

# Northamptonshire County Council Directions under section 15(5) and (6) of the Local Government Act 1999

## Explanatory Memorandum

1. The Secretary of State for Housing, Communities and the Local Government (“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 Northamptonshire County 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 10 May 2018. 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. Following the publication of the external auditor’s (KPMG) “adverse” value for money opinion in relation to the 2015/16 and 2016/17 accounts of the Authority, publically available budget documents, and the September 2017 Local Government Association peer review into the council’s financial planning and management, on 9 January 2018, the Secretary of State appointed Max Caller CBE under section 10 of the 1999 Act to carry out an inspection of the compliance of the Authority with its best value duty (as set out in Part I of the 1999 Act). The Secretary of State asked that the inspection should in particular consider the authority’s corporate governance and financial management systems.
4. On 15 March 2018, Max Caller CBE, having undertaken his inspection, sent to the Authority and the Secretary of State a report (“the Report”) setting out his findings. The Report, which reflected the thoroughness and detail of the Inspector and Assistant Inspector’s investigation, concluded that the Authority had failed to comply with its duty under Part I of the 1999 Act from the financial year 2013/14. The Report provided case studies of how the Authority had failed to secure savings through transformation of services together with detailed analysis of successive years’ accounts showing how the Authority had failed to manage its budgets and deliver services within proper budgetary constraints. The Report states “Living within budget constraints is not part of the culture of [the Authority]”.
5. The Report also set out the Inspector’s view that “the problems faced by [the Authority] are now so deep and ingrained that it is not possible to promote a recovery plan that could bring [the Authority] back to stability and safety in a reasonable timescale”. In the light of this conclusion, the Report recommended that, in order to secure a “way forward with a clean sheet, leaving all the history behind” the Authority should be restructured as a unitary form of local government over the next two to three years with Commissioners put in place to

provide support to the Authority in safeguarding its short term position, given the challenges that it faces.

6. On the same day, 15 March 2018, the Secretary of State published the Report. Having considered its findings, on 27 March 2018, he published a letter from senior officials to the Authority setting out a proposed intervention package to secure the Authority's compliance with its best value duty ("the minded to letter"). He invited the Authority and the district and borough authorities within the area of the Authority (the "principal authorities"), if they wished, to make representations to him on or before 12 April 2018 about the Report and the proposed intervention package.
7. The minded to letter explained that the proposed intervention package reflected the recommendations of the Inspector, particularly the need to secure a clean sheet for the Authority and ensure its compliance with Part I of the 1999 Act. The proposed package contained two key elements:
  - a. proposals to put in place Commissioners: the Secretary of State proposed to appoint Commissioners – including one Lead Commissioner and one Commissioner with a specific remit around strategic financial management within the Authority – to take over functions associated with governance and scrutiny at the Authority and its strategic financial management and budgetary control; and
  - b. an invitation to the Authority and borough and the principal authorities to make proposals for a unitary form of local government.
8. The minded to letter included a detailed description of the Directions that the Secretary of State proposed to make under section 15 of the Local Government Act 1999 in order to implement the first element of the proposed package. The proposed Directions provided for the Commissioners to exercise for a time certain of the Authority's functions, gave to the Commissioners certain responsibilities and reserved powers and required the Authority to take certain actions. This memorandum explains the content of the Directions as finalised in the light of representations received from the Authority and the principal authorities.

## **Representations**

9. Before making Directions, the Secretary of State is required under section 15(9) of the 1999 Act to give the Authority an opportunity to make representations about the Report as a result of which the Directions are proposed, and about the proposed Directions. On this occasion, and because of the simultaneous invitation to the principal authorities to submit proposals for local government restructuring, representations were also sought from the principal authorities.
10. Representations were received from the Authority, dated 9 April 2018, from both the Leader of the Council and the Interim Chief Executive. In their letter they welcome the proposed intervention package and ask that Commissioners be appointed swiftly.

11. Representations were also received from the principal authorities by means of a joint letter, in which they welcomed the intervention package, and from Voluntary Voices Northamptonshire, who represent various voluntary sector agencies in the Authority, who also welcomed the proposals and asked to be actively involved in next steps.
12. This Memorandum, together with the Directions, material taken into account for the purposes of making Directions and the invitation for proposals for restructuring in the Authority area, is published on the Government website at [www.gov.uk](http://www.gov.uk).

### **The intervention package**

13. Having carefully considered afresh the Report, together with letters from the Authority (dated 9 April 2018), principal authorities (9 April 2018) and Voluntary Voices Northamptonshire (11 April 2018), the Secretary of State is confident that there is a sound basis on which to found his considerations and, accordingly, is satisfied that the Authority is failing to comply with its best value duty.
14. The Secretary of State, having considered the representations made by the Authority as required under section 15(9) of the 1999 Act, also 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 line with his proposals as described in paragraph 7 of this memorandum in order to secure the Authority's future compliance with its best value duty.
15. The Secretary of State considers that this package will address the failings identified in the Report until a long term solution (such as restructuring) is in place.
16. For avoidance of doubt, the Secretary of State believes that each individual element of the intervention that he has implemented is individually justified.

### **Commissioners**

17. The package that the Secretary of State has put in place centres on a team of Commissioners to ensure that the Authority meets its duty under Part I of the 1999 Act in the short term (anticipated to be in place until 31 March 2021) until a longer term solution, such as restructuring, is complete. The Secretary of State has made Directions in relation to the Commissioners, including providing for them to perform certain functions and to have a role in overseeing other functions or actions which the Authority is to perform. The Commissioners are accountable to the Secretary of State in that they have been nominated by him and can have their nomination withdrawn by him. The Commissioners will report to the Secretary of State on the progress of the intervention.
18. The Secretary of State has nominated a Commissioner team with a proven record in providing leadership and financial stability in local government. The Commissioners are:

- **Tony McArdle** (Lead Commissioner) – until February 2018, Chief Executive of Lincolnshire County Council, a post he held for 12 years. Previously held a number of senior posts in local government and is currently Chair of the Association of County Chief Executives.
- **Brian Roberts** (Finance Commissioner) – recently retired from his post as director of corporate resources and deputy chief executive at Leicestershire County Council. This followed on from a varied career in local government. A past President of CIPFA, he has also been a past president of the Society of County Treasurers of the Association of Local Government Treasurers. Currently a national council member and a trustee of the Centre for Public Scrutiny.

19. All Commissioners are nominated for the period from 10 May 2018 and ending on 31 March 2021 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.

### **Commissioners' roles**

20. The skills and experience in the Commissioner team will mean that it is both possible and sensible to give them considerable levels of discretion over how they implement their roles and responsibilities under the Directions, in order that they can find the solutions most likely to lead to sustainable improvement in the Authority.
21. The Commissioners are to act jointly or severally, and it will be for them to decide how best to exercise their functions. However, the Secretary of State envisages two complementary roles:
- a. a Lead Commissioner, whose responsibilities include, but are not limited to, giving direction and leadership to the work of the Commissioners and to the delivery of improvements which the Authority is required to make particularly with respect to aspects of the culture of the Authority and the way its services are organised which act as a hindrance to compliance with the best value duty; and
  - b. a Financial Commissioner whose responsibilities will focus on securing the prudent and sustainable strategic financial management of the Authority, including proper budgetary control.
22. The Directions provide that the Commissioners' 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 £800 a day for the Lead Commissioner and £700 a day for the Financial Commissioner.

## **Powers to be exercised by the Commissioners**

23. In his report, the Inspector highlights failures in the strategic financial management of the Authority, allied with weak and confused governance and scrutiny arrangements, as being the core causes of the Authority's failure to comply with the requirements of Part I of the 1999 Act. Alongside this he refers to "good, hardworking, dedicated staff" and attempts by experienced backbench Members of the Authority to question decisions which were rebuffed or obstructed.
24. The Report, therefore, presents a strong case for intervention to ensure proper financial planning and budgetary control backed up by appropriate governance and scrutiny, while also suggesting that there would be real value in working alongside existing staff and elected Members to run other services. The Report also makes it clear that the Inspector does not believe that the Authority can be stabilised by means of an internally led recovery plan.
25. For these reasons, the Directions give to the Commissioners the exercise of functions in three areas:
- a. all functions associated with the governance and scrutiny of strategic decision making by the Authority – the Report highlighted a diffuse structure for service delivery in the Authority leading to no clear line of sight between the centre, particularly for budget making purposes, allied with silo working and no sense of common purpose. The Report also identified a culture which was resistant to challenge or criticism. In practice, most decisions will be taken by the Authority; however, the Directions are designed to give Commissioners the power to tackle the weaknesses the Report identified in order to ensure that the Authority is better equipped to meet the requirements of Part I of the 1999 Act and, in particular, to put in place meaningful procedures with consequences and actions;
  - b. all functions associated with strategic financial planning and budgetary control – again, the intention is not that Commissioners should be involved with day to day financial decisions. But, rather, that they should have the power to ensure that the Authority is able to set realistic strategic financial and manage within established budgets; and
  - c. functions relating to the appointment and dismissal of statutory officers (the Chief Executive, Chief Financial Officer (and section 151 officer) and Monitoring Officer).

## **Reserved powers**

26. The Directions also provide the capability required by Commissioners through reserved powers to back up the functions outlined above and ensure proper decision making. The Directions require the Authority to:

- a. refer to the Commissioners, together with any recommendation the authority wishes to make, any matter where the Authority does not agree with any recommendation or part of a recommendation made to it by a statutory officer or where it does not comply with and implement any such recommendation within the period specified by the statutory officer in the recommendation;
- b. comply with and implement any decision or recommendation of the Commissioners following such a reference; and
- c. comply with and implement any decision or recommendation of the Commissioners following a reference to the Commissioners by any statutory officer of a matter where the Authority has not complied with or implemented a recommendation by the statutory officer within the period specified by the statutory officer in the recommendation and the Authority itself has not complied with the obligation set out above to refer the matter to the Commissioners.

27. In practice, most decisions will continue to be made by the Authority. However, where concerns are raised by a statutory officer, matters will be referred to the Commissioners for advice. Commissioners will uphold proper standards and due process and recommend action to the Authority.

28. The exercise of these functions should enable the Commissioners to bring the Authority's finances under control and ensure robust service delivery to local residents.

### **Directions to the Authority**

29. The Directions require the Authority to fully cooperate with the Commissioners in order to facilitate their work:

- a. To refer to the Commissioners any and all proposals for in-year amendments to budgets;
- b. 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,
- c. 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,
- d. To pay the Commissioners' reasonable expenses, and such fees as the Secretary of State determines are to be paid to them;

- e. To provide the Commissioners with such assistance and information, including any views of the Authority on any matter, as the Commissioners may reasonably request; and
- f. To co-operate with the Secretary of State for Housing, Communities and Local Government in relation to implementing the terms of the Directions.

### **Duration of the intervention**

30. The Secretary of State expects that Commissioners will remain in place until a point at which it is anticipated that a long term solution, such as the restructuring process, is complete. Consequently, the Directions will remain in force until 31 March 2021. However, it is open to the Secretary of State to return functions to the Authority, or successor authorities if appropriate, before then. The Secretary of State has also not ruled out extending the duration of Directions if necessary.