



Department for
Communities and
Local Government

19 October 2016

Sharon Kemp
Chief Executive
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ROTHERHAM METROPOLITAN BOROUGH COUNCIL – PROPOSED FURTHER DIRECTIONS

Sir Derek Myers, Rotherham Lead Commissioner, having undertaken the 15 and 18 month review on the potential return of functions from Commissioners to Rotherham Metropolitan Borough Council as required by the 11 February 2016 Directions, has today sent to your Authority his final reports. I am now writing to invite your Authority, if it wishes, to make to the Secretary of State representations about his proposed revised intervention package.

The Secretary of State has carefully considered the reports and other relevant information referred to in the attached Annex. He is satisfied, on the basis of the evidence set out therein, that your Authority is able to exercise non-executive functions in relation to licensing, including all related enforcement and regulatory functions, in compliance with the requirements of Part 1 of the Local Government Act 1999 (“the 1999 Act”), namely to comply with the best value duty. On that basis he is considering exercising his powers under the 1999 Act in relation to your Authority to return non-executive licensing functions, including all related enforcement and regulatory functions, to your Authority to exercise. The package of measures which he is proposing to implement through appropriate Directions is set out in the attached Annex.

Your Authority is now invited to make such representations as it wishes about the report and the Secretary of State’s proposals. All such representations should be sent by email to Debjani.Ghosh@communities.gsi.gov.uk, copied to Alex.Powell@communities.gsi.gov.uk, or in hard copy to the address below marked for the attention of Debjani Ghosh, so as to be received on or before 9:30 a.m. on Thursday 3rd November 2016. They will then be carefully considered by the Secretary of State in making a decision as to whether to make any, and if so what, Directions.

I am copying this letter to your Authority's section 151 Officer, to its Monitoring Officer and to the Commissioners' office.

Yours sincerely,

A handwritten signature in black ink that reads "Alex Powell". The signature is written in a cursive style with a long horizontal stroke at the end.

ALEX POWELL

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ANNEX – PROPOSED REVISED INTERVENTION PACKAGE

INTRODUCTION

1. Following the receipt of a 15 month report and 18 month report by Sir Derek Myers, Rotherham Lead Commissioner, on the potential return of functions from Commissioners to Rotherham Metropolitan Borough Council (“the Authority”), dated 10 May 2016 and 11 August 2016, as required by the Directions issued to the Authority on 11 February 2016, the Secretary of State for Communities and Local Government (“the Secretary of State”) is considering exercising his powers under section 15 of the Local Government Act 1999 (“the 1999 Act”) to return non-executive licensing functions, including all related enforcement and regulatory functions (“the licensing functions”), to the Authority to exercise. The Secretary of State is also considering issuing further directions under section 15 of the 1999 Act in order to facilitate the return of the licensing functions and to ensure the Authority’s compliance with the requirements of Part 1 of the 1999 Act.

CONTEXT

2. On 26 February 2015 the Secretary of State and the Secretary of State for Education exercised their respective powers of direction under section 15 of the 1999 Local Government Act and section 497A of the Education Act 1996 (“the 1996 Act”) in relation to the Authority and issued Directions to the Authority (“the 26 February 2015 Directions”). This followed consideration of the investigation and report by Louise Casey CB dated 27 January 2015 (“the Casey report”), the advice note from Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (Sir Michael Wilshaw) to the Secretary of State for Education of 30 September 2014, and published on 7 October 2014, (“Sir Michael Wilshaw’s advice note”) and representations made by the Authority. The Casey report identified failings of the utmost seriousness, and concluded that the Authority was not fit for purpose and in the discharge of its functions was failing to comply with its best value duty. Sir Michael Wilshaw’s advice note identified failings such that the Secretary of State for Education was satisfied that the Authority was failing to perform children’s social care services to an adequate standard. In light of the Casey report and Sir Michael Wilshaw’s advice note the Secretary of State and Secretary of State for Education issued the 26 February 2015 Directions, which outlined wide-ranging measures to address the identified failings in the Authority.
3. When the then Secretary of State announced the intervention in the House of Commons on 26 February 2015 he stated that “...the intervention should initially be broad and wide ranging with Commissioners exercising many of the Authority’s functions until these can be confidently rolled back for the Authority to exercise in compliance with its best value duty.” It is therefore clear that the Secretary of State’s intention was that the functions outlined in Annex B to the 26 February Directions should be exercised by the Commissioners until such time as the Authority can exercise functions in compliance with the best value duty, and the

Authority and Lead and other Commissioners agree that it would be appropriate for the exercise of a function (or functions) to be returned to the Authority, subject to the provision of reasons and clear evidence to substantiate any such proposal (as set out in paragraph (1) of Annex A to the 26 February Directions).

4. On 27 November 2015 the Lead Commissioner sent to the Secretary of State the 9 month review on the potential return of functions to the Authority (“the 27 November report”), as required by the 26 February 2015 Directions. The 27 November report proposed, on the basis of the significant progress made by Commissioners and the Authority since 26 February 2015, and on the basis that the assessment criteria set out by the Lead Commissioner were satisfied, that certain service areas and associated executive and non-executive functions (“the identified service areas”) could now be exercised in compliance with the requirements of Part 1 of the 1999 Act and so returned to the Authority to exercise. The 27 November report proposed that the remaining service areas and associated executive and non-executive functions (“the retained service areas”) should continue to be exercised by Commissioners.
5. Following further consideration by the Lead Commissioner, and consultation with lay and expert panels as well as with the public, a further report on each of the identified service areas was provided on 11 January 2016 (“the 11 January report”) plus auxiliary material on 14 January 2016 (“the 14 January auxiliary material”). The 14 January auxiliary material proposed minor additions to the identified service areas. The 11 January report and 14 January auxiliary material set out that the lay and expert panels were supportive of the proposed return of the identified service areas, and although there was a very limited response to the public consultation this was also supportive. The information provided demonstrated how each of the assessment criteria applied by the Lead Commissioner in assessing whether a service area is suitable for return to the Authority is satisfied for each of the identified service areas.
6. As a result of the 27 November report, the 11 January report and the 14 January auxiliary material, on 21 January 2016 the Secretary of State sent to the Authority a letter indicating he was considering exercising his powers under section 15 of the 1999 Act in order to return the identified service areas to the Authority (“the 21 January letter”), and invited the Authority to make representations to him. For further information on the 27 November report, 11 January report and 14 January auxiliary material please refer to the 21 January letter. Representations were received from Cllr Martyn Parker on 30 January 2016, and from Cllr Chris Read and Sharon Kemp on 2 February 2016.
7. After carefully considering afresh the Casey report, Sir Michael Wilshaw’s advice note, the 27 November report, the 11 January report, the 14 January auxiliary material and the representations received from the Authority, on 11 February 2016 the Secretary of State issued new Directions to the Authority (“the 11 February

Directions”). The 11 February Directions returned the identified service areas to the Authority to exercise, but prescribed that the Commissioners should exercise functions in relation to the retained service areas. The identified service areas were returned to the Authority via paragraph 6 of Annex B to the 11 February Directions, which specified the service areas to be exercised by Commissioners – all other service areas and associated executive and non-executive functions therefore fell by default to be exercised by the Authority. The 11 February Directions also set out oversight arrangements in relation to the identified service areas to enable the Commissioners to advise and scrutinise the Authority and ensure its compliance with the best value duty without clouding where ultimate responsibility applies.

THE LEAD COMMISSIONER’S 10 MAY 2016 REPORT

8. On 10 May 2016 the Lead Commissioner sent to the Secretary of State the 15 month review on the potential return of functions (“the 10 May report”), as required by the 11 February Directions. In that report the Lead Commissioner set out the results of the 5 May 2016 election and proposed that the licensing functions were returned to the Authority to exercise. The 10 May report set out that the Labour Group retained control of the Council, which he asserted would ensure consistency in the leadership and membership of the Advisory Licensing Board. The 10 May report presented evidence for the Secretary of State to consider in support of the proposal to return the licensing functions to the Authority.
9. The 10 May report set out comprehensive evidence to demonstrate how each of the four criteria established by the Lead Commissioner in the 27 November report are met in relation to the licensing functions. The 10 May report included information on: the new, more stringent Hackney carriage and taxi licensing policy, in particular the ‘fit and proper person test’; the new organisational structure to ensure more joined-up and effective management of the service; more effective partnership working and information sharing arrangements to ensure relevant information is shared appropriately; improved formal decision making processes; and the development and enhanced capabilities of the Advisory Licensing Board, in particular the Chair.

THE LEAD COMMISSIONER’S 11 AUGUST 2016 REPORT

10. The 11 August report provides letters of assurance from Weightmans and Gowling WLG regarding the licensing function. It also includes information on the implementation of the new licensing policy and recruitment for the new organisational structure and reiterates that in the event the licensing function was returned to the Council, Commissioner Ney would continue to play an oversight role.
11. After carefully considering the 10 May and 11 August reports the Secretary of State is considering exercising his powers under section 15 of the 1999 Act in relation to

the Authority, in order to ensure that the licensing functions are returned to the Authority to exercise. The Secretary of State is also considering making further directions in order to facilitate the return of the licensing functions to the Authority. The directions would, as with the identified service areas currently, enable the Commissioners to advise and scrutinise the Authority and ensure its compliance with the best value duty.

FUNCTIONS TO BE RETURNED TO THE AUTHORITY

12. The Secretary of State proposes that the licensing functions are returned to the Authority to exercise this autumn. The Authority would exercise the licensing functions including, for the avoidance of doubt and insofar as they relate to the licensing functions:
 - a. The delegation of the exercise of such functions under section 9E of the Local Government Act 2000 (including all 'local choice' functions);
 - b. 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;
 - c. All functions of the Authority relating to the nomination or appointment of persons to other bodies.

ACTIONS TO BE TAKEN BY THE AUTHORITY

13. The Authority will be obliged to continue to undertake the actions outlined in paragraphs 1-8 of Annex A to the 11 February Directions for the retained service areas.
14. In order to enable the Commissioners to advise and scrutinise the Authority and ensure its compliance with the best value duty without clouding where ultimate responsibility applies, the Authority will be required to undertake the actions outlined in paragraphs 9-14 of Annex A to the 11 February Directions in relation to all functions exercised by the Authority, including the licensing functions.

FUNCTIONS TO BE EXERCISED BY THE COMMISSIONERS

15. The Secretary of State proposes that the Commissioners exercise all functions in relation to the service areas outlined in paragraph 6 of Annex B to the 11 February Directions, minus the licensing functions. This conclusion has been reached by careful consideration of the 10 May and 11 August reports.
16. The Commissioners would continue to exercise all relevant executive and non-executive functions insofar as they relate to the service areas set out in paragraph 6 of Annex B to the 11 February Directions, minus the licensing functions, in order to continue to deliver improvements in those services and outcomes for the people of Rotherham, secure future compliance with the best value duty and restore public trust and confidence in Rotherham. The functions to be exercised by

Commissioners would include, for the avoidance of doubt and insofar as they relate to the service areas set out in paragraph 6 of Annex B to the 11 February Directions, minus the licensing functions:

- a. All local choice functions;
- b. Functions of arranging for the discharge of functions by another body or person; and
- c. The nomination or appointment of persons to other bodies that relate to the identified functions.

17. Paragraph 2 of Annex B to the 11 February Directions sets out that the Commissioners are to exercise non-executive functions in relation to the appointment and dismissal of statutory officers. Commissioners would continue to exercise such functions in light of the recent appointment of new statutory officers. Responsibility for determining special responsibility allowances in relation to the identified service areas and associated functions returned to the Authority would also be retained by Commissioners.

THE COMMISSIONER TEAM

18. The Commissioner team would remain unchanged. A new Children's Social Care Commissioner, Councillor Patricia Bradwell, was appointed on 10 May 2016.

DURATION OF THE DIRECTION

19. The 11 February Directions are in force until 31 March 2019. This reflects the seriousness of the failings identified in the Casey report and Sir Michael Wilshaw's advice note and the extent of the improvements needed. Any further Directions reflecting the proposals above would also be in force until 31 March 2019.