

## **ROTHERHAM METROPOLITAN BOROUGH COUNCIL**

### **DIRECTIONS UNDER SECTION 15(5) AND (6) OF THE LOCAL GOVERNMENT ACT 1999 TO ROTHERHAM METROPOLITAN BOROUGH COUNCIL, 2016**

#### **EXPLANATORY MEMORANDUM**

1. The Secretary of State for Communities and Local Government (“the Secretary of State”) and Secretary of State for Education have exercised their respective powers under section 15(5) and (6) of the Local Government Act 1999 (“the 1999 Act”) and section 497A(4B) of the Education Act 1996 (“the 1996 Act”) in relation to Rotherham Metropolitan Borough Council (“the Authority”) in order to ensure certain service areas and associated executive and non-executive functions are returned to the Authority to exercise as the Secretary of State is satisfied that they can now be exercised in compliance with the requirements of Part 1 of the 1999 Act.

2. This memorandum is intended as a companion document to the Directions issued on 11 February. 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. On 26 February 2015 the Secretary of State and the Secretary of State for Education (“the Secretaries of State”) exercised their respective powers of direction under section 15(5) and (6) of the 1999 Act and section 497A(4B) of 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.

4. 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.

To achieve these aims five Commissioners were appointed - a Lead Commissioner, Managing Director Commissioner, Children's Social Care Commissioner and two supporting Commissioners.

5. 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"). 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, although did identify a number of 'significant headwinds' that stood in the way of further progress. The Lead Commissioner did not choose to recommend the return of any service areas and associated functions to the Authority at this stage.

6. 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"). 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").

7. Following further consideration by the Lead Commissioner, and consultation with lay and expert panels as well as with the public, a further report was provided by the Lead Commissioner on 11 January 2016 ("the 11 January report") plus auxiliary material on 14 January 2016 ("the 14 January auxiliary material") that set out further clear evidence and reasons regarding why he considered 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 to the list of identified service areas, and are reflected in the evidence contained in the 14 January auxiliary material.

8. After carefully considering the 27 November report, 11 January report and 14 January auxiliary material the Secretary of State published his 21 January 2016 letter to the Authority stating that he was 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 are returned to the Authority and Executive Councillors to exercise. The letter also set out that the Secretary of State was considering making new directions in order to facilitate the return of those functions to the Authority. He invited the Authority, if it wished, to make to him on or before 9.30am on 4 February 2016 representations about the 11 January report and 14 January auxiliary material and about the proposed revised intervention package.

9. The Secretary of State explained in his 21 January letter that the proposed revised intervention package would return the identified service areas to the Authority as he considered that, on the basis of the 27 November report, the 11 January report and 14 January auxiliary material, the identified service areas could be exercised in compliance with the best value duty. The remaining service areas and associated executive and non-executive functions would be retained by Commissioners (“the retained service areas”) in order to continue to deliver improvements in those services and outcomes for the people of Rotherham, restore public trust and confidence in Rotherham and secure future compliance with the best value duty.

10. The proposed revised intervention package set out that the Authority would be obliged to take certain actions in relation to the identified service areas and the retained service areas, that Commissioners would continue to exercise certain functions, and that the Commissioner team would be maintained. The proposed duration of Directions was also set out.

## **REPRESENTATIONS FROM THE AUTHORITY**

11. Representations were received from Cllr Martyn Parker (Leader Independent Group) on 30 January, and from Cllr Chris Read (Leader of the Council) and Sharon Kemp (Chief Executive) on 2 February.

12. The representations from Cllr Parker raised concerns regarding the decision to hand back the identified service areas to the Authority, but did not raise any specific concerns or queries with the proposed revised intervention package. Cllr Read and the Chief Executive were supportive of the Secretary of State’s proposals, and did not raise any specific concerns or queries with the proposed revised intervention package.

## **THE REVISED INTERVENTION PACKAGE**

13. Having carefully considered afresh the Casey report, Sir Michael Wilshaw's advice note, 27 November report, the 11 January letter and the 14 January auxiliary material and the representations received from the Authority on 30 January and 2 February, the Secretary of State for Communities and Local Government is confident that the evidence contained therein provides a sound basis on which to base his considerations and, accordingly, is satisfied that the Authority is able to exercise the identified service areas in compliance with the requirements of Part 1 of the 1999 Act. Further, having carefully considered afresh the Casey report, Sir Michael Wilshaw's advice note, 27 November report, the 11 January letter and the 14 January auxiliary material and the representations received from the Authority on 30 January and 2 February, the Secretaries of State are confident that the evidence contained therein provides a sound basis on which to base their considerations and, accordingly, are satisfied that the Authority is not able to exercise the retained service areas in compliance with the requirements of Part 1 of the 1999 Act, and that it is not yet able to perform to an adequate standard, or at all, some or all of its children's social care functions.

14. 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 put in place a revised intervention package in order to return the identified service areas to the Authority to exercise and direct that the Commissioners exercise the retained functions and assure and secure the Authority's future and sustainable compliance with its best value duty. Insofar as the Directions made by the Secretary of State about the actions the Authority is required to take, or the retained service areas, relate areas to children's social care functions, they are also made 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 which do not relate to children's social care functions, the Secretary of State for Education endorses the Directions.

15. For the avoidance of doubt, the Secretaries of State believe that each individual element of the intervention that they have implemented is justified. The Directions revoke the Directions made by the Secretaries of State on 26 February 2015.

## **POWERS TO BE EXERCISED BY THE COMMISSIONERS**

16. The Commissioners are to exercise powers in relation to the retained functions, which are (as set out in paragraph 6 of Annex B to the Directions):

- 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; and
- m. Audit.

17. The Directions provide that the following functions are to be exercised by Commissioners:

- a. 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 [16 above]. 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 [16 above] that were exercisable by the executive as of 4 February 2015.
- b. 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;
- c. All non-executive functions relating to licensing, to include all related enforcement and regulatory functions;
- d. 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 [16 above];
- e. 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 [16 above].

18. The Secretaries of State expect that the phased return of powers to the Authority will continue as and when there can be confidence that the Authority could exercise a specified function in compliance with the best value duty and, in the case of children's social care functions, to an adequate standard. The expectation is that there may be a proposal for the return of further powers to the Authority following the May 2016 all-out elections.

19. For clarity, any services delivered as part of the Early Help and Families Service that relate to children's social care functions (e.g. Children in Need under section 17 of the Children Act 1989) will be included in the retained functions.

## **THE COMMISSIONER TEAM AND ROLES**

20. The Commissioner team will remain the same as that put in place on 26 February 2015, including the nomination period. However, the Managing Director Commissioner's post came to end on 31 January and a replacement Commissioner was not appointed due to the appointment of a Chief Executive of the Authority, and following the substantial progress made by the Commissioners and the Authority since 26 February 2015.

21. The Commissioner team will therefore be constituted as follows;

- a. Sir Derek Myers (Lead Commissioner) – an experienced local authority Chief Executive. Following the Managing Director Commissioner's departure, Sir Derek will have overall responsibility for all functions not returned to the Authority in relation to governance, leadership and culture; Commissioners responsible for specific retained service areas will have responsibility for these functions in the areas for which they have responsibility. The Lead Commissioner will designate other

Commissioners as “relevant Commissioners” for the purposes of providing formal advice to Executive Councillors in relation to the identified service areas (see paragraph 23). The Lead Commissioner will exercise functions in relation to adult social care and the Council’s partnership with the NHS, performance management and audit.

- b. Malcolm Newsam (Children’s Social Care Commissioner) – an experienced Director of Children’s Services, Malcolm will exercise all executive functions related to children’s social care, including safeguarding.
- c. Mary Ney (Supporting Commissioner) – recently retired Chief Executive who will exercise functions in relation to community safety, the licensing function and licensing policy, human resources, waste collection and grounds maintenance.
- d. Julie Kenny CBE (Supporting Commissioner) – a key business and industry leader in the region, who will exercise functions in relation to economic growth, town centres, external partnerships and asset management.

22. From 1 February the Lead Commissioner distributed between the remaining Commissioners the functions that were exercised by the Managing Director Commissioner. Any three month review undertaken following 11 February in relation to the retained service areas 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 Lead Commissioner, who will have responsibility for functions not returned to the Authority in relation to governance, leadership and culture.

## **POWERS TO BE EXERCISED BY THE AUTHORITY**

23. As the Directions provide that only the retained service areas, and associated executive and non-executive functions, set out in paragraph 6 of Annex B to the Directions (and paragraph 16 above) are to be exercised by Commissioners, the identified service areas will by default fall to the Authority to exercise. As set out in the 14 January auxiliary material the identified service areas are:

- 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; business regulation and enforcement (not including licensing); emergency planning.
- i. Financial services, including revenues and benefits (not including audit); ICT; legal and democratic services; corporate communications; corporate policy; procurement.
- j. Budget control in these areas, and budget planning.
- k. Policy arising from Sheffield City Region.

24. For the avoidance of doubt the Authority will exercise the following functions insofar as they relate to the identified service areas:

- 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 any of the Authority's functions by another body or person; and
- c. All functions of the Authority relating to the nomination or appointment of persons to other bodies.

25. The Authority will not exercise non-executive functions related to the appointment and dismissal of statutory officers; although a new set of statutory officers was appointed recently, only one is in post and time is needed for the Commissioners to assure themselves regarding the capability of the senior officer team.

26. For clarity all executive decisions in respect of children's social care functions remain with the Commissioners, including those delivered as part of the Early Help and Families Service. For the avoidance of doubt all the Council's functions in respect of the Youth Offending Service will continue to be exercised by Commissioners.

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

27. The Directions provide that the Authority take certain actions in relation to both the identified service areas and the retained service areas. The actions in relation to the identified service areas aim to provide Commissioners with a means to influence decision making and assure future compliance with the best value duty, but not cloud where ultimate authority and responsibilities lie. The Authority is directed to provide concurrently a copy of any proposed reports for decision by an Executive Councillor to the Commissioner with responsibility for oversight of a given service



area (“the relevant Commissioner” as designated by the Lead Commissioner). This will enable the relevant Commissioner to review the evidence presented and officer recommendation made, and provide an opportunity to give formal advice to the relevant Executive Councillor if deemed appropriate (e.g. if the decision is particularly significant and carries notable risk in terms of the best value duty). In order to not be overly prescriptive, formal advice may be given either orally or in writing by the Commissioner – the only stipulation in this regard is that it must be made clear at the time of giving the advice that it is formal in nature. If that advice is not followed then written reasons must be provided by the Executive Councillor, having regard to the best value duty. Slightly different requirements apply to proposals related to setting the annual revenue budget or adopting the medium term financial strategy – in this case any Commissioner may give formal advice, not just the relevant Commissioner.

28. The Authority is required to take different actions in relation to the retained service areas. These largely mirror the actions to be taken by the Authority as directed in Annex A of the 26 February 2015 Directions. The Secretaries of State are not satisfied that these functions can be exercised in compliance with the requirements of Part 1 of the 1999 Act or, in the case of children’s social care functions, to an adequate standard. As such the retained functions still require significant input from the Commissioners in order to deliver the necessary improvements, and the Secretaries of State consider it is appropriate for the reporting and other requirements in Annex A of the 26 February 2015 Directions to be replicated. Paragraph 2 of Annex A to the 26 February Directions is not replicated (‘to prepare improvement plans etc.’) as this requirement has been completed and relevant improvement plans published.

29. The Authority is also required to provide the Commissioners with such reasonable assistance, amenities, services and administrative support as they may reasonably require from time to time to carry out their responsibilities under the Directions in relation to both the identified service areas and the retained service areas. The Secretary of State also expects the Commissioners to be paid reasonable expenses in accordance with the rules for senior officers as set out in the Authority’s standard policies and practices.

## **GOVERNANCE ARRANGEMENTS**

30. Under the 26 February 2015 Directions the Commissioners made key decisions that would otherwise have been taken by Executive Councillors (i.e. the Cabinet). From 11 February Executive Councillors will make decisions in relation to the identified service areas, and Commissioners will make decisions in relation to the retained service areas. As set out in the Directions and above the Authority is required to take certain actions in relation to the identified service areas to ensure

that Commissioners are able to influence decision making and assure compliance with the best value duty.

31. Commissioner / (Advisory) Cabinet meetings will be held in public, and necessarily involve 'mixed authority' whereby Commissioners will make decisions in relation to the retained service areas and Executive Councillors will make decisions in relation to the identified service areas. This will require robust chairmanship and careful minuting of meetings but is workable given the commitment shown by Commissioners and Executive Councillors. Call-in provisions will resume for Executive Councillor decision-making. These new Constitutional arrangements have been published on the Authority's website.

### **DURATION OF THE INTERVENTION**

32. The duration of the intervention will be the same as that set out in the 26 February 2015 Directions, i.e. until 31 March 2019. This reflects the need for continued oversight of the identified service areas, and the significant further improvements needed in the retained service areas, to assure and secure respectively compliance with the best value duty and, in relation to children's social care functions, to ensure that they are performed to an adequate standard.