

# **LONDON BOROUGH OF CROYDON DIRECTIONS UNDER SECTION 15(5) 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) of the Local Government Act 1999 (“the 1999 Act”) in relation to London Borough of Croydon (“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 20 July 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.

### **The context for the Directions**

3. The Authority is working to resolve serious governance and financial issues, including historic ones, that have occurred over a number of years, with significant support. Historic issues have continued to be unearthed at the Authority and their potential impact on the Authority and the progress it has made to date cannot be underestimated, particularly given their precarious financial position. The Authority is currently unable to achieve financial sustainability of its own accord and has requested an unprecedented level of support from Government as a result of these historic issues. The Authority has been subject to two Public Interest Reports by external auditors relating to poor financial decision making and associated governance failings (October 2020) and failures in financial control and poor governance arrangements relating to the refurbishment of Fairfield Halls (January 2022). It has also issued three Section 114 notices since 2020, the latest being in November 2022 following the conclusion that it could not balance its budget in 2023/24 and beyond, following the uncovering of further legacy issues.
4. The former Secretary of State appointed an independent Improvement and Assurance Panel (“the Panel”) in February 2021, chaired by Tony McArdle OBE and made up of independent experts, to offer the Authority advice, expertise and challenge as it sought to address failings related to poor financial control and governance. The Panel has provided regular assurance reports to the Secretary of State on the Authority’s progress throughout this time, with their latest report being submitted in November 2022.
5. The Authority has taken positive steps to address the challenges it faces and, with the oversight from the Improvement and Assurance Panel, to lay the foundations for its recovery and ensure that legacy issues are being addressed. In May 2022, the Authority changed its model of governance with the election of a Mayor, Jason Perry, and a new Council. The Secretary of State acknowledges the Panel’s assessment in their latest report that the Mayor has been working constructively with them and is prepared to “take firm decisions” to return the Authority to a sustainable financial footing. The Panel have also commented that within the Authority there is “much evidence of managers and staff grasping the scale of the problem and doing their best to fix it.”

6. On balance, the Secretary of State agrees with the Panel's latest assessment, that the work of the new leadership has made good progress, however he has concluded partly due to the result of the historic problems, and the extent of improvement necessary, that the Authority is not meeting its best value duty.
7. The 'minded to' letter of 16 March 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 gave the Improvement and Assurance Panel certain responsibilities and required the Authority to take certain actions.
8. This Memorandum explains the content of the Directions as finalised in the light of the representation received from the Authority.

### **Representations**

9. Before making Directions, the Secretary of State is required under section 15(9) of the 1999 Act to give the Authority and other interested parties an opportunity to make representations about the proposed Directions, as well as on the Report which served as the basis for them.
10. One representation was received, from the Chief Executive of the Authority, Katherine Kerswell. The Authority welcomed the 'minded to' proposal to move the existing Improvement and Assurance Panel to a statutory footing, although requested some minor changes to the proposed intervention package citing the strengthening of their internal control systems and approach to risk management, as well as the improvements made to the governance arrangements of their commercial portfolio. The representation identified three pressing priorities which the Authority needs to address; finance, housing and transformation, and the Authority are supportive of the proposed intervention package covering these areas. They recognise the importance of the Authority continuing to lead its recovery and are committed to continue working positively with the Panel moving forward.
11. This Memorandum, together with the Directions and related material, is published at [www.gov.uk](http://www.gov.uk).

### **The intervention package**

12. The Secretary of State has carefully considered the representation from the Authority.
13. It is important that the Authority leads their recovery but that it does not lose momentum in making the necessary improvements. The proposed package is centred on the Authority continuing to make the necessary improvements to the satisfaction of the Panel. The Panel will be backed by Directions issued to the Authority requiring them to continue to implement the London Borough of Croydon Renewal Plan to the satisfaction of the Panel including taking steps to address the culture of poor financial management, improve the capacity and capability of the Authority's housing service, transform the Authority's activities, practices and omissions to ensure they are compatible with the best value duty and to ensure 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 Croydon. The Panel will provide the Secretary of State with progress reports at six monthly intervals following the start of the intervention.

14. The Secretary of State, having considered the representation 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) of the same Act, to put in place an intervention package to secure the Authority's future and sustainable compliance with the best value duty. This intervention package is in line with his proposals as described in paragraph 13 of this Memorandum.
15. The Secretary of State considers that this package will address the failings identified in the Panel's latest reports. For the avoidance of doubt, the Secretary of State believes that each individual element of the intervention that he has implemented is individually justified.

### **The Improvement and Assurance Panel**

16. The package that the Secretary of State has put in place centres on the Directions issued under section 15(5) of the 1999 Act. These direct the Authority to follow the advice of the Improvement and Assurance Panel as a necessary and expedient action to secure compliance with their best value duty. The Improvement and Assurance Panel currently offer advice, expertise and challenge to the Authority on their improvement journey, as described in their Terms of Reference published on 18 January 2021 on gov.uk. The Directions move the Panel from a non-statutory advisory role to a statutory footing so that they are empowered to instruct rather than guide the Authority's improvement activities if they are not satisfied with the progress being made.
17. The Directions focus on the three priority action areas of finance, housing and transformation. The Secretary of State appointed three Panel members on 18 January 2021, and a fourth on 29 May 2021. The Secretary of State has now appointed two additional members to lead on finance and housing respectively.
18. The Improvement and Assurance Panel's membership now includes:
  - Phil Brookes (Commercial and Asset Disposal)
  - Pamela Leonce (Housing)
  - Tony McArdle OBE (Chair and Governance)
  - Brian Roberts OBE (Finance)
  - Jon Wilson (Adult Social Care)

### **Directions to the Authority**

19. To achieve and facilitate the objectives of the intervention, the Secretary of State has also directed the Authority to take the following actions:
  - a. To continue to implement the London Borough of Croydon Renewal Plan and make the necessary improvements to the satisfaction of the Improvement and Assurance Panel, and as a minimum, to implement the following components:

- i. To continue to address the culture of poor financial management of the Authority.
- ii. To continue to improve the capacity and capability of the Authority's housing service.
- iii. To continue to restore public trust and confidence in the Authority by transforming the Authority's activities, practices, and omissions to ensure that they are compatible with the best value duty.
- iv. 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 Croydon.

20. The Directions require the Authority to fully cooperate with the Improvement and Assurance Panel and in order to facilitate their work:

- a) To allow the Improvement and Assurance Panel at all reasonable times, such access as appears to the Improvement and Assurance Panel 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 Improvement and Assurance Panel, at the expense of the Authority, with such reasonable amenities and services and administrative support as the Improvement and Assurance Panel may reasonably require to carry out their functions and responsibilities under these Directions.
- c) To pay the Improvement and Assurance Panel reasonable expenses, and such fees as the Secretary of State determines are to be paid to them.
- d) To provide the Improvement and Assurance Panel with such assistance and information, including any views of the Authority on any matter, as the Improvement and Assurance Panel 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 the Directions.

### **Duration of the intervention**

21. 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 20 July 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.