

Lessons Learnt – Government Intervention in Rotherham MBC

Prepared by the Commissioner Team

Introduction

The government intervention in Rotherham was unprecedented and unique. Never before in local government history had appointed Commissioners taken over the running of a top tier council, assuming decision-making of all of the Council's executive functions and Licensing. Previous government-led interventions were different in nature and scope and there was no blueprint.

Following the Jay Report on child sexual exploitation, an Ofsted report and the Casey Report of an inspection of corporate governance, in February 2015 the Secretaries of State for Communities and Local Government and for Education appointed a team of 5 Commissioners for a period up to four years to March 2019.

Following three years of phased restoration of powers to the Council, in March 2018, Commissioners wrote to the Secretaries of State for Housing, Communities and Local Government, and for Education, recommending an early withdrawal from Rotherham before the end of the 4 year period. This followed a successful Ofsted Inspection of children's services and an Independent Health Check of the Council which concluded that they were now able to return to 'normality' and conduct business without the need for continued intervention or oversight by commissioners.

This document sets out some of the learning from the experience of intervention in Rotherham MBC. It identifies the key considerations new Commissioners might need to think about when setting up any future similar process. It is not suggested that there is any role for prescriptive guidelines as each intervention will be unique and the detailed arrangements need to be sensitively tailored in each case.

Key considerations

1. Scope of the Directions

The specific terms of the Directions need to be clear and unambiguous and the legal basis sound and unchallengeable. In Rotherham they included not only the power of decision-making but also the requirement to restore confidence and to recommend the phased restoration of powers. This approach is important in building momentum and confidence and signalling progress. Whilst, Commissioners decisions should be exempt from the normal scrutiny/ call-in arrangements in order to ensure the intervention cannot be frustrated, commissioners should ensure transparency and accountability of their decision-making. Consideration of resuming normal scrutiny arrangements should be considered as the intervention stabilises.

As in Rotherham, there is often the need to recruit a new senior management team, including statutory officers, and it is vital that the directions give the commissioners this decision-making remit. In the main Commissioners will not be full-time and it is helpful if the directions provide for decision-making to be held by commissioners collectively so that formal decisions can be taken by any of them regardless of portfolio. In addition care is needed in defining the functions covered by the intervention as descriptions of functions may vary in different councils.

The Commissioner Team

The size and composition of the Commissioner Team will depend on the nature of the intervention and any specific skills and experience that may be needed. There were a number of features of the Rotherham Commissioner Team which were important to its success:

- The Secretary of State appointed a lead Commissioner to provide overall co-ordination and leadership of the intervention. This is not a line management role and leaves Commissioners to take responsibility for their own portfolio but provides an important means to build cohesiveness of the team and provide collective interfaces with the council, government and partners.
- The Children's Commissioner, already appointed by the SOS for Education, became part of the Commissioner team and provided essential expertise on improvement of children's social care. After one year this role was replaced by the use of a children's practice partner, Lincolnshire County Council and a Children's Commissioner from Lincolnshire.
- With the appointment of Lincolnshire CC, the deputy Leader who held the Children's portfolio joined the Commissioner Team. This brought an important missing dimension of a political Commissioner to the team which should be considered in future interventions.
- Three Commissioners were experienced local government Chief Executives well used to exercising strategic leadership, very experienced at working with politicians and with a strong ethos of valuing democratic accountability. Overall the team had over 150 years' experience in Local Government and this assisted in rapidly modelling the way a council's leadership should operate.
- Given the depth of the failures to be addressed one of the Commissioners was the full time Managing Director Commissioner for the first 12 months of the intervention (part of phase 1 of 4 phases of recovery and restoration developed by Commissioners). This allowed the Commissioner team to have direct management and leadership of the workforce as well as a pivotal role in the officer-member interface. This was an essential ingredient in getting momentum into the improvement effort, sure-footedness in day to day decision making and giving Commissioners line of sight into and leverage on the organisation and its culture.
- Depending on the nature and history of the path to intervention and the attitude of the Council other factors which could be considered in establishing the team include, consultation with the Council, role of a political commissioner, role of a person with local credibility e.g. from business or voluntary sector, role of anyone involved in any inspection pre- intervention. In Rotherham, the team include a local business woman with experience of council improvement as well as members of the Casey Inspection team and a political Commissioner.

2. Establishing the Ethos of the Intervention

It is vital that the Commissioner Team establishes an ethos and ways of working at an early stage. This should be based on public sector values, on good governance, transparency and valuing democratic accountability. The step of overriding decision-making by democratically elected members is not taken lightly and Commissioners need to put in place arrangements which respect the democratic mandate. They should not interpose themselves between elected members and their constituents.

In Rotherham, democratic legitimacy was supported by putting in place arrangements for Elected Members to work alongside Commissioners. Arrangements for decision-making included: ensuring involvement of Cabinet portfolio holders with the Commissioners in the development of strategy, policy and decisions; Cabinet Members chairing partnership bodies with commissioners in attendance; and supporting ward members' representational role. In addition it was important to identify those matters which required political leadership rather than being led by Commissioners. This included political leadership on community cohesion, developing a vision for Rotherham and media. Commissioners provided a supporting role but the Council's political leadership was to the fore. The more detailed comments below on working arrangements expand on how the ethos was put into effect which did enable a productive and collaborative partnership to be developed between Commissioners and the council at officer and member level based on mutual respect.

It is important that Commissioners adhere to requirements for visible accountability similar to councillors e.g. codes of conduct, Nolan principles, good governance, publication of registers of interest, fees and expenses on the website etc.

3. **Commissioners' Ways of Working.**

At the earliest stage it is important to provide clarity to the organisation and to partner agencies on the working arrangements which need to be based on the well-established principles of good governance and transparency within local government. In Rotherham the Commissioner Team published:

- **A mission statement**, this enables the Commissioners to be clear about the priorities and what they are seeking to achieve
- **Portfolio responsibilities of each commissioner and outcomes to be achieved**, this allows for transparency, workload management and for Commissioners to be held to account individually.
- **Commissioner and Councillor Working Protocol**, this ensures that development of policy and decision making can progress efficiently with clarity on working at the political interface.
- **Individual Commissioner Working Protocols** provides granularity of expectations for cabinet members and officers.

The protocols were developed in conjunction with the Council and its Legal officer. They were made widely available and were published on the council's website. They evolved over time but included the following features:

- Adoption of the Council's existing officer delegation framework which gave clarity on where decision making lay and signalled the ongoing responsibility of officers for the running of the Council e.g. for service delivery, complaints, communications, resource management etc. This avoided stagnancy in decision-making and an initial tendency for officers to push all decisions upwards.
- Establishment of joint meetings with Cabinet portfolio holders for decision-making. This was later developed into Commissioner/ Cabinet decision making meetings chaired by the Leader of the Council which operated to the normal legal requirements of meetings of council executives. This facilitated one public meeting for decision-making when the intervention moved into phased restoration of powers with a split agenda with some decisions sitting with Commissioners and some with the Cabinet. A separate protocol was developed to manage these arrangements.

- A periodic public webcast Commissioners' Meeting attended by all members of the Council which gave an opportunity for the public to hold both commissioners and elected members to account for progress of the intervention.
- Commissioner Case Hearings for all Licensing decisions with the Chair and members of the Licensing Board sitting alongside the decision-making Commissioner.

It is important to develop these arrangements alongside the Council so that they have clarity on the internal arrangements they need to put in place which can be a significant change to past practice. The arrangements need to be refreshed as the intervention progresses through its phases and the role of Commissioners changes from decision-making to oversight. For instance in the decision-making phase it is vital for Commissioners, Cabinet Members and officers to work side by side on policy development, implementation and the wider improvement agenda. This gives Commissioners considerable line of sight on the Council's strengths and challenges.

As powers are rolled back, Commissioners need to give the Council, Members and officers the space to lead that work and develop their own skills but to maintain sufficient contact to allow meaningful oversight. The approach to this will vary from function to function dependent on the capabilities available. The more functions which are restored and as the Council, Cabinet and senior managers take on more responsibility and develop their own capability, Commissioners need to ensure sufficient arrangements remain for them to assess the Council's progress and behaviours. The monitoring of the improvement plan/ corporate plan and performance data are important components but mechanisms to understand the progress on Council cultures and partnership working will also need to feature. In Rotherham the Commissioner team found that in addition to their business meetings with senior members and officers that periodic meetings with the Senior Leadership Team and separately with the Assistant Director cohort were valuable in providing a two way dialogue on these matters.

4. Functioning of the Commissioner Team

It is important that the Commissioner Team functions as a cohesive unit and presents consistent expectations and judgements to the council and partners and that there is administrative capacity to support the work and maintain a data base of evidence. Given the practical need to divide responsibilities into portfolios and that the majority of commissioners were not full time the following arrangements were needed.

- Commissioners Office to provide a full time focus and point of contact for the council and headed by a full time Chief of Staff. This role provide the Commissioners with capacity to provide a liaison with the council and partners and with MHCLG and to ensure evidence gathering and recording, as well as the capability to undertake some specific projects. Some secretarial support was also needed including dealing with enquiries, IT facilities, management of commissioners' generic email address, diary management etc. The specific benefits of a Chief of Staff role and having a good team around the Commissioners meant:
 - Speedy development of administrative processes with the council e.g. as the council moved into phased restoration of powers with differing requirements in the directions, maintaining an A to Z responsibility grid for Council functions;

- Building a wide-ranging local knowledge and an on the ground conduit between Commissioners and the Council;
 - Establishing a document and evidence system;
 - Overseeing the Independent Health Check in the last phase;
 - Undertaking regular reviews of emerging partner perspectives of the Council;
 - Undertaking a review of complaints and whistleblowing procedures;
 - Maintaining information flows with MHCLG and DfE including arrangements for reporting to the Secretaries of State;
 - Arrangements for archiving at the end of the intervention.
- In the early stages of the intervention all the Commissioners planned to all to be based in the Council offices on one day per week and for monthly team meetings. Use was made of conference calls and one to ones as needed.
- A section of the Council's website was allocated for Commissioners' information which included the documents referred to above, Commissioners good governance declarations, reports to the Secretaries of State, video diaries which Commissioners made at key points of the intervention.
- The Commissioners Team support also dealt with general housekeeping arrangements for pay, indemnity etc. It was deemed that Commissioners are not employees of RMBC nor of government but are 'office holders'. The Commissioners fee rates were set by the Secretary of State but in order to pay commissioners correctly and not breach tax regulations the Council sought advice from HMRC, tax advisors, MHCLG and counsel. The outcome was to pay Commissioners via the council's payroll albeit they did not have employment status.

Elsewhere, this note describes the Commissioners' ways of working and the phased approach to restoration of powers and this was reflected in the resources within the Commissioner Team. The number of Commissioners reduced from five to four by March 2016 and to three from March 2017 to the end of the intervention. The actual Commissioner days used was 448 days plus a full time Managing Director Commissioner in 2015/16, 248 days in 2016/17 and 114 days in 2017/18 and a final estimated 40 days to the end of the intervention.

5. Council Improvement

In addition to the individual work of Commissioners in their portfolio areas, the Council, under the guidance of the Managing Director Commissioner, developed an Improvement Plan to tackle a wide range of corporate, cultural, performance and partnership issues. The Lead Commissioner with all Commissioners in attendance chaired a monthly meeting with the Council including the Leader of the Council and the Leader of the Opposition to monitor progress. In later stages of the intervention the Leader took over the chairing of the meetings.

The Children's Commissioner had similar arrangements in Children's Services and in the second phase the work of Lincolnshire CC as the practice partner was vital to providing hands on detailed analysis and advice.

The most effective route to improvement is for Commissioners to put in place and support a competent senior leadership team. The appointment of a Chief executive and Chief Officers are critical and should be undertaken in partnership with senior politicians. The use of experienced interims is valuable whilst these long term appointments are put in place, providing they are not 'caretakers' but

bring a clear understanding of 'what good looks like' and begin the process of building a momentum for cultural change. In Rotherham, outside challenge was achieved through a mix of new appointments, interims, peer reviews and independent health checks. Within Children's Services the practice partners also provided challenge at a granular level. These are all tools which provide practical assistance to the Council and independent insight to Commissioners.

Equally, the political leadership of the Council needs to fully recognise the challenges and support the improvement journey. From the outset Commissioners need to embrace their responsibility to work diligently to build credibility and gain the confidence of councillors. The establishment of an ethos which respects the democratic mandate (see para 3 above.) is key to achieving this.

Depending on the triggers for intervention, the issues of members' code of conduct, member behaviours, officer- member working relationships and holding of officers to account may require the attention of Commissioners. The commissioner team should ensure the appropriate policies, codes and protocols are in place but as importantly should promote these by the example of their own behaviours and conduct and by the way they deal with any issues which arise on their watch.

Commissioners should also give attention to the development of a competent Scrutiny function within the council and to building ongoing capability to hold the executive to account.

The LGA provided very welcome support to the council throughout the intervention including mentoring for members and officers, peer review capacity, staff and resident surveys, training for potential new councillors prior to all- out elections in 2016, development of the scrutiny function and bespoke arrangements for the Independent Health Check in 2018. Future interventions should explore with the LGA the support that can be offered.

6. Reporting to the Secretaries of State

The Lead Commissioner and the Children's Commissioner reported quarterly to the respective Secretaries of State on the intervention and the Council's progress. A timeline tracker of events and Commissioner activity was maintained which now provides an evidence base for the journey and the phased return of powers. The style of reporting was flexible and was adjusted to reflect the needs of the intervention. When recommendations for restoration of powers were made an evidence pack was provided to support the case.

From time to time Commissioners met with ministers to discuss progress and the Secretary of State for Housing, Communities and Local Government visited the Council on one occasion. Ultimately all quarterly letters to the Secretaries of State were published on the Council's website.

7. Phases of the Intervention and an Exit Strategy

From the outset, it was important to provide the Council with clarity on what was expected and what would constitute success. Success criteria were drawn up for both the whole Council and specifically for children's services.

The Children's Commissioner set out seven tests for Children's Social Care and a copy of these is attached at Appendix 1. Similarly, Commissioners set four

criteria to be met in making any recommendation for the restoration of powers for individual functions and a copy of these is attached at Appendix 2. Finally Commissioners set the 10 factors which would be reviewed as part of a final assessment of whether the intervention could end and the Council's fitness to continue the improvement journey without the oversight of Commissioners and a copy is attached at Appendix 3.

The government Directions allowed for Commissioners to recommend the phased return of powers to the Council at any stage prior to the end of the intervention in March 2019. Commissioners therefore established a proposition with the council at the outset that the intervention would progress through four phases:

- phase 1 with commissioners taking all decisions and a managing director commissioner in place;
- phase 2 with some restored powers and the new senior leadership team in place;
- phase 3 with the majority of powers restored and the council increasingly taking ownership of future progress.
- and the final phase of moving to the end of the intervention. In the final phase the Commissioners would arrange for an Independent Health Check to test the fitness of the Council to continue its journey without commissioner oversight.

In the early phase of the intervention Commissioners may need to engage with the local media to explain their role and to be accountable for the progress made, but as the Council resumes its powers, Commissioners need to take care to adjust the level of overt media profile and for the Council to take full leadership of its own media relationships.

All councils experience crisis, challenges and reputational management issues of varying types on a weekly basis. It is important that the Council takes the lead in dealing with these matters but Commissioners should be alert to the need for them to provide advice and challenge drawing on their own experience.

In practice in Rotherham, the first tranche of 30% of functions were restored to the Council in February 2016; Licensing powers were restored in December 2016. Remaining functions with the exception of children's services, community safety, asset management, performance management, waste management, and HR were returned in March 2017. By September 2017 the only decision making powers retained by Commissioners was for children's services and the appointment of statutory officers with a residual power to intervene in relation to domestic abuse and adult social care decisions.

The key learning points for future interventions are:

- To establish clarity on the criteria and tests that will be applied
- To describe a phased approach on how the intervention will progress.
- To ensure that evidence of improvement is captured
- To work collaboratively with MHCLG and DfE in signalling progress and to provide the Secretaries of State with clarity through regular reporting. The opportunity to meet with Ministers is also important in establishing confidence in recommendations. Commissioners need to factor in the time line requirements of the ministerial decision-making process.

At the point of discussing potential restoration of powers and changes to the directions with government it is vital to ensure the Council is prepared for implementing the changes to its decision-making arrangements. As far as possible it is preferable to set a date for the formal Secretaries of State new Directions on a day where the Council has no formal decision-making meetings, as confirmation of the Secretary of State decision may not be received until late in the day but will apply from the previous midnight and decisions under the previous directions may be invalid.

8. Summary

This note has drawn on the experience of the Rotherham Intervention to explore some of the issues which future Commissioners may face. It is not a blueprint but provides insights which may help in formulating a tailored approach to suit the circumstances.

Mary Ney – Lead Commissioner
Cllr Patricia Bradwell – Children’s Commissioner
Julie Kenny- Supporting Commissioner
Steve Nesbit – Chief of Staff.

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Appendix 1

Rotherham MBC Children's Social Care – Seven Tests

- 1. Well-functioning corporate services** which prioritises children's social care and deliver effective financial, human resources and infrastructure support. It is critical that the corporate leadership is well engaged with the issues within children's services and provides effective support and challenge. I have outlined the risk that energy and resources will lean towards services already handed back at the expense of the prioritisation on children's social care services but it is clear to me that improvement will not be sustainable without high quality human resources, financial, legal and infrastructure support
- 2. Stable and capable leadership** at both a Member and officer level. There are all out elections in May, and the Labour Group has indicated that if it returns to administration the cabinet will remain largely as is, allowing the continued development of the existing members. If that is not the case then there is the wider consideration of developing the necessary skills and experience of the new councillors. Cabinet meetings are now being held in public so over the next few months it will be a measure of readiness to see how well portfolio holders manage their new responsibilities. A permanent senior management team in the Council has been appointed and the Children's Directorate now has the benefit of a permanent departmental leadership down to heads of service. By September I would expect to see much less reliance on temporary managers at that level.
- 3. Continued improvement in the quality and effectiveness of practice**, including progress against the actions in the improvement plan and evidence that recommendations from quality assurance, audits and Ofsted improvement visits have been dealt with promptly and effective. The Strategic Director has set out a vision for the delivery of outstanding child-centred services through a major transformation programme. I would expect this to be widely understood and embedded by September and progress robustly programme managed.
- 4. Strong and supportive partnerships.** My progress report signals a step change in the partnership through better leadership, increased collaboration and improved working practices. Although there is much improvement, to date, partnerships have not been well supported by transparent and rigorous governance and going forward there is a need to be clear about shared priorities and how they are resourced. The new Children and Young People's Partnership (Children's Trust Board Arrangements) was re-launched in February 2016 with excellent representation across the system, including young people, and three task and finish groups were established to lead on: development of a Children and Young People's Plan; Embedding Early Help and the development of a well-performing workforce across the partnership. Over the next six months, it should be delivering against this plan and harnessing resources around a shared agenda. Overall, by September, I would want the LSCB and the Strategic Partnership to be making good progress and this partnership commitment to be evidenced through improved outcomes.
- 5. Robust financial management.** As I have indicated, the budget set for 2016/17 is unlikely to meet the forecast demands. The Strategic Director has led on the production of a medium term financial strategy which will both drive more cost effective practices through service transformation and deliver savings over the lifetime of the plan. To support him and his management team he will need the senior financial capacity with the right skills and experience to undertake the necessary

financial modelling. While this has been agreed in principle, it will take some time before the benefits of better resource management and more effective commissioning begin to be evidenced in the bottom line.

6. **A compelling strategy for the workforce** which has delivered a settled structure for children's social care, more permanent social care staff in post, nearing national averages, and a return to only using interim staff as a means of upskilling or supplementing, when necessary, the permanent staffing establishment. I would expect to see in place comprehensive professional development for staff at all levels supporting effective practice and staff retention.
7. **Effective performance information and quality assurance** which is being used to measure outcomes for children and improve practice. Data has been used very effectively to monitor and drive better performance but to improve practice further there needs to be a greater emphasis on the outcomes being achieved and a clearer understanding of the quality of practice with children and young people. Performance information needs to demonstrate stable and sustained delivery of services, milestones set out in the improvement plan need to be met or on course for delivery, the budget agreed and the transformation programme for children's social care services understood and delivering.

Appendix 2

Rotherham MBC Return of Functions (Four Tests)

1. Commissioners have satisfied themselves that the services are operating at a good enough level with no significant value for money deficits.
2. They are operating in areas where there is good enough officer leadership and that definitions of service quality and plans for further improvements are in place.
3. Where service quality has been assured either by a Peer Review or from other activity carried out under the direction of Commissioners including review by experienced interim Chief Officers appointed from outside the authority.
4. Where Commissioners feel that individual Councillors are now in a position to exercise executive authority over these functions.

Appendix 3

Rotherham MBC – Independent Health Check

1. The competence of the Council's political leadership to promote the vision for the borough, to have the confidence of stakeholders and to work effectively with officers.
2. The competence of the Council's officer leadership to operate corporately and work effectively with Members.
3. Sufficiency of clarity about strategic direction and priorities which are becoming widely understood.
4. Engagement with key partners, the quality of partnership working and the Council's leadership role.
5. Engagement with residents and stakeholders, building community cohesion.
6. Capacity and resolve to deliver financial stability and financial discipline.
7. Capacity and resolve to identify and manage risk, and to deal with new demands, turbulence, challenges, services weaknesses and failures, media attention and reputational risks.
8. A positive and healthy organisational culture and attention to performance management.
9. Prospects for the sustainability and continuity of competent leadership.
10. Assurance of improved Council capability in relation to adult social care and domestic abuse, in preparedness for the removal of additional measures of Commissioners' formal advice set out in revised Directions on 12th September.