to this ground, it is important to address what appears to be a misapprehension evidenced by your letter. You seem to be under the impression that the type of inspection referred to in my letter of 14 May 2014 is somehow different to that referred to in the Secretary of State's letters of 4 April 2014. If you are under any such impression, it is mistaken. The letter to PWC of 4 April 2014 is clear that the inspection is to relate to "the [Council's] functions in respect of governance, particularly under s 151 of the Local Government Act 1972". Accordingly, from the outset, the Secretary of State made it clear that the inspection was to relate to the Council's functions in respect of governance. There was nothing in my letter of 14 May 2014 that was inconsistent with this, or which purported to expand the scope of the inspection as set out in the letters of 4 April 2014. The expression "wide-ranging" that I used in my letter is merely an apt adjective to describe what has been clear from the outset.

20. Turning to the substance of this second ground, your argument appears to be that there is no rational basis for deciding to commission an inspection into the Council's functions in respect of governance generally. Again, we note that in your letter you wholly fail to put forward a positive case to that effect. This is not surprising. As was set out in the Secretary of State's letter to the Council dated 4 April 2014, the Secretary of State had received documents which PWC advised merited further investigation to establish whether there has been, amongst other things, poor governance at the Council and he had had regard to the allegations made by a BBC Panorama programme that, amongst other things, there were governance failures at the Council. The PWC review of the documents stated the following:

"If the allegations made by the sources were well-founded (and, as stated above, we are not currently in a position to evaluate this either way), then this would indicate the existence of potential evidence of:

- Conflicts of interest;
- Abuse of position, possible fraud; and/or

- Failures of governance.

In the light of the above, we would recommend that appropriate further investigations be carried out to establish whether or not in fact the allegations have any foundation.”

21. If there has been poor governance at the Council, that could (at the very least) suggest that the Council is failing to comply with its best value duty. Accordingly, it is obvious that the report of an inspection which addresses those matters is likely to be relevant to any decision by the Secretary of State to intervene (or not to intervene) in the Council.
22. It follows that we reject your contention that the Secretary of State's decision is irrational. Indeed, we consider that your contention has an air of unreality to it. You are, in effect, arguing that where the Secretary of State receives information suggesting that there might have been governance failures, poor financial management and fraud at a local authority, with the potential consequent detriment to the residents of the local authority's area and the public purse that might follow from such failings, he cannot rationally commission an inspection to investigate those matters further. We consider that a court would regard such an argument as totally without merit.

*(2) Alleged failure to provide reasons*

23. The unstated premise of your proposed reasons challenge is that the Secretary of State was under a duty to give detailed reasons for his decision to commission an inspection under s 10 of the 1999 Act. We note that you cite no legal authority for such a proposition. Self-evidently, without knowing the legal basis for the various contentions that you make, we are in some difficulty in responding to them. If, in proper compliance with the Pre-Action Protocol for Judicial Review, you make good this omission, we will of course endeavour to respond further.

24. For the time being, however, even if for the sake of argument one assumes that the Secretary of State was under common law duty to give reasons (Parliament not having imposed any such duty in s 10 of the 1999 Act), bearing in mind the points made in paragraphs 8 to 13 above, we cannot see that such a duty would require the Secretary of State to do anything more than state briefly why he had commissioned an investigation. If such a duty applied, we consider that the Secretary of State has discharged it, both in his letter to the Council of 4 April 2014 and in subsequent correspondence.
25. In particular, in the Secretary of State's letter to the Council dated 4 April 2014, the Secretary of State clearly stated that he was commissioning an inspection under s 10 of the 1999 Act in light of certain documents received by him, PWC's review of those documents, and the BBC Panorama programme, which (as noted above) together raised allegations of poor governance, poor financial management and possible fraud. As explained above, it is obvious that those matters referred to in the Secretary of State's letter, if established, could suggest that the Council is failing to comply with its best value duty, and it was clearly rational for the Secretary of State to decide to commission an investigation on this basis. This was also made clear in my letter to the Council of 14 May 2014:

"Serious allegations have been made about governance at Tower Hamlets. A well-respected audit firm has recommended further investigation about certain allegations. In these circumstances, serious doubt has been cast on whether your Council is compliant with its 1999 Act duties in relation to the exercise of its governance functions. Accordingly, the Secretary of State believes an inspection is necessary to provide either assurance of compliance or to identify matters of non-compliance, and possibly appropriate remedial action. He is clear that without such an inspection the public could have no

continuing confidence that your Council has in place arrangements to ensure it delivers value for money in its use of public resources.”

26. Accordingly, we do not consider that anything more was required by way of reasons. For the avoidance of doubt, we do not consider that the Secretary of State was required to identify particular documents that he relied upon when reaching his decision, particularly when those documents were provided on a confidential basis and where their release might compromise the inspection and/or any future police investigation. Again, we note that you have put forward no legal basis to support your contention to the contrary.

*(3) Alleged failure to provide information and documents*

27. Insofar as you allege that the Secretary of State has acted unlawfully by not providing the Council with information and documents, you have entirely failed to identify the source of the duty to provide the information and documents upon which you rely. Unless and until you do so, we are simply not in a position to respond to this ground of challenge. In any event, we note that this appears to be a criticism of the Secretary of State's actions *after* the date of the decision under challenge, and therefore we do not understand how it could possibly form a basis for quashing the decision itself.

*Delay*

28. We note that almost two months elapsed between the Secretary of State's letters of 4 April 2014 and your letter before claim, during which time the PWC inspection has been ongoing, and the inspections is now in a number of ways well advanced. We also note that there is no explanation for this delay in your letter. Accordingly, should you bring a claim for judicial review of the decision of 4 April 2014, we reserve the right to argue that you have not acted promptly as required by CPR 54.5.

*Conclusion*

29. For the reasons set out above, we do not consider that any of your proposed grounds of challenge have merit, and we do not propose to take the action sought in your letter.
30. Finally, we wish to draw your attention to a letter dated 2 June 2014 from the Mayor of the Council to the Secretary of State. In that letter, the Mayor states that he “welcomes” the inspection and hopes that PWC will provide a report within the time frame originally envisaged. We are unable to reconcile this sentiment with your threat to claim judicial review of the Secretary of State’s decision to commission the inspection and your threat to seek an injunction requiring that the inspection should halt, and we are therefore left somewhat confused as to the Council’s position.

***Details of any interested parties***

31. We do not consider that there are any parties that should be named as interested parties to your proposed claim.

***Address for further correspondence and service of court documents.***

32. Please send any further correspondence on this matter to me at the address on the first page of this letter. Any court documents should be served on:

The Treasury Solicitor (for the attention of Neera Ghajja)  
One Kemble Street  
London WC2B 4TS

Yours sincerely



**Paul Rowsell**

