

**DIRECTIONS UNDER SECTION 15(5) AND (6) OF THE LOCAL GOVERNMENT ACT 1999 AND SECTION 497A(4B) OF THE EDUCATION ACT 1996 TO ROTHERHAM METROPOLITAN BOROUGH COUNCIL, DECEMBER 2016**

**WHEREAS**

1. The Secretary of State for Communities and Local Government and the Secretary of State for Education (“the Secretaries of State”) have carefully considered the following in respect of Rotherham Metropolitan Borough Council (“the Authority”):
  - a. The three-monthly reviews of progress from the Lead Commissioner dated 26 February 2016 (“the 26 February 2016 report”), 10 May 2016 (“the 10 May 2016 report”) and 11 August 2016 (“the 11 August 2016 report”); and
  - b. Representations made on 21 October, 31 October and 2 November 2016 on the proposed return of licensing functions.
2. The Secretary of State for Communities and Local Government is satisfied that the Authority is able to exercise the associated executive and non-executive licensing functions in compliance with the requirements of Part 1 of the Local Government Act 1999 (“the 1999 Act”). However, the Authority’s exercise of these functions should be subject to oversight arrangements to enable the Commissioners to advise and scrutinise the Authority and ensure its compliance with best value duty.
3. The Secretary of State for Communities and Local Government, having considered the representations made by the Authority as required by 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 1999 Act, to direct the Authority as set out below in order to secure the Authority’s compliance with the requirements of Part I of the 1999 Act.

**NOW THEREFORE**

4. Pursuant to his powers under section 15(5) and (6) of the 1999 Act, the Secretary of State for Communities and Local Government directs:
  - a. the Authority to take the actions outlined in Annex A to these Directions;
  - b. that the service areas and associated executive and non-executive functions of the Authority specified in Annex B to these Directions shall be exercised by the Commissioners acting jointly or severally; the

Commissioners being persons nominated by the Secretary of State for Communities and Local Government and who remain in post on 13 December 2016 as long as those nominations are in force;

- c. that, from the date of these Directions, the Authority shall comply with any instructions of the Commissioners in relation to the exercise of the functions specified in Annex B, and shall provide such information and assistance as the Commissioners may require for the purpose of exercising the functions specified in Annex B, and as may be needed in order to satisfy the requirements of Annex A.
5. Insofar as the Directions at paragraph 4(b) relate to children's social care functions, they are also directed by the Secretary of State for Education pursuant to her powers under section 497A(4B) of the 1996 Act, as applied by section 50 of the Children Act 2004. Otherwise, and including the Directions in paragraph 4 which do not relate to children's social care functions, the Secretary of State for Education endorses the Directions made by the Secretary of State for Communities and Local Government.
6. In consequence of these Directions, the Secretaries of State revoke Annex A and paragraphs 3 and 6 of the Directions issued to the Authority on 11 February 2016. All other paragraphs of the 11 February 2016 Directions remain in force.
7. These Directions shall remain in force until 31 March 2019 or such earlier date as the Secretaries of State may decide.

Signed on behalf of the Secretary of State for Communities and Local Government and the Secretary of State for Education.

A handwritten signature in black ink, appearing to read 'Alex Powell', with a long horizontal flourish extending to the right.

Alex Powell

A Senior Civil Servant in the Department for Communities and Local Government

A handwritten signature in black ink, appearing to read 'Suzanne Lunn'. The signature is written in a cursive style with a large, looping initial 'S'.

Suzanne Lunn

A Senior Civil Servant in the Department for Education

13 December 2016

## **ANNEX A**

### **ACTION TO BE TAKEN BY THE AUTHORITY**

In this Annex, the following expressions have the following meaning:

“Lead Commissioner” means one of the Commissioners referred to in paragraph 4 of the Directions whose responsibilities include, but are not limited to, giving direction and leadership to the work of the Commissioners and to the delivery of the improvements which the Authority is required to make. For the avoidance of doubt this will include overall responsibility for the improvements the Authority needs to deliver in relation to governance, leadership and culture, in the exercise of its overview and scrutiny functions, and in its performance of services;

“improvement plans” means the Children and Young Peoples Improvement Plan, version 1, issued to Ofsted on 25 February 2015 and the ‘A Fresh Start’ Improvement Plan published by the Authority on 26 May 2015;

“relevant Commissioner” means one of the Commissioners, as designated by the Lead Commissioner, responsible for providing formal advice to Executive Councillors in relation to a given service area that is already exercised by the Authority and/or from 13 December 2016 is to be exercised by the Authority;

“the Authority” includes the Leader, the Cabinet Members, or any committee or sub-committee and any other person who has responsibility for the matter in question;

“Executive Councillor” means a Cabinet Member designated by the Leader as exercising the Authority’s functions in relation to a given service area;

“formal advice” means advice given either orally or in writing by a relevant Commissioner to an Executive Councillor in relation to a decision to be made by that Executive Councillor where it is made clear by the relevant Commissioner the advice is formal in nature, and action must be taken if the Executive Councillor does not agree with the advice

In relation to the service areas and associated executive and non-executive functions in paragraph 5 of Annex B, the actions to be taken by the Authority are:

1. To undertake as soon as practicable after the date of these Directions, and every 3 months thereafter, under the direction of the Lead Commissioner, a review of whether it would be appropriate for any function exercisable by the Commissioners to be returned to the Authority to exercise, and where the Authority and Lead and other Commissioners agree that it would be appropriate for the exercise of a function to be returned to the Authority, to report this to the Secretary of State for Communities and Local Government or, insofar as the functions are children’s social care functions, to the Secretaries 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 and, in the case of children's social care functions, that the function will be performed to the required standard;

2. To undertake the measures set out in the improvement plans and such other measures as the Lead and other Commissioners may require, and to provide the Secretaries of State with progress reports, agreed with the Lead and other Commissioners, at 6 monthly intervals following the date of these Directions;
3. To maintain such improvement panels as the Commissioners may agree to, for the purpose of enabling the Authority to be held to account for the progress it is making on securing future compliance with the best value duty and securing the performance of its children's social care functions to the required standard;
4. To cease to pay or, insofar as may be agreed with the Commissioners, to reduce to a level that is commensurate with the extent of the functions that the Authority's executive exercises from time to time, any special responsibility allowances that members of the Authority receive by virtue of them being members of, or otherwise connected with, the Authority's executive;
5. 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;
6. To provide the Commissioners with such assistance and information, including any views of the Authority on any matter, as the Commissioners may reasonably request;
7. 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 under these Directions; and
8. To pay the Commissioners' reasonable expenses and such fees as the Secretary of State for Communities and Local Government determines are to be paid to them.

In relation to the service areas and associated executive and non-executive functions not specified in paragraph 5 of Annex B, the actions to be taken by the Authority are:

9. To provide concurrently all proposed reports for decision by Executive Councillors to the relevant Commissioner;
10. That Executive Councillors provided with formal advice by the relevant Commissioner in relation to a proposed decision have regard to that advice, and if the formal advice is not followed then written reasons are provided that accompany the decision made, having regard to the Authority's best value duty; and
11. That Executive Councillors provided with formal advice by any Commissioner in relation to any proposal related to setting the annual revenue budget or adopting the Medium Term Financial Strategy have regard to that advice, and if the formal advice is not followed then written reasons are provided that accompany the decision made, having regard to the Authority's best value duty.
12. To cease to pay or, insofar as may be agreed with the Commissioners, to reduce to a level that is commensurate with the extent of the functions that the Authority's executive exercises from time to time, any special responsibility allowances that members of the Authority receive by virtue of them being members of, or otherwise connected with, the Authority's executive;
13. To provide the Commissioners, at the expense of the Authority, with such reasonable assistance, amenities, services and administrative support as the Commissioners may reasonably require from time to time to carry out their responsibilities under these Directions.
14. To pay the Commissioners' reasonable expenses and such fees as the Secretary of State for Communities and Local Government determines are to be paid to them.

## **ANNEX B**

### **FUNCTIONS OF THE AUTHORITY TO BE EXERCISED BY THE COMMISSIONERS**

In this Annex:

“statutory officers” means the head of paid service designated under section 4(1) of the Local Government and Housing Act 1989, the chief financial officer designated as having responsibility for the administration of the Authority’s financial affairs under section 151 of the Local Government Act 1972, and the monitoring officer designated under section 5(1) of the Local Government and Housing Act 1989 (and the expressions “statutory officer” and “statutory office” are to be construed accordingly).

The Commissioners shall exercise:

1. All executive functions of the Authority i.e. all functions of the Authority which are the responsibility of the executive, including the delegation of the exercise of such functions under section 9E of the Local Government Act 2000, in relation to the service areas set out in paragraph 5. For the avoidance of doubt, these functions include all “local choice” functions (i.e. functions that may be exercised by either an authority’s executive or council) of the Authority in relation to the service areas set out in paragraph 5 that were exercisable by the executive as of 4 February 2015.
2. All non-executive 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 following functions:
  - a. Designating a person as a statutory officer and removing a person from a statutory office;
  - b. The functions under section 112 of the Local Government Act 1972 of:
    - i. 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
    - ii. Removing any person who has been designated as a statutory officer from his or her position as an officer of the Authority;

3. Functions of arranging, under section 101 of the Local Government Act 1972, for the discharge of any of the Authority's functions by another body or person insofar as the latter functions are functions in relation to the service areas set out in paragraph 5;
4. All functions of the Authority relating to the nomination or appointment of persons to other bodies insofar as the functions relate to the service areas set out in paragraph 5;
5. The Commissioners shall exercise the functions in paragraphs 1 to 4 insofar as they relate to the following service areas:
  - a. Economic growth;
  - b. Town centres;
  - c. External partnerships;
  - d. Children's safeguarding and all other children's social care services<sup>1</sup>;
  - e. Community safety;
  - f. Adult social care and the Council's partnership with the NHS;
  - g. Asset management;
  - h. Performance management;
  - i. Human resources;
  - j. Waste collection;
  - k. Grounds maintenance; and
  - l. Audit.

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<sup>1</sup> Meaning children's social care functions as defined by paragraph 3 of of the 11 February 2016 direction.