



Department for Levelling Up,
Housing & Communities

Mel Barrett
Chief Executive
By email

Max Soule
*Deputy Director, Local Government
Stewardship*

**Department for Levelling Up,
Housing and Communities**
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Dear Mel,

I am writing to invite your Authority, if it wishes, to make to the Secretary of State representations about the intervention he is proposing, following the publication of the two independent reports into the unlawful Housing Revenue Account (HRA) expenditure and the latest progress report and HRA assessment by the Nottingham City Council Improvement and Assurance Board. This letter proposing this intervention will be published on www.gov.uk.

I would like to take this opportunity to formally recognise the hard work of many of the staff at your Authority, including yourself, as the Council continues on its improvement journey. The Secretary of State is mindful that you and your Corporate Leadership Team have worked closely and constructively with the Improvement and Assurance Board since January 2021 to address the many challenges the Authority faces. Whilst the building blocks for the Authority's recovery are in place, many difficult decisions remain, and it is essential that the proposed intervention does not distract the Authority from the vital improvements that are starting to be made.

It is important that the Council does not lose momentum in making the necessary improvements. The Secretary of State is therefore minded to appoint Sir Tony Redmond as Lead Commissioner, subject to representations received on the proposed intervention package, given your constructive existing working relationship and his understanding of the scale and nature of the challenges facing the Council. The 'minded to' decision does though represent a significant shift in Government's interaction with the Council, which to date has been on a non-statutory basis, and you will wish to reflect on the impact the proposed intervention package could have on your improvement plans moving forward and the way you would work with Commissioners, if they are appointed.

The Secretary of State has carefully considered the findings and recommendations of the independent reports by Richard Penn (LGA Associate) and the Chartered Institute of Public Finance and Accountancy (CIPFA) which were published on 23 April. He is satisfied on the basis of matters set out in the Reports that your Authority is failing to comply with the requirements of Part I of the Local Government Act 1999 (the "1999 Act"), namely failing to comply with the best value duty. On that basis, he is considering exercising the powers of direction in the 1999 Act in relation to your Authority to secure its compliance with the best

value duty. The package of measures which he is proposing to implement through appropriate Directions is set out in the attached Annex.

Your Authority is now invited to make such representations as it wishes about the Reports and the Secretary of State's proposals. All such representations should be sent by email to maxwell.soule@levellingup.gov.uk or in hard copy to the address above marked for my attention, so as to be received on or before Thursday 7 July. They will then be carefully considered by the Secretary of State when deciding whether to make any and, if so, what Directions.

I am copying this letter to the Authority's Section 151 Officer and Monitoring Officer.

Yours sincerely,

Max Soule
Deputy Director, Local Government Stewardship

PROPOSED INTERVENTION PACKAGE

1. The Secretary of State is considering exercising his powers of direction under section 15 of the Local Government Act 1999 (“the 1999 Act”) in relation to Nottingham City Council (“the Authority”) to secure its compliance with the best value duty. He is doing so following the publication of the independent reports by Richard Penn (LGA Associate) and the Chartered Institute of Public Finance and Accountancy (CIPFA) into the unlawful Housing Revenue Account (HRA) expenditure which was identified by the Authority in December 2021. The Secretary of State has considered this evidence alongside the quarterly assurance reports provided by the Nottingham City Council Improvement and Assurance Board, chaired by Sir Tony Redmond, who has provided advice, expertise and challenge to the Authority following its rapid non-statutory review in November 2020.

2. Whilst the independent reports conclude that the Authority is now on an improvement journey, they evidence failings of the utmost seriousness and provide considerable evidence of significant and systemic best value failure. In light of this evidence, the Secretary of State is minded to implement the intervention package set out below. The Secretary of State is supportive of the steps the Authority has taken to address the unlawful HRA expenditure since it was discovered last December. The Chief Executive has also worked closely and constructively with the Improvement and Assurance Board since January 2021 to address the many challenges the Authority faces. However, whilst the building blocks of recovery have been put in place, difficult decisions will be required moving forward and the scale of the challenge cannot be underestimated. The Secretary of State is concerned that further serious issues may be uncovered which could have a severe impact on the Authority’s ability to maintain and increase the momentum of the required improvements. This lack of assurance, as highlighted in the Improvement and Assurance Board’s latest progress report and Sir Tony Redmond’s assessment of the HRA issue, along with the risk of progress stalling or slowing, is significant and the proposed intervention is necessary and expedient to secure compliance with the best value duty.

3. The Secretary of State has set out his proposals in order to assist the Authority to formulate any representations it may choose to make. He acknowledges that, save in cases of urgency, the Authority has a statutory right to make representations if the Secretary of State is considering making a direction. He will carefully consider those representations in deciding whether to make any and if so what Directions. He specifically reserves his ability to make further or revised Directions after implementing this, or any, intervention package (if that is what he decides to do).

Overall purpose and approach

4. The starting point is the evidence, as set out in the independent reports and in the assessments by the Improvement and Assurance Board, which highlight serious governance concerns and an ineffective culture whereby scrutiny and challenge are lacking. The Secretary of State has concluded that there are significant concerns around the Authority's overall strategic approach to risk and financial management. It is also a concern that further serious issues may yet be uncovered and there is a lack of assurance regarding the actions being taken to determine and address these concerns, alongside on-going capacity constraints which will hamper the Authority's recovery. In particular, the Reports include the following:
- On governance, until recently the Authority has failed to take an effective grip of key issues facing the Authority. There is evidence that the Authority has not made progress at the pace of change expected since the commencement of the intervention and appointment of the Improvement and Assurance Board in January 2021, particularly in relation to the review of its commercial portfolio and associated governance arrangements. The Improvement Board and external auditors are highly critical at the speed at which the Authority is addressing this issue. The commercial portfolio review remains incomplete and should have been expedited by the Authority, noting this was due to be completed within the first year of the Recovery Plan (*Recommendation 5, Non-statutory review Report November 2020*). There has also been a lack of challenge within the Authority with regards the decisions being taken that impacted the HRA, a lack of understanding of the HRA ring-fence and/or a lack of will to maintain the integrity of the ring-fence. The independent reports also highlight serious governance failings, a lack of overview and scrutiny, poor record keeping as well as processes that are not fit for purpose. The Improvement Board have commented that whilst "*a large proportion of the failings are historical, a number of those shortcomings have yet to be completely eradicated*" and these behaviours have continued under the current leadership.
 - On financial governance, there has been a failure over several years to properly scrutinise proposals, ensure transactions are lawful and maintain the integrity of the HRA ringfence, poor record keeping relating to HRA transactions, and an overall lack of grip on financial management. Accounts for both 2019/20 and 2020/21 remain open with the risk of formal qualification by external auditors in respect of one or both years. In addition, while financial leadership in the Council has improved since the appointment of the Improvement Board, concerns have been raised by both the Improvement Board and the Council's external auditor, Grant Thornton, regarding the adequacy of the financial control regime across the whole Council, with particular attention drawn to the capacity of the current finance team. Resourcing needs to be addressed to ensure recovery can be delivered, noting the current Section 151 officer and Deputy Section 151 officer roles are filled on an interim basis, and that capacity and expertise within the wider finance function needs improvement.

- On culture and leadership, a poor culture has been allowed to embed within the Authority over several years, whereby robust challenge and intellectual curiosity did not take place, or on occasions when it did happen, was subsequently ignored. Whilst the current leadership has taken positive steps to address these failings, these deep-rooted practices will take time to resolve. There is viable concern, as set out by the Improvement and Assurance Board, that the issues that have been uncovered with relation to the HRA may have permeated into other areas of the Authority.
 - On services, the Authority's actions in diverting money from the HRA to the General Fund has had a negative impact on some of the Council's most vulnerable residents. The magnitude of the issues facing Nottingham City Council's portfolio of companies raises concern that the Council does not have the capacity to act at the pace required to remedy the problems, and there is a risk this will impact on service delivery.
 - On capacity or capability to improve, while progress under the Chief Executive and recently consolidated Leadership Team is recognised, it is noted that capacity constraints within the Authority remain, particularly with regards the council's finance function. The Improvement and Assurance Board notes that the quality of financial planning, management and control across the Authority is such that it requires a credible and properly resourced improvement programme moving forward.
5. The Secretary of State considers that given the evidence of governance culture concerns revealed by the Report, a broad and wide-ranging intervention package would be necessary and expedient to address the circumstances of the Authority.
 6. The proposed intervention package would need to, and is designed to, cement and expand on the progress that has been seen over recent months. It recognises the building blocks that have been put in place, whilst also appreciating the scale of the challenge and how much improvement is necessary for the Authority to deliver its best value duty. Such an intervention package would need:
 - To ensure that a strategic and systematic approach to risk management, with appropriate scrutiny and governance of the decision-making processes and procedures, is adopted and embedded across the Authority;
 - To continue to rebuild the governance capacity of the Authority, addressing the historic culture of poor financial management and governance of its commercial portfolio;
 - To restore public trust and confidence in the Authority by putting an end to any of the Authority's activities, practices, and omissions which are, or risk being, not compatible with the best value duty;

- To secure as soon as practicable that all the Authority's functions are exercised in conformity with the best value duty thereby delivering improvements in services and outcomes for the people of Nottingham.

Commissioners

7. The proposed intervention package accordingly involves putting in place Commissioners who between them will have experience to work closely with the Authority. It is important that the Council leads their recovery but that it does not lose momentum in making the necessary improvements. Sir Tony Redmond has forged constructive working relationships with the Council leadership and has an intrinsic understanding of the scale and nature of the challenges facing the Authority. The Secretary of State is therefore minded to appoint Sir Tony Redmond as Lead Commissioner, subject to representations received on the independent reports and proposed intervention package.
8. The following Directions are proposed in relation to the Commissioners. The Secretary of State proposes to direct that the Authority's functions listed below are to be exercised by the Commissioners, who will act jointly or separately, and that the Authority is to provide the Commissioners with such assistance and information, including any views of the Authority's members on the matter in question, as the Commissioners may request. It is envisaged that in exercising any function the Commissioners will have regard to any views the Authority's members and officers arrived at through their normal processes of consideration. In particular, the Secretary of State is mindful that the Chief Executive and his team have taken considerable steps to address the unlawful HRA expenditure and have made progress on the Authority's wider improvement journey, and envisages that the Commissioners would build on the work they have started and work closely with them.
9. The Secretary of State proposes that this Direction to the Authority should be in place for up to two years. If the Secretary of State considers at any time that it would be appropriate to change the Direction or withdraw it, then he will do so. His concern will be to ensure that the Direction operates for as long, but only as long, and only in the form, as he considers it should operate in order to secure the objectives set out above.

Functions to be exercised by the Commissioners

10. For the reasons set out above, the Secretary of State considers that the proposed scope of intervention needs to focus on the Authority's overall strategic approach to risk and financial management, to ensure that the appropriate procedures and processes are in place and that the Authority has the capacity and capability to fulfil its best value duty. Accordingly, he is proposing to direct that the following functions should be exercised by the Commissioners:

- All functions associated with the governance and scrutiny of strategic decision making by the Authority, to include:
 - Overseeing the full range of the Authority's improvement activities, including its strategies to secure the medium to long term sustainability of the Council, its plans to uncover all instances of poor governance, and its plans to transform front line services and the culture of the organisation.
- All functions associated with the strategic financial management of the Authority, to include;
 - The requirements from section 151 of the Local Government Act 1972 to make arrangements for the proper administration of the Authority's financial affairs;
 - Providing advice and challenge to the Council to improve its financial stability and its ability to meet future commitments without additional borrowing, including advising upon credible budget planning;
 - The power to amend budgets where Commissioners consider that those budgets constitute a risk to the Authority's ability to fulfil its best value duty;
 - Providing advice and challenge to the Council on the governance and structure of its commercial portfolio.
- All functions relating to the appointment and dismissal of persons to positions, the holders of which are to be designated as statutory officers, and the designation of those persons as statutory officers, to include:
 - The functions of designating a person as a statutory officer and removing a person from a statutory office;
 - The functions under section 112 of the Local Government Act 1972 of appointing and determining the terms and conditions of employment of an officer of the Authority, insofar as those functions are exercised for the purpose of appointing a person as an officer of the Authority principally in order for that person to be designated as a statutory officer; and dismissing any person who has been designated as a statutory officer from his or her position as an officer of the Authority.

Actions for the Authority

11. The proposed Directions also set out actions which the Authority must undertake to effect the changes which are needed as well as supporting and facilitating the work of the Commissioners.
12. To achieve and facilitate the objectives of the intervention, the Secretary of State proposes to direct the Authority in the first three months to re-appraise the Nottingham City Council Improvement Plan, to the satisfaction of Commissioners, with resources allocated accordingly and activities to implement the recommendations contained in the independent Penn and CIPFA reports, and as a minimum, the following components:

- Actions to ensure that a strategic and systematic approach to risk management, coupled with the appropriate scrutiny and governance of decision-making processes and procedures, is adopted and embedded across the Authority.
- Actions to deliver financial stability in the Authority, including investigation to establish accuracy and suitability of current financial accounts and management controls, rapid and sustainable improvements to its scrutiny function, financial and risk management, strengthening accounting processes and reporting arrangements.
- Actions to secure improvement in the governance and structure of the commercial portfolio.
- Actions to secure continuous improvement in all services.

13. The Secretary of State proposes further to direct the Authority to undertake the measures set out in the plan, under the direction of the Commissioners, and such other measures as the Commissioners require, and to provide the Secretary of State with progress reports, agreed with the Commissioners, at 6 monthly intervals following the start of the intervention.

14. In addition, the Secretary of State proposes to direct the Authority 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.

15. Furthermore, the Secretary of State proposes to direct the Authority:

- 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 to carry out their functions and responsibilities under these Directions.
- 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.

- e) To co-operate with the Secretary of State for Levelling Up, Housing and Communities in relation to implementing the terms of these Directions.

Duration of intervention

16. The Secretary of State proposes that the Commissioners will be in place for an initial period of two years, and that this should only be extended if the Authority fails to make satisfactory progress in implementing and embedding the changes necessary to deliver Best Value in its governance and operations.