

WOKING 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 Woking 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 25 May 2023. 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. This Explanatory Memorandum has been updated to reflect the changes to the Commissioner Team announced on 13 December 2023.

The context for the Directions

3. The Department had been aware of concerns around the Authority’s commercial activity and financial situation and had been closely monitoring this. The Authority is the most indebted local authority relative to size in the UK. As of December 2022, it had £1.9bn in borrowing compared to a core spending power of £14m. The Authority has two main companies, ThamesWey Group and Victoria Square Woking Ltd, from which associated housing and regeneration schemes have generated the majority of the debt. In January 2023, the Department commissioned an External Assurance Review, covering governance, finance and commercial issues. This review was undertaken over January and February by Jim Taylor, Carol Culley OBE and Mervyn Greer, with the Authority then stating that it was “in the territory” of issuing a section 114 notice as part of setting its 2023/24 budget.
4. In April 2023, the Department was made aware by the Authority of changes to their financial and commercial position. As a result of this, Ministers asked reviewers to extend their work to provide a view on the support required to enable the Authority to achieve the best possible outcome from its current situation. This formed Part Two of the External Assurance Review.
5. In light of the above, and discussions between the Department and the Authority, the Department was particularly concerned about the scale of the financial and commercial risks facing the Authority. The Authority failed to provide adequate assurance to Ministers and the Department on their actions to address the issues, considering the scale and pace of the response required.
6. The Secretary of State considered both parts of the External Assurance Review and the contents of engagement between the Department and the Authority from May 2022 onwards. Some of the material that the Secretary of State had considered is commercially sensitive, and he was mindful that releasing that information at the time could be of greater detriment to the residents of Woking.

7. The Secretary of State 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 considered that there was a pressing case for urgent government action to protect the interests of the residents and tax-payers of Woking, as well as to provide assurance to the sector that action was being taken. The financial challenge was acute, and the Secretary of State was concerned that key decisions needed to be taken in the coming weeks and months to secure Woking's financial position, as well as provide assurance that the Authority was taking all steps necessary to comply with its best value duty.
8. The Authority's situation is severe, and the improvement and recovery journey is likely to take a number of years. The Directions set out powers that the Commissioners will exercise, give responsibilities to Commissioners and require the Authority to take certain actions. The Directions are in place for five years. The Secretary of State appointed Commissioners for a 12-month period and committed to review the continued suitability of these Directions, and the interventions package as a whole, within six months or at such a time as he considered necessary.

The intervention package

9. Having carefully considered the evidence, the Secretary of State was confident that there was a sufficient basis on which to found his considerations and, accordingly, was satisfied that the Authority was failing to comply with its best value duty.
10. The Secretary of State considered 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 on 25 May 2023 to secure the Authority's future and sustainable compliance with its best value duty.
11. The intervention consisted of the appointment of Commissioners to oversee specific functions of the Authority, alongside directions to the Authority. The Secretary of State considered that this package would address the failings identified.

Commissioners

12. The evidence presented a strong case for intervention to deliver the improvements required. Therefore, the Secretary of State appointed Commissioners for a period of 12 months to ensure that the Authority acted immediately to meet its duty under Part I of the 1999 Act.
13. The Secretary of State nominated Jim Taylor, Carol Culley and Mervyn Greer as Commissioners with Jim Taylor as Lead Commissioner, Carol Culley as Finance Commissioner and Mervyn Greer as Commercial Commissioner. It was the Secretary of State's view that the Authority required rapid and extensive support in their commercial and finance functions, and that this was best provided by appointing individuals as Commissioners who were familiar with the situation in Woking.
14. The Secretary of State directs the Commissioners to perform certain functions, if necessary, and to have a role in overseeing other functions or actions which

the Authority was to perform. The Commissioners are accountable to the Secretary of State, in that they were nominated by him and can have their nomination withdrawn by him. The Commissioners report to the Secretary of State on the progress of the intervention after an initial period of three months, six months, and thereafter at six-month intervals – or at any other time deemed necessary by the Secretary of State.

15. Commissioners were nominated for the period from 25 May 2023 to 25 May 2024 or such earlier or later time as the Secretary of State determines. The Secretary of State considered the skills and experiences required to support Woking on their longer-term journey within six months as outlined above.
16. The Secretary of State may, if he considers it appropriate, nominate further Commissioners and on 13 December 2023 the Secretary of State announced changes to the Commissioner Team. This is outlined further in paragraphs 18 – 25.
17. The Directions provide that the Commissioners' reasonable expenses and such fees as the Secretary of State determine 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 determined fees of £1200 a day for the Lead Commissioner, £1100 for other Commissioners.¹

Changes to the Commissioner Team from 13 December 2023

18. The Commissioners' second report was provided after six months and published on 13 December 2023. It paints a stark picture of the challenges Woking faces, noting that the Authority "remains in an extremely vulnerable position due to its overhanging debt and historical lack of rigour in its commercial activity." Whilst the Authority has made some limited progress on immediate areas of focus identified in Commissioners' first report, this has been hampered by a significant lack of capacity and capability in the finance and commercial functions in particular, which has necessitated Commissioners taking a very hands-on approach.
19. Given this, and other changes taking place over the next few months, with Jim Taylor stepping down as Lead Commissioner for personal reasons and the resignation of the Authority's Chief Executive, Julie Fisher, the Secretary of State has decided to appoint a Managing Director Commissioner, Richard Carr, and Sir Tony Redmond to the role of Lead Commissioner.
20. The Secretary of State envisages the roles in the Commissioner Team as:
 - a. The Lead Commissioner's responsibilities include, but are not limited to, giving direction and guiding the strategy for intervention and providing oversight of, and support to, the Authority's leadership.
 - b. The Managing Director Commissioner will fulfil the role of a Chief Executive and Head of Paid Service for the Authority when the current Chief Executive departs and will be responsible for the day-to-day operations of the Authority.

¹ Fees for Carol Culley, the Finance Commissioner, are paid to her employer, Manchester City Council.

- c. The Finance Commissioner's responsibilities include, but are not limited to, overseeing the improvements the Authority needs to deliver in relation to financial governance and management and long-term financial sustainability.
- d. The Commercial Commissioner's responsibilities include, but are not limited to, overseeing the improvements the Authority needs to deliver in relation to commercial decision-making and the management of commercial projects.

Powers to be exercised by the Commissioners

21. The evidence set out above highlights failures in the administration of financial affairs and corporate governance, including scrutiny of strategic financial decision making, and failures relating to commercial projects and decision making and property management.

22. 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.
- b. The requirement from 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 and capital spending;
 - iii. scrutiny of all in-year amendments to annual budgets;
 - iv. the power to propose amendments to 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;
 - vii. ensuring compliance with all relevant rules and guidelines relating to the financial management of the Authority.

- c. All functions associated with commercial decision-making, regeneration, property management, procurement and the management of commercial projects by the Authority.
 - d. All functions associated with the governance, scrutiny and transparency of strategic decision making by the Authority.
 - e. All functions associated with the Authority's operating model and redesign of the Authority's services to achieve value for money and financial sustainability.
 - f. All functions relating to the appointment and dismissal of persons to positions the holders of which are to be designated as senior officers and statutory officers, and the designation of those persons as statutory officers, to include:
 - i. The functions of designating a person as a statutory officer and removing a person from a statutory office;
 - ii. The functions under section 112 of the Local Government Act 1972 of:
 - 1. 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
 - 2. dismissing any person who has been designated as a statutory officer from his or her position as an officer of the Authority.
 - g. All functions to define the officer structure for the senior positions, to determine the recruitment processes and then to recruit the relevant staff to those positions.
 - h. All functions pertaining to the development, oversight and operation of an enhanced performance management framework for officers holding senior positions.
23. 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 to ensure that the Authority takes the necessary steps to achieve the best possible outcome for Woking residents and the public purse.
24. The exercise of these functions should enable the Commissioners to make sure that the Authority has made sufficient improvement within the next five years to be able to comply with its best value duty on a sustainable basis.

Directions to the Authority

25. To achieve and facilitate the objectives of the intervention, the Secretary of State also directs the Authority to take the following actions:
- a. Prepare and agree **an Improvement and Recovery Plan** to the satisfaction of the Commissioners, within six months, with resource allocated accordingly. This should draw upon the contents and

recommendations of the External Assurance Review published on 25 May 2023. The plan is to set out measures to be undertaken, together with milestones and delivery targets against which to measure performance, in order to deliver rapid and sustainable improvements in governance, finance and commercial functions, thereby securing compliance with the best value duty. The Improvement and Recovery Plan should include at a minimum:

- i. An action plan to achieve financial sustainability and to identify and close any short and long-term budget gaps 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, demonstrating how overall capital financing requirement and external borrowing will be reduced over a realistic but expedient timescale, reducing debt servicing costs.
 - iv. An action plan to ensure the Authority is complying with all relevant rules and guidelines relating to the financial management of the Authority. An updated minimum revenue provision (MRP) policy in line with all relevant rules and guidelines.
 - v. An action plan to reconfigure the Authority's services commensurate with the Authority's available financial resources.
 - vi. A plan to ensure that the Authority has sufficient skills, capabilities and capacity to deliver the Improvement and Recovery Plan, within a robust officer structure, including appropriate commercial expertise and capacity.
 - vii. An action plan to strengthen the Authority's financial and commercial functions, and to secure improvements in risk management and governance.
 - viii. A plan to secure value for money during any exit from the Authority's arrangements with its companies, and the revolving lending arrangements between them, including a plan on how to mitigate the risk surrounding the insolvency of these companies and an appropriate timescale for doing so.
 - ix. Actions to secure continuous improvement in all services.
- b. To report to the Commissioners on the delivery of the Improvement and Recovery Plan after three months, six months and thereafter at six-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 governance, 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 Commissioners at all reasonable times, such access as appears to the Commissioners to be necessary: a. to any premises of the Authority; b. to any document relating to the Authority; and c. to any employee or member of the Authority.
- e. To provide the Commissioners, at the expense of the Authority, with such reasonable amenities, 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 Commissioners reasonable expenses, and such fees as the Secretary of State determines are to be paid to them.
- g. To provide the Commissioners with such assistance and information, including any views of the Authority on any matter, as the Commissioners may reasonably request.
- 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

- 26. 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 25 May 2028 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 the Directions beyond this date, or it may be appropriate to return functions before this time.
- 27. The Secretary of State asked for an initial report from the Commissioners three months after the start of the intervention, again at six months, and thereafter at six-monthly intervals. This allows for both rapid and ongoing review of whether it would be appropriate to change any element of the intervention, to expand the functions of the Commissioners or for any function exercisable by the Commissioners to be returned to the Authority.
- 28. Where the Authority and Commissioners agree that it would be appropriate for the exercise of a function to be returned to the Authority, the 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 25 May 2023. The Secretary of State has not ruled out the possibility that further functions might be brought under the control of the Commissioners.