

## Local authorities and government intervention

22/03/2016

**Local Government analysis: What are the protocols of government intervention within local authorities (LAs)?**  
David Fletcher, barrister at St John's Chambers, explores government intervention in LAs following recent events in Rotherham.

### Original news

Rotherham Council regains control of schools, LNB News 12/02/2016 61

*Among several other powers returned, Rotherham Metropolitan Borough Council is to regain control of education for 14 to 19-year-olds, the Department for Communities and Local Government (DCLG) has announced. Although responsibility for the running of a limited number of services will return to the council as they are now operating at an adequate standard and have in place a suitably strong leadership, the DCLG warns that more progress is needed before full powers are restored.*

### When can the government intervene?

The powers of intervention invoked in the Rotherham case fell under two distinct statutory regimes.

First, under Part 1 of the Local Government Act 1999 (LGA 1999), the Secretary of State for Communities and Local Government (SSCLG) has powers to inspect, inquire and intervene if satisfied that a LA is failing its best value obligation. LGA 1999, s 10 empowers the SSCLG to appoint a person to carry out an inspection of a best value authority's compliance with the requirements of LGA 1999, Pt 1 in relation to specified functions. If the inspection indicates the LA is failing in any specific areas then LGA 1999, s 15(5) empowers the SSCLG to direct the LA to take any action which they consider necessary or expedient, and LGA 1999, s 15(6) empowers them to direct that:

- o a specified function of the authority shall be exercised by the SSCLG or by a person nominated by them (a commissioner) for a period specified in the direction or for as long as the SSCLG considers appropriate, and
- o the LA shall comply with any instructions of the SSCLG or his commissioner and provide such assistance as they require

Second, whereas the basis for the intervention powers in LGA 1999, Pt 1 is a failure to provide best value in a specific area of local government, section 497A of the Education Act 1996 (EA 1996) contains more specific intervention powers for the Secretary of State for Education (SSE) in respect of a failing local education authority (LEA). This provision contains a range of options entitling:

- o the SSE to direct that a function be exercised by a person nominated, and
- o a wide-ranging power under EA 1996, s 4(B) to give such other directions as the SSE thinks expedient for the purpose of securing that the function is performed to an adequate standard

In addition to the powers in EA 1996, s 497B, the SSE has power to give directions under EA 1996, s 496 where an LEA or governing body of a school is acting or proposing to act unreasonably in the exercise of any power.

Although EA 1996, s 497A limits the SSE's power of intervention to failing LEAs in exercise of their education functions, section 50 of the Children Act 2004 (CA 2004) applies those powers to functions of a LA in respect of:

- o social services so far as they relate to children
- o continuing services to former relevant children under the Children Act 1989
- o other LA functions under CA 2004 in relation to children

Therefore, in the Rotherham case intervention by the SSE was based upon alleged failures in respect of social services and services to children and upon the importation of EA 1996, s 497A powers by CA 2004, s 50.

### How is intervention triggered?

The trigger for the exercise of the SSCLG's powers of intervention under LGA 1999, s 15 is that the SSCLG is 'satisfied' that the LA is failing to comply with its best value obligations. In practice, it is likely that any intervention will have been preceded by a best value inspection under LGA 1999, s 10, as happened in the Rotherham case. Before issuing a direction, the SSCLG must give the LA an opportunity to make representations about the report that preceded the proposed direction, and about the proposed direction. Nevertheless, these powers are broad, discretionary and draconian.

In the case of EA 1996 powers, the trigger is simply that the SSE is satisfied, by complaint or otherwise, that an LEA or LA is failing to perform any function to an adequate standard. Under both intervention regimes, the trigger may be that a previous direction has been given.

### **How will power be returned to the LA and how will this work in practice?**

In practice, directions are issued for a limited period and kept under review. Powers are returned in stages to the LA as and when the commissioners are satisfied that it is appropriate to do so. Thus in the case of Rotherham, directions were made in February 2015 following an investigation report in January 2015 and an advice note from HM Inspector of Education. Following a review in November 2015, the lead commissioner proposed a restoration protocol, ie that certain services could be returned to the LA, and following a further report this was done in February 2016. Since the 2016 direction Rotherham has in effect been governed jointly by the elected officers and the commissioners, with certain functions returned to the officers.

### **How are the commissioners appointed and how are they paid?**

The commissioners are appointed by the relevant government departments, as experienced specialists in their fields. In the case of Rotherham, the lead commissioner appointed was an experienced LA chief executive. It is assumed they are paid by the government department that appoints them. The selection and remuneration of commissioners is a matter left entirely to the discretion of each government department.

*Interviewed by Alex Heshmaty.*

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