



Department for
Communities and
Local Government

Date: 21 January 2016

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ROTHERHAM METROPOLITAN BOROUGH COUNCIL – PROPOSED REVISED DIRECTIONS

Sir Derek Myers, Rotherham Lead Commissioner, having undertaken the 9 month review on the potential return of functions from Commissioners to Rotherham Metropolitan Borough Council as required by the 26 February 2015 Directions, has today sent to your Authority his final report. I am now writing to invite your Authority, if it wishes, to make to the Secretary of State representations about a revised intervention package he is proposing.

The Secretary of State has carefully considered the report 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 functions in relation to the service areas identified in the report (“the identified service areas”) 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 the identified service areas and associated executive and non-executive 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 Simon.Denison@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 Simon Denison, so as to be received on or before 9.30am on 4 February 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.

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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 large, looping initial "A" and a long horizontal stroke at the end.

ALEX POWELL

ANNEX – PROPOSED REVISED INTERVENTION PACKAGE

INTRODUCTION

1. Following the receipt of a report by Sir Derek Myers, Rotherham Lead Commissioner, on the potential return of functions from Commissioners to Rotherham Metropolitan Borough Council (“the Authority”), dated 27 November 2015, as required by the Directions issued to the Authority on 26 February 2015, 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 certain functions to the Authority to exercise. The Secretary of State is also considering issuing new directions under section 15 of the 1999 Act in order to facilitate the return of the 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 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.

THE 26 FEBRUARY 2015 DIRECTIONS

3. The 26 February 2015 Directions had four key aims:
 - a. To rebuild the governance and capacity of the Authority, addressing the deep seated culture of poor governance and leadership – both political leadership and officer/managerial leadership;
 - b. To restore public trust and confidence in Rotherham by putting an end to any of the Authority’s activities, practices, and omissions which are, or risk being, incompatible with the best value duty;

- c. 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 Rotherham; and
- d. To secure that the Authority's children's social care functions are performed to the required standard.

4. To achieve these aims five Commissioners were appointed - a Lead Commissioner, Managing Director Commissioner, Children's Social Care Commissioner and two supporting Commissioners. Annex A to the 26 February 2015 Directions sets out the actions to be taken by the Authority, including the following which are of key relevance to this letter:

“(1) To undertake as soon as practicable after the date of these Directions, and every 3 months thereafter, under the direction of the Managing Director 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 [i.e. the Secretary of State for Communities and Local Government and the Secretary of State for Education], 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.”

and

“(3) To undertake the measures set out in the improvement plans and such other measures as the Lead and other Commissioners require to deliver the improvements [referred to in paragraph 2], 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.”

5. Annex B to the Directions sets out the functions to be exercised by the Commissioners, which are as follows:

“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. 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 that were exercisable by the executive as of 4 February 2015;

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;

All non-executive functions relating to licensing, to include all related enforcement and regulatory functions;

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 which are to be exercised by the Commissioners under this Annex;

All functions of the Authority relating to the nomination or appointment of persons to other bodies."

6. 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 2015 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 2015 Directions.

THE LEAD COMMISSIONER'S 26 AUGUST PROGRESS REPORT

7. On 26 August 2015 the Lead Commissioner sent to the Secretary of State a report outlining progress made by Commissioners and the Authority during the 6 months since 26 February 2015 (“the 26 August report”) as required by the 26 February 2015 Directions (paragraph 3 of Annex A to the 26 February 2015 Directions). The report outlined progress made in key service areas identified as failing in the Casey report and Sir Michael Wilshaw’s advice note, such as Children’s Services and taxi licensing. The 26 August report also identified some other strengths that could be drawn on: buy-in to change from Councillors, including the establishment of an Advisory Cabinet; the election of 16 new Councillors in the May 2015 elections; and a cadre of experienced, long-serving staff who are loyal and want to improve the Council. In the report the Lead Commissioner stated:

“All this means we have made good progress in putting the building blocks of a better service in place within Children’s Services and the work to improve the rest of the Council is going well.”

8. The report also identified a number of ‘significant headwinds’ that stood in the way of further progress including: a lack of experience in the senior Councillor cadre; a lack of capacity in the senior officer team; and significant financial challenges. The Lead Commissioner did not choose to recommend the return of any service areas and associated functions to the Authority at this stage.

THE LEAD COMMISSIONER’S 27 NOVEMBER 2015 REPORT

9. On 27 November 2015 the Lead Commissioner sent to the Secretary of State the latest three month review on return of functions (“the 27 November report”) as required by the 26 February 2015 Directions. The Lead Commissioner proposed that the ‘restoration protocol’, as set out in Appendix B to the 27 November report and Annex B of the 26 August progress report, should be operated for certain service areas currently exercisable by the Commissioners (“the identified service areas”) and that these service areas should be exercised by the Authority from 1 February 2016. For the avoidance of doubt this would include associated executive and non-executive functions in relation to the identified service areas.
10. The 27 November report set out the significant progress made by Commissioners and the Authority since 26 February 2015 including: the recruitment of a new Chief Executive; the commencement of recruiting the remainder of the senior officer team; the further development of a new Medium Term Financial Strategy; and new Codes of Conduct for Members and for Officer and Member working relationships. In particular, the report drew attention to the conscientious commitment shown by the Advisory Cabinet, the leadership shown by the Leader and Deputy Leader, and the growing confidence of the Advisory Cabinet members. The proposal to return the identified service areas to the Authority to exercise was made with the agreement of the Commissioners and leading Councillors (Leader, Deputy Leader, and members of the Advisory Cabinet). It was therefore clear that good progress had been made in a number of the ‘significant headwind’ areas identified by the Lead Commissioner in the 26 August report.

11. The 27 November report proposed that the identified service areas could be returned to the Authority to exercise on the basis that:

“They represent functions where:

- a. Commissioners have satisfied themselves that the services are operating at a good enough level with no significant value for money deficits;
- b. They are operating in areas where there is good enough officer leadership and that definitions of service quality and plans for further improvement are in place;
- c. Service quality has been assured either by a Peer Review or from other activity carried out under the direction of Commissioners including review by experienced interim Chief Officers appointed from outside the authority; and
- d. Commissioners feel that individual Councillors are now in a position to exercise executive authority over these functions.”

12. The identified service areas were:

- a. Education and schools; education for 14-19 years in all settings; school admissions and appeal system; youth services.
- b. Public health.
- c. Leisure services; events in parks and green spaces.
- d. Customer and cultural services, libraries, arts, customer services and welfare programmes.
- e. Housing.
- f. Planning and transportation policy; highways maintenance.
- g. The Council’s area assembly system and neighbourhood working; responsibilities under the Equalities Act.
- h. Building regulation, drainage, car parking; environmental health; emergency planning.
- i. ICT; legal and democratic services; corporate communications; corporate policy; procurement.
- j. Budget control in these areas, and budget planning.
- k. Policy arising from the Sheffield City Region.

13. There were other service areas that did not meet the four criteria in paragraph 11. The Lead Commissioner proposed that these service areas are retained by Commissioners:

- a. Economic growth.
- b. Town centres.
- c. External partnerships.
- d. Children’s safeguarding and all other children’s social care services.
- e. The licensing function.
- f. Community safety.
- g. Adult social care and the Council’s partnership with the NHS.
- h. Asset management.

- i. Performance management.
- j. Human resources.
- k. Waste collection.
- l. Grounds maintenance.
- m. Audit.

14. In terms of governance arrangements the Lead Commissioner proposed that from 1 February 2016 executive decisions in relation to the identified service areas are made by (Advisory) Cabinet members in public meetings, with speaking rights for the public, and that call-in provisions will resume for these decisions. New Directions were proposed that would enable Commissioners to influence decision making and therefore ensure compliance with the best value duty, but not cloud where ultimate authority and responsibilities lie.

THE LEAD COMMISSIONER'S 11 JANUARY REPORT AND 14 JANUARY AUXILIARY MATERIAL

15. Following further consideration by the Lead Commissioner, and consultation with lay and expert panels as well as with the public (undertaken via public notices in print media and publicity by Radio Sheffield and the Rotherham Advertiser), a further report on each of the identified service areas was provided by the Lead Commissioner on 11 January ("the 11 January report") plus auxiliary material on 14 January ("the 14 January auxiliary material") that sets out further clear evidence and reasons regarding why he considers it appropriate to return the identified service areas to the Authority to exercise. The 14 January auxiliary material slightly amended the list of service areas and functions proposed for return. Specifically, 'business regulation and enforcement, not including taxi licensing,' and 'financial services, including benefits and revenues, but not including audit' were added, and are reflected in the evidence contained in the 14 January auxiliary material.

16. 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 (one response) this was also supportive. The information provided in relation to each of the identified service areas demonstrates how each of the four criteria applied by the Lead Commissioner in assessing whether a service area and associated functions are suitable for return to the Authority (see paragraph 11) is satisfied for each of the identified service areas.

17. After carefully considering the 27 November report, 11 January report and 14 January auxiliary material 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 identified service areas, including associated executive and non-executive functions and those included in the 14 January auxiliary material, are returned to the Authority and Executive Councillors to exercise. The Secretary of State is also considering making new directions in order to facilitate the return of

those functions to the Authority. The directions would enable the Commissioners to advise and scrutinise the Authority in order to ensure its compliance with the requirements of Part 1 of the 1999 Act and ensure that there is clarity as to where responsibility for the functions lies between the Authority and the Commissioners.

FUNCTIONS TO BE RETURNED TO THE AUTHORITY

18. The Secretary of State proposes that the identified service areas are returned to the Authority to exercise in w/c 8 February 2016. The Authority would exercise associated executive and non-executive functions insofar as they relate to the identified service areas including, for the avoidance of doubt:
 - 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.

19. Paragraph 2 of Annex B to the 26 February 2015 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 very 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.

ACTIONS TO BE TAKEN BY THE AUTHORITY

20. The Authority will be obliged to continue to undertake the actions outlined in Annex A to the 26 February 2015 Directions for those functions exercised by Commissioners. This would be the actions required by paragraphs 1, 3, 4, 5, 6, 7, 8, and 9 of Annex A. The action in paragraph 2 (to draft improvement plans under the direction of the Managing Director Commissioner and submit them to the Secretaries of State) has been completed.

21. In order to achieve the aim set out in paragraph 14 above, namely to allow the Commissioners to influence decision making and ensure compliance with the best value duty without clouding where ultimate authority and responsibilities lie, the Secretary of State proposes the Authority takes the following actions:

To provide concurrently all proposed reports for decision by Executive Councillors to the relevant Commissioner [to be specified by the Lead Commissioner];

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

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.

FUNCTIONS TO BE EXERCISED BY THE COMMISSIONERS

22. The Secretary of State proposes that the service areas outlined in paragraph 13, and all associated executive and non-executive functions, will continue to be exercised by Commissioners. This conclusion has been reached by careful consideration of the 27 November, 11 January report and 14 January auxiliary material and the risks outlined therein.
23. The Commissioners would continue to exercise all relevant executive and non-executive functions insofar as they relate to the paragraph 13 service areas and associated executive and non-executive 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. This would include, for the avoidance of doubt:
 - a. All local choice functions;
 - b. Functions of arranging for the discharge of functions by another body or person;
 - c. The nomination or appointment of persons to other bodies that relate to the identified functions; and
 - d. Those functions referred to in paragraph 19.

THE COMMISSIONER TEAM

24. With the appointment of a Chief Executive and following the substantial progress made, the Managing Director Commissioner is due to leave her post at the end of January. All other Commissioners will remain in post.
25. In relation to paragraph 1 of Annex A to the 26 February 2015 Directions, as the current Managing Director Commissioner is due to leave her post at the end of January this may, prima facie, leave a gap in terms of oversight of the three monthly reviews of return of functions. However, the Managing Director Commissioner post is defined in Annex A to the 26 February 2015 Directions as follows:

“Managing Director Commissioner” means one of the Commissioners referred to in paragraph 6 of the Directions whose responsibilities include, but are not limited to, overseeing the improvements the Authority needs to deliver in relation to governance, leadership and culture, the exercise of its overview and scrutiny functions, and in its performance of services.”

26. It is the Lead Commissioner’s intention, on the Managing Director Commissioner’s departure, to distribute between the remaining Commissioners any of the functions which the Managing Director Commissioner currently has the power to exercise. Accordingly, any three month review following the Managing Director Commissioner’s departure in relation to service areas and functions retained by the Commissioners to exercise will be undertaken by the Authority, and overseen by the Commissioner(s) designated by the Lead Commissioner as exercising those functions as well as the Commissioner(s) with responsibility for functions in relation to governance, leadership and culture.
27. For the avoidance of doubt the new Chief Executive, who will undertake many of the Managing Director Commissioner’s day-to-day duties, will not have Commissioner powers.

DURATION OF THE DIRECTION

28. The 26 February 2015 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 new Directions reflecting the proposals above would also be in force until 31 March 2019.