

## **DIRECTIONS UNDER SECTION 15(5) AND (6) OF THE LOCAL GOVERNMENT ACT 1999**

1. The former Secretary of State for Levelling Up, Housing and Communities announced on 2 September 2022 that, after due consideration, he was satisfied that Thurrock Council (“the Authority”) was failing to comply with the requirements of Part I of the Local Government Act 1999 (“the 1999 Act”), and that he was therefore using his powers under the 1999 Act to intervene at the Authority. Given the urgency of the matter, he considered it necessary and expedient, in accordance with his powers under section 15(5) and (6) of the 1999 Act to immediately direct the Authority and its appointed Commissioners to undertake actions to secure compliance with Part I of the 1999 Act. Those Directions were issued on 2 September 2022 and have been in force since that date.
2. The Secretary of State for Levelling Up, Housing and Communities (“the Secretary of State”) has reviewed the progress of the intervention so far and has considered the following:
  - i. The Authority’s exceptional level of external borrowing and approach to managing this borrowing and the Authority’s finances more widely.
  - ii. The feedback report of the Local Government Association (LGA) Corporate Peer Challenge of Thurrock Council (10 to 13 January 2022).
  - iii. Discussions between ministers and officials of the Department for Levelling Up, Housing and Communities and members and officers of Thurrock Council.
  - iv. The first report of the Commissioner received on 5 December 2022 and published on 24 January 2023.
  - v. An update letter from the Best Value Inspection team received on 13 December 2022 and published on 24 January 2023, containing key findings and recommendations from the Inspection.
  - vi. The representation made on 7 February 2023 by the Authority on the Commissioner’s first report, the Best Value Inspection update letter and the proposed expansion to the Directions.
  - vii. A representation from Cllr Steve Liddiard received on 25 January 2023.
  - viii. A representation from the Thames Crossing Action Group, received on 31 January 2023.
  - ix. A representation from the Voluntary & Community sector in Thurrock, received 3 February 2023.
  - x. A representation from Thurrock Lifestyle Solutions, received 7 February 2023.
  - xi. Representations from 18 members of the public received during the representation period (24 January to 7 February 2023) and one received on 8 February 2023.
  - xii. The Best Value Inspection report from Essex County Council, received on 17 February 2023.
3. The Secretary of State is satisfied that the Authority is still failing to comply with the requirements of Part I of the 1999 Act. He therefore considers it necessary to issue an updated and expanded set of Directions to the Authority and Commissioners. This expanded set of Directions will provide Commissioners with further powers, and instruct the Authority to take further actions, beyond those set out in the Directions issued on 2 September 2022. These Directions herein therefore supersede and override those issued on 2 September 2022.
4. The Secretary of State, having considered the representations made by the Authority as required by section 15(9) of the 1999 Act, and those items listed above, considers it necessary and expedient, in accordance with his powers under section 15(5) and (6) of

the 1999 Act, to direct the Authority as set out below in order to secure the Authority's compliance with the requirements of Part I of the 1999 Act, in particular:

- To address systemic weaknesses in the Authority's governance function, to secure improvements in transparency and formal decision making.
- To deliver financial sustainability by closing any short- or long-term budget gaps and reducing the Authority's exceptionally high level of external borrowing.
- To ensure compliance with all relevant rules and guidelines relating to the financial management of the Authority.
- To implement an improved officer structure and performance management framework for the Authority which provides sufficient resources to deliver the Authority's functions in an effective way.
- To agree as necessary any changes needed to the Authority's operating model and redesign of council services to achieve value for money and financial sustainability.
- To ensure that a strategic and systematic approach to risk management, with appropriate scrutiny and governance of the decision-making processes and procedures, is adopted and embedded across the Authority.
- To address the culture of poor financial management and governance of the Authority's commercial portfolio.

5. Pursuant to his powers under section 15(5) and (6) of the 1999 Act, the Secretary of State directs:

- i. the Authority to take the actions set out in Annex A to these Directions;
- ii. that the functions of the Authority specified in Annex B to these Directions shall be exercised from the date of these Directions by the Commissioners acting jointly or severally; the Commissioners being persons nominated by the Secretary of State for the purposes of these Directions as long as those nominations are in force; and
- iii. that, from the date of these Directions, the Authority shall comply with any instructions of the Commissioners in relation to the exercise of the functions specified in Annex B, and shall provide such information and assistance as the Commissioners may require for the purpose of exercising the functions specified in Annex B.

6. These Directions shall remain in force until 1 September 2025 unless the Secretary of State considers it appropriate to amend or revoke them at an earlier date.

Signed on behalf of the Secretary of State for Levelling Up, Housing and Communities.

Maxwell Soule

Senior Civil Servant in the Department for Levelling Up, Housing and Communities

Date: 16 March 2023

**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 Commissioners, 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 Improvement and 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.
  - 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.
2. To report to the Commissioners on the delivery of the Improvement and Recovery Plan at 6 monthly intervals, or at such intervals as Commissioners may direct.
3. 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, poor financial 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.

4. 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.
5. 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.
6. 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 under these Directions.
7. To pay the Commissioners reasonable expenses, and such fees as the Secretary of State determines are to be paid to them.
8. To provide the Commissioners with such assistance and information, including any views of the Authority on any matter, as the Commissioners may reasonably request.
9. To co-operate with the Secretary of State for Levelling Up, Housing and Communities in relation to implementing the terms of these Directions.

## **FUNCTIONS OF THE AUTHORITY TO BE EXERCISED BY THE COMMISSIONERS**

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.

“Statutory Officer” means any of: the Head of Paid Service designated under section 4(1) of the Local Government and Housing Act 1989; the Chief Financial Officer designated as having responsibility for the administration of the Authority’s financial affairs under section 151 of the Local Government Act 1972; the Monitoring Officer designated under section 5(1) of the Local Government and Housing Act 1989; and the Scrutiny Officer designated under section 9FB of the Local Government Act 2000 (and the expressions “statutory officer” and “statutory office” are to be construed accordingly).

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

The Commissioners shall exercise:

1. All functions associated with the governance, scrutiny and transparency of strategic decision making by the Authority.
2. All functions associated with the financial governance and scrutiny of strategic financial decision making by the Authority.
3. 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; and

- g. ensuring compliance with all relevant rules and guidelines relating to the financial management of the Authority.
4. All functions associated with the Authority's operating model and redesign of 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; and
    - 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 at the Authority, 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.