

# **LONDON BOROUGH OF TOWER HAMLETS**

## **COUNCIL MEETING**

**WEDNESDAY 21<sup>st</sup> JANUARY 2015**

### **AGENDA ITEM 9.1**

#### **REFERENCE FROM THE OVERVIEW AND SCRUTINY COMMITTEE - JUDICIAL REVIEW ON THE BEST VALUE INSPECTION**

#### **REPORT OF THE SERVICE HEAD, DEMOCRATIC SERVICES**

#### **1. SUMMARY**

- 1.1 This report sets out the response of the Overview and Scrutiny Committee to a motion passed at Council in September 2014 (the details of which are included below).

#### **2. RECOMMENDATIONS**

- 2.1 The Council is asked to note the Overview and Scrutiny Committee's findings that the decision to proceed with the Judicial Review was a reasonable one, having had regard to the advice received from Counsel that there was a substantial chance of success. However it also resolved to express its concerns regarding:
- how the authority's relationship with both the Department for Communities and Local Government and PricewaterhouseCoopers were managed
  - the extent of the consideration given to the impact of seeking Judicial Review, and
  - the use of delegated authority to take a decision of this significance,

#### **3. BACKGROUND**

- 3.1 On the 4th April 2014, the Secretary of State for Communities and Local Government appointed PwC to undertake a best value inspection of the London Borough of Tower Hamlets pursuant to section 10 of the Local Government Act 1999 (as amended by the Local Audit and Accountability Act 2014).

3.2 On 30<sup>th</sup> June 2014, the Council sought permission from the High Court to bring Judicial Review proceedings in respect of the above decision. On 13<sup>th</sup> November 2014, permission was refused.

3.3 On 10<sup>th</sup> September 2014, a motion was put to the Council meeting by Councillors Golds and Aston and it was resolved:

That this Council instructs:-

- The Overview and Scrutiny Committee to review the process whereby the decision to seek a Judicial Review was implemented.
- The Overview and Scrutiny Committee, in conjunction with the Head of Paid Service, engage a completely Independent legal advisor to provide assistance to the Committee when this is considered
- That a report by Overview and Scrutiny be prepared and presented to the full Council for consideration.

3.4 On 4<sup>th</sup> November 2014, the Overview and Scrutiny Committee received a report from the Service Head, Democratic Services concerning the above resolution and accepted the reference.

3.5 At its meeting on 6<sup>th</sup> January, 2015, the Overview and Scrutiny Committee considered a report by the Interim Monitoring Officer that set the process whereby the decision had been taken to seek a Judicial Review of the Secretary of State for Communities and Local Government's appointment of PwC to undertake a best value inspection of certain council functions.

3.6 In his report and discussion with the Committee, the Interim Monitoring Officer explained that, following the announcement of the inspection by Secretary of State in April 2014, officers sought to engage in a dialogue with the DCLG as to the specific issues that were of concern but to no avail. Thus, the view was reached that the only way to ensure that there was proper scrutiny of the Secretary of State's decision-making and to limit the Council's liability for the then unquantified costs of the inspection was to seek permission for a Judicial Review of that decision. Counsel was engaged to advise on the approach of the Council to the decision. Jonathan Swift QC had been selected as he had great experience (as Senior Treasury Counsel) of advising Government Ministers and Departments on Judicial Review matters.

3.7 It was noted that Judicial Review Proceedings had to be commenced within three months of the decision being challenged. It was considered that during the Pre-Election Period there should be no decision as to what action should be taken but to allow any new Administration to have the opportunity to review the position before litigation was commenced. At a Conference with Counsel on 23<sup>rd</sup> June, having received advice from Counsel that the authority had a 60% chance of success in seeking Judicial Review, the Mayor approved the commencement of the proceedings. The

Committee noted that Counsel's assessment was maintained throughout the process.

- 3.8 The action was commissioned by the Interim Monitoring Officer on 26<sup>th</sup> June 2014 and was undertaken in accordance with the Council's agreed scheme of delegation. The Interim Monitoring Officer stated that the reason for doing so was that the deadline for bringing proceedings was too close to allow for either an Individual Mayoral Decision or at a meeting of the Cabinet, either of which would require the development of a report. The renewal of the application was undertaken by the Service Head, Legal Services on 5<sup>th</sup> September 2014 following consultation with the Mayor and Head of Paid Service and endorsed at Conference with Counsel on 11<sup>th</sup> September 2014.
- 3.9 Overall, having considered the process leading to the decision to seek Judicial Review, including evidence of the advice received from Counsel on the likelihood of success, the Committee has concluded that this was a reasonable course of action to undertake. However, the Committee had concerns with how the council had managed its relationship with both the DCLG and PwC and, the impact of seeking Judicial Review. It also questioned the use of delegated powers to take the decision to seek Judicial Review, on the basis that its significance marked it out as deserving member input, despite not meeting the criteria for a Key Decision.

#### **4. LEGAL COMMENTS**

- 4.1 The Council is empowered (under section 222 of the Local Government Act 1972) to institute proceedings where it is considered expedient for the promotion or protection of the interests of the inhabitants of its area. Under the Local Government Act 2000, this is an executive function exercisable by the Mayor or under his delegation. Article 14 of the Council's Constitution authorises the Director of Law, Probity and Governance (currently exercisable by the Head of Paid Service and the Interim Monitoring Officer) to make such decisions and under Part 3 of the Constitution Corporate Delegation A.13 enables any Director or Service Head to authorise proceedings.

#### **5. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 5.1 Costs for the Judicial Review were estimated at £40,000. Actual costs are set out in para 5.2. These will be funded from corporate contingencies. Other costs are primarily the opportunity cost of officer time.
- 5.2 The prospective cost of a judicial review action had been estimated at around £40,000 while the potential liability of the best value inspection was unlimited, but estimated at £1,000,000. If the process found that the Secretary of State had been misadvised to proceed with the inspection, then that liability would not have occurred. Assessing the risk of cost against the reward of eliminating the liability, the action was justified. In

the event, permission was not granted and the Council's costs are substantially less than originally estimated. The Council's costs were £29,745 for Counsel's fees; the Council will also pay £8,500 to Treasury Solicitors for the Secretary of State's costs and has paid £490 on Court fees. The total spend on the Judicial Review proceedings is therefore expected to be £38,735.

**6. ONE TOWER HAMLETS CONSIDERATIONS**

6.1 None directly related to this report.

**7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

7.1 None directly related to this report.

**8. RISK MANAGEMENT IMPLICATIONS**

8.1 None directly related to this report.

**9. CRIME AND DISORDER REDUCTION IMPLICATIONS**

9.1 None directly related to this report.

**10. EFFICIENCY STATEMENT**

10.1 None directly related to this report.

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**LOCAL GOVERNMENT ACT, 1972, AS AMENDED SECTION 100D  
LIST OF "BACKGROUND PAPERS" USED IN THE PREPARATION OF THIS REPORT**

| Brief description of "background paper" | Name and telephone number<br>of holder and address where open to inspection |
|---|---|
| None                                    | n/a   |