

THURROCK 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 Thurrock 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 2 September 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 Department has been aware of concerns around Thurrock Council’s investment activity and external borrowing over a number of years and has been closely monitoring the current situation in Thurrock.
4. Thurrock has incurred an exceptional level of external borrowing and is one of the most indebted and highly leveraged of all local authorities. The Council’s total external borrowing was c.£1.5bn (as at 30 June 2022), of which a significant amount (c.£0.94bn) was short term loans from other local authorities.
5. The feedback report of the Local Government Association (LGA) Corporate Peer Challenge of Thurrock Council (10 to 13 January 2022), published in July 2022, echoes the Department’s concerns regarding the Council’s financial strategy, and also raised a number of concerns relating to decision making processes and governance arrangements.
6. There have also been serious allegations made by third parties about the processes that have been applied to the operation of the Council’s commercial strategy, and concerns raised around the financial and commercial risks potentially facing the Council.
7. In light of the above, and on the basis of discussions between the Department and the Council, the Department is particularly concerned about the scale of the financial and commercial risks potentially facing the Council, and the failure of the Council to provide assurance to Ministers and the Department on the adequacy of their actions to address the issues, considering the scale and pace of the response required.
8. Whilst the Secretary of State has carefully considered the available evidence, there is no single publicly available report that catalogues that material, and some of the material that the Secretary of State has considered is commercially

sensitive. The Secretary of State is mindful that releasing that information at this time could be of greater detriment to the residents of Thurrock.

9. The Secretary of State has deemed it prudent to forego the period of representation, given the gravity and time-sensitivity of the financial issues, as is his discretion under section 15(11) of the 1999 Act. He considers that there is a pressing case for urgent government action to protect the interests of the residents and tax-payers of Thurrock, as well as to provide assurance to the sector that action is being taken. The scale and nature of the issues is emerging very quickly, and the Secretary of State is concerned that further evidence of failure could come to light very quickly and require prompt action.
10. The Directions set out powers that Essex County Council will exercise as Commissioner for a specified duration of three years, give responsibilities to Essex County Council within its Commissioner role and require the Authority to take certain actions. This memorandum explains the content of the Directions.

The intervention package

11. Having carefully considered the evidence, the Secretary of State is confident that there is a sufficient basis on which to found his considerations and, accordingly, is satisfied that the Authority is failing to comply with its best value duty.
12. The Secretary of State considers it necessary and expedient, in accordance with his powers under section 15(5) and (6) of the 1999 Act, to put in place an intervention package in order to secure the Authority's future and sustainable compliance with its best value duty.
13. The intervention package is formed of two complementary parts: the first is that the Authority's functions over managing its financial resources, exercise of the statutory requirement to arrange for the proper administration of the Authority's financial affairs, and all functions associated with the strategic financial management of the Authority will be overseen by Essex County Council, in the role of Commissioner. This is using the Secretary of State's powers under section 15(5) and 6 of the Act, in order to address the financial and commercial at Thurrock Council.
14. The second part is that the Secretary of State exercising his powers under section 10 of the same Act to also appoint Essex County Council as a best value inspector, to inspect the governance, audit (internal and external), risk management, overview and scrutiny functions of the Council and consider their impact on service delivery. This is in order to assess the extent of the failure to comply with the best value duty by the Authority, beyond the management of financial resources, and to make recommendations to mitigate the risk to service delivery that any further failure may have. Both parts share a common goal, which is to protect the interests and services of the people of Thurrock.

15. The Secretary of State considers that this package will address the failings identified. 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 evidence presents a strong case for intervention to deliver the improvements required. Therefore, the Secretary of State is appointing a Commissioner to make sure that the Authority meets its duty under Part I of the 1999 Act in the short term (anticipated to be in place until 1 September 2025).
17. The Secretary of State has nominated Essex County Council as Commissioner. It is the Secretary of State's view that local authorities are often best placed to address local and regional issues and that sectoral intervention is most effective when it is built on foundations of local knowledge, strong relationships and existing collaboration between civic and business leaders. That is the approach that the Secretary of State has implemented in Liverpool. This nomination will build on the strong collaboration and existing partnership across Greater Essex and the Association of South Essex Local Authorities (ASELA) and recognises the expertise and capability of Essex County Council. The shared intention is to correct as quickly and as effectively as possible the basis for this intervention, and act in the interests of local tax-payers in Thurrock and Greater Essex.
18. The Secretary of State has directed Essex County Council to fill the role of Commissioner and 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 Commissioner is accountable to the Secretary of State, in that they have been nominated by him and can have their nomination withdrawn by him. The Commissioner will report to the Secretary of State on the progress of the intervention.
19. The expertise and capability of the Essex County Council mean that it is both possible and sensible to give them considerable levels of discretion over how they implement their role in order that they can find the solutions most likely to lead to sustainable improvement in the Authority.
20. The Commissioner is nominated for the period from 2 September 2022 to 2 September 2025 or such earlier or later time as the Secretary of State determines. The Secretary of State may, if he considers it appropriate, nominate further Commissioners, and, on the recommendation of the Inspector, appoint assistant inspector.
21. The Directions provide that the Commissioner's 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 £1100 a day. Essex County Council will be paid the equivalent up to a maximum of 150 days per annum for each year. However, in light of the Commissioner role being

given to the Council as an individual entity, rather than to a person acting as an individual, the Secretary of State appreciates that a different approach may be required and is committed to keeping this under review.

Powers to be exercised by the Commissioners

22. The evidence set out above highlight failures in the administration of financial affairs and corporate governance, including scrutiny of strategic financial decision-making.

23. For these reasons, the Directions enable the Commissioners to exercise the following functions:

- a. All functions associated with the financial governance and scrutiny of strategic financial decision making by the Authority.

The evidence presents a strong case that the necessary administrative functions (relating to strategic financial decision making) to support a healthy democracy are not functioning in the Authority. For example, it is not clear how certain investment decisions were taken by the Council and the extent to which these decisions were subject to scrutiny by the Council. In practice, most decisions are expected to be taken by the Authority; however, the Directions are designed to give Commissioners the power to tackle any such issues to make sure that the Authority is better equipped to meet the requirements of Part I of the 1999 Act

- b. The requirement under section 151 of the Local Government Act 1972 to make arrangements for the proper administration of the Authority's financial affairs, and all functions associated with the strategic financial management of the Authority, to include:

- i. providing advice and challenge to the Authority on the preparation and implementation of a detailed action plan to achieve financial sustainability and to close any short and long-term budget gaps identified by the Authority across the period of its medium-term financial strategy (MTFS), including a robust multi-year savings plan;
- ii. providing advice and challenge to the Authority in the setting of annual budgets and a robust medium term financial strategy (MTFS) for the Authority, strictly limiting future borrowing;
- iii. scrutiny of all in-year amendments to annual budgets;
- iv. 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;
- v. providing advice and challenge to the Authority on the preparation of sustainable and affordable capital, investment and treasury

management strategies; a strict debt reduction plan; and a revised minimum revenue provision (MRP) policy;

- vi. providing advice and challenge to the Authority on a suitable scheme of delegations for financial decision-making; and
- vii. ensuring compliance with all relevant rules and guidelines relating to the financial management of the Authority.

The evidence raises serious concerns regarding the Authority's financial position, and its financial reporting and governance arrangements. For example, it is unclear if the current arrangements provide the overview and scrutiny or assurance necessary for the Authority's leadership, both officers and members, to fulfil their responsibilities or have confidence in the evidence presented to them to support decision-making. Concerns have also been raised over corporate governance processes. Again, 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

- 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 three 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. Prepare and agree an Improvement Plan to the satisfaction of the Commissioner (which may include or draw upon improvement or action plans prepared before the date of these Directions) within 3 months, with resource allocated accordingly, to include at a minimum:
 - i. An action plan to achieve financial sustainability and to close any short and long-term budget gaps identified by the Authority across the period of its medium-term financial strategy (MTFS), including a robust multi-year savings plan;

- ii. An action plan to ensure the Authority's capital, investment and treasury management strategies are sustainable and affordable;
 - iii. A strict debt reduction plan and an updated minimum revenue provision (MRP) policy;
 - iv. An action plan to ensure the Authority is complying with all relevant rules and guidelines relating to the financial management of the Authority; and
 - v. A suitable scheme of delegations for financial decision-making.
- b. To report to the Commissioner on the delivery of the Improvement Plan at 6 monthly intervals, or at such intervals as Commissioners may direct.
 - 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 financial 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.
 - d. To allow the Commissioner at all reasonable times, such access as appears to the Commissioner 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.
 - e. To provide the Commissioner, 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 under these Directions;
 - f. To pay the Commissioner reasonable expenses, and such fees as the Secretary of State determines are to be paid to them.
 - g. To provide the Commissioner with such assistance and information, including any views of the Authority on any matter, as the Commissioners may reasonably request; and
 - h. 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 the intervention

27. The Secretary of State considers that any aspect of the Directions should only be in force long enough to achieve the stated objectives of the intervention. The Directions will remain in force until 1 September 2025 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.

28. The Secretary of State has asked for six monthly reports from the Commissioner, or at such other times as he might agree with the Commissioner, which allows for a process for regular review of whether it would be appropriate to expand the functions of the Commissioner or for any function exercisable by the Commissioner to be returned to the Authority. The first report is expected as soon as is practicable within the first three months of the intervention.
29. Where the Authority and Commissioner agree that it would be appropriate for the exercise of a function to be returned to the Authority, the Commissioner 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 2 September 2022. The Secretary of State has not ruled out the possibility that further functions might be brought under the control of the Commissioner.