

# **DIRECTIONS UNDER SECTION 15(5) AND (6) OF THE LOCAL GOVERNMENT ACT 1999 AND SECTION 497A (4B) OF THE EDUCATION ACT 1996 TO ROTHERHAM METROPOLITAN BOROUGH COUNCIL, SEPTEMBER 2018**

## **EXPLANATORY MEMORANDUM**

1. The Secretary of State for Housing, Communities and Local Government and the 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 all remaining service areas are returned to the Authority to exercise as both Secretaries of State are 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 18 September 2018 (“September 2018 Directions”). It summarises the circumstances in which the Secretaries of State has made the Directions, their reasons for this exercise of their respective powers, and the implications of the Directions for the Authority.

## **THE CONTEXT FOR THE DIRECTIONS**

3. The September 2018 Directions revoke the 12 September 2017 Directions (“September 2017 Directions”) by returning the service areas and associated executive and non-executive functions specified in Annex B to the Directions issued on 12 September 2017 to the Authority, including Children’s Services, thereby returning all remaining service areas to the Authority.

### Background to the September 2018 Directions

4. On 26 February 2015 the Secretary of State for Communities and Local Government 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 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. In light of the Casey report and Sir Michael Wilshaw’s advice note, the Secretary of State for Communities and Local Government 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.
5. When the then Secretary of State for Communities and Local Government 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 is able to 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).

6. Between August 2015 and January 2016 the Commissioners made the following reports in relation to the Authority:
  - 26 August 2015: the Lead Commissioner sent to both Secretaries of State a report outlining progress made during the 6 months from February 2015, as required by paragraph 3 of Annex A to the 26 February 2015 Directions.
  - 27 November 2015: the Lead Commissioner sent to both Secretaries of State the 9 month review on the potential return of functions to the Authority ("the 27 November 2015 report"), stating that certain identified service areas and associated executive and non-executive functions 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 2015 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.
  - 11 January 2016: further report on each of the identified service areas was provided on 11 January 2016 ("the 11 January 2016 report") plus auxiliary material on 14 January 2016 ("the 14 January 2016 auxiliary material"). The 14 January 2016 auxiliary material proposed minor additions to the identified service areas.
7. After considering the 27 November 2015 report, the 11 January 2016 report and the 14 January 2016 auxiliary material, on 21 January 2016 the then Secretary of State for Communities and Local Government 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 2016 letter"), and invited the Authority to make representations to him. Representations were received from Cllr Martyn Parker on 30 January 2016 and from Cllr Chris Read and Sharon Kemp on 2 February 2016.
8. After carefully considering afresh the Casey report, Sir Michael Wilshaw's advice note, the 27 November 2015 report, the 11 January 2016 report, the 14 January 2016 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 2016 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 2016 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 2016 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.

9. On 10 May 2016 the Lead Commissioner sent to both Secretaries of State the 15 month review on the potential return of functions (“the 10 May 2016 report”), as required by the 11 February 2016 Directions and set out comprehensive evidence to demonstrate how each of the four criteria established by the Lead Commissioner in the 27 November 2015 report were met in relation to the licensing functions. The Lead Commissioner’s 18 month review dated 11 August 2016 (“the 11 August 2016 report”) provided letters of assurance from Weightmans and Gowling WLG regarding the licensing function. It also included information on the implementation of the new licensing policy and recruitment for the new organisational structure and reiterated that in the event the licensing function was returned to the Council, Commissioner Ney would continue to play an oversight role.
10. After carefully considering the 10 May 2016 and 11 August 2016 reports, on 19 October 2016 the then Secretary of State for Communities and Local Government sent to the Authority a letter indicating he was considering exercising his powers under section 15 of the 1999 Act in order to return licensing functions to the Authority (“the 19 October letter”), and invited the Authority to make representations to him. Representations were received from the Rotherham UKIP leader, the Council leader and the Chief Executive.
11. After carefully considering the 10 May 2016 and 11 August 2016 reports, and the representations received from the Authority, on 13 December 2016 the Secretary of State for Communities and Local Government and the Secretary of State for Education issued further Directions to the Authority (“the 13 December Directions”) amending the 11 February 2016 Directions. The 13 December Directions returned licensing functions to the Authority to exercise, but prescribed that the Commissioners should exercise functions in relation to the service areas named in paragraph 5 of Annex B to the 13 December Directions. All other service areas and associated executive and non-executive functions therefore fell by default to be exercised by the Authority. The 13 December Directions also set out oversight arrangements in relation to the service areas already exercised by the Authority 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.
12. On 10 November 2016, the Lead Commissioner sent to both Secretaries of State the 21 month review on the potential return of functions (“the 10 November 2016 report”), as required by the 13 December Direction and set out evidence supporting his recommendation to return nine functions. Additional information was subsequently provided by Commissioners.
13. After carefully considering the 10 November 2016 report and supporting information, on 9 February 2017 the Secretary of State for Communities and Local Government sent to the Authority a letter indicating he was considering exercising his powers under section 15 of the 1999 Act in order to return six functions to the Authority (“the 9 February letter”), and invited the Authority to make representations to him. Representations were received from the Council leader and the Chief Executive. These representations also supported a recommendation from the Lead Commissioner in his 24 month progress review on the potential return of functions (“the 10 February 2017 report”) to return the power to appoint council representatives to external bodies.
14. After carefully considering the 10 November 2016 and 10 February 2017 reports, additional information received from Commissioners and the representations received from the Authority, on 21 March 2017 the Secretary of State for Communities and Local Government and the Secretary of State for Education issued further Directions to the Authority (“the 21 March Directions”) amending the 13 December 2016 Directions. The

21 March Directions returned functions relating to adult social care and the Council's partnership with the NHS, external partnerships, economic growth, town centre, audit, ground maintenance as well as the power to appoint council representatives to external bodies to the Authority to exercise. It also prescribed that the Commissioners should exercise functions in relation to the service areas named in paragraph 4 of Annex B to the 21 March Directions. All other service areas and associated executive and non-executive functions therefore fell by default to be exercised by the Authority. The 21 March Directions also set out oversight arrangements in relation to the service areas already exercised by the Authority 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.

15. After carefully considering the 18 May 2017 report and additional information received from the Commissioners, on 18 July 2017 the Secretary of State for Communities and Local Government sent to the Authority a letter indicating he was considering exercising his powers under section 15 of the 1999 Act in order to return five functions to the Authority ("the 18 July letter"), and invited the Authority to make representations to him. Representations were received from the Council and a Rotherham resident.
16. After carefully considering the 18 May 2017 report, additional information received from the Commissioners and the representations received, on 12 September 2017 the Secretary of State for Communities and Local Government and the Secretary of State for Education issued further Directions to the Authority ("the 12 September Directions") amending 21 March 2017 Directions. The 12 September Directions returned functions relating to performance management, waste collection, human resources, asset management and community safety. It also prescribed that the Commissioners should exercise functions in relation to the service areas named in paragraph 4 of Annex B to the 12 September Directions. All other service areas and associated executive and non-executive functions therefore fell by default to be exercised by the Authority. The 12 September Directions also set out oversight arrangements in relation to the service areas already exercised by the Authority 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.

#### Subsequent Developments

17. The Lead Commissioner submitted her thirteenth quarterly report on 4 May 2018 recommending that the Intervention can be concluded. This recommendation was supported by the assessment of the Independent Health Check (submitted 21 March 2018), the Lead Commissioner's twelfth quarterly report (submitted 7 February 2018) and the findings of the OFSTED single inspection of Children's Services (published 29 January 2018).
18. After carefully considering the 4 May 2018 report, as well as the additional reports provided on 21 March 2018, 7 February 2018 and 29 January 2018, on the 23 July 2018 the Secretary of State announced that he was 'minded to' return all remaining functions in respect of the remaining service areas to the Authority; and issue new Directions to require the Authority to establish and receive an independent review by 18 February 2019 to ensure the Authority's compliance with the requirements of Part 1 of the Local Government Act 1999.
19. The Secretary of State for Housing, Communities and Local Government and the Secretary of State for Education have considered representations from the Authority, from members of the public and from a charity, and considers that it is appropriate to

return all remaining functions to the Council. He is satisfied that the Council has the capacity and governance in place to deal with the challenges that it faces, such as those raised in the representations, and is committed to ongoing improvement.

20. The Lead Commissioner subsequently submitted her fourteenth quarterly report on 3 August 2018.

#### **FUNCTIONS TO BE RETURNED TO THE AUTHORITY**

21. The Secretary of State for Housing, Communities and Local Government proposes that all functions specified in Annex B to the September 2017 Directions as amended are returned to the Authority on the 24 September 2018.

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

22. The Authority will be obliged to undertake the actions outlined below:

The Authority will continue to demonstrate progress against the best value duty. In addition the Authority will set up an independent review of their performance to be submitted to the Secretary of State for Housing, Communities and Local Government by 18 February 2019.

#### **THE COMMISSIONER TEAM**

23. The Commissioner team will end their involvement in the Authority on 23 September 2018 in recognition of the progress made.

#### **DURATION OF THE DIRECTION**

24. These Directions remain in force until 31 March 2019 or such earlier date as the Secretary of State may decide.