

NOTTINGHAM CITY COUNCIL DIRECTIONS UNDER SECTION 15(5) 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) 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 2 September 2022. 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 Memorandum, together with the Directions and related material, is published at www.gov.uk.

The context for the Directions

3. Nottingham City Council has struggled to resolve serious governance and financial issues despite significant support. In November 2020, following a number of issues raised in a Public Interest Report published in August 2020 by the Council’s external auditors Grant Thornton, a rapid non-statutory review was conducted into the Council to review the serious governance and risk management issues associated with its energy company Robin Hood Energy. The report presented by Max Caller CBE highlighted serious governance failings, poor risk management and the pursuit of commercial ventures which had resulted in a significant budget gap and low levels of reserves. The then Secretary of State appointed an independent Improvement and Assurance Board in January 2021, chaired by Sir Tony Redmond and made up of independent experts. The Board’s purpose was to offer the Council advice, expertise and challenge as it sought to address these failings. The Board has provided regular assurance reports to Secretaries of State on the Council’s progress throughout this time.
4. In December 2021, the Council discovered unlawful accounting practices associated with its ring-fenced Housing Revenue Account (HRA), covering the period 2014/15 to 2020/21 and totalling £15.86 million. In response, the Council issued Section 114 and Section 5 notices and commissioned independent reports from an LGA associate (Richard Penn) and the Chartered Institute of Public Finance and Accountancy (CIPFA) to understand the scale of the unlawful expenditure and decision-making processes that ultimately led to this situation.
5. The Reports paint a deeply concerning picture of serious historic financial and governance failings. This includes the failure of the Council and its wholly owned company Nottingham City Homes (NCH) to maintain the integrity of its HRA ringfence. It also found that the company was operating without strategic oversight due to poor client management and governance by the Council. The Penn report does not conclude that unlawful accounting practice was a deliberate mechanism to divert funds from the HRA to support the General Fund. However, it does provide evidence of cultural failings and a reluctance to escalate issues appropriately, which led to the situation remaining unchallenged over several

years. The scale of the unlawful expenditure may also be more substantial than originally thought. The Chartered Institute of Public Finance and Accountancy (CIPFA) are now estimating that this could be up to £40m.

6. On 23 June 2022 the former Secretary of State published a letter from senior officials at the Department for Levelling Up, Housing and Communities (DLUHC) to the Authority setting out a proposed intervention package to secure the Authority's compliance with its best value duty ("the minded to letter"). The decision to do so, was made on the basis of the findings of the independent reports and assessments from the Nottingham City Council Improvement and Assurance Board. Representations about the independent reports and the proposed intervention package were invited from the Authority and any other interested parties on or before 7 July 2022.
7. The minded to letter set out the way in which the proposed intervention package reflected the recommendations of the Report, and provided detail on:
 - Proposals to put in place Commissioners to take over all functions associated with: the governance and scrutiny of strategic decision-making; strategic financial management; the appointment and dismissal of statutory officers; and the designation of those persons as statutory officers.
 - Actions which the Authority must undertake to implement the recommendations contained in the independent Penn and CIPFA reports, and to support and facilitate the work of the Commissioners.
8. The 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. The proposed Directions set out that the Commissioners could exercise, for a time, certain functions of the Authority, gave them certain responsibilities and reserved powers, and required the Authority to take certain actions.
9. This Memorandum explains the content of the Directions as finalised in light of representations received from the Authority and other interested parties.

Representations

10. 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 and the Report which served as the basis for them.
11. A joint representation was received from Councillor David Mellen, Leader of the Council and the Chief Executive Mel Barrett. The Authority referred to the 'Together for Nottingham' improvement programme, the steps the Council has taken to address past failings, and their constructive working relationship with the Improvement and Assurance Board. Progress includes the approval of a four-year Medium Term Financial Plan, improved governance and member/officer relationships, along with wider transformation work and cultural change. Whilst the Authority expressed disappointment with the 'minded to' decision and wish for the existing arrangements to remain in place, they expressed a willingness to co-operate with Commissioners should they be appointed and were supportive of Sir Tony assuming the role of Lead Commissioner. Councillor Mellen also submitted a

response on behalf of the Labour Group, highlighting the achievements of the Council over the last 18 months and setting out the reasons why the Group felt that the proposed intervention was unnecessary given the positive progress made. The letter also made the commitment that the Group would work with Commissioners for the benefit of the people of Nottingham should the Secretary of State confirm his intention to intervene at the Authority.

12. Representations were also received from:
 - a. Lilian Greenwood MP (Nottingham South), Alex Norris MP (Nottingham North), and Nadia Whittome MP (Nottingham East), who submitted a joint representation against the proposed intervention. They stated their confidence in the current leadership at the Council who in their view were working effectively with the Improvement and Assurance Board to address past failings. They expressed concern that appointing Commissioners risked destabilising the improvement journey and reducing public confidence in the Council.
 - b. Councillor Steve Battlemuch and Councillor Angharad Roberts submitted individual representations against the proposed intervention. Councillor Battlemuch cited the improvements made by the Council over the last 18 months with oversight by the Improvement and Assurance Board, including the approval of a four-year Medium Term Financial Plan. He also questioned the need to move to a statutory intervention given the negative impact this would have on local democratic accountability. Councillor Roberts highlighted the swift action taken by the Council to address the unlawful HRA expenditure without the need for exceptional financial support from central government. Councillor Roberts also referred to the Authority's 'Big Conversation' exercise with residents to determine the future of the Broadmarsh shopping centre.
 - c. The local branch of the UNISON trade union was strong in its opposition to the proposal, describing it as 'undemocratic' and laying blame with cuts to local government funding for the issues with the Council's finance functions.
 - d. Representations were received from ten partner organisations, all of whom reported extremely positive experiences of collaborating with the Council, and the far-reaching impact of this partnership working. The start of Councillor David Mellen and Mel Barrett's leadership of the Council were mentioned as positive turning points for the Council. Representations also referenced substantial improvements to culture and openness achieved over the last 18 months at the Council. One partner organisation expressed concern that installing Commissioners could stall progress on place-based partnerships within the integrated care system in the area. One partner explicitly expressed preference for the Improvement and Assurance Board to continue in its current capacity.
 - e. A further eight representations were received from local businesses, community leaders and members of the public, all of whom work or have worked with the Council. All of these described a positive role the Authority has played in developing partnership working with the local community over the last 18 months.

The intervention package

13. The Secretary of State has carefully considered afresh the two independent reports on the unlawful HRA expenditure, the quarterly progress reports from the Improvement and Assurance Board, along with Sir Tony Redmond's assessments

of the Authority response to the unlawful HRA expenditure. He has done so together with the 25 representations received on the 'minded to' intervention package, including letters from the Authority (7 July 2022), the Leader of the Council (7 July 2022) three Members of Parliament (7 July 2022), two local Councillors (7 July 2022), Unison (4 July 2022) along with representations from local organisations, community leaders and members of the public (various dates).

14. The Secretary of State notes the improvements made by the Authority with oversight from the Improvement and Assurance Board over the last 18 months. The building blocks for recovery have been put in place, and it will be essential this is continued through further constructive partnership working with the Improvement and Assurance Board, sector organisations and the local community. The Secretary of State is satisfied that the current leadership has shown that it is willing to make the necessary improvements and has demonstrated drive and determination during the negotiation and agreement of the East Midlands Devolution Deal.
15. The Secretary of State is satisfied that the Council is failing to comply with its Best Value duty. However, following detailed consideration of representations received by the Authority and other interested parties under section 15(9) of the 1999 Act (as set out in paragraphs 10-12) and the rationale set out in paragraph 14, he has decided to modify the 'minded to' proposal and issue Directions under the 1999 Act to direct the Council to follow the advice of the Nottingham City Council Improvement and Assurance Board as a necessary and expedient action to secure compliance with their best value duty. He expects significant progress to be made over the next three months, and he will again consider exercising his powers from the 1999 Act, including the appointment of Commissioners, in the new year.
16. The Secretary of State considers that this package will address the failings identified in the independent Reports.

The Nottingham City Council Improvement and Assurance Board

17. The package that the Secretary of State has put in place centres on the Directions issued under section 15(5) of the 1999 Act. These direct the Council to follow the advice of the Improvement and Assurance Board as a necessary and expedient action to secure compliance with their best value duty. The Improvement and Assurance Board currently offer advice, expertise and challenge to the Council on their improvement journey, as described in their Terms of Reference published on 20 January 2021 on gov.uk. The Directions codify the role of the Improvement and Assurance Board in the strongest possible terms, moving the Board from a non-statutory advisory role to a statutory footing so that they are empowered to direct rather than guide the Council's improvement activities.
18. The Improvement and Assurance Board's membership includes:
 - Sir Tony Redmond (Chair – Independent member)
 - Sean Nolan (Finance – Independent member)
 - Robin Hughes (Commercial – Independent member)
 - Cllr David Mellen (Leader of the Council)

Directions to the Authority

19. 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 amend the Nottingham City Council Improvement Plan to the satisfaction of the Improvement and Assurance Board. This may include or draw upon improvement or action plans prepared before the date of these Directions. Resources will need to be allocated accordingly to implement the recommendations contained in the independent Penn and CIPFA reports, and as a minimum, the following components:
 - i. Actions to ensure that a strategic and systematic approach to risk management is adopted and embedded across the Authority, coupled with appropriate scrutiny and governance of decision-making processes and procedures.
 - ii. Actions to deliver financial stability in the Authority, including: moving to sustainable long term budget setting; an investigation to establish the accuracy and suitability of current financial accounts and management controls; rapid and sustainable improvements to the Council's scrutiny function, and financial and risk management; and strengthening its accounting processes and reporting arrangements.
 - iii. Actions to secure improvement in the governance and structure of the Council's commercial portfolio.
 - iv. Actions to secure continuous improvement in all services.
 - b. To report to the Secretary of State on the delivery of the Improvement Plan at six monthly intervals, or at such intervals as the Improvement and Assurance Board may direct. To adopt any recommendations from the Improvement and Assurance Board with respect to the Improvement Plan and its implementation.
 - c. To allow the Improvement and Assurance Board at all reasonable times such access as appears to the Improvement and Assurance Board to be necessary, including:
 - i. To any premises of the Authority.
 - ii. To any document relating to the Authority.
 - iii. To any employee or member of the Authority.
 - d. To provide the Improvement and Assurance Board at the expense of the Authority, with such reasonable amenities and services and administrative support as the Improvement and Assurance Board may reasonably require from time to time to carry out its functions and responsibilities under these Directions.
 - e. To pay the Improvement and Assurance Board reasonable expenses, and such fees as the Secretary of State determines are to be paid to them.

- f. To provide the Improvement and Assurance Board with such assistance and information, including any views of the Authority on any matter, as the Improvement and Assurance Board may reasonably request.
- g. 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

- 20. 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 1 September 2024 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.
- 21. The Secretary of State has asked for six monthly reports from the Improvement and Assurance Board, or at such other times as he might agree with the Board, which allows for a process for regular review of whether it would be appropriate to expand the scope of the intervention or to revoke the Directions. The first report is expected as soon as is practicable within the first three months of the intervention.
- 22. The Secretary of State will carefully consider any such reports and, if agreed to, further Directions will be issued to expand or reduce the scope of the intervention by amending these Directions made on 2 September 2022. The Secretary of State has not ruled out the possibility that Commissioners could be appointed in future should the Council fail to make the necessary progress.