

# **NOTTINGHAM 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 Nottingham 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 22 February 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. This Explanatory Memorandum has been updated to reflect the change to the Commissioner team announced on 11 April 2024.

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

3. Nottingham City Council has been under intervention since the Improvement and Assurance Board was first appointed in January 2021. The intervention was escalated in September 2022 by the then Secretary of State with the issuing of statutory Directions compelling the Authority to follow the advice of the Board and to increase the momentum with which the necessary improvements were to be made. While the Authority made efforts to address the recommendations issued by the Board in February 2023, the Board’s latest assessment was that the Authority was not acting at the required pace, particularly in addressing particular weaknesses in finance, transformation and the underlying culture of the organisation in respect to governance and the workforce. The Board, in January 2024, issued further recommendations in relation to the Authority’s budget setting for 2024/25. The precarious nature of the Authority’s finances, and its effect on overall transformation, together with outstanding governance issues were causes of serious concern.
4. On governance, the Board were not yet convinced that the application of the officer and member protocols under the Authority’s constitution, which was adopted in September 2021, were fully embedded and were producing timely and efficient decision-making across all service areas. While the Board were satisfied that suitable appointments had been made to the boards of existing council run companies, there were some persistent governance issues which needed to be addressed promptly, particularly in relation to Nottingham City Homes. While work remained underway to ensure risk management is understood and practised effectively at all levels of the Authority, the Board considered that embedding this across the Authority and its services must be tackled urgently.
5. On financial governance, concerns have been present since the intervention started in 2021 and the precarious nature of the Authority’s finances crystallised, with the Authority issuing a Section 114 notice due to its inability to balance the budget for 2023/24. As seen in the Section 114 report, the Authority reported a net in-year overspend of £23.4m, driven mainly by an increased demand, including around adults’ and children’s social care; non-delivery of transformation savings; increased costs, particularly in children’s social care packages and temporary accommodation and broader provider inflationary

pressures; nationally agreed pay agreement, above the 2023/24 budgetary provision; income shortfalls; and pressures relating to non-qualifying capital recharges. In their September report, the Board considered there to be an “ineffective culture of budget accountability departmentally and corporately” and cited the “position is made worse by a continuing high level of volatility and poor quality in budget forecasting especially (but not only) in respect of adults and children’s social care”. They also noted that the strategic plan and service plans were integrated but were concerned by the mismatch between these and the medium-term financial plan.

6. On culture and leadership, the Board reported there is “a much increased awareness of the need for members and officers to observe the protocol which underpins a healthy and effective member/officer interface” but that some issues remained and must be addressed. In their assessment, “the issue of achieving and embedding fundamental cultural change remains a key challenge for the Council” and “there is yet to be total commitment of all senior management to fundamental change in behaviours and ways of working”; outdated ways of working were jeopardising the Authority’s delivery of its transformation agenda. The Board were particularly also concerned about the scale and pace of improvement in performance management and stated the need to be more rigorous around removing any resistance to change.
7. On services, the Board reported that services had been restructured to incorporate ‘best value’ considerations but that they were not yet as resident focussed as they should be. The Board acknowledged that due to significant overspending in both the financial year 2022/23 and the current year, that the Authority’s transformation plan may be “severely compromised” if there wasn’t “significant improvement in resourcing, budget management and control”. Adult social care and children’s services were most negatively impacted, and this would hinder fundamental change and transformation in service provision. The Board considered the mismatch between the Authority’s strategic and service plans and the medium-term financial plan must be addressed immediately.
8. On capacity or capability to improve, the Board reported “positive progress in a number of areas of the Authority’s Improvement and Recovery” but that there were “particular weaknesses in finance, transformation, and the underlying culture of the organisation in respect of governance and the workforce”. While the Authority had “increased its attention” to all outstanding issues following the Board’s issuing of recommendations in February 2023, with officers and members having a “strong desire” to make the necessary changes, the Board concluded that progress remained “inadequate” and that “there is now no scope whatsoever for any further slippage in performance”.
9. A letter to the Authority of 13 December 2023 included a detailed description of the Directions that the Secretary of State proposed to make under section 15(5) and (6) 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.
10. This Memorandum explains the content of the Directions as finalised in light of the representations received from the Authority, the Nottingham Labour Group, Labour Councillors, local MPs, members of the public, local businesses, community leaders, UNISON and partner organisations, together with consideration of all other developments including the recommendations issued by the Improvement and Assurance Board in January 2024, and the statutory

recommendations issued to the Council by external auditors on 9 February 2024, and is published on [www.gov.uk](http://www.gov.uk) together with the Directions and related material.

## **Representations**

11. 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 70 representations on the intervention package proposed on 13 December 2023, including from the Authority, the Nottingham Labour Group, 16 Labour Councillors, local MPs, 35 from members of the public, four local businesses, two community leaders, UNISON and eight partner organisations.
12. A joint representation from the Leader, Councillor David Mellen, and Chief Executive, Mel Barrett, of the Authority highlighted improvements made at the Authority to date, including around the governance of companies, risk management, driving forward the devolution arrangements for the East Midlands County Combined Authority, and taking measures to manage their in-year position and the 2024/25 budget and Medium-Term Financial Plan beyond that. The Authority made clear their preference for retaining the Improvement and Assurance Board, but that they will cooperate with Commissioners if appointed and noted the proposed Commissioner team. The representation requested that any decision to appoint Commissioners is done so expeditiously and that a smooth transition is ensured.
13. Two representations were received from the Leader, Councillor David Mellen, on behalf of the Nottingham Labour Group. They reported good progress made at the Authority to date, namely around the governance of companies, devolution, the reopening of Nottingham Castle, the new Economic Strategy delivered for the city, and improvements in financial management. The representations highlight councillors' collaboration with officers as part of the Authority's 'one-council' approach and that they remain committed to continue with their improvement journey under the current intervention arrangements.
14. Representations from the 16 Labour Councillors were unanimously against the appointment of Commissioners and emphasised the improvements made at the Authority to date. Two representations were supportive of retaining the Improvement and Assurance Board.
15. The representation from the three local MPs sought further clarity on what Commissioners will achieve so as to understand what they will do differently to the longstanding Improvement and Assurance Board. They would prefer to see the Board continue its work under its current remit as well as additional government funding to deliver essential services.
16. The 35 representations from members of the public provided a mixed assessment of improvements made to date at the Authority. 20 representations were against the appointment of Commissioners, three representations were supportive of retaining the Improvement and Assurance Board, and another three representations requested the Authority be given more time to resolve its issues under the current arrangements. The remainder of the representations were broadly neutral on the appointment of Commissioners but critical of the Authority's previous failings in governance and financial management. One representation from a member of the public raised concerns about the costs of Commissioners.

17. One of the four representations from local businesses was against the appointment of Commissioners, while another was in favour. The remainder had negative views of the Authority but were neutral on Commissioners.
18. The two representations from community leaders emphasised the improvements already being seen at the Authority and the strong partnership working arrangements already in place.
19. The representation from UNISON wholly opposed the proposal to impose Commissioners to oversee certain functions at the Authority.
20. The eight representations from partnership organisations cited confidence in the current leadership and highlighted strong partnership working with the Authority. One representation was in favour of the appointment of Commissioners, with the remainder, bar one which was broadly neutral, being against. Those against consider the Authority to be making sufficient progress with the Improvement and Assurance Board in place.

### **The intervention package**

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

### **Commissioners**

24. The evidence presented a strong case for intervention to deliver the improvements required. Therefore, the Secretary of State appointed Commissioners for a period of two years to ensure that the Authority acted 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 and transformation given the failings of the Authority described above.
25. On 22 February 2024, the Secretary of State nominated the following people as Commissioners. It was announced that a Commissioner for transformation will be nominated in due course.
  - Tony McArdle. Tony has extensive experience in local government and is the former Chief Executive of Lincolnshire County Council, and Wellingborough Council. He has experience in multiple interventions and best value roles, including as Chair of the Croydon Improvement and Assurance Panel, Lead Commissioner at Northamptonshire, and Best Value Inspector at Thurrock. The Secretary of State has nominated Tony as Lead Commissioner to bring together the team, set the direction and coordinate work so as to exercise the Directions.
  - Margaret Lee. Margaret previously worked at Essex County Council where she held the posts of Section 151 Officer and Executive Director for

Corporate and Customer Services for 13 years. Margaret also has experience of interventions and best value roles, including as former Finance Commissioner at Slough Borough Council, Finance lead on the London Borough of Croydon Improvement and Assurance Panel, and Finance lead for the Best Value Inspection at Thurrock Council.

26. 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.
27. Commissioners are nominated for the period from 22 February 2024 to 22 February 2026 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.
28. 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.

### **Change to the Commissioner Team from 11 April 2024**

29. On 22 February 2024, the Secretary of State appointed a Lead Commissioner and a Commissioner for finance. It was announced that a Commissioner for transformation will be nominated in due course.
30. On 11 April 2024, the Secretary of State nominated the following person as Commissioner for transformation.
  - Sharon Kemp. Sharon is the Chief Executive at Rotherham Metropolitan Borough Council where she has taken the Council from intervention to an exemplar authority. She was previously the Assistant Chief Executive for People and then Strategic Director (reform) at Manchester City Council.

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

31. The evidence set out above highlights failures in governance, financial governance, decision making, culture and leadership, services and capacity and capability to improve.
32. 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, to include:
    - i. Overseeing the full range of the Authority's improvement activities, including its strategies to secure the medium to long term sustainability of the Authority, its plans to uncover all instances of poor governance, and its plans to transform front line services and the culture of the organisation.

- 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 to improve its financial stability and its ability to meet future commitments without additional borrowing, including advising upon credible budget planning;
    - ii. Scrutiny of all in-year amendments to annual budgets;
    - iii. 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;
    - iv. Providing advice and challenge to the Authority on a sustainable scheme of delegations for financial decision-making; and
    - v. Ensuring compliance with all relevant rules and guidelines relating to the financial management of the Authority.
  - d. All functions associated with the Authority's operating model and redesign of the Authority's services to achieve value for money and financial sustainability;
  - e. All functions pertaining to the development, oversight and operation of an enhanced performance management framework for officers holding senior positions;
  - f. 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 them 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.
  - g. All functions to define the officer structure for the senior positions, to determine the recruitment processes and then to recruit the relevant staff.
33. 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 Nottingham residents and the public purse. The Commissioners should not hesitate to exercise their functions if they determine it to be necessary to do so.

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

### **Revocation of previous Directions**

35. The Directions issued on 2 September 2022 were revoked on 22 February 2024. All relevant actions and functions set out in Annex A from the previous Directions have been captured within the accompanying 2024 Directions.

### **Directions to the Authority**

36. To achieve and facilitate the objectives of the intervention, the Secretary of State has also directed the Authority to take the following actions:
- a. In the first three months to agree and appraise the Nottingham City Council Improvement Plan, to the satisfaction of Commissioners (which may include or draw upon improvement or action plans prepared in response to any recommendations issued by the Nottingham Board before the date of these Directions), and as a minimum, the following components:
    - i. Actions to ensure that a strategic and systematic approach to risk management, coupled with the appropriate scrutiny and governance of decision-making processes and procedures, is adopted and embedded across the Authority.
    - ii. Actions to deliver financial stability in the Authority, including investigation to establish accuracy and suitability of current financial accounts and management controls, rapid and sustainable improvements to its scrutiny function, financial and risk management, strengthening accounting processes and reporting arrangements.
    - iii. Actions to secure continuous improvement in all services.
  - b. To report to the Secretary of State on the delivery of the Nottingham City Council Improvement Plan at six monthly intervals, or at such intervals as the Commissioners may direct and adopt any recommendations of the Commissioners with respect to the Improvement Plan and its implementation.
  - c. 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 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.
  - d. 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.
  - e. 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 to carry out their functions and responsibilities under these Directions.

- f. To pay the Commissioners' reasonable expenses, and such fees as the Secretary of State determines are to be paid to them.
- g. To provide the Commissioners with such assistance and information, including any views of the Authority on any matter, as the Commissioners may reasonably request.
- h. 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**

- 37. 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 22 February 2026 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.
- 38. 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.
- 39. 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 22 February 2024. The Secretary of State has not ruled out the possibility that further functions might be brought under the control of the Commissioners.