

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:	Council
2.	Date:	4th March 2015
3.	Title:	The Effect of Directions made in relation to Rotherham Borough Council on 26th February 2015
4.	Directorate:	Resources

5. Summary

On the 26th February 2015 the Secretary of State for Communities and Local Government and the Secretary of State for Education (“the Secretaries of State”) issued Directions under the Local Government Act 1999 and the Education Act 1996 in relation to Rotherham Borough Council. This report explains the nature of the Directions, their effect and some practical implications for both the Authority and Elected Members.

6. Recommendations

It is recommended that Council:

- i) Notes the contents and effects of the Directions dated 26th February 2015
 - ii) Resolves to fully support the appointed Commissioners in the exercise of their functions as described in the Directions dated 26th February 2015.
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7. Proposals and Details

Following the publication of the Jay report in August 2014, and the report following the inspection by Louise Casey CB (the “Inspector”), on the 4th February 2015, the Secretaries of State published a package of proposed intervention in relation to the Authority. Representations were requested from the Authority within 14 days, and were made. Subsequently the full package of intervention was confirmed by Directions made on 26 February 2015.

In the Directions the Secretaries of State have exercised their respective powers under section 15(5) and (6) of the Local Government Act 1999 and section 497A(4B) of the Education Act 1996 in relation to Rotherham Metropolitan Borough Council to secure its compliance with the best value duty and to secure that the Authority’s children’s social care functions are performed to the required standard.

This report explains the nature of the Directions, the functions of the Commissioners and the remaining functions of the Council. The representations made by the Council requested further information from the Department for Communities and Local Government (the Department) relating to the constitutional implications and practical operation of the proposed intervention. The responses to these representations are also set out below.

Further as part of that intervention package, the Secretary of State for Communities and Local Government state that he was minded to make an Order under section 86 of the Local Government Act 2000 Act providing for full council elections to be held in Rotherham in 2016 and every fourth year thereafter. The Secretary of State for Communities and Local Government considered this measure key to achieving the fresh start that the Authority was said to require. The Authority sought confirmation that the arrangements for the local elections in May 2015 should progress in the usual manner and this was confirmed by the Department.

The full Directions along with Explanatory Memorandum, and material taken into account for the purposes of making the Directions by the Secretary of State published on the government website www.gov.uk. This report is taken largely from information provided within the Explanatory Memorandum.

Commissioners

The measures that the Secretary of State for Communities and Local Government has decided to put in place is centred on a team of five Commissioners, including a Lead Commissioner, a Commissioner with a “managing director” role and the existing Children’s Social Care Commissioner.

The Secretary of State for Communities and Local Government has made a number of Directions in relation to the Commissioners, including providing for them to perform certain functions and having roles overseeing actions which the Authority is to perform. The Commissioners are accountable to the Secretary of State for Communities and Local Government in that they have been nominated by him and

can have their nomination withdrawn by him. The Commissioners will report to both Secretaries of State on the progress of the intervention.

The Secretary of State has nominated a Commissioner team with a proven record of providing leadership and securing transformational change together with a wide range of expertise in local government and children's social care service. The Commissioners nominated are:

Sir Derek Myers (Lead Commissioner)

Stella Manzie CBE (Managing Director Commissioner)

Malcolm Newsam (Children's Social Care Commissioner)

Mary Ney (Supporting Commissioner)

Julie Kenny CBE (Supporting Commissioner)

All Commissioners other than the Managing Director Commissioner are nominated for the period beginning on 26 February 2015 and ending on 31 March 2019 or such earlier time as the Secretary of State for Communities and Local Government determines. The Managing Director Commissioner is nominated for the period beginning on 26 February 2015 and ending on 25 February 2016 or such later time as the Secretary of State determines. The Secretary of State for Communities and Local Government may, if he considers it appropriate, nominate further Commissioners.

Commissioners' roles

In its representations to the Secretary of State, the Authority sought clarification regarding the specific roles and responsibility of the current Commissioners.

The response from the Department stated that the breadth of skills and experience in the Commissioner team means that it is both possible and sensible to give the Commissioners considerable levels of discretion over how they implement their roles and responsibilities under the Directions, in order that they can find the solutions most likely to lead to rapid improvement in the authority. Further the Department stated that the Commissioners will act jointly or severally, and it will be for them to decide how best to exercise their functions. However, the Directions provide for the following designated roles:

- a Lead Commissioner, whose responsibilities include, but are not limited to, giving direction and leadership to the work of the Commissioners and to the delivery of the improvements which the Authority is required to make.
- a Managing Director Commissioner who has a full-time role and whose responsibilities include, but are not limited to, overseeing the improvements the Authority needs to deliver in relation to governance, leadership and culture, the exercise of its overview and scrutiny functions, and in its performance of services. It

is envisaged that this Commissioner will be in post for a period of one year or such longer period until a new permanent Chief Executive takes up his or her position.

□ the Children's Social Care Commissioner whose responsibilities include, but are not limited to, overseeing the improvements the Authority needs to deliver in relation to its exercise of children's social care functions.

Powers to be exercised by the Commissioners

The Secretaries of State consider that given the conclusions that the Inspector reached on the basis of the evidence she obtained from her investigations, as revealed by the Report, a broad and wide ranging intervention is required to address the circumstances of the Authority.

Therefore the directions provided that the following functions are to be exercised by the Commissioners:

□ all executive functions of the Authority i.e. all functions of the Authority which are the responsibility of the executive, including the delegation of the exercise of such functions, for example to committees and sub-committees of the executive or officers of the Authority, under section 9E of the Local Government Act 2000;

□ all "local choice" functions of the Authority (i.e. functions that may be exercised by either an authority's executive or council) that were exercisable by the Executive as of 4 February 2015;

□ non-executive functions relating to the appointment and dismissal of persons to positions the holders of which are to be designated as the head of paid service, the monitoring officer and the chief financial officer (section 151 officer), and the designation (and removal) of those persons as statutory officers;

□ all non-executive functions relating to licensing, including all related enforcement and regulatory functions;

□ delegation functions under section 101 of the Local Government Act 1972 of arranging for the discharge of any of the Authority's functions, for example, by a committee or sub-committee of the Authority or an officer of the Authority in relation to functions which are to be exercised by the Commissioners; and,

□ all functions of the Authority relating to the nomination or appointment of persons to other bodies.

The Secretaries of State state that they expect that there will be a phased return of powers to the Authority as and when there can be confidence that the Authority could exercise a function in compliance with the best value duty and, in the case of children's social care functions, to the required standard. The expectation is that it may be appropriate to return certain functions in 2015, with some significant

functions being able to be returned after the proposed 2016 all out local elections. All functions are expected to be returned to the Authority within four years of the date of the Directions.

In relation to the powers to be exercised by the Commissioners, the Authority sought clarification regarding the Authority's Planning Board. The response from the Department stated that the Planning Board is a committee of the Authority rather than the Executive and the Directions do not provide that these functions are to be exercised by the Commissioners.

Decision-making and accountability of Commissioners

In its representations the Authority asked "what procedures will the Commissioners follow to take decisions?" The Department responded by stating that the Commissioners will act jointly or severally, having regard to any views of the Authority's Members and officers communicated to them. The Directions require the Authority to provide the Commissioners with such assistance and information, including any views of the Authority's Elected Members on any matter, as the Commissioners may reasonably request.

Further the Authority sought clarification on how the Commissioners will be held to account and in particular the role of the Authority's Overview and Scrutiny Committee(s) and also whether there will be a public right to recall on Commissioner decisions.

The Department responded by stating that the Commissioners will exercise the Authority's executive functions i.e. the functions of the Leader and the Cabinet, and certain other functions as set out above for the duration of the Directions unless and until they are returned to the Authority. The exercise of these functions is stated to be wholly a matter for the Commissioners, and the Authority's Overview and Scrutiny Committee(s) have no statutory role in these matters. Nor in the Commissioners' exercise of functions are there any statutory processes of recall.

However, the Department further stated that the Commissioners may decide to involve the Authority's Overview and Scrutiny Committee(s) and may adopt such processes as they see fit to enhance the accountability of their exercise of the functions set out above. Such processes may include the Commissioners holding meetings in public, working with an improvement panel, and as they see fit involving existing or new Overview and Scrutiny arrangements.

The Authority's Elected Members asked how they will communicate with the Commissioners in their representations of 10 February. The Department responded by stating that it will be for the Commissioners to consider how best to engage with Elected Members and officers of the Authority and to agree appropriate arrangements. As noted above, the Secretaries of State envisage that in exercising any function the Commissioners will have regard to any views of the Authority's Elected Members and officers arrived at through their normal processes of consideration.

Role of Leader, Cabinet and Members

The Authority sought clarification on the role of the Leader and Cabinet and on the role of Councillors more widely. In response the Department stated that in the immediate term, the Commissioners will exercise all the functions of the executive (and other functions of the Authority, as directed), and the Secretaries of State have made clear that they expect that there will be a phased return of functions to the Authority from after the proposed 2016 all-out elections, if not before.

However, the full council has a duty to elect a Leader and the Leader, once elected, has a duty to appoint at least two councillors to the Executive so that the duty under section 9C of the Local Government Act 2000 is fulfilled. The Authority is also under a duty to designate one of its Members as the lead member for children's services in accordance with section 19 of the Children Act 2004.

Until any executive functions are returned, this Executive can have no more than an advisory role of expressing views to the Commissioners, if it so chooses, particularly for example in response to any requests for views which the Commissioners make to the Authority under the Directions.

Once any executive function is returned to the Authority, the Executive will then again become responsible for exercising those functions. The Department states that the skills and expertise of such Cabinet Members would inform the Commissioners' agreement to any recommendations of the Authority to the Secretaries of State regarding whether or not functions can be returned.

As to the role of Elected Members who are not in the Cabinet, they would continue to exercise their existing functions (where these are not to be exercised by the Commissioners), for example where there are existing delegations to committees and sub-committees.

The Directions provide that the Commissioners have the powers under section 101 of the Local Government Act 1972 and section 9E of the Local Government Act 2000 to alter the Authority's scheme(s) of delegation in relation to the functions which they will exercise. This will allow the Commissioners to exercise functions of the Authority in the most efficient and effective manner. In the immediate term, the existing schemes of delegation remain in place until such time as they may be reviewed by the Commissioners

The Directions also provide that the Authority ceases to pay or, insofar as may be agreed with the Commissioners, reduces to a level that is commensurate with the extent of the functions that the Authority's executive exercises from time to time, any special responsibility allowances that Members of the Authority receive by virtue of them being Members of, or otherwise connected with, the Authority's Executive.

Appointment of statutory officers

The Directions state that the Commissioners shall exercise all non-executive 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 designating a person as a statutory officer and removing a person from a statutory office.

The Authority's Elected Members sought clarification regarding whether the Commissioners will "just appoint *new* Chief Executive, Monitoring Officer and Finance Officer roles, or will they look at *existing* appointments". The Department responded by stating that under the Directions the Commissioners will as necessary exercise the Authority's powers to appoint persons to and dismiss persons from posts where those persons are to be designated as statutory officers, and also the Authority's powers to designate (and remove) those persons as statutory officers. The Commissioners will not dismiss persons unless there are good grounds for doing so under employment law.

Appointment to other bodies

The Authority sought clarification on the process of appointment to outside bodies, in particular whether the Commissioners would look to replace existing appointments or only when a vacancy arose. The Department stated that it will be for the Commissioners to decide how to exercise these functions. The Authority also asked about its representation and role on partnership bodies such as the Combined Authority and the Health and Wellbeing Board the Department responded by stating that the Commissioners will exercise the functions of making appointments and nominations to these bodies and any committees and sub-committees of these bodies.

Directions to the Authority

To achieve and facilitate the objectives of the intervention, the Secretaries of State have also directed the Authority to take the following actions:

- to prepare, under the direction of the Managing Director Commissioner and Children's Social Care Commissioner, improvement plans (which may include or draw upon improvement or action plans prepared before the date of these Directions), and within 3 months of the date of these Directions to agree these plans with the Lead and other Commissioners and submit them to the Secretaries of State; the plans are 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 and securing the performance of the Authority's children's social care functions to the required standard;
- to undertake the measures set out in the improvement plans and such other measures as the Lead and other Commissioners require to deliver the improvements referred to above, and to provide the Secretaries of State with progress reports, agreed with the Lead and other Commissioners, at six monthly intervals following the date of these Directions; and

□ to maintain such improvement panels as the Commissioners may agree to, for the purpose of enabling the Authority to be held to account for the progress it is making on securing future compliance with the best value duty and securing the performance of its children's social care functions to the required standard.

With reference to the currently constituted Improvement Board, the Department confirmed that the membership and terms of reference of any panel, within the scope set out in the Directions, will be for the Commissioners to agree and it will be for them to determine whether to continue the existing arrangements, to vary those arrangements, or to create entirely new arrangements.

The Authority sought clarification as to whether "the Children's Commissioner [will continue] overseeing the dedicated Children's Improvement Board and Action Plan". The Department responded by stating that the Children and Young People's Improvement Board is already established to oversee progress through monitoring, challenging and supporting the actions of the Children and Young People's Services Improvement Board Action Plan and the current arrangements appear to be effective. It will be for the Children's Social Care Commissioner, together with the other Commissioners, and the Authority to agree the future scope of the Children and Young People's Improvement Board and Action Plan and how its work will link with any improvement panel(s) which the Authority is required to maintain under the Directions.

In addition to the above Directions, the Secretaries of State have made the following Directions to the Authority in order to ensure that the intervention can be efficiently and effectively undertaken:

□ to provide the Commissioners with such assistance and information, including any views of the Authority on any matter, as the Commissioners may reasonably request;

□ 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 the directions; and

□ to allow the Commissioners at all reasonable times access as appears to the Commissioners to be necessary to any premises of the Authority, any document relating to the Authority, and any employee or member of the Authority.

Duration of the intervention

The Secretaries of State consider that any aspect of the Directions should only be long enough to achieve the stated objectives of the intervention. The Directions will remain in force until 31 March 2019 unless the Secretaries of State or, as the case may be, either one of them considers it appropriate to amend or revoke them at an earlier date. As explained above, the Secretaries of State expect that it may be appropriate to return functions before 31 March 2019.

The Directions put in place a process for regular review by the Authority, under the direction of the Commissioners, of whether it would be appropriate for any function

exercisable by the Commissioners to be returned to the Authority. The first review will take place as soon as is practicable after the date of the intervention and subsequent reviews will take place every three months thereafter.

Where the Authority and Commissioners agree that it would be appropriate for the exercise of a function to be returned to the Authority, the Authority will report this to the Secretary of State for Communities and Local Government, or insofar as the functions are children's social care functions to the Secretaries 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 and in the case of the Authority's children's social care functions, performing these functions to the required standard.

The Secretary of State for Communities and Local Government or the Secretaries of State, as appropriate, will carefully consider any such reports and if agreed to, further Directions will be issued to this effect amending the Directions made on 26 February 2015. The Secretaries of State's expectation is that following the 2016 elections it is likely that a phased return of functions to the Authority would be appropriate, and they recognise that some earlier return might be appropriate depending on the circumstances of the Authority.

Order moving Rotherham Council to all-out elections from 2016

As stated above, the Secretary of State for Communities and Local Government is minded to make an Order under section 86 of the Local Government Act 2000 providing for full council elections to be held in Rotherham in 2016 and every fourth year thereafter. He considers this key to achieving the fresh start the Authority is said to require. The Order, which would be subject to the negative resolution procedure, would be made as soon as practicable and well in advance of the local government elections in 2016.

8. Finance

The Directions provide that the Commissioners' reasonable expenses and such fees as the Secretary of State for Communities and Local Government determines, are to be paid to them by the Authority. The Secretary of State for Communities and Local Government 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 £800 a day for the Lead Commissioner and £700 a day for other Commissioners except the Managing Director Commissioner. He has determined for the Managing Director Commissioner a fee of £160,000 per annum to be paid.

9. Risks and Uncertainties

N/A

10. Policy and Performance Agenda Implications

The Directions set out how the whole Council operate, therefore all Policies and Performance Agendas relevant to the Council are affected.

11. Background Papers and Consultation

Directions of the Secretary of State for Communities and Local Government and the Secretary of State for Education dated 26th February 2015

Explanatory Memorandum dated 26th February 2015

Letter from DCLG to Rotherham covering the Directions and explanatory memorandum – 26 February 2015

Commissioner Nominations Dated 26th February 2015

Representations from the Authority to the DCLG

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