

BIRMINGHAM CITY 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 Birmingham City 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 5 October 2023. 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 Directions

3. The Authority has been beset by systemic failings over several years including weak governance, poor culture, a challenging relationship with trade unions and ineffective service delivery. These failings have been exacerbated by instability and churn at senior officer level. The Authority was in non-statutory intervention from 2015-2019 with an Advisory Panel, following the Kerslake report into the Trojan Horse affair. This found failings in governance, transparency, and financial management. When stepping down the Advisory Panel noted that, whilst progress had been made, significant challenges remained. In the intervening time, the Authority has used different models to support improvement work.
4. On governance, whilst the Authority has commissioned an independent review which is due to report in the next few weeks, the seriousness and scale of the Equal Pay liabilities and failed implementation of the Oracle financial ledger system (estimated to be up to £100 million) highlight critical weaknesses in the Authority’s broader internal control environment. There are also media reports of an internal report by the Labour Party that found a ‘dysfunctional’ climate amongst members, with associated implications for good governance and effective scrutiny.
5. On financial governance, concerns have been present since the original intervention in 2015 and have been recently precipitated by the Authority’s handling of the issues relating to Equal Pay and Oracle. The 5 September 2023 Section 114 notice was issued due to several factors, including correspondence from the external auditors Grant Thornton raising concerns around the provisions for Equal Pay in prior year accounts. Their assessment was that the size of the revised estimated Equal Pay (which the Authority currently estimates to be up to £760 million) means that the 2020/21 and 2021/22 accounts were materially misstated, and that the Authority did not have sufficient reserves to mitigate the cost of the liability due for these years. In addition to the acute financial position stemming from Equal Pay, the Authority is dealing with other difficulties. These include the costs of resolving the Oracle implementation,

estimated at £100 million, and the Authority's lack of progress in delivering planned savings.

6. On culture and leadership, the Authority has experienced extremely high levels of churn of senior staff in recent years. In the eight years prior to 2022, and following the 2014 Kerslake report, there had been nine Chief Executives and nine Directors of Children's Services. The Kerslake report also highlighted a culture of sweeping problems under the carpet or blaming them on others, rather than tackling them head-on.
7. On services, the Authority has historic issues with its waste services as shown in the non-statutory intervention and recent cases considered by the Local Government and Social Care Ombudsman; a Department for Education Special Educational Needs and Disabilities intervention is in place; and the Local Government Social Care Ombudsman and Regulator of Social Housing have recently raised significant concerns with the Authority about service delivery. The ongoing Equal Pay dispute is also causing continued friction with trade unions and there are risks of industrial action and impacts to service delivery.
8. On capacity or capability to improve, the Kerslake report found that successive administrations had failed the City. It warned that the Authority lacked a clear vision, had failed to tackle deep-rooted problems such as low skills and was not doing enough to provide consistently good quality services. These problems have endured as highlighted by the Equal Pay liability issue and failed implementation of the Oracle financial ledger system.
9. In April this year, Lee Rowley MP, Parliamentary Under Secretary of State for Local Government and Building Safety, wrote to the then Leader of the Authority requesting an independent governance review following concerns raised in reports by the Department for Education's Commissioner for Special Educational Needs at the Authority, the Local Government and Social Care Ombudsman, and the Housing Ombudsman. The scope of the review was then extended, with input from the Department, to include two further serious weaknesses in the Authority's broader internal control environment – the flawed implementation of a new financial ledger system, Oracle, and the Authority's handling of its significant Equal Pay liabilities. Concerns regarding Equal Pay and the Authority's response to these challenges have continued to grow over the Summer. In August, the Parliamentary Under Secretary of State for Local Government and Building Safety wrote to the Leader seeking assurances about whether the Authority were compliant with its best value duty.
10. On 1 September the Council Business Management Committee met to discuss the process for Equal Pay resolution and chose the option recommended by officers to minimise trade union involvement in the resolution process. However, under the agreed approach, trade unions were required to sign an addendum agreeing to minimise their role and accept the timescale for resolution. This should have happened by Monday 11 September, however the unions rejected this approach and sought renegotiation.
11. On Tuesday 5 September the Section 151 Officer issued a Section 114 notice. As laid out in the 151 officer's 114 report, the notice was issued due to several

factors, including correspondence from the external auditors Grant Thornton raising concerns around the provisions for Equal Pay in prior year accounts. Their assessment was that the size of the revised estimated Equal Pay (which the Authority estimates at up to £760 million) means that the 2020/21 and 2021/22 accounts were materially misstated, and that the Authority did not have sufficient reserves to mitigate the cost of the liability due for these years.

12. The stated purpose of this Section 114 report was to ensure that Members of the Authority understand the severity of the financial implications of the Equal Pay claims. The report was considered at an extraordinary meeting of Full Council on 25 September. At this meeting the Authority agreed to accept the Section 114 notice, agreed to continue spending control measures under the direction of the Section 151 Officer until a balanced budget for 2024/25 has been approved, and agreed to endorse the financial recovery plan set out by the Chief Executive.
13. In light of the above, and discussions between the Department and the Authority, the Department is particularly concerned about the ongoing issues facing the Authority and the scale of the financial risks. The Authority has failed to provide adequate assurance to Ministers and the Department on its actions to address the issues, considering the scale and pace of the response required. The Authority's situation is severe, and the improvement and recovery journey is likely to take a number of years.
14. A letter to the Authority of 19 September included a detailed description of the Directions that the Secretary of State proposed to make under sections 15 and 16 of the 1999 Act. The Directions set out the functions that the Commissioners will exercise, give responsibilities to Commissioners and require the Authority to take certain actions. The Secretary of State is also considering exercising his powers to direct a local inquiry, and may then want to consider the intervention package as a whole in light of that local inquiry.
15. This Memorandum explains the content of the Directions as finalised in the light of the representations received from the Authority, GMB Union and members of the public, together with the Directions and related material, and is published at www.gov.uk.

Representations

16. 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 proposed Directions. We received four representations on the proposed intervention package, one from the Authority, one from the GMB Union and two from members of the public.
17. A joint representation from the Leader, Councillor John Cotton, and Chief Executive, Deborah Cadman OBE, of the Authority acknowledged the analysis of the challenges which led to the 'minded to' intervention package and welcomed the move to appoint Max Caller CBE as Lead Commissioner, noting his previous experience as a non-executive director at the Authority. The representation highlighted their desire for further clarity on the format, scope and timelines of the local inquiry, noting the Authority announced in June this

year its intention to hold a judge led inquiry into the causes of its Equal Pay liabilities. The Authority has also called for discussions regarding links between the statutory intervention being proposed under the Local Government Act 1999, and other statutory interventions, including the Special Education Needs and Disability (SEND) Commissioner and the intense dialogue with the Regulator for Social Housing (RSH). The representation also requests that the diverse nature of Birmingham is a factor in determining other commissioner appointments so as to give confidence to local communities and key partners alike.

18. The representation from the GMB Union requests that Commissioners are directed to engage with settlement talks with the GMB regarding Equal Pay.
19. One representation from a member of the public raised their concerns that Commissioners will only be empowered to provide strategic support and that operational change is necessary in relation to Oracle and the waste service. They were also complimentary of the Chief Executive. Another representation from a member of the public raised concerns about the costs of Commissioners.

The intervention package

20. Having carefully considered the evidence, together with the representations received, the Secretary of State is confident that there is a sufficient basis on which to found his considerations and, accordingly, is satisfied that the Authority is failing to comply with its best value duty.
21. The Secretary of State 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 to secure the Authority's future and sustainable compliance with its best value duty.
22. The intervention will consist of the appointment of Commissioners to exercise specific functions of the Authority, if necessary, alongside Directions to the Authority. The Secretary of State considers that this package will address the failings identified above and the representation received from the Authority.

Commissioners

23. The evidence presents a strong case for intervention to deliver the improvements required. Therefore, the Secretary of State is nominating Commissioners for five years to ensure that the Authority acts immediately to meet its duty under Part I of the 1999 Act. The Secretary of State has nominated individuals with significant experience and expertise in local authority governance, finance, HR/ Equal Pay, housing, ICT and commercial projects given the failings of the Authority described above.
24. The Secretary of State has nominated the following people as Commissioners:
 - Max Caller CBE. Max has more than 50 years' experience in local government and is the former Chief Executive of the London Borough of Hackney and London Borough of Barnet, as well as the former Chair of the Local Government Boundary Commission for England. He has experience in multiple interventions and Best Value roles, including as Commissioner in Slough and Tower Hamlets and Best Value Inspector

in Northamptonshire and Liverpool. The Secretary of State has nominated Max as Lead Commissioner to bring together the team, set the direction and co-ordinate work so as to exercise the Directions.

- John Coughlan CBE. John has significant expertise in local authority governance, is the former Chief Executive of Hampshire County Council and has extensive experience of local government interventions especially in children's services. John has been asked to focus on broad improvement and governance, by supporting cultural change and transformation and driving forward work on the long-term sustainability of the Authority. His role will operate alongside his role as Commissioner for Special Educational Needs and Disability services in Birmingham, for which he reports to the Secretary of State for Education.
- Chris Tambini. Chris is the former Director of Corporate Resources at Leicestershire County Council, where he has held other roles including Section 151 Officer and Head of Strategic Finance. He was the President of the Society of County Treasurers and also worked at city unitary councils. Chris will focus on the financial position and recovery of the Authority. This will include supporting the Authority's work to develop and implement a plan for managing the significant Equal Pay liabilities that led to the Section 114 notices, and overseeing the steps needed to manage other budget pressures for 2023/24 and beyond, and to return the Authority to a position of long-term financial sustainability. It will also include considering what action may be necessary to ensure the Authority has appropriate and effective processes, governance and capacity in relation to its overall financial management.
- Pam Parkes FCIPD. Pam is the current Executive Director for People and Transformation at Essex County Council, is a FCIPD qualified senior practitioner and was part of the Best Value Inspection Team in Thurrock Council. Pam will focus on supporting Birmingham to improve its Human Resource and Organisational Design capacity and to find solutions to the Equal Pay issue, including ensuring that appropriate steps are being taken at the required pace to address and manage its Equal Pay liabilities, in a way that is both sustainable and represents value for money.
- Jackie Belton. Jackie is the Chief Executive of the London Borough of Bexley, the former Executive Director of Operations at the London Borough of Newham where she was responsible for Housing, Planning, Regeneration and Environment, and was Assistant Director of Housing Strategy at the London Borough of Camden. Jackie will focus on supporting the Authority's housing function.
- Myron Hrycyk. Myron is the Cabinet Office's Crown Representative for Oracle, IBM and Microsoft. Myron has held prior senior executive roles as Group Chief Information Officer and Chief Procurement Officer at Severn Trent Water and as Chief Information Officer at Yusen Logistics. Myron has worked in a range of sectors including Financial Services, Technology, Utilities and Logistics. Myron will focus on supporting the

Authority to rectify its Oracle issues, improve IT and provide commercial insight.

25. The Secretary of State has directed the Commissioners to exercise 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 within the first six months, and thereafter at six-month intervals – or at any other time deemed necessary by the Secretary of State.
26. Commissioners are nominated for the period from 5 October 2023 to 4 October 2028 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.
27. 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.¹ 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 £1,200 a day for the Lead Commissioner and £1,100 for other Commissioners.

Powers to be exercised by the Commissioners

28. The evidence set out above highlights failures in governance, financial governance, decision making, culture and leadership, services and capacity and capability to improve.
29. For these reasons, the Directions enable the Commissioners to exercise the following functions:
 - a. All functions associated with the governance and scrutiny of strategic decision making by the Authority.
 - b. All functions associated with the financial governance and scrutiny of strategic financial decision making by the Authority.
 - c. 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:
 - 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

¹ Fees for Pam Parkes will be paid to her employer, Essex County Council.

(MTFS) for the Authority, strictly limiting future borrowing and capital spending;

- iii. scrutiny of all in-year amendments to annual budgets;
 - iv. the power to propose amendments to 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; including on any requirement for an appropriate debt reduction plan or for any revisions to the Authority's 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.
- d. 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 –
 - 1. 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
 - 2. Dismissing any person who has been designated as a statutory officer from his or her position as an officer of the Authority.
- e. 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.
- f. All functions associated with the Authority's operating model and redesign of services to achieve value for money and financial sustainability.
- g. All functions pertaining to the development, oversight and operation of an enhanced performance management framework for officers holding senior positions.

30. 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 to ensure that the Authority takes the necessary steps to achieve the best possible outcome for Birmingham residents and the public purse. The Commissioners

should not hesitate to exercise their functions if they determine it to be necessary to do so.

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

Political Advisors

32. In addition to the Commissioner team as set out above, the Secretary of State has appointed two political advisors to support the political leadership of the Authority as they take the difficult decisions that will be required:
 - Lord John Hutton. John held roles as Defence Secretary and Business Secretary under the previous Labour Government. In 2010 he led a major review of public sector pension provision, and more recently he was appointed Chair of Make UK. He is currently the Prime Minister's Trade Envoy to Turkey and a current member of the House of Lords.
 - John Biggs. John is the former Executive Mayor of the London Borough of Tower Hamlets and held prior roles there as Leader of the Labour Group and Council Leader. He has also served in the London Assembly. He has now retired from elected politics.
33. The Secretary of State has directed the Authority to meet the fees of the political advisors, at £1,100 a day.

Directions to the Authority

34. To achieve and facilitate the objectives of the intervention, the Secretary of State has also directed the Authority to take the following actions:
 - a. Prepare and agree an Improvement Plan, which considers actions to secure continuous improvement and restore public trust across all the Authority's functions with a particular focus on housing, waste, finance, HR, governance and corporate services; to the satisfaction of the Commissioners (which may include or draw upon improvement or action plans prepared before the date of these Directions), within six months, with resource allocated accordingly.
 - b. In the first 12 months to review the provision and operation of corporate services, (including HR, legal, internal audit, risk management, IT and systems, procurement and the PMO), to enable and support the effective delivery of front-line services and the smooth running of the Authority, and to implement any required changes thereafter to the satisfaction of Commissioners.
 - c. To secure as soon as practicable that all the Authority's functions are exercised in conformity with the best value duty thereby delivering improvements in services and outcomes for the people of Birmingham.
 - d. To report to the Commissioners on the delivery of the Improvement Plan at six monthly intervals, or at such intervals as Commissioners may direct.
 - e. 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.

- f. 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.
- g. 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.
- h. To pay the Commissioners reasonable expenses, and such fees as the Secretary of State determines are to be paid to them. 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

35. 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 4 October 2028 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.
36. The Secretary of State has asked for an initial report from the Commissioners within the first six months, and thereafter at six-monthly intervals. This allows ongoing review of whether it would be appropriate to change any element of the intervention, to expand the functions of the Commissioners or for any function exercisable by the Commissioners to be returned to the Authority.
37. 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 5 October 2023. The Secretary of State has not ruled out the possibility that further functions might be brought under the control of the Commissioners.