

SANDWELL METROPOLITAN BOROUGH COUNCIL DIRECTIONS UNDER SECTION 15(5) AND (6) OF THE LOCAL GOVERNMENT ACT 1999

EXPLANATORY MEMORANDUM

1. The Secretary of State for Levelling Up, Housing and Communities (“the Secretary of State”) has exercised his powers under section 15(5) and (6) of the Local Government Act 1999 (“the 1999 Act”) in relation to Sandwell Metropolitan Borough Council (“the Authority”) to secure its compliance with the best value duty.
2. This Memorandum is intended as a companion document to the Directions issued on 22 March 2022. It summarises the circumstances in which the Secretary of State has made the Directions, his reasons for this exercise of his powers, and the implications of the Directions for the Authority.

The Context for the Directions

3. The Authority has struggled for many years to resolve a variety of governance issues, including allegations of serious misconduct by both members and officers. The Authority has had six different Leaders in six years and three Chief Executives over the past three years. This instability has led to a breakdown in trust, respect and confidence between those holding governance roles at the Authority.
4. In August 2021 the Authority’s external auditors, Grant Thornton, initiated a Value for Money Governance Review into the Authority’s arrangements for securing economy, efficiency and effectiveness in its use of resources. This comprehensive Governance Review (“the Report”), based on evidence gathered from 75 interviews over a period of three months, was issued to the Authority on 3 December 2021. The Report makes 45 wide-ranging recommendations, three of which are Statutory Recommendations, and provides a picture of the Authority of the utmost seriousness. Given the extensive nature of this Report and the evidence contained in it, the Secretary of State was satisfied that there was no need to commission an additional Best Value Inspection into the challenges facing the Authority.
5. The Report paints a deeply troubling picture of mismanagement, of ineffective scrutiny and accountability arrangements, and identifies considerable evidence that the Authority has failed to comply with its best value duty under Part I of the 1999 Act over a number of years. In particular, the Report notes how a breakdown in trust between those holding governance roles at the Authority over an extended period has significantly limited the Authority’s ability to move away from the past and to manage the challenges and opportunities it faces. While the conclusion of the external auditor is that the Authority is now at the beginning of a fragile improvement journey, it is the Secretary of State’s view that the risk of progress stalling or slowing is significant. In his view the proposed intervention is both necessary and expedient to secure compliance with the best value duty.
6. Having considered the findings of the Report, on 18 January 2022 the Secretary of State published the Report and a letter from senior officials to the Authority setting out a proposed intervention package to secure the Authority’s compliance with its

best value duty (“the minded to letter”). Representations about the Report and the proposed intervention package were invited from the Authority and any other interested parties on or before 11 February 2022.

7. The minded to letter explained that the proposed intervention package reflected the recommendations of the Report, and contained two key elements:
 - a. Proposals to put in place Commissioners to take over functions associated with the governance and scrutiny of strategic decision-making, and functions relating to the appointment and dismissal of statutory officers, and the designation of those persons as statutory officers; and
 - b. Actions which the Authority must undertake in order to implement all 45 recommendations of the Report, as well as supporting and facilitating the work of the Commissioners.
8. The minded to letter included a detailed description of the Directions that the Secretary of State proposed to make under section 15 of the 1999 Act. The proposed Directions provided for the Commissioners to exercise, for a time, certain functions of the Authority, gave to the Commissioners certain responsibilities and reserved powers, and required the Authority to take certain actions. This Memorandum explains the content of the Directions as finalised in the light of representations received from the Authority and other interested parties.

Representations

9. Before making Directions, the Secretary of State is required under section 15(9) of the 1999 Act to give the Authority an opportunity to make representations about the proposed Directions, as well as on the Report which served as the basis for them.
10. Representations were received on behalf of the Authority, dated 10 February 2022, from the Interim Chief Executive Officer, Kim Bromley-Derry CBE DL. While the Authority expressed disappointment with the Secretary of State’s proposed decision to intervene, the Authority welcomed the Department’s support for its improvement journey and confirmed that they look forward to working with the Commissioners. The Authority noted that they have already developed an Improvement Plan in response to the Report. They intend to bring together the findings of this Report with those of a recent Financial Management Review, conducted by the Chartered Institute for Public Finance and Accountancy, and a Corporate Peer Challenge conducted by the Local Government Association, into one overarching Improvement Plan for the Authority. With regards to moving to a four-yearly election cycle, the Authority confirmed that they are in the process of preparing an action plan to progress this matter, which includes details of its consultation and engagement activity, so that an informed decision can be made at Full Council as soon as it is practicable to do so.
11. Representations were also received from:
 - a. The Authority’s Conservative Councillor Group, led by Cllr Archer Williams (Leader of the Opposition). The Group welcomed the intervention proposals, believing that progress at the Authority to date is inadequate and lacks scrutiny. The representation welcomed the intervention package’s focus on strengthening scrutiny and decision-making processes at the Authority, as the

Group believe that the current culture, processes and lack of internal controls are negatively impacting service delivery.

- b. One Councillor from the Authority who welcomed the proposed intervention and raised doubts on the current scrutiny and audit functions of the Authority, including the 'green shoots' conclusion in the Report.
- c. Shaun Bailey, MP for West Bromwich West, welcomed the proposed intervention, noting that the Government's intervention is the first step needed to right the past failings of the Authority, which have severely impacted on the lives of many local residents.
- d. Nicola Richards, MP for West Bromwich East, welcomed the proposed intervention, noting that it is needed to ensure 'green shoots' of improvement are sustained, following long-term disfunction within the Authority and its service delivery for local residents.
- e. John Spellar, MP for Warley, opposed the intervention, noting the risks it poses to the continuity of progress made by the Authority's senior leaders and their ability to successfully appoint a new permanent Chief Executive. He made specific reference to the 'green shoots' conclusion of the Report as reasoning for the Authority being allowed to continue to manage its own affairs.
- f. Eight members of the public and one residents' group, who welcomed the proposed intervention package. Key themes were a perceived lack of scrutiny or consequences for contract and financial mismanagement, organisational instability and poor-quality customer service. One resident requested an independent inquiry into the legality of certain past practices of the Authority. One expressed doubts in the 'green shoots' conclusion of the Report.

12. This Memorandum, together with the Directions and related material, is published at www.gov.uk.

The Intervention Package

13. Having carefully considered afresh the Report, together with letters from the Authority (10 February 2022), Members of Parliament Shaun Bailey (West Bromwich West, letter dated 10 February 2022), Nicola Richards (West Bromwich East, letter dated 10 February 2022) and John Spellar (Warley, letter dated 10 February 2022), the Authority's Conservative Councillor Group (11 February 2022), one Councillor (dated 10 February 2022), members of the public (various dates) and a residents' group, the Secretary of State is confident that there is a sound basis on which to found his considerations and, accordingly, is satisfied that the Authority is failing to comply with its best value duty.

14. The Secretary of State, having considered the representations made by the Authority as required under section 15(9) of the 1999 Act, considers it necessary and expedient, in accordance with his powers under section 15(5) and (6) of the same Act, to put in place an intervention package to secure the Authority's future and sustainable compliance with its best value duty. This intervention package is in line with his proposals as described in paragraph 7 of this Memorandum.

15. The Secretary of State considers that this package will address the failings identified in the Report. For the avoidance of doubt, the Secretary of State believes that each

individual element of the intervention that he has implemented is individually justified.

Commissioners

16. The package that the Secretary of State has put in place centres on an Authority-led Improvement Plan and a Managing Director Commissioner and Assistant Commissioner to make sure that the Authority meets its duty under Part I of the 1999 Act (anticipated to be in place until March 2024). The Secretary of State has made Directions in relation to the Commissioners, including providing for them to perform certain functions, if necessary, and to have a role in overseeing other functions or actions which the Authority is to perform. The Commissioners are accountable to the Secretary of State in that they have been nominated by him and can have their nomination withdrawn by him. The Commissioners will report to the Secretary of State on the progress of the intervention.
17. The skills and experience of the Commissioners mean that it is both possible and sensible to give them considerable levels of discretion over how they implement their roles and responsibilities under the Directions, in order that they can find the solutions most likely to lead to sustainable improvement in the Authority.
18. The Commissioners are to act jointly or severally, and it will be for them to decide how best to exercise their functions. However, the Secretary of State envisages complementary roles:
 - a. a Managing Director Commissioner, whose responsibilities include, but are not limited to, giving direction and leadership to the delivery of the improvements which the Authority is required to make.
 - b. an Assistant Commissioner whose responsibilities include, but are not limited to, overseeing the cultural change necessary at the Authority.
19. The Secretary of State has nominated Commissioners with a proven record in leadership, governance and scrutiny, delivering cultural change and transformation. The Commissioners are:
 - **Kim Bromley-Derry CBE CL (Managing Director Commissioner)** – Kim has more than 35 years of public sector experience, including eight years as Chief Executive of the London Borough of Newham. He was also Director of Children’s Services at both South Tyneside and Leicester City Councils. Kim was appointed Interim Chief Executive of Sandwell Council in August 2021 after being temporarily released from his role as Group Director for Strategic Partnerships at McLaren Construction Group. Kim has been President of the Association of Directors of Children’s Services. He has also chaired the Government’s Libraries Taskforce, been a Non-Executive Board Member of both the National College of Creative Industries, the National Creative and Cultural Skills Agency and a member of the London 2017 World Athletics and Para Athletics Championships Board.
 - **Jim Taylor (Assistant Commissioner)** – Jim Taylor served for six years as Chief Executive of Salford City Council prior to his retirement in 2021. He also fulfilled the role of Interim Chief Executive of Trafford Borough Council simultaneously from July 2018 to February 2019. Prior to this Jim was the Chief

Executive of Rochdale Council having also served as Director for Children's Services at Tameside MBC. In June 2021 Jim was appointed by the Secretary of State to undertake an external assurance review of governance at Slough Borough Council.

The Commissioners are nominated for the period from 22 March 2022 to 22 March 2024 or such earlier or later time as the Secretary of State determines.

20. It is expected that the Commissioners will oversee the appointment of a permanent Chief Executive Officer within 18 months and then step back from the Council. In the interim period the Managing Director Commissioner will make appropriate delegations or arrangements in relation to their existing statutory roles as Interim Chief Executive of the Council, and work with the Council as they consider their Constitution and what amendments are necessary. The Commissioners are accountable to the Secretary of State.
21. The Directions provide that the Commissioners' reasonable expenses and such fees as the Secretary of State determines are to be paid to them by the Authority. The Secretary of State is mindful of the need for Commissioner remuneration to represent value for money for local taxpayers. In recognition of the nature and scale of the intervention, he has determined fees of £1200 a day for the Managing Director Commissioner and £1100 a day for the Assistant Commissioner.

Powers to be exercised by the Commissioners

22. The Report highlight failures in three key areas – the administration of corporate governance, democratic services and scrutiny, and service reform. Alongside this the Report refers to the concerted efforts made by the Authority over recent months, particularly since the appointment of the Interim Chief Executive.
23. For these reasons, the Directions enable the Commissioners to exercise functions in two areas:
 - a. All functions associated with the governance and scrutiny of strategic decision making by the Authority. The Report concluded that, until recently, the Authority has failed to take an effective grip of the key issues it faces, and that the Authority's Scrutiny Boards and the Audit and Risk Assurance Committee need improvement. The Report noted how a lack of a clear performance management framework and agreed key corporate indicators has impacted on the ability of the Leadership Team and Cabinet to take an effective grip of the key issues. It also noted how the Leadership Team has not effectively engaged strategic financial planning and budget monitoring, and that a perceived blame culture had contributed to silo working, resulting in a lack of ownership and grip on key challenges. In practice, most decisions are expected to be taken by the Authority; however, the Directions are designed to give Commissioners the power to tackle the weaknesses the Report identified to make sure that the Authority is better equipped to meet the requirements of Part I of the 1999 Act.
 - b. All functions relating to the appointment and dismissal of statutory officers (the Chief Executive, Chief Financial Officer (and section 151 officer) and Monitoring Officer), and the designation of those persons as statutory officers.

24. The Secretary of State considers that most decisions should continue to be made by the Authority. Commissioners will uphold proper standards and due process and recommend action to the Authority. The Secretary of State's intention is that the powers he is providing to the Commissioners be used as a last resort should the Authority not satisfy the Commissioners in their improvement processes. This approach reflects the work commenced by the Authority and the confidence the Secretary of State has in the continuation of this work with the support of the Commissioners.
25. The exercise of these functions should enable the Commissioners to make sure that the Authority has made sufficient improvement within the next two years to be able to comply with its best value duty on a sustainable basis.

Directions to the Authority

26. To achieve and facilitate the objectives of the intervention, the Secretary of State has also directed the Authority to take the following actions:
 - a) In the first three months prepare, agree and implement an Improvement Plan to the satisfaction of the Commissioners (which may include or draw upon improvement or action plans prepared before the date of these Directions), with resource allocated accordingly, activities to implement all 45 recommendations of the Report, and as a minimum, the following components:
 - i. Actions to deliver rapid and sustainable improvements in governance, leadership and culture in the Authority. It is expected that the required programme of cultural change will rebuild trust between Members and Officers by making sure that both Members and Officers understand the scale of the challenge and their respective roles in driving improvement, the way in which the Authority and its activities are regulated and governed, and the way in which this is monitored and breaches rectified.
 - ii. Actions to secure improvements in relation to the proper functioning of the scrutiny and associated audit functions.
 - iii. Actions to secure continuous improvement in all services.
 - b) To report to the Secretary of State on the delivery of the Improvement Plan at six monthly intervals, or at such intervals as the Commissioners may direct, and adopt any recommendations of the Commissioners with respect to the Improvement Plan and its implementation.
 - c) To undertake, in the exercise of any of its functions, any action that the Commissioners may reasonably require to avoid, so far as practicable, incidents of poor governance or financial mismanagement that would, in the reasonable opinion of the Commissioners, give rise to the risk of further failures by the Authority to comply with the best value duty.
27. The Directions require the Authority to fully cooperate with the Commissioners in order to facilitate their work:
 - a) To allow the Commissioners at all reasonable times, such access as appears to the Commissioners to be necessary:
 - i. to any premises of the Authority;
 - ii. to any document relating to the Authority; and
 - iii. to any employee or member of the Authority;

- b) To provide the Commissioners, at the expense of the Authority, with such reasonable amenities and services and administrative support as the Commissioners may reasonably require from time to time to carry out their functions and responsibilities;
- c) To pay the Commissioners' reasonable expenses, and such fees as the Secretary of State determines are to be paid to them;
- d) To provide the Commissioners with such assistance and information, including any views of the Authority on any matter, as the Commissioners may reasonably request; and
- e) To co-operate with the Secretary of State for Levelling Up, Communities and Housing in relation to implementing the terms of the Directions.

Duration of the intervention

- 28. The Secretary of State considers that any aspect of the Directions should only be in place long enough to achieve the stated objectives of the intervention. The Directions will remain in force until 22 March 2024 unless the Secretary of State considers it appropriate to amend or revoke them at an earlier date. The Secretary of State may decide to extend Directions beyond this date, or it may be appropriate to return functions before this time.
- 29. The Secretary of State has asked for six monthly reports from the Commissioners, or at such other times as he might agree with the Commissioners, which allows for a process for regular review of whether it would be appropriate to expand the functions of the Commissioners or for any function exercisable by the Commissioners to be returned to the Authority. The first report is expected as soon as is practicable within the first three months of the intervention.
- 30. Where the Authority and Commissioners agree that it would be appropriate for the exercise of a function to be returned to the Authority, Commissioners will report this to the Secretary of State, setting out reasons, including clear evidence as to why the public could be expected to have confidence in the Authority exercising this function in compliance with the best value duty. The Secretary of State will carefully consider any such reports and, if agreed to, further Directions will be issued to this effect amending these Directions made on 22 March 2022. The Secretary of State has not ruled out the possibility that further functions might be brought under the control of the Commissioners.