

SLOUGH BOROUGH COUNCIL DIRECTIONS UNDER SECTION 15(5) AND (6) OF THE LOCAL GOVERNMENT ACT 1999

EXPLANATORY MEMORANDUM

1. The Secretary of State for Levelling Up, Housing and Communities (“the Secretary of State”) has exercised his powers under section 15(5) and (6) of the Local Government Act 1999 (“the 1999 Act”) in relation to Slough Borough Council (“the Authority”) to secure its compliance with the best value duty.
2. This Memorandum is intended as a companion document to the Directions issued on 1 December 2021. 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. This Memorandum was updated on 11 January 2022 to reflect the appointment of an Assistant Commissioner.

The context for the Directions

3. Following Slough Borough Council’s request for exceptional financial support during the COVID-19 pandemic, the Government agreed in principle to this request subject to the outcome of an external assurance review (“the Report”). On 30 June 2021 the then Secretary of State commissioned a review to consider the Authority’s financial position and strength of its wider governance arrangements, and to provide an assessment of the Authority’s ability to achieve financial sustainability without further recourse to public funds. The Chartered Institute of Public Finance and Accountancy (CIPFA) was appointed to lead on the financial aspects of this external assurance review. Jim Taylor, former Chief Executive of Salford City Council, Trafford Council and Rochdale Borough Council, was appointed to lead on the governance aspects. The review resulted in two reports (“the Report”) which were published on 25 October 2021.
4. The Report paints a deeply concerning picture of mismanagement, of a breakdown in scrutiny and accountability, and of a dysfunctional culture at Slough Borough Council. It sets out a picture of serious failings by the Authority, particularly focussed in the three areas of administration of financial affairs and corporate governance; democratic services and scrutiny; and service reform, encompassing service transformation, IT, HR, procurement, internal audit and the revenues and benefits service. The Report confirms a budget shortfall identified for 2021-22 of £111m against a budget of £134m and concludes there is a need for ongoing oversight of the Authority’s financial plans. The Report concluded that the Authority had failed to comply with its best value duty under Part I of the Local Government Act 1999 over a number of years.
5. Having considered the findings of the Report, on 25 October 2021, the Secretary of State published the Report and a letter from senior officials to the Authority setting out a proposed intervention package to secure the Authority’s compliance with its best value duty (“the minded to letter”). Representations about the Report and the proposed intervention package were invited from the Authority and any other interested parties on or before 5 November 2021.
6. The minded to letter explained that the proposed intervention package reflected the recommendations of the Report, and contained two key elements:
 - a. Proposals to put in place Commissioners to take over executive functions associated with the governance and scrutiny of strategic decision-making,

strategic financial management, the oversight of collection of revenues and the distribution of benefits, non-executive functions relating to the appointment and dismissal of statutory officers; and

- b. Actions which the Authority must undertake in order to effect the changes which are needed, as well as supporting and facilitating the work of the Commissioners.
7. The minded to letter included a detailed description of the Directions that the Secretary of State proposed to make under section 15 of the Local Government Act 1999. The proposed Directions provided for the Commissioners to exercise for a time certain of the Authority's functions, gave to the Commissioners certain responsibilities and reserved powers and required the Authority to take certain actions. This Memorandum explains the content of the Directions as finalised in the light of representations received from the Authority and other interested parties.

Representations

8. Before making Directions, the Secretary of State is required under section 15(9) of the 1999 Act to give the Authority an opportunity to make representations about the Report as a result of which the Directions are proposed, and about the proposed Directions.
9. Representations were received from the Authority, dated 5 November 2021, from the Acting Chief Executive Officer, Steven Mair on behalf of the Authority. The Authority accepts the Report's findings and the additional support Commissioners will bring and looks forward to working with them to continue the recovery work that has already begun. The Authority also stated that since April they had been working rigorously to address issues and had made positive action and progress against their Recovery and Renewal Plan which they attached as part of their representations. With regard to the proposed intervention package, the Authority sought clarity on the requirement for the Authority to prepare and agree to the satisfaction of the Commissioners an action plan to "deliver financial sustainability and to close the long-term budget gap" within the first three months. The Authority wished to clarify that this should be interpreted as a plan to achieve the requirement, and not the actual closing of the budget gap in that timeframe. The Authority also commented that they understand that moving to a four yearly election cycle would create space to take longer term decisions without the distraction of yearly election preparations. The representations reported that the Authority had established a cross-party working group to consider this issue and intends to consult local residents shortly.
10. Representations were also received from:
 - a. Slough Borough Council's Conservative Councillor Group, a group of five Conservative councillors led by Cllr Wayne Strutton (Leader of the Opposition). The Group welcomed the findings of the external assurance review and pledged its wholehearted support for efforts to change the Authority's situation, culture and practices, and to work constructively with Government-appointed Commissioners to make sure the necessary improvements are made. The Group particularly welcomed the proposed intervention package's focus on strengthening the Authority's scrutiny function, which they believe has been further weakened by changes to the Authority's scrutiny framework.

- b. Cllr Madhuri Bedi (Independent), who also welcomed the findings of the independent review and pledged to work constructively with the Commissioners to achieve the changes needed within the Authority. Cllr Bedi was particularly supportive of the proposal to improve scrutiny and remarked how the Authority's new scrutiny structure has further weakened Members' ability to scrutinise the work of the Authority. Cllr Bedi noted the importance of a core team existing within the Authority who have the experience and skills necessary to realise the recommendations made by the independent review. She also expressed support for the Authority to move towards a four yearly election cycle as soon as possible and for changes to be introduced locally to the way candidates are selected to stand.
 - c. Seven members of the public, who welcomed the proposed intervention package, including four local residents who felt that the scope of the proposed intervention should be broader and also be accompanied by investigations into the legality of certain past practices by the Authority. Three local residents expressed support for the Authority moving towards a four yearly election cycle as soon as possible, while two residents suggested that boundary changes to make Slough part of a larger unitary authority should be considered in the future.
 - d. No representations were received that did not support the proposed intervention package.
11. This Memorandum, together with the Directions and related material, is published on the Government website at www.gov.uk.

The intervention package

12. Having carefully considered afresh the Report, together with letters from the Authority (5 November 2021), Slough Borough Council's Conservative Councillor Group (4 November 2021), Cllr Madhuri Bedi (Independent) (5 November 2021) and members of the public (various dates), the Secretary of State is confident that there is a sound basis on which to found his considerations and, accordingly, is satisfied that the Authority is failing to comply with its best value duty.
13. The Secretary of State, having considered the representations made by the Authority as required under 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 an intervention package in order to secure the Authority's future and sustainable compliance with its best value duty. This intervention package is in line with his proposals as described in paragraph 6 of this Memorandum, with the following modification:
- The Direction to the Authority for the Improvement Plan to include "an action plan to deliver financial sustainability and to close the long-term budget gap" to be amended to "an action plan to achieve financial sustainability and to close the long-term budget gap identified by the Authority across the period of its Medium Term Financial Strategy (MTFS)".
14. This modification is in response to representations received by the Secretary of State from the Authority, as referred to above.

15. The Secretary of State considers that this package will address the failings identified in the Report. For the avoidance of doubt, the Secretary of State believes that each individual element of the intervention that he has implemented is individually justified.

Commissioners

16. The Report presents a strong case for intervention to allow a reset and that the work that is currently being undertaken is continued at pace and embedded. Therefore, the package that the Secretary of State has put in place centres on a team of Commissioners to make sure that the Authority meets its duty under Part I of the 1999 Act in the short term (anticipated to be in place until 30 November 2024). The Secretary of State has made Directions in relation to the Commissioners, including providing for them to perform certain functions, if necessary, and to have a role in overseeing other functions or actions which the Authority is to perform. The Commissioners are accountable to the Secretary of State in that they have been nominated by him and can have their nomination withdrawn by him. The Commissioners will report to the Secretary of State on the progress of the intervention.

17. The skills and experience of the Commissioners mean that it is both possible and sensible to give them considerable levels of discretion over how they implement their roles and responsibilities under the Directions, in order that they can find the solutions most likely to lead to sustainable improvement in the Authority.

18. The Commissioners are to act jointly or severally, and it will be for them to decide how best to exercise their functions. However, the Secretary of State envisages complementary roles:

- a. a Lead Commissioner, whose responsibilities include, but are not limited to, giving direction and leadership to the delivery of the improvements which the Authority is required to make.
- b. a Finance Commissioner whose responsibilities include, but are not limited to, overseeing the improvements the Authority needs to deliver in relation to its financial governance and management.
- c. an Assistant Commissioner whose responsibilities include, but are not limited, to overseeing the implementation of the improvement plan and securing cultural change at the Authority.

19. The Secretary of State has nominated Commissioners with a proven record in leadership, financial management and governance, delivering cultural change and transformation, together with specific expertise relevant to their functions. The Commissioners are:

- **Max Caller CBE – Lead Commissioner** – led the Best Value Inspections at Northamptonshire County Council and Liverpool City Council and was a Commissioner at the London Borough of Tower Hamlets. He is former Chief Executive of the London Boroughs of Hackney and Barnet and former Chair of the Local Government Boundary Commission for England.
- **Margaret Lee – Finance Commissioner** – recently retired from Essex County Council where she held senior finance roles, including the statutory finance officer. She is a serving member of the London Borough of Croydon Improvement and Assurance Panel.

- **Gavin Jones – Assistant Commissioner** – Serving Chief Executive of Essex County Council and chair of the Society of Local Authority Chief Executives (SOLACE).

The Lead and Finance Commissioners are nominated for the period from 1 December 2021 to 30 November 2024 or such earlier or later time as the Secretary of State determines. The Assistant Commissioner is nominated for the period from 11 January 2022 to 30 November 2024 or such earlier or later time as the Secretary of State determines. The Secretary of State may, if he considers it appropriate, nominate further Commissioners.

20. The Directions provide that the Commissioners' reasonable expenses and such fees as the Secretary of State determines are to be paid to them by the Authority. The Secretary of State is mindful of the need for Commissioner remuneration to represent value for money for local taxpayers. In recognition of the nature and scale of the intervention, he has determined fees of £1200 a day for the Lead Commissioner and £1100 a day for the Finance and Assistant Commissioners.

Powers to be exercised by the Commissioners

21. The Report highlight failures in three key areas – the administration of financial affairs and corporate governance, democratic services and scrutiny, and service reform. Alongside this the Report refers to the concerted efforts made by the Authority over recent months following the issuing of statutory recommendations by the external auditor in May and July 2021, and the issuing of a Section 114 notice by the Section 151 Officer in July.
22. For these reasons, the Directions enable the Commissioners to exercise functions in four areas:
 - a. All functions associated with the governance and scrutiny of strategic decision making by the Authority.

The Report concluded that the necessary administrative functions to support a healthy democracy are not functioning in the Authority: reports to support decision-making do not contain key information, decisions are taken in the wrong meetings and are not properly scrutinised. The scrutiny function is under resourced and there is no permanent statutory scrutiny officer. All seven meetings of Scrutiny Committees were cancelled in June and July of 2021. In practice, most decisions are expected to be taken by the Authority; however, the Directions are designed to give Commissioners the power to tackle the weaknesses the Report identified to make sure that the Authority is better equipped to meet the requirements of Part I of the 1999 Act.

- b. All functions associated with the strategic financial management of the Authority.

The Report expressed serious concerns regarding the Authority's financial reporting and governance arrangements, which do not provide the overview and scrutiny or assurance necessary for the Authority's leadership, both officers and members, to fulfil their responsibilities or have confidence in the evidence presented to them to support decision-making. Concerns were also expressed over corporate governance processes, which the Report regards are inadequate and poorly understood by officers and members. These concerns were shared by the Authority's external auditor, Grant Thornton,

who issued four Section 24 statutory recommendations concerning the Authority's arrangements for financial reporting and the management of its reserves in May 2021, and a further two statutory recommendations in July, due to inadequate arrangements in financial management and the capacity of the Authority to manage its finances. This culminated on 2 July 2021 with a Section 114 notice being issued on the basis that the Authority could not meet its immediate liabilities. Again, in practice, most decisions are expected to be taken by the Authority; however, the Directions are designed to give Commissioners the power to tackle the weaknesses the Report identified to make sure that the Authority is better equipped to meet the requirements of Part I of the 1999 Act.

- c. All functions associated with the oversight of collection of revenues (Council Tax and Business Rates) and the distribution of benefits (Housing Benefit and Council Tax Support) by the Authority

The Report details how the transformation programme embarked on by the Authority in 2019 was executed poorly and has resulted in the Authority operating at a sub-optimal level, with essential components necessary for effective service delivery not being present. The Report also notes that, whilst the Authority are aware of most, if not all issues facing its Council Tax and Business Rates services, there is a considerable lack of resource, accountability and ownership required to address these issues. Again, in practice, most decisions are expected to be taken by the Authority; however, the Directions are designed to give Commissioners the power to tackle the weaknesses the Report identified to make sure that the Authority is better equipped to meet the requirements of Part I of the 1999 Act and, in particular, to put in place a good service.

- d. All non-executive functions relating to the appointment and dismissal of statutory officers (the Chief Executive, Chief Financial Officer (and section 151 officer) and Monitoring Officer) and the scrutiny officer.

23. The Secretary of State considers that most decisions should continue to be made by the Authority. Commissioners will uphold proper standards and due process and recommend action to the Authority. The Secretary of State's intention is that the powers he is providing to the Commissioners be used as a last resort should the Authority not satisfy the Commissioners in their improvement processes. This approach reflects the work commenced by the Authority and the confidence the Secretary of State has in the continuation of this work with the support of the Commissioners.

24. The exercise of these functions should enable the Commissioners to make sure that the Authority has made sufficient improvement within the next three years to be able to comply with its best value duty on a sustainable basis.

Directions to the Authority

25. To achieve and facilitate the objectives of the intervention, the Secretary of State has also directed the Authority to take the following actions:

- a) In the first three months undertake an assessment of the functional capability of all service areas identifying the gaps in capacity and capability, and within six months prepare and agree action plans to the satisfaction of the Commissioners.

- b) To undertake in the exercise of any of its functions any action that the Commissioners may reasonably require to avoid so far as practicable incidents of poor governance or financial mismanagement that would, in the reasonable opinion of the Commissioners, give rise to the risk of further failures by the Authority to comply with the best value duty.
- c) In the first three months prepare and agree an Improvement Plan to the satisfaction of the Commissioners (which may include or draw upon improvement or action plans prepared before the date of these Directions), with, resource allocated accordingly, and as a minimum, the following components:
 - i. An outline action plan to achieve financial sustainability and to close the long-term budget gap identified by the Authority across the period of its Medium-Term Financial Strategy (MTFS).
 - ii. An action plan to achieve improvements in relation to the proper functioning of democratic services, to include rapid training for council officers, a revised term of reference for the Audit and Corporate Governance Committee, and the agreement of an Annual Governance Statement for 2020-21.
 - iii. An action plan to achieve improvements in relation to the proper functioning of the scrutiny function, to include a review of the Authority's strategic risk register to make it fit for purpose.
 - iv. An action plan to achieve improvements in relation to the proper functioning of internal audit, which addresses outstanding management actions and includes the commissioning of an independent review of the internal audit contract and a fully costed plan for establishing an internal audit function that reflects best practice.
 - v. An action plan to achieve improvements in relation to the proper functioning of the procurement and contract management function, which includes an independent review.
 - vi. An action plan to achieve improvements in relation to the proper functioning of the Authority's IT.
 - vii. A suitable officer structure and scheme of delegation for the Authority which provides sufficient resources to deliver the Authority's functions in an effective way, including the Improvement Plan and its monitoring and reporting, prioritising permanent recruitment and/or longer term contract status of interim position.
- d) To report to the Commissioners on the delivery of the Improvement Plan at six monthly intervals, or at such intervals as the Commissioners may direct, and adopt any recommendations of the Commissioners with respect to the Improvement Plan and its implementation.
- e) In the first six months devise and then implement a programme of cultural change to rebuild trust between officers and members, to the satisfaction of the Commissioners. This should make sure both Members and Officers understand the scale of the challenge and their respective roles in driving improvement and the way in which the Authority and its activities are regulated and governed and the way in which this is monitored, and breaches rectified.

- f) Following the review by the Authority of their companies within six months consider the roles and case for continuing with each subsidiary company of the Authority (except Slough Children First through which the Authority delivers functions under Direction, and therefore is outside the scope of this work). For those companies that it is agreed to continue, make sure that the Directors appointed by the Authority are appropriately skilled in either technical or company governance matters to make sure each Board functions effectively under the terms of an explicit shareholder agreement and a nominated shareholder representative. For those companies which it is determined not to continue with in this form, to establish a plan to internalise, close or sell as appropriate.
 - g) In the first six months take steps to enable better and evidence-based decision making, including enhancing the data and insight functions to enable better evidence-based decision making.
26. The Directions require the Authority to fully cooperate with the Commissioners in order to facilitate their work:
- a) To allow the Commissioners at all reasonable times, such access as appears to the Commissioners to be necessary:
 - i. to any premises of the Authority;
 - ii. to any document relating to the Authority; and
 - iii. to any employee or member of the Authority;
 - b) To provide the Commissioners, at the expense of the Authority, with such reasonable amenities and services and administrative support as the Commissioners may reasonably require from time to time to carry out their functions and responsibilities;
 - c) To pay the Commissioners' reasonable expenses, and such fees as the Secretary of State determines are to be paid to them;
 - d) To provide the Commissioners with such assistance and information, including any views of the Authority on any matter, as the Commissioners may reasonably request; and
 - e) To co-operate with the Secretary of State for Levelling Up, Communities and Housing in relation to implementing the terms of the Directions.

Duration of the intervention

27. The Secretary of State considers that any aspect of the Directions should only be long enough to achieve the stated objectives of the intervention. The Directions will remain in force until 30 November 2024 unless the Secretary of State considers it appropriate to amend or revoke them at an earlier date. The Secretary of State may decide to extend Directions beyond this date, or it may be appropriate to return functions before this time.
28. The Secretary of State has asked for six monthly reports from the Commissioners, or at such other times as he might agree with the Commissioners, which allows for a process for regular review of whether it would be appropriate to expand the functions of the Commissioners or for any function exercisable by the

Commissioners to be returned to the Authority. The first report is expected as soon as is practicable within the first three months of the intervention.

29. Where the Authority and Commissioners agree that it would be appropriate for the exercise of a function to be returned to the Authority, Commissioners will report this to the Secretary of State, 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. The Secretary of State will carefully consider any such reports and, if agreed to, further Directions will be issued to this effect amending these Directions made on 1 December 2021. The Secretary of State has not ruled out the possibility that further functions might be brought under the control of the Commissioners.