

# **LIVERPOOL CITY 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 Liverpool City 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 June 2021. 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 seriousness of the issues identified through the Merseyside Police investigation into fraud, bribery and corruption in public office, which involves a significant connection to Liverpool City Council (LCC); and LCC’s submission to the department of 11 December 2020 regarding their governance arrangements, oversight and control measures, including details of the measures and controls implemented during the previous eighteen months, 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 consider whether the Authority has effective arrangements in place for securing best value in its planning, highways, regeneration and property management functions and the strength of associated audit and governance arrangements.
4. On 19 March 2021, 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 Inspectors’ investigation, set out a picture of serious failings by the Authority in the areas of highways, regeneration and property management functions, together with their interaction with planning functions and associated audit and governance arrangements in the exercise of those specified functions. The Report concluded that the Authority had failed to comply with its duty under Part I of the 1999 Act over a number of years.
5. Having considered the findings of the Report, on 24 March 2021, the Secretary of State published the Report and 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 any other interested parties to make representations to him on or before 24 May 2021 about the Report and the proposed intervention package.

6. The minded to letter explained that the proposed intervention package reflected the recommendations of the Inspector, and contained two key elements:
  - a. Proposals to put in place Commissioners to take over functions associated with regeneration, highways and property management, together with associated audit and governance arrangements at the Authority; and
  - b. Proposals to introduce electoral changes, in particular:
    - i. to make an Order using powers in the Local Government Act 2000 to provide for whole council elections in 2023 and every fourth year thereafter; and
    - ii. to consider and consult upon a new submission to the Local Government Boundary Commission for England as part of the current boundary review, which includes consideration of a proposal to reduce the number of Councillors to those consistent with elections on a single member ward basis and be approved by the Commissioners.
7. 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. 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 other interested parties.

## **Representations**

8. 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.
9. Representations were received from the Authority, dated 24 May 2021 from the Chief Executive Officer, Tony Reeves. The Council accept the findings of the Report in full and acknowledge they have failed to comply with the best value duty over a number of years. The Council are supportive of the proposed intervention including to appoint Commissioners. The Council have committed to consider and consult upon a new submission to the Local Government Boundary Commission for England (LGBCE) as part of the current boundary review.
10. Representations were also received from:
  - a. Centenary Action Group, a coalition of over 50 organisations and activists campaigning to eradicate the barriers that prevent women taking part in politics. The representation expresses concern that single member wards may discourage women from seeking elected office, stating multi-member wards are helpful because the workload can be

shared between colleagues; and voters in single member wards could be left without representation if councillors need to take maternity leave or are absent for caring-related reasons.

- b. Unlock Democracy, an organisation that campaigns for a vibrant, inclusive democracy that puts powers in the hands of the people. They express concern about the proposed single member wards and reductions in the number of Councillors, arguing multi-member wards allow councillors to share their workload, which means those with other commitments can serve as Councillors. Multi-member wards can also provide checks and balances on each other's activities. They also cite their research which highlights that the UK already has fewer Councillors than other European countries.
  - c. Eight members of the public who welcomed the proposed intervention package.
  - d. Five members of the public who were not supportive of the proposed intervention package.
11. This Memorandum, together with the Directions and material taken into account for the purposes of making Directions, is published on the Government website at [www.gov.uk](http://www.gov.uk).

### **The intervention package**

12. Having carefully considered afresh the Report, together with letters from the Authority (24 May 2021), Centenary Action Group (12 April 2021), Unlock Democracy (22 April 2021) and members of the public (various dates), 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.
13. The Secretary of State, having considered the representations 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) 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. This intervention package is in line with his proposals as described in paragraph 6 of this Memorandum, with the following modifications:
- a. The Commissioner's functions relating to the appointment and dismissal of statutory officers are expanded to include the role of Assistant Director Governance, Audit and Assurance;
  - b. The Direction to the Council to consider and consult upon a new submission to the LG BCE as part of the current boundary review has been amended to clarify that the submission should include consideration of a proposal to reduce the number of Councillors to those consistent with elections on the basis of *predominantly* single member

wards, completed to the satisfaction of and approval by the Commissioners. That is single member wards across the whole Council area save where the LGBCE consider a multi member ward is essential to balance their statutory duties of delivering electoral equality, reflecting interests and identities of local communities, and of promoting effective and convenient local government; and

- c. As part of the Secretary of State's intention to make an Order using his powers in the Local Government Act 2000 to achieve the fresh start the Authority requires by providing full Council elections from 2023, is an intention that the Order specifically provides for:
  - i. Liverpool City Council to hold all-out elections every four years from 2023 and adjust retirement dates for existing Councillors accordingly;
  - ii. Postponement for one year of the May 2022 elections of one third of Liverpool City Councillors and extend terms of office accordingly; and
  - iii. The movement of the next election for Liverpool City's Mayor to 2023 from 2024 and shorten the term of office accordingly.

14. The first modification is to reflect what was proposed in the Report and has been accepted by LCC. The second modification is in response to representations received by the Secretary of State. The modifications to the Electoral Order will help address the Report's recommendation of ensuring as much stability as possible during a period of significant change. Going forward, the city mayoral and council elections will take place in the same year every four years. The Order will be subject to the negative resolution procedure and will be made as soon as practicable and well in advance of the local government elections currently scheduled for 2022. Following the making of the Order, the independent Local Government Boundary Commission for England will be able to undertake their electoral review, with its necessary legislation, subject to Parliamentary approval.

15. The Secretary of State considers that this package will address the failings identified in the Report. 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 Report presents a strong case for intervention to ensure a reset and that the work that is currently being undertaken is continued at pace and embedded. Therefore, 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 9 June 2024). The Secretary of State has made Directions in relation to the Commissioners, including providing 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 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.

17. 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.
18. 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 complementary roles:
  - a. a Lead Commissioner, whose responsibilities include, but are not limited to, giving direction and leadership to the work of the other Commissioners and to the delivery of the improvements which the Authority is required to make;
  - b. a Local Government Improvement Commissioner whose responsibilities include, but are not limited to, overseeing the improvements the Authority needs to deliver in relation to its governance, leadership and culture, and the exercise of its overview and scrutiny function;
  - c. a Regeneration Commissioner whose responsibilities include, but are not limited to, overseeing the improvements the Authority needs to deliver in relation to its exercise of its regeneration function; and
  - d. a Highways Commissioner whose responsibilities include, but are not limited to, overseeing the improvements the Authority needs to deliver in relation to its exercise of its highways function.
19. The Secretary of State has nominated a Commissioner team with a proven record in adherence to the rule of law, leadership and delivering cultural change, together with specific expertise relevant to their functions. The Commissioners are:
  - **Mike Cunningham QPM – Lead Commissioner** – Has been involved in policing for more than 30 years, most recently as Chief Executive of the College of Policing from 2018 – 2020, the standards setting body for policing in England and Wales. Formerly one of Her Majesty’s Inspectors of Constabulary, inspecting forces in the north of England and Northern Ireland, and the national lead inspector for the development and implementation of inspections into police efficiency, legitimacy and leadership, and Chief Constable of Staffordshire Police.
  - **Joanna Killian – Local Government Improvement Commissioner** – Has more than 30 years of experience in the public sector delivering transformational change and service improvement. Since March 2018 she

has been Chief Executive of Surrey County Council. Prior to this Joanna worked at KPMG and was also Chief Executive of Essex County Council for 9 years.

- **Neil Gibson – Highways Commissioner** – Former Executive Director of Transport Economy and Environment for Buckinghamshire County Council, where he also acted for a time as Interim Chief Executive. A Fellow of the Chartered Institute of Highways and Transportation and former President of the Association of Directors of Environment, Economy, Planning and Transport.
- **Deborah McLaughlin – Regeneration Commissioner** – Extensive experience working in Regeneration and Housing for over 30 years across public and private sectors, including as Director of Housing at Manchester City Council, regional director for the North West at Homes England and Director of Capita's real estate business. Also worked at the Audit Commission as a Best Value Inspector and auditor.

All Commissioners are nominated for the period from 10 June 2021 to 9 June 2024 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.

20. 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 other Commissioners.

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

21. In his report, the Inspector highlights failures in six key areas – highways, regeneration, property, procurement, legal services, governance and scrutiny – which he considers that taken together have led to the Authority's failure to comply with its best value duty. Alongside this he refers to the recent improvements made at the Authority and the active support that the Authority and executive team need to continue making improvements.
22. For these reasons, the Directions enable the Commissioners to exercise functions in four areas:
- a. All functions associated with highways – The Report expressed serious concerns over the relationship between the core services team and Liverpool Streetscene Services Ltd (LSSL), a wholly owned subsidiary of the Authority, and that senior managers did not understand the risks to the service or what resources, structures, processes or procedures should be put in place to ensure a good service could be delivered. Concerns were also expressed over compliance with Standing Orders and how some of the maintenance contracts were awarded. 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 a good service;

- b. All functions associated with regeneration – The Report outlines the intimidating nature of the Department, the lack of appropriate files and systems and how proper decision making was not upheld. Again, 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 a good service;
- c. All functions associated with property management – The Report details the poor record keeping in relation to property disposals and a disregard for securing best value. Again, 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 a good service; and
- d. Functions relating to the appointment and dismissal of statutory officers (the Chief Executive, Chief Financial Officer (and section 151 officer) and Monitoring Officer) and the Assistant Director Governance, Audit and Assurance.

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 as a last resort should the Authority not satisfy the Commissioners in their improvement processes. This approach reflects the good work commenced by the Authority and current executive team and the confidence the Secretary of State has in the continuation of this work with the support of the Commissioners.

24. The exercise of these functions should enable the Commissioners to ensure 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**

25. 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 prepare and implement an improvement plan to the satisfaction of Commissioners (which may include or draw upon improvement or action

plans prepared before the date of these Directions), with, as a minimum the following components.

- b) In the first 12 months review and implement changes to the Council's constitution which will:
  - I. Improve the ethical governance framework to best practice incorporating the Local Government Association model code and a fully functioning Standards Committee.
  - II. Constitute the Audit Committee as a stand-alone committee with a direct reporting line to Council and a right to have its recommendations considered by the Executive Mayor and Cabinet, with either an independent Chair or an Independent Technical Advisor.
  - III. To re-establish Scrutiny activity in line with Statutory Guidance ensuring that Councillor leadership of the activity is on a cross party basis and with appropriate officer support.
  - IV. Introduce best practice Standing Orders and Regulations for contracts and property disposals.
  - V. Review the scope, content and reporting of all delegated powers.
  - VI. Establish a specific code of conduct for all Members in connection with dealing with Planning and Licencing matters.
  - VII. Require mandatory training of members in key activities, including behaviours, before participation in Council activities other than full Council.
  - VIII. Improve the content and updating of declarations of interests and gifts and hospitality, for both Members and Officers.
- c) Consider and consult upon a new submission to the Local Government Boundary Commission for England as part of the current boundary review. The submission should include consideration of a proposal to reduce the number of Councillors to those consistent with elections on a predominantly single member ward basis, completed to the satisfaction of and approval by the Commissioners;
- d) To obtain the consent of the Commissioners before the Authority, at either Member or Officer level, agree Heads of Terms for any property transaction and subsequent consent before any legally binding commitment is entered into;
- e) To review, in the first 24 months, the roles and case for continuing with each subsidiary company of the Authority. For those companies that it is agreed to continue, ensuring that the Directors appointed by the Authority are



appropriately skilled in either technical or company governance matters to ensure each Board functions effectively under the terms of an explicit shareholder agreement and a nominated shareholder representative. For those companies which it is determined not to continue with in this form, to establish a plan to internalise, close or sell as appropriate;

- f) To consider and approve a suitable officer structure for the Authority which provides sufficient resources to deliver the Authority's functions in an effective way, including the Improvement Plan and its monitoring and reporting within 6 months;
- g) To oversee a detailed structure and strategy for the Highways function in short and medium-term as set out in the Highways section of the Report;
- h) To establish a plan to deliver an effective file management system so that the Authority can more easily comply with its statutory and managerial responsibilities;
- i) To devise and implement a programme of cultural change which ensures both Members and Officers understand their respective roles and the way in which the Authority and its activities are regulated and governed, and the way in which this is monitored, and breaches rectified.

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

- a. 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;
- b. 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;
- c. To pay the Commissioners' reasonable expenses, and such fees as the Secretary of State determines are to be paid to them;
- d. 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
- e. 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**

27. The Secretary of State considers that any aspect of the Directions should only be long enough to achieve the stated objectives of the intervention. The Directions will remain in force until 9 June 2024 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 Commissioners, or at such other times as he might agree with the Commissioners, which allows for a process for regular review of whether it would be appropriate for any function exercisable by the Commissioners 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 Commissioners agree that it would be appropriate for the exercise of a function to be returned to the Authority, 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 10 June 2021. The Secretary of State has not ruled out the possibility that further functions might be brought under the control of the Commissioners.