



**Department for Levelling Up,
Housing & Communities**

Max Soule

Deputy Director, Local Government Stewardship

**Department for Levelling up, Housing and
Communities**

Fry Building, 2 Marsham Street
London SW1P 4DF

www.gov.uk/dluhc

Deborah Cadman OBE
Chief Executive
Birmingham City Council

By email

19 September 2023

Dear Deborah

I am writing to invite your Authority, if it wishes, to make representations to the Secretary of State about the intervention package that he is proposing. This letter will be published on www.gov.uk.

The Secretary of State has carefully considered the evidence available. He is satisfied that your Authority is failing to comply with the requirements of Part I of the Local Government Act 1999 (the “1999 Act”), namely failing to comply with the Best Value duty, due to the Authority’s handling of its significant equal pay liabilities, governance concerns and systematic service weakness.

On that basis, he is considering exercising the powers of direction sections 15(5) and (6) of the 1999 in relation to your Authority to secure its compliance with the Best Value duty. The proposed intervention package is formed of two complementary parts: the first is a series of Directions which are set out at Annex A accompanied by a summary of the evidence that has led the Secretary of State to conclude that intervention is necessary and expedient to secure compliance with the best value duty. The proposed Directions provide Commissioners with the Authority’s functions concerning governance and scrutiny of strategic decision making, all functions associated with the strategic financial management of the Authority, all functions relating to the appointment, designation and dismissal of persons to positions as statutory officers, all functions associated with the Authority’s operating model and all functions pertaining to the performance management framework for officers holding senior positions and their recruitment. As well as this the Directions require the Authority to prepare an improvement plan within 6 months and report to Commissioners on said plan.

The second part is that the Secretary of State proposes to direct a local inquiry, which could consider the more fundamental questions around how Birmingham got to this position, assessing the Authority’s ongoing management of issues identified in the Kerslake review of the Authority in 2014 and the subsequent non-statutory intervention, and considering options for how it can become a sustainable organisation moving forward that secures best value for its residents.

Both parts share a common goal, which is to protect the interests and services of the people of Birmingham.

Your Authority is now invited to make such representations as it wishes about the Secretary of State's proposals. All such representations should be sent to interventions@levellingup.gov.uk, or in hard copy to the postal address above marked for my attention, to be received on or before **Tuesday 26 September 2023**. They will then be carefully considered by the Secretary of State. The Secretary of State considers the exceptional level of financial issues, significant governance concerns and the risks that these pose to your Authority's services and stability to be sufficiently urgent to carry out a shorter representations period than standard.

I am copying this letter to your Authority's Interim Section 151 Officer and Monitoring Officer.

Yours sincerely,

Maxwell Soule
Deputy Director, Local Government Stewardship

PROPOSED INTERVENTION PACKAGE

1. The Secretary of State is considering exercising his powers of direction under section 15 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. He has considered the evidence, including the serious governance and service delivery concerns raised by three independent sources (the Local Government and Social Care Ombudsman, the Housing Ombudsman and the Department for Education’s Commissioner for Special Educational Needs and Disability at the Council); the flawed implementation of a new financial ledger system, Oracle; and the Authority’s handling of its significant equal pay liabilities, alongside the Section 114 notice issued on 5 September 2023.

2. The Authority has been beset by systemic failings over several years including poor culture, weak governance, 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. The evidence from independent sources outlined above, alongside the Section 114 notice, highlight failings of great seriousness and provide evidence of significant and systemic best value failure. In light of this evidence, the Secretary of State is minded to implement the intervention package set out below. The Secretary of State believes the proposed intervention is necessary and expedient to secure compliance with the best value duty.

3. The Secretary of State has set out his proposals in order to assist the Authority to formulate any representations it may choose to make. He acknowledges that, save in cases of urgency, the Authority has a statutory right to make representations if the Secretary of State is considering making a direction. The Secretary of State considers the exceptional level of financial issues, significant governance concerns and the risk that these pose to the Authority’s services and stability to be sufficiently urgent to carry out a shorter representations period than standard. He will carefully consider those representations in deciding whether to make any and if so what Directions. He specifically reserves his ability to make further or revised Directions after implementing this, or any, intervention package (if that is what he decides to do).

Overall purpose and approach

4. The starting point is the evidence which highlight serious financial and governance concerns:

- On governance, whilst the Authority have 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 Council’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.

- 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 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 £100m, and the Authority's lack of progress in delivering planned savings – and that is before accounting for the potential liability relating to equal pay.
- 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 services. The Kerslake review also highlighted a culture of sweeping problems under the carpet or blaming them on others, rather than tackling them head-on.
- 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 Council 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.
- On capacity or capability to improve, the Kerslake review 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.

5. The Secretary of State considers that given the evidence of financial and governance concerns, and the scale of the equal pay liabilities, intervention is necessary and expedient to address the circumstances of the Authority.

Draft Directions

6. The proposed package is centred on the appointment of Commissioners who would assume functions, as described in the enclosed draft Directions. The Commissioners will be backed by Directions, also enclosed in draft, issued to the Authority requiring them to take specific actions as a necessary and expedient action to secure compliance with their Best Value Duty.

7. Ministers will reflect on Commissioner appointments during the 'minded to' period to ensure they are fit for purpose to support the Authority moving forward. Given the scale of the issues the Secretary of State proposes that Directions to the Authority should be in place for five years, noting that the Authority's situation is severe, and the improvement and recovery journey is likely to take a number of years. If the Secretary of State considers at any time that it would be appropriate to change Directions or withdraw them, then he will do so. His concern will be to ensure that the Directions operate for as long, but only as long, and only in the form, as he considers it should operate in order to secure the objectives set out above.

ACTION THE AUTHORITY IS REQUIRED TO TAKE

In this Annex, the following expressions have the following meanings –

“the Authority” includes the Leader of the Council, Cabinet Members, any committee or sub-committee; and any other person who has responsibility for the matter in question.

The actions to be taken by the Authority are:

1. 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 6 months, with resource allocated accordingly.
2. 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.
3. 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.
4. To report to the Commissioners on the delivery of the Improvement Plan at 6 monthly intervals, or at such intervals as Commissioners may direct.
5. 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.
6. 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.
7. 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.

8. To pay the Commissioners reasonable expenses, and such fees as the Secretary of State determines are to be paid to them.
9. To provide the Commissioners with such assistance and information, including any views of the Authority on any matter, as the Commissioners may reasonably request.
10. To co-operate with the Secretary of State for Levelling Up, Housing and Communities in relation to implementing the terms of these Directions.

FUNCTIONS OF THE AUTHORITY TO BE EXERCISED BY THE COMMISSIONERS

In this Annex –

“The Authority” includes the Leader, Cabinet Members, any committee or subcommittee; and any other person who has responsibility for the matter in question.

“Statutory Officer” means any of: the Head of Paid Service designated under section 4(1) of the Local Government and Housing Act 1989; the Chief Financial Officer designated as having responsibility for the administration of the Authority’s financial affairs under section 151 of the Local Government Act 1972; the Monitoring Officer designated under section 5(1) of the Local Government and Housing Act 1989; and the Scrutiny Officer designated under section 9FB of the Local Government Act 2000 (and the expressions “statutory officer” and “statutory office” are to be construed accordingly).

“Senior positions” are defined as the Chief Executive, direct reports to the Chief Executive and their direct reports – tiers one, two and three.

The Commissioners shall exercise:

1. All functions associated with the governance and scrutiny of strategic decision making by the Authority.
2. All functions associated with the financial governance and scrutiny of strategic financial decision making by the Authority.
3. 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:
 - a. 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;
 - b. providing advice and challenge to the Authority in the setting of annual budgets and a robust medium term financial strategy (MTFS) for the Authority, strictly limiting future borrowing and capital spending;
 - c. scrutiny of all in-year amendments to annual budgets;

- d. 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;
 - e. providing advice and challenge to the Authority on the preparation of sustainable and affordable capital, investment and treasury management strategies; a strict debt reduction plan; and a revised minimum revenue provision (MRP) policy;
 - f. providing advice and challenge to the Authority on a suitable scheme of delegations for financial decision-making; and
 - g. ensuring compliance with all relevant rules and guidelines relating to the financial management of the Authority.
4. 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:
- a. The functions of designating a person as a statutory officer and removing a person from a statutory office;
 - b. The functions under section 112 of the Local Government Act 1972 of –
 - i. 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
 - ii. Dismissing any person who has been designated as a statutory officer from his or her position as an officer of the Authority.
5. 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.
6. All functions associated with the Authority's operating model and redesign of services to achieve value for money and financial sustainability.
7. All functions pertaining to the development, oversight and operation of an enhanced performance management framework for officers holding senior positions.