

THURROCK 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 Thurrock Council (“the Authority”) to secure its compliance with the Best Value Duty.
2. The intervention at the Authority was announced on 2 September 2022. At that time, the former Secretary of State appointed Essex County Council as Best Value Inspector and issued Directions instructing the Authority to undertake actions to secure improvements at the Authority. These Directions also provided the Commissioner, also Essex County Council, with powers over the Authority’s finance function. On 24 January 2023 the Parliamentary Under-Secretary of State for Local Government and Building Safety announced that the Secretary of State was minded to use his powers under the 1999 Act to expand the intervention at the Authority and invited representations. On 16 March 2023, the Under-Secretary of State confirmed that the Secretary of State would use his powers under the 1999 Act to expand the intervention, having carefully considered the representations received and reports from the Authority’s Commissioner and Best Value Inspector.
3. An updated and expanded set of Directions has therefore been issued to expand the intervention package. These Directions issued on 16 March 2023 replace those issued on 2 September 2022. They include and replicate the powers granted to Commissioners in relation to oversight of the Authority’s finance function, which were set out in the Directions issued on 2 September 2022. To reflect the expanded scope of the intervention announced on 16 March 2023, these new Directions provide Commissioners with additional powers over the Authority’s governance and staffing functions and instruct the Authority to take additional actions to support its improvement. This Memorandum is therefore intended as a companion document to the Directions currently in force, issued on 16 March 2023, which supersede and override the Directions issued on 2 September 2022. 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 decision to intervene in the Authority in September 2022

4. The Department had been aware of concerns around the Authority’s investment activity and external borrowing over a number of years and had been closely monitoring the situation.
5. The Authority had incurred an exceptional level of external borrowing and is one of the most indebted and highly leveraged of all local authorities. The Authority’s total external borrowing was c.£1.5bn (as at 30 June 2022), of which a significant amount (c.£0.94bn) consisted of short term loans from other local authorities.

6. The feedback report of the Local Government Association (LGA) Corporate Peer Challenge of Thurrock Council (10 to 13 January 2022), published in July 2022, echoed the Department's concerns regarding the Council's financial strategy, and also raised a number of concerns relating to decision making processes and governance arrangements.
7. There had also been serious allegations made by third parties about the processes that had been applied to the operation of the Authority's commercial strategy, and concerns raised around the financial and commercial risks potentially facing the Authority.
8. In light of the above, and on the basis of discussions between the Department and the Authority, the Department was particularly concerned about the scale of the potential financial and commercial risks facing the Council, and the failure of the Authority to provide assurance to Ministers and the Department on the adequacy of their actions to address the issues considering the scale and pace of the response required.
9. Whilst the former Secretary of State, the Rt Hon Greg Clark MP had carefully considered the available evidence, there was no single publicly available report that catalogued that material, and some of the material that the former Secretary of State had considered was commercially sensitive. The former Secretary of State was therefore mindful that releasing such information at that time could have been of greater detriment than benefit to the residents of Thurrock.
10. The former Secretary of State deemed it prudent to forego the period of representation, given the gravity and time-sensitivity of the financial issues as was his discretion under section 15(11) of the 1999 Act. He considered that there was a pressing case for urgent government action to protect the interests of the residents and taxpayers of Thurrock, as well as to provide assurance to the sector that action was being taken. The scale and nature of the issues was emerging very quickly, and the former Secretary of State was concerned that further evidence of failure could come to light very quickly and require prompt action.
11. The Directions issued on 2 September 2022 set out powers that Essex County Council would exercise as Commissioner for a specified duration of three years from that date, gave responsibilities to Essex County Council within its Commissioner role and required the Authority to take certain actions.

The intervention package announced on 2 September 2022

12. Having carefully considered the evidence, the former Secretary of State was confident that there was a sufficient basis on which to found his considerations and, accordingly, was satisfied that the Authority was failing to comply with its Best Value Duty.

13. The former Secretary of State considered 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.
14. The intervention package was formed of two complementary parts. The first was that the Authority's functions over managing its financial resources, exercise of the statutory requirement to arrange for the proper administration of the Authority's financial affairs, and all functions associated with the strategic financial management of the Authority will be overseen by Essex County Council in the role of Commissioner. This was using the Secretary of State's powers under section 15(5) and 6 of the Act, in order to address the financial and commercial risks at the Authority.
15. The second part was that the Secretary of State exercised his powers under section 10 of the same Act to also appoint Essex County Council as Best Value Inspector, to inspect the governance, audit (internal and external), risk management, overview and scrutiny functions of the Authority and consider their impact on service delivery. This was in order to assess the extent of the failure to comply with the Best Value Duty by the Authority, beyond the management of financial resources, and to make recommendations to mitigate the risk to service delivery that any further failure may have. Both parts shared a common goal, which was to protect the interests and services of the people of Thurrock.
16. The former Secretary of State considered that this package would address the failings identified. For the avoidance of doubt, the former Secretary of State believed that each element of the intervention that he implemented was individually justified.

The proposed expansion to the intervention package announced on 24 January 2023

17. Essex County Council submitted their first Commissioner report to the Secretary of State on 5 December 2022. The Best Value Inspection team at Essex County Council provided the Secretary of State with an update letter on the Inspection on 13 December which contained key findings and recommendations from their work so far and requested an extension to complete their final report. On 14 December it was agreed that the inspection team would have more time to complete their report and would provide their report to the Secretary of State by 17 February 2023.
18. The Secretary of State and the Under-Secretary of State for Local Government and Building Safety carefully considered these reports. Taken together, the Commissioner report and update letter laid bare the profound weaknesses in the Authority's financial function, which has resulted in unmanageable budget gaps in the current financial year and in future years. The documents also revealed significant weaknesses in the Authority's governance function and raised pressing concerns about lack of capacity at the Authority. The Best Value

Inspection update letter posited that the Authority's financial failings are a manifestation of deeper systemic weakness in the running of the Authority.

19. Having carefully considered these two documents in the context of the intervention, the Secretary of State was satisfied that the Authority is not meeting its Best Value Duty, both in terms of its known financial issues, and in relation to its governance and staffing functions. The evidence and recommendations presented in the Commissioner report and update letter were judged to be serious enough to warrant taking steps to expand the intervention at that point, in order to prevent further best value failure. On 24 January 2023, Under-Secretary of State for Local Government and Building Safety announced that the Secretary of State was considering further exercising his powers of direction in the 1999 Act to expand the intervention.
20. The changes proposed on 24 January 2023 centred on the need to expand the scope of Commissioner's existing powers, which were previously limited to oversight of the financial function. The proposed expansion to the intervention package would give Commissioners powers over the Authority's governance and staffing functions and would instruct the Authority to take further actions to support its recovery and the work of Commissioners, in order to carry out improvement and transformation work. The Secretary of State was also minded to appoint a Managing Director Commissioner, independent of the existing Commissioner Essex County Council, to the intervention team.
21. On 17 February 2023, the Secretary of State received the Best Value Inspection report ("the Report") from Essex County Council, and the Department will publish the report in due course, following a further representations process whereby any particular individuals criticised are given an opportunity to read and respond to those relevant parts of the report before it is published. This rigorous and wide-ranging report corroborated the concerns about the Authority's governance and finance functions, and leadership capacity, raised in the first Commissioner report and Best Value Inspection update letter.

Representations received on the expanded intervention package

22. Before making Directions, the Secretary of State is required, unless the circumstances are deemed sufficiently urgent, under section 15(9) of the 1999 Act to give the Authority an opportunity to make representations about the reports as a result of which the Directions are proposed, and about the proposed Directions.
23. Representations were received from acting Chief Executive Ian Wake, on behalf of the Authority, dated 7 February 2023. The Authority supported the proposed Directions and welcomed the support provided by Essex County Council (ECC) as Commissioner. The Authority requested that the department was explicit in its instructions in order to ensure that sovereignty and decision making remains in Thurrock and noted that the model of intervention in which another Council serves as a Commissioner has posed some challenges which have not been experienced by other authorities in intervention. The Authority requested clarity from the department on whether it was minded to retain this

approach or whether there will be a transition to a Commissioner model in which individuals are appointed as Commissioners. The Authority welcomed ECC's commitment to undertaking further work between the Authority and ECC on working practices and noted their commitment to this approach. The Authority highlighted progress made within the past five months but acknowledged the considerable journey ahead. The Authority accepted the findings of the Best Value Inspection update letter and suggested that many of the areas within this update had been included in the Authority's recovery plans.

24. Representations were also received from:

- a. Councillor Steve Liddiard (Labour) who raised concerns that responsibility for the Authority's financial challenges has been diverted away from the Conservative administration. He identified the former chief executive as being at fault for many of the Authority's failings and raised some concerns about lack of government oversight of the council's borrowing activity.
- b. Nineteen members of the public, three of whom supported the proposed expansion and sixteen of whom neither explicitly supported nor objected to the proposed expansion to the intervention. Common themes included concerns over service reduction; residents bearing the cost of failure; and potential future cuts to services. The representations also highlighted a perceived lack of proper management, leadership, and scrutiny at the Authority. Several representations raised specific concerns independent of the intervention, such as council services including housing and planning. Seven people specifically raised concerns about the future of the Thameside Complex.
- c. The Thames Crossing Action Group, who raised concerns about the proposed Lower Thames Crossing which it opposes due to the costs of the project, funding issues and impact on Thurrock's green belt land.
- d. Thurrock Community and Voluntary Services, who raised concerns that residents from disadvantaged groups might suffer service reduction, and that potential cuts to voluntary services may have an impact disproportionate to any savings made by the Authority.
- e. Thurrock Lifestyle Solutions, who welcomed proposals for appointing a Managing Director Commissioner. They asked that the Thameside Complex be protected from cuts.

25. No representations were received that objected to the intervention package.

The expanded intervention package

26. Having carefully considered the Commissioner's first report (5 December 2022), the Best Value Inspection update letter (13 December 2022) and the Report (17 February 2023), along with the representations received on the

proposed expansion to the intervention (various dates) the Secretary of State is satisfied that the Authority is failing to comply with the Best Value Duty placed on all local authorities.

27. 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 expanded intervention package in order to secure the Authority's future and sustainable compliance with its Best Value Duty.
28. The expanded intervention package includes the appointment of an independent Managing Director Commissioner. As part of his announcement on 16 March 2023, the Parliamentary Under-Secretary of State confirmed that Dr Dave Smith will be appointed to this role.
29. The Secretary of State considers that this package will address the failings identified in the reports and representations set out in paragraphs 17 – 24.

Commissioners appointed on 2 September 2022 and 16 March 2023

30. The evidence presented a strong case for intervention to deliver the improvements required. Therefore, the package that the Secretary of State has put in place centres on a team of Commissioners to act jointly or severally 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 1 September 2025). The team of Commissioners is formed from Essex County Council – appointed by the Secretary of State as Commissioner on 2 September 2022 – together with a Managing Director Commissioner appointed on 16 March 2023.
31. Local authorities are often best placed to address local and regional issues and sectoral intervention is most effective when it is built on foundations of local knowledge, strong relationships and existing collaboration between civic and business leaders. Nominating Essex County Council as one of the Authority's Commissioners built on the strong collaboration and existing partnership across Greater Essex and the Association of South Essex Local Authorities (ASELA) and recognised the expertise and capability of Essex County Council. The shared intention is to correct as quickly and as effectively as possible the basis for this intervention, and act in the interests of local tax-payers in Thurrock and Greater Essex. It is the Secretary of State's view that the scale of the challenges at the Authority are such that the Commissioner team will also benefit from the appointment of an independent Managing Director Commissioner to support the Authority's capacity to deliver against its improvement plan.
32. 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 on a six-monthly basis, or at such other times as the Secretary of State might agree with the Commissioners.

33. The expertise and capability of Essex County Council and the Managing Director Commissioner mean that it is both possible and sensible to give them considerable levels of discretion over how they implement their roles in order that they can find the solutions most likely to lead to sustainable improvement in the Authority. They have been directed to fill the roles of Commissioners and 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.
34. Broadly, the Secretary of State expects that the following individuals to perform the following roles. Essex County Council and the Managing Director Commissioner will agree a protocol of working practices with the Authority and publish it in the interest of transparency.
- a. The Chief Executive of Essex County Council will provide oversight of and strategic leadership for the wider Commissioner team and will chair the Improvement and Recovery Board.
 - b. The Managing Director Commissioner will fulfil the role of a Chief Executive for the Authority and will be responsible for the day-to-day operations of the Authority. They will use their independent position to provide advice and guidance to the Authority on matters pertaining to infrastructure or regeneration projects in the local area, for example the Thames Freeport, local transport initiatives, and represent Thurrock in any future discussions and negotiations on the expression of interest submitted to DLUHC in respect of wider devolution in Essex.
 - c. The Section 151 Officer of Essex County Council will provide oversight of the Authority's finance functions and will chair the Finance Recovery Board.
 - d. The Leader of Essex County Council will provide political support to all members of the Authority to promote a whole council approach to improvement and recovery.
35. Essex County Council are nominated for the period from 2 September 2022 to 1 September 2025, and the Managing Director Commissioner, Dr Dave Smith, is nominated for the period from 16 March 2023 to 15 March 2025, 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, or choose to review the intervention model and Commissioner team following receipt of the next report from Commissioners.
36. 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. As such, he has determined that Essex County Council should recharge the Authority for the costs of its officers at the pro-rata rate of their existing salaries, and that information about the costs of the intervention should be published on a regular basis to ensure transparency. In recognition of the nature and scale of the

intervention, he has determined fees of £1100 a day for the Managing Director Commissioner, consistent with other interventions.

Powers to be exercised by the Commissioners through Directions issued on 16 March 2023

37. The evidence set out above highlights failures in the administration of financial affairs and corporate governance, including scrutiny of strategic decision making, as well as concerns on senior capacity at the Authority.

38. For these reasons, the Directions enable the Commissioners to exercise the following functions:

- a. All functions associated with the governance, scrutiny and transparency of strategic decision making by the Authority.

The evidence shows significant weakness regarding the Authority's governance, scrutiny and transparency of strategic decision making. For example, there is a concerning culture of informality around decision making, in addition to a weak scrutiny function and poor culture of transparency with members by officers. There is also a poor set of checks and balances to ensure the organisation is running effectively. The lack of transparency, poor planning and variable quality of reports has compromised the quality advice to members and therefore the integrity of decision making.

- b. All functions associated with the financial governance and scrutiny of strategic financial decision making by the Authority.

The evidence presents a strong case that the necessary administrative functions (relating to strategic financial decision making) to support a healthy democracy are not functioning in the Authority. For example, it is not clear how certain investment decisions were taken by the Authority and the extent to which these decisions were subject to scrutiny by the Authority. In practice, most decisions are expected to be taken by the Authority; however, the Directions are designed to give Commissioners the power to tackle any such issues to make sure that the Authority is better equipped to meet the requirements of Part I of the 1999 Act.

- c. The requirement under 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:

- i. 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.

- ii. 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.
- iii. Scrutiny of all in-year amendments to annual budgets.
- iv. 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.
- v. 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.
- vi. Providing advice and challenge to the Authority on a suitable scheme of delegations for financial decision-making.
- vii. Ensuring compliance with all relevant rules and guidelines relating to the financial management of the Authority.

The evidence raises serious concerns regarding the Authority's financial position, and its financial reporting and governance arrangements. For example, it is unclear if the current arrangements 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 have also been raised over corporate governance processes. 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 identified to make sure that the Authority is better equipped to meet the requirements of Part I of the 1999 Act.

- d. All functions associated with the Authority's operating model and redesign of services to achieve value for money and financial sustainability.

The evidence shows that the Authority, in addition to making extensive efficiency savings, will have to make a significant and rapid reduction in the scope of local services. Undertaking this transformation will be a hugely difficult task, which will need to be effectively managed at both the corporate and service level if the Authority is to avoid serious operational failures.

- e. 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:

- i. The functions of designating a person as a statutory officer and removing a person from a statutory office.
- ii. The functions under section 112 of the Local Government Act 1972 of:
 - 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
 - dismissing any person who has been designated as a statutory officer from his or her position as an officer of the Authority.

The evidence shows that the scale of the change required, and the reduction in resources available to the Authority, will inevitably require significant change to the Authority's senior management structures. Currently, members of the Director's board are not working within a structure that makes the most of their skills or adds value to the corporate operation of the authority. The current state of the Authority's senior officer structure represents a major risk to the recovery of the Authority.

- f. 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.

As above.

- g. All functions pertaining to the development, oversight and operation of an enhanced performance management framework for officers holding senior positions.

As above.

39. 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.

40. The exercise of these functions should enable the Commissioners to make sure that the Authority has made sufficient improvement within the period of intervention to be able to comply with its Best Value Duty on a sustainable basis.

Directions to the Authority

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

- a. To 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:
 - i. 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 multiyear savings plan.
 - ii. An action plan to ensure the Authority's capital, investment and treasury management strategies are sustainable and affordable.
 - iii. A strict debt reduction plan, and an updated minimum revenue provision (MRP) policy in line with all relevant rules and guidelines.
 - iv. An action plan to ensure the Authority is complying with all relevant rules and guidelines relating to the financial management of the Authority.
 - v. A suitable scheme of delegations for financial decision-making.
 - vi. An action plan to reconfigure the Authority's services commensurate with the Authority's available financial resources.
 - vii. 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.
 - viii. 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.

- ix. Arrangements to secure the proper resourcing and functioning of the system of internal controls, including risk management and internal audit.
- b. To report to the Commissioners on the delivery of the Improvement and Recovery Plan at 6 monthly intervals, or at such intervals as Commissioner may direct.
- c. 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.
- d. 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 Authority's Improvement and Recovery Plan.
- e. 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.
- f. 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.
- g. To pay the Commissioner reasonable expenses, and such fees as the Secretary of State determines are to be paid to them.
- h. To provide the Commissioners with such assistance and information, including any views of the Authority on any matter, as the Commissioners may reasonably request.
- i. To co-operate with the Secretary of State for Levelling Up, Housing and Communities in relation to implementing the terms of these Directions.

Duration of the intervention

42. The Secretary of State considers that any aspect of the Directions should only be in force long enough to achieve the stated objectives of the intervention. The

Directions will remain in force until 1 September 2025 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.

43. The Secretary of State has asked for six monthly reports from the Commissioners, or at such other times as he might agree with the Commissioner, 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 was received on 5 December 2022, and we therefore expect the second report in June 2023.
44. Where the Authority and Commissioners agree that it would be appropriate for the exercise of a function to be returned to the Authority, the 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 16 March 2023. The Secretary of State has not ruled out the possibility that further functions might be brought under the control of the Commissioners.