

## **LIVERPOOL 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 Liverpool 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 7 March 2024. 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.
3. The 7 March 2024 Directions replace the Directions issued on 10 June 2021 and 8 November 2022, which are revoked. This Explanatory Memorandum also replaces the Explanatory Memoranda for the 10 June 2021 and 8 November 2022 Directions.

### **The context for the Directions**

4. From December 2020 to March 2021, Max Caller CBE undertook an inspection under section 10 of the 1999 Act to assess the compliance of the Authority with its best value duty (as set out in Part I of the 1999 Act). The best value inspection found multiple failures across the property management, regeneration and highways functions of the Authority and their associated governance, and concluded that the Authority had failed to comply with its duty under Part I of the 1999 Act over a number of years.
5. The then Secretary of State commenced a statutory intervention at the Authority on 10 June 2021, and issued directions to oversee a ‘reset’ of the Authority involving a council restructure, electoral ward boundary review, and constitutional change; and a remit to look across-council performance and finances. Four Commissioners were appointed, with responsibility for functions relating to regeneration, highways and property and their associated governance. They provided regular assurance reports to the Secretary of State on the Authority’s progress as required by the Directions issued on 10 June 2021. The Secretary of State has published four reports from the Commissioners (the first report on 25 November 2021; the second report on 19 August 2022; the third report on 8 March 2023; and the fourth report on 13 December 2023).
6. In November 2022, following the Commissioners’ second report which pointed to systematic whole-council weakness and further best value failure, the intervention was expanded through the appointment of an additional Commissioner (on Finance), and providing Commissioners with further responsibilities for functions relating to governance, recruitment and finance. The Secretary of State also announced at that time the creation of the Liverpool Strategic Futures Advisory Panel to craft a local vision for Liverpool’s future beyond

intervention, with a plan for driving growth in skills, jobs and opportunities, and to bolster political support and accountability for turning the Authority around.

7. The Commissioners' fourth report to the Secretary of State, published on 13 December 2023, outlined significant progress by the Authority. It stated that Commissioners have confidence that the new leadership team are now well placed to deal with challenges, but that there needed to be more time to observe the impact of this new leadership on establishing and maintaining a sustained positive improvement trajectory. It recommended that the scope of the intervention be reduced by returning to the Authority early some functions that the Commissioners held responsibility for (tiers 1-3 appointments, highways and finance) supported by continued oversight of these functions by Commissioners. The report outlined some areas where the Commissioners wanted to see more progress, and areas that the Authority should focus on. It also reported that Commissioners were of the view that their March 2024 report would be likely to recommend that a reduced form of statutory intervention would be likely to be post June 2024, subject to the Authority continuing to make progress.
8. On 4 December 2023, Commissioners wrote to the Authority with concerns about Property Services and instructed the Authority to complete certain actions, including compiling an accurate record of the Authority's property, land, and investment assets by June 2024; it recommended permanent recruitment of a new Director of Property and other senior roles.
9. Having considered the findings of the fourth report and the letter regarding Property Services, on 13 December 2023, the Secretary of State published the report and the government response, including a letter from senior officials to the Authority ("the fourth minded-to letter"), which proposed a change in the scope of the intervention.
10. The fourth minded to letter included a detailed description of the Directions that the Secretary of State proposed to make under section 15 of the 1999 Act, alongside revoking the 10 June 2021 and 8 November 2022 Directions. It explained that the new proposed Directions would retain previous outstanding Directions and make some Directions on specific issues to provide clarity for the Council. These proposed changes would to enable focus on the improvements across the Authority that are needed to secure the Authority's compliance with its best value duty. The proposed new Directions would have the result of returning some functions currently held by the Commissioners to the Authority, with continued oversight from Commissioners. Specifically, it proposed to:
  - return to the Authority the functions held by Commissioners associated with the Section 151 Finance function and Highways (from end March 2024), and appointments at Tiers 1-3 (when Directions are made);
  - enable Commissioners to retain oversight of improvements in financial processes through additional directions to the Authority, and in highways and transport through the corporate Directions;
  - for Commissioners to retain functions over appointments for the directors of property, Human Resources and Organisational Development and statutory officers, and performance appraisals of the Chief Executive and direct reports to the Chief Executive;
  - retain all other Commissioner functions;

- issue new or consolidate previous Directions to the Authority to enable it to continue to progress improvement work in line with issues outlined in the Commissioners' fourth report that need to be addressed and the progress needed on "Commissioner indicators" - including producing vital core strategies, strengthening the capital programme, and implementing an embedded cultural change programme; on performance management, Freedom of Information performance, risk management, and property;
- remove Directions on the Authority that Commissioners confirmed have been met; and
- revoke the Directions of 10 June 2021 and 8 November 2022 and retain outstanding actions in the new Directions issued.

## **Representations**

11. Under section 15(9) of the 1999 Act, the government invited the Authority and any other interested parties to make representations on the report and the proposed changes to the intervention package, including the new Directions, by 2 January 2024. We received two representations: one from the Authority and one from a member of the public.
12. The Authority's representation, from the Leader, Liam Robinson, and Chief Executive, Andrew Lewis, welcomed the proposal to reduce the scope of the intervention and the early return of certain functions to the Authority, but raised the issue that some proposed Directions were not direct recommendations in the Commissioners' report. The Authority's representation highlighted progress made since the report was written and said the Authority considers the statutory intervention should end as scheduled on 9 June 2024. The one other representation was from a resident who did not agree that the Commissioners' functions on highways and transport should be returned to the Authority.

## **The intervention package**

13. Having considered carefully the Commissioners' fourth report, the letter from the Commissioners to the Authority regarding Property Services, and the representations received on the draft Directions, the Secretary of State notes the improvements made by the Authority but considers it is failing to comply with its best value duty. He is revoking the Directions issued on 10 June 2021 and 8 November 2022, and, as he considers it necessary and expedient, in accordance with his powers under section 15(5) and (6) of the 1999 Act, he is issuing new Directions on the Authority.
14. The Secretary of State considers that the new Directions constitute a reduced intervention package. Certain functions, previously exercised by the Commissioners (on S151 Finance, highways and transport and appointments of tiers 1-3), will be for the Authority to exercise, with oversight from Commissioners. Some Directions included in the 10 June 2021 and 8 November 2022 Directions have been met and are not included in the 2024 Directions. The 2024 Directions focus on certain issues where improvements across the Authority are needed 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 10 of this Memorandum.

15. The Secretary of State considers that the new phase for the intervention, specified in the Directions, demonstrates confidence in the direction of travel and the Authority's recent progress, supports a planned transition from intervention, and enables the Authority to focus on the improvements which remain necessary as evidenced in the Commissioners' latest report. The Secretary of State considers that each individual element of the intervention that he has implemented is individually justified.

## **Commissioners**

16. The intervention package that the Secretary of State has put in place continues to centre on a team of Commissioners to ensure that the Authority meets its duty under Part I of the 1999 Act in the short term.
17. The Secretary of State has made Directions in relation to the Commissioners, including providing for them to perform certain functions, if necessary (although these are fewer than previously), and to have a role in overseeing other functions or actions which the Authority is to perform.
18. The Secretary of State is also proposing to reduce the size of the Commissioner team from 18 March 2024 from five Commissions to four, recognising the progress made by the Authority, and supporting a managed transition to the end of any intervention. The Secretary of State has accepted the resignation as a Commissioner of Joanna Killian, with effect from 18 March due to her appointment as the Chief Executive to the Local Government Association. When Joanna's term as Commissioner ends, the Secretary of State does not intend to make any further changes to the commissioner team he nominated previously. The Commissioners, who have a proven record in adherence to the rule of law, leadership and delivering cultural change, together with specific expertise relevant to their functions, are:
- **Mike Cunningham QPM CBE – Lead Commissioner** – Has been involved in policing for more than 30 years, most recently as Chief Executive of the College of Policing from 2018 – 2020, the standards setting body for policing in England and Wales. Formerly one of Her Majesty's Inspectors of Constabulary, inspecting forces in the north of England and Northern Ireland, and the national lead inspector for the development and implementation of inspections into police efficiency, legitimacy and leadership, and Chief Constable of Staffordshire Police.
  - **Joanna Killian – Local Government Improvement Commissioner** (until 17 March 2024) – Has more than 30 years of experience in the public sector delivering transformational change and service improvement. Since March 2018 she has been Chief Executive of Surrey County Council. Prior to this Joanna worked at KPMG and was also Chief Executive of Essex County Council for 9 years.
  - **Neil Gibson – Highways Commissioner** – Former Executive Director of Transport Economy and Environment for Buckinghamshire County Council, where he also acted for a time as Interim Chief Executive. A Fellow of the Chartered Institute of Highways and Transportation and former President of the Association of Directors of Environment, Economy, Planning and Transport.

- **Deborah McLaughlin – Regeneration Commissioner** – Extensive experience working in Regeneration and Housing for over 30 years across public and private sectors, including as Director of Housing at Manchester City Council, regional director for the North West at Homes England and Director of Capita’s real estate business. Also worked at the Audit Commission as a Best Value Inspector and auditor.
  - **Stephen Hughes – Finance Commissioner** – is a highly experienced local government leader, having served as Chief Executive of Birmingham City Council for nearly 10 years, as well as previously holding an executive role at Brent Council. An accountant by profession, Stephen is currently a non-executive director for HS2 Ltd, Housing & Care 21 and Big Band Limited, He holds a degree in Economics from Cambridge.
19. 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 continue to report to the Secretary of State on the progress of the intervention, in March 2024.
  20. In support of previous Directions, Commissioners were nominated for the period from 10 June 2021 (Stephen Hughes was appointed on 8 November 2022) to 9 June 2024 or such earlier or later time as the Secretary of State determines. As explained above, Joanna Killian will be leaving on 18 March 2024, The Secretary of State may, if he considers it appropriate, nominate further Commissioners, although he does not currently intend to do so.
  21. The Directions give Commissioners specific executive powers where they can act in place of the Authority if they feel it is appropriate. In recognition of progress made, these Directions give fewer functions to the Commissioners than the previous Directions did.
  22. Commissioners are appointed by the Secretary of State to secure continuous improvement in accordance with the Directions. It is for the Commissioners to decide how they discharge their duties in working with the Authority. The expectation is that the Council will continue to make decisions, with Commissioners exercising their powers when, in their view, sound judgement has not been exercised, processes have failed and/or members have sought to absolve themselves of the responsibilities for which they were elected. If Commissioners do exercise their powers and make decisions in place of the Authority, this will be done transparently.
  23. The Secretary of State expects the Authority to adhere to the Directions issued with its utmost ability and for the Authority to fully cooperate with Commissioners in order to achieve an effective working relationship.
  24. 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 £1,200 a day for the Lead Commissioner and £1,100 for other Commissioners.

### **Functions to be exercised by the Commissioners**

25. The Directions enable the Commissioners to exercise the following functions:
  - a. Until 31 March 2024, all executive functions associated with highways.
  - b. All executive functions associated with regeneration and property management at the Authority.

- c. All non-executive functions in relation to the appointment, organisation and performance of persons to positions the holders of which are to be designated as statutory officers, and the designation of those persons as statutory officers:
  - 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.
- d. Functions in relation to performance of staff, specifically: The right to take part in the performance appraisal of the Chief Executive and any direct report to the Chief Executive (tier two).
- e. All functions relating to the appointment, suspension, and dismissal of director of property, Human Resources, Organisational Development or their equivalents.
- f. Until 31 March 2024, 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) 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; and
  - ii) providing advice and challenge to the Authority in the setting of annual budget and a robust medium term financial strategy (MTFS) for the Authority
- g. All functions associated with the governance and scrutiny of strategic decision making by the Authority.

### **Directions to the Authority**

26. To achieve and facilitate the objectives of the intervention, the Secretary of State has also directed the Authority to take the following actions:
- 1. To continue to progress improvement work in line with the Commissioner indicators across the Authority, and as a minimum:
    - a) Work with stakeholders to produce vital core strategies including a new city plan, capital, housing, and economic strategies and also build the operational regeneration capacity in the City to deliver the outcomes articulated in these strategies.
    - b) Continue to strengthen the capital programme, financial resilience, management and accountability.
    - c) From 31 March 2024, allow Commissioners to provide advice and challenge to the Authority on strategic decisions related to its Finance function; including advice and challenge in relation to setting the annual budget and medium term financial strategy.

- d) Progress remaining finance improvement actions, specifically: embedding a Business Partnering Model; to be in the final stages of implementing a new Target Operating Model for procurement; develop a robust plan for finance system change; and significantly improve income collection.
  - e) Complete the review of the roles and case for continuing with each subsidiary company of the Authority. 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.
  - f) Continue to establish and implement a cultural change programme which embeds a customer focus, performance management culture, systems and reporting across the organisation.
  - g) Continue to take steps to rebuild trust with residents in particular improve: Freedom of Information performance, report writing and systems to record delegated decisions.
  - h) Complete a review of the strategic risk management and implement a strengthened mechanism based on its recommendations.
  - i) Significantly progress the implementation of the corporate landlord model, commence the stock condition surveys to better understand the asset base, develop comprehensive asset management plans, and produced a revised structure for the property directorate.
2. To report to the Commissioners on the delivery of the Improvement work at regular intervals, of which the frequency will be determined by Commissioners.
  3. To undertake any action that Commissioners may reasonably require to avoid so far as practicable incidents of poor governance or financial mismanagement that would, in the Commissioners' reasonable opinion, give rise to the risk of the Authority failing to comply with its 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 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.
  6. To pay the Commissioners' 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

### **Revocation of previous Directions**

27. The Directions issued on 10 June 2021 and 8 November 2022 are revoked, together with their Explanatory Memorandums. All appropriate actions and functions set out in Annex A and

Annex B from the 10 June 2021 and 8 November 2022 Directions have been included within the accompanying 2024 Directions.

### **Duration of intervention**

28. The Secretary of State considers that any aspect of the Directions should only be in place long enough to achieve the stated objectives of the intervention. The Directions will remain in force until 9 June 2024 unless the Secretary of State considers it appropriate to amend or revoke them at an earlier date.
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 the Directions issued on 7 March 2024. The Secretary of State has not ruled out the possibility that further functions might be brought under the control of the Commissioners.
30. As the Minister for Local Government said on 13 December 2023, when publishing the Commissioners' fourth report, the Commissioners currently consider a form of statutory intervention is likely to be recommended beyond the current end date of June 2024. The next report from Commissioners, due in March 2024, will be vital to support Ministers' decisions on how to proceed beyond 9 June 2024.