



Department for Levelling Up,
Housing & Communities

Max Soule

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Ian Wake
Acting Chief Executive
Thurrock Council

By email

24 January 2023

THURROCK COUNCIL – PROPOSED FURTHER DIRECTIONS

Dear Mr Wake,

I am writing to you in your capacity as acting Chief Executive at Thurrock Council, to inform you that the Secretary of State is minded to make further Directions in relation to the ongoing intervention in your Authority.

Essex County Council (ECC), in their capacity as Finance Commissioner for the intervention, wrote to the Secretary of State on 5 December with their first report on the progress of the financial intervention in Thurrock Council, as required by the Directions issued on 2 September 2022. In their capacity as Best Value Inspector, ECC wrote to the Secretary of State on 13 December to provide an update letter on the Best Value Inspection, which contained key findings and recommendations from the inspection so far, in advance of the full report to be delivered in February 2023.

Taken together, the two documents provide a clear rationale for Ministers to review the scope of the existing Directions, in order to provide Commissioners with additional powers over your Authority's functions. I am now writing to provide your Authority with the opportunity to make representations about the proposed additional Directions. This letter, alongside the Finance Commissioners' report and the Best Value Inspection update letter, will be published on www.gov.uk.

The first Finance Commissioner report sets out the unprecedented scale and complexity of the financial challenge facing Thurrock Council as a result of the Authority's failed commercial investment strategy. It notes that Thurrock have produced an improvement plan, but that significant further work is needed to accelerate the pace at which the Authority grips issues, and to develop and resource the plan to make it operational. The report acknowledges that the Authority have made good progress to improve decision making processes but makes clear that there are serious concerns with weaknesses in the Authority's governance. It also highlights a lack of capacity at the Authority, preventing Thurrock being able to deliver change to the timescales required. On this basis, the report recommends that Ministers provide Commissioners

with additional powers in relation to governance, and the appointment, dismissal, and organisation of staff.

Turning now to the update letter on the Best Value Inspection, which has been provided to Ministers in advance of Inspectors delivering the full report in February. The letter corroborates the conclusions of the first Finance Commissioner report regarding the grave financial position of the Council, which Inspectors judge will take many years to resolve, and the structural weaknesses in Thurrock's governance and staffing functions. It also highlights shortcomings in the delivery of major projects. It recommends that Thurrock should produce a robust recovery plan (building on the existing improvement plan), it notes the need to reconfigure services, and to address weaknesses in capacity, governance, and transparency. It calls for an improved officer structure and effective performance management framework, and (like the Commissioner report) recommends that Commissioners are provided with powers over appointments and dismissals of senior officers.

Proposed Changes

Having carefully considered these two documents in the context of the intervention, the Secretary of State has concluded that Thurrock is failing in its best value duty, both in terms of the known financial issues, and in relation to its governance functions.

On this basis, the Secretary of State is considering further exercising the powers of direction in the Local Government Act 1999 in relation to your Authority to secure its compliance with the best value duty. The Secretary of State is minded to decide that the need to strengthen the Authority's governance functions and address its capacity challenges is such that it is necessary to issue further Directions to permit the Commissioners to exercise powers over:

- All functions associated with the governance, scrutiny and transparency of strategic decision making by the Authority to ensure compliance with the best value duty and have oversight of an audit of the Authority's governance;
- All functions associated with the Authority's operating model and redesign of Council services to achieve value for money and financial sustainability;
- The appointment, suspension and dismissal of staff in the top three tiers of the organisation, including powers to determine the process for making these appointments and dismissals, and to design a new officer structure; and
- The development, oversight and operation of an effective performance management framework for senior officers.

The Secretary of State is also minded to make further Directions to your Authority, instructing Thurrock Council to undertake the following actions to the satisfaction of Commissioners:

- To prepare, produce and implement an enhanced improvement and recovery plan (building on the existing improvement plan);
- To take steps to ensure that the role of Accountable Body to the Thames Freeport is exercised to the satisfaction of the Commissioners. This should be reflected in the improvement and recovery plan; and

- To undertake any action that Commissioners may reasonably require to avoid so far as practicable incidents of poor governance that would, in the Commissioners' reasonable opinion, give rise to the risk of the Authority failing to comply with its best value duty.

The Secretary of State has also reviewed the model of intervention in your Authority as a whole and is minded to propose a further change to the Directions to appoint a Managing Director Commissioner. This appointment is intended to strengthen the intervention model, and to support the Authority's capacity to deliver against its improvement plan.

Finally, in recognition of the important part that the leader of ECC, Cllr Kevin Bentley, has played in the intervention so far, including the support he has provided to the leader and members of Thurrock Council, the Secretary of State intends to acknowledge and formalise the scope of his role in an updated Explanatory Memorandum, to accompany any new set of Directions issued.

Next steps

It is important to note that the Secretary of State intends to issue a new set of Directions to incorporate these proposed changes, pending a formal decision following a period of representations. New Directions would be intended to supersede and replace those issued on 2 September 2022. Relevant Directions from 2 September which pertain to the Commissioner's existing powers over your Authority's finance functions would be replicated in any new Directions issued, as these powers will remain in place. A draft of a proposed set of Directions is set out below.

Your Authority is now invited to make such representations as it wishes about the two reports and the Minister's proposals. All such representations should be sent by email to interventions@levellingup.gov.uk or in hard copy to the address above marked for my attention, to be received on or before 7 February 2023. They will then be carefully considered by the Secretary of State in deciding whether to make the proposed new Directions.

As you know, the Best Value Inspectors will deliver their full report to the Secretary of State no later than 17 February. The inspection is an independent exercise, and therefore we cannot prejudge its outcomes. It is important, however, to note the possibility that the report could contain further recommendations in relation to the Directions, on which Ministers may choose to act.

Please find attached to this letter a document which sets out new Directions pertaining to the intervention, should the proposed changes be formalised.

I am copying this letter to Gavin Jones in his capacity as representative for ECC in their Commissioner and Best Value Inspector roles.

Yours sincerely,

Max Soule
Deputy Director, Local Government Stewardship

PROPOSED CHANGES TO THE DIRECTIONS

ANNEX A

ACTION THE AUTHORITY IS REQUIRED TO TAKE

In this Annex, the following expressions have the following meanings –

“The Authority” includes the Leader of the Council, Cabinet Members, any committee or sub-committee; and any other person who has responsibility for the matter in question.

The actions to be taken by the Authority are:

1. Prepare and agree an Improvement and Recovery Plan to the satisfaction of the Commissioner, within 6 months, with resource allocated accordingly. This should include and draw upon the existing Improvement Plan produced in December 2022, per the Directions issued to the Authority on 2 September 2022. The plan is to set out measures to be undertaken, together with milestones and delivery targets against which to measure performance, in order to deliver rapid and sustainable improvements in governance, leadership and culture in the Authority, in the Authority’s exercise of its overview and scrutiny functions and in its performance of services, thereby securing compliance with the best value duty. The Recovery Plan should include at a minimum:
 - a. An action plan to achieve financial sustainability and to close any short and long-term budget gaps identified by the Authority across the period of its medium-term financial strategy (MTFS), including a robust multi-year savings plan;
 - b. An action plan to ensure the Authority’s capital, investment and treasury management strategies are sustainable and affordable;
 - c. A strict debt reduction plan, and an updated minimum revenue provision (MRP) policy in line with all relevant rules and guidelines;
 - d. An action plan to ensure the Authority is complying with all relevant rules and guidelines relating to the financial management of the Authority; and
 - e. A suitable scheme of delegations for financial decision-making.
 - f. An action plan to reconfigure the Authority’s services commensurate with the Authority’s available financial resources.
 - g. A plan to ensure that the Authority has personnel with sufficient skills, capabilities and capacity to deliver the Improvement and Recovery Plan, within a robust officer structure.
 - h. An action plan to strengthen the Authority’s governance function, to secure improvements in transparency and formal decision making. This should include measures to improve the Authority’s scrutiny function, including the taking and recording of formal decisions.
 - i. Arrangements to secure the proper resourcing and functioning of the system of internal controls, including risk management and internal audit.
 - j. Arrangements to provide assurance, to the satisfaction of Commissioners, on the exercise of your role of Accountable Body to the Thames Freeport.

2. To report to the Commissioner on the delivery of the Improvement and Recovery Plan at 6 monthly intervals, or at such intervals as Commissioner may direct.
3. To undertake in the exercise of any of its functions any action that the Commissioner may reasonably require to avoid so far as practicable incidents of poor governance, poor financial governance or financial mismanagement that would, in the reasonable opinion of the Commissioner, give rise to the risk of further failures by the Authority to comply with the best value duty.
4. To allow the Commissioners at all reasonable times, such access as appears to the Commissioners to be necessary:
 - a. to any premises of the Authority;
 - b. to any document relating to the Authority; and
 - c. to any employee or member of the Authority.
5. To provide the Commissioner, 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 under these Directions;
6. To pay the Commissioner reasonable expenses, and such fees as the Secretary of State determines are to be paid to them.
7. To provide the Commissioners with such assistance and information, including any views of the Authority on any matter, as the Commissioners may reasonably request.
8. To co-operate with the Secretary of State for Levelling Up, Housing and Communities in relation to implementing the terms of these Directions.
9. To take steps to ensure that the role of Accountable Body to the Thames Freeport is exercised to the satisfaction of the Commissioners. This should be reflected in your Improvement and Recovery plan.

FUNCTIONS OF THE AUTHORITY TO BE EXERCISED BY THE COMMISSIONER

In this Annex, the following expressions have the following meanings –

“The Authority” includes the Leader, Cabinet Members, any committee or subcommittee; and any other person who has responsibility for the matter in question.

“Senior positions” are defined as direct reports to the Chief Executive and their direct reports, and their Group Managers – tier one, tiers two and three.

The Commissioner shall exercise:

1. All functions associated with the financial governance and scrutiny of strategic financial decision making by the Authority;
2. The requirement from section 151 of the Local Government Act 1972 to make arrangements for the proper administration of the Authority’s financial affairs, and all functions associated with the strategic financial management of the Authority, to include;
 - a. providing advice and challenge to the Authority on the preparation and implementation of a detailed action plan to achieve financial sustainability and to close any short and long-term budget gaps identified by the Authority across the period of its medium-term financial strategy (MTFS), including a robust multi-year savings plan;
 - b. providing advice and challenge to the Authority in the setting of annual budgets and a robust medium term financial strategy (MTFS) for the Authority, strictly limiting future borrowing and capital spending;
 - c. scrutiny of all in-year amendments to annual budgets;
 - d. the power to amend budgets where Commissioners consider that those budgets constitute a risk to the Authority’s ability to fulfil its best value duty;
 - e. providing advice and challenge to the Authority on the preparation of sustainable and affordable capital, investment and treasury management strategies; a strict debt reduction plan; and a revised minimum revenue provision (MRP) policy;
 - f. providing advice and challenge to the Authority on a suitable scheme of delegations for financial decision-making;
 - g. ensuring compliance with all relevant rules and guidelines relating to the financial management of the Authority.
3. All functions associated with the governance, scrutiny and transparency of strategic decision making by the Authority.
4. All functions associated with the council’s operating model and redesign of council services to achieve value for money and financial sustainability.

5. All 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:
 - a. The functions of 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. dismissing any person who has been designated as a statutory officer from his or her position as an officer of the Authority.
6. All functions to define the officer structure for the senior positions, to determine the recruitment processes and then to recruit the relevant staff to those positions.
7. All functions pertaining to the development, oversight and operation of an enhanced performance management framework for officers holding senior positions.