

ROTHERHAM METROPOLITAN BOROUGH COUNCIL

DIRECTIONS UNDER SECTION 15(5) AND (6) OF THE LOCAL GOVERNMENT ACT 1999 TO ROTHERHAM METROPOLITAN BOROUGH COUNCIL, SEPTEMBER 2017

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 executive and non-executive functions in relation to specified service areas 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 12 September 2017 (“September 2017 Directions”). 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. The August 2017 Directions amend the 21 March 2017 Directions (“March 2017 Directions”) by returning to the Authority functions relating to performance management, waste collection, human resources, asset management and community safety (“five additional powers”).

BACKGROUND TO THE AUGUST 2017 DIRECTIONS

4. 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 to issue Directions to the Authority (“the 26 February 2015 Directions”). This followed consideration of the investigation and report by Dame 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.

5. The 26 February 2015 Directions had four key aims:
- To rebuild the governance and capacity of the Authority, addressing the deep seated culture of poor governance, poor political leadership and poor officer/managerial leadership;
 - 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;
 - 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
 - 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, a Children's Social Care Commissioner and two supporting Commissioners. The Managing Director Commissioner was appointed for a fixed term of 12 months and completed her term in February 2016.

6. 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"), which outlined progress made in key service areas which had been 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 other strengths that could be drawn on, together with a number of 'significant headwinds' that prevented further progress. The Lead Commissioner did not recommend the return of any service areas and associated functions to the Authority at this stage.

7. On 27 November 2015 the Lead Commissioner sent to the Secretary of State his 9 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").

8. 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 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 amended the list of service areas and functions proposed for return, adding to the list of identified service areas ‘business regulation and enforcement, not including taxi licensing,’ and ‘financial services, including benefits and revenues, but not including audit’.

9. 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 required that the Commissioners should exercise functions in relation to the remaining service areas and associated executive and non-executive functions (“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 lies.

10. On 26 February 2016, the Lead Commissioner sent to the Secretary of State the 12 month review on the potential return of functions (“the 26 February report”), as required by the 11 February Directions and recommended the return of the licensing function. In light of the uncertainty arising from all-out elections in May 2016 and the need to see additional evidence supporting this recommendation, a decision to return licensing functions was deferred.

11. After careful consideration of the information provided in the Lead Commissioner’s 15 month (“the 10 May report”) and 18 month (“the 11 August report”) progress reports, a ministerial visit to Rotherham in September 2016 and representations from the Authority, the Secretary of State agreed on 13 December 2016 to return licensing functions to the Authority. The December 2016 Directions also set out oversight arrangements for licensing and confirmed that the 11 February Directions were unchanged in all other respects.

12. On 10 November 2016, the Lead Commissioner submitted his 21 month progress report (“the 10 November report”) to the Secretary of State and recommended the return of functions associated with nine additional service areas, namely adult social care and the Council’s partnership with the NHS, external partnerships, economic growth, town centre, grounds maintenance, audit, waste collection, performance management and community safety, to the Council together with supporting evidence. Following provision of additional information in December 2016, the Secretary of State announced on 9 February 2017 that he was ‘minded to’ return functions associated with six of these service areas, namely adult social care and the Council’s partnership with the NHS, external partnerships, economic growth, town centre, grounds maintenance and audit, as there was robust evidence of sustainable improvement in service delivery.

13. The Lead Commissioner submitted his 24 month report on 10 February 2017 (“the 10 February report”) and made a recommendation for an additional function, the power of appointment of Council representatives to external bodies, to be returned to the Authority. Representations received from the Council’s Chief Executive and Leader on 23 February 2017 were in favour on the return of the six functions noted in the ‘minded to’ letter of 9 February 2017 and the additional function recommended for return in the 10 February report.

14. After careful consideration of the information provided in the 10 November and 10 February reports and representations from the Authority, the Secretary of State agreed on 21 March 2017 to return seven functions to the Authority. The March 2017 Directions also set out enhanced oversight arrangements for adult social care and the Council’s partnership with the NHS and confirmed that the December 2016 Directions were unchanged in all other respects.

SUBSEQUENT DEVELOPMENTS

15. The Lead Commissioner submitted her 27 month report on 18 May 2017 (“the 18 May report”) and recommended five additional service areas to be returned – performance management, waste collection, human resources, asset management and community safety. On 18 July 2017, the Secretary of State announced that he was ‘minded to’ return functions associated with these five service areas.

16. The Council’s representation of 21 July was in favour of returning all five service areas. Additional information provided by Commissioners addressed a resident’s objection sent on 19 July in relation to waste collection.

THE AMENDED INTERVENTION PACKAGE

17. Having carefully considered the 18 May report, the representations of 19 and 21 July 2017 on the proposed return of additional powers and additional information

provided on 20 July from Commissioners regarding waste collection, 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 five additional powers in compliance with the requirements of Part 1 of the 1999 Act.

18. For the avoidance of doubt, the Secretaries of State believe that each individual element of the intervention that they have implemented is justified. These Directions amend the Directions made by the Secretaries of State on 21 March 2017.

FUNCTIONS TO BE EXERCISED BY THE COMMISSIONERS

19. The Commissioners are to exercise functions in relation to the retained service area of Children's safeguarding and all other children's social care services (as set out in paragraph 4 of Annex B to the Directions).

20. 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 19 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 19 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. 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 19 above.

21. The Secretaries of State will consider the return of further functions to the Authority 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 COMMISSIONER TEAM AND ROLES

22. The composition of the Commissioner team has changed since 21 March 2017 with Sir Derek Myers stepping down as Lead Commissioner on 31 March 2017.

23. The Commissioner team is now formed of three people. Mary Ney is the Lead Commissioner; Councillor Patricia Bradwell is the Children's Social Care Commissioner and Julie Kenny CBE a Supporting Commissioner. Further information on roles and responsibilities can be accessed from the Council's website - http://www.rotherham.gov.uk/downloads/download/164/commissioner_documents

24. Any three month review undertaken following publication of these Directions in relation to the retained service area is 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 has responsibility for functions not returned to the Authority in relation to governance, leadership and culture.

FUNCTIONS TO BE RETURNED TO THE AUTHORITY

25. The Secretary of State proposes that the five additional powers are returned to the Authority to exercise on 12 September 2017. The Authority would exercise functions relating to these powers including, for the avoidance of doubt and insofar as they relate to the following 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.

FUNCTIONS TO BE EXERCISED BY THE AUTHORITY

26. As the Directions provide that only the retained service areas, and associated executive and non-executive functions, set out in paragraph 4 of Annex B to the Directions (and paragraph 19 above) are to be exercised by Commissioners, the identified service areas that by default fall to the Authority to exercise 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;
- l. Licensing functions;
- m. External partnerships;
- n. Economic growth;
- o. Town centre;
- p. Grounds maintenance;
- q. Adult social care and the Council's partnership with the NHS;
- r. Audit;
- s. Performance management;
- t. Waste collection;
- u. Human resources;
- v. Asset management; and
- w. Community safety.

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

- The delegation of the exercise of such functions under section 9E of the Local Government Act 2000 (including all 'local choice' functions);
- 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
- All functions of the Authority relating to the nomination or appointment of persons to other bodies.

28. The Authority will not exercise non-executive functions related to the appointment and dismissal of statutory officers. Although a new set of statutory officers are in post, additional time is needed for the Commissioners to assure themselves about the capability of the senior officer team.

29. 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. 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

30. 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 9-15 of Annex A to the Directions in relation to all functions exercised by the Authority, including the licensing functions.

31. 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). The Commissioners' involvement will be as follows:

- For service areas other than adult social care and the Council's partnership with the NHS and the domestic abuse aspect of community safety, the relevant Commissioner will review the evidence presented and officer recommendation made, and have the 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). Formal advice may be

given either orally or in writing by the Commissioner; the Commissioner must make 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.

- For adult social care and the Council's partnership with the NHS and the domestic abuse aspect of community safety, the relevant Commissioner will also review the evidence presented and officer recommendation about any Cabinet decision regarding this service area. If the relevant Commissioner considers it appropriate (e.g. if the decision is particularly significant and carries notable risk in terms of the best value duty), the relevant Commissioner can make a formal written recommendation to the relevant Executive Councillor that must be followed. This additional safeguard is to give assurance to the public that protection of the most vulnerable remains strong during the transfer of responsibility for the exercise of service delivery functions.
- Different requirements apply to proposals related to setting the annual revenue budget or adopting the medium term financial strategy, where any Commissioner may give formal advice, rather than just the relevant Commissioner.

32. The Authority will be obliged to continue to undertake the actions outlined in paragraphs 1-8 of Annex A to the Directions for the retained service areas. The Secretaries of State are currently 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 Directions to be replicated.

33. 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 carrying 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

34. Executive Councillors will continue to make decisions in relation to the identified service areas, and Commissioners will continue to 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.

35. 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 minutes of meetings but is workable given the commitment shown by Commissioners and Executive Councillors. Call-in provisions will continue for Executive Councillor decision-making as described in the new Constitutional arrangements published on the Authority's website.

DURATION OF THE INTERVENTION

36. The duration of the intervention will be the same as that set out in the 21 March 2017 Directions, i.e. until 31 March 2019. This reflects the need for continued oversight of the identified service areas, and 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.