

Extraordinary Council Meeting Supplementary Agenda



4. Section 114 Report (Pages 3 - 26)

For Members to consider the Chief Finance Officer's Section 114 report dated 2 December 2020.

JACQUELINE HARRIS BAKER
Council Solicitor and Monitoring Officer
London Borough of Croydon
Bernard Weatherill House
8 Mint Walk, Croydon CR0 1EA

Democratic Services
020 8726 6000
Democratic.Services@croydon.gov.uk
www.croydon.gov.uk/meetings

This page is intentionally left blank

Agenda Item 4

REPORT TO:	EXTRAORDINARY COUNCIL 16 December 2020
SUBJECT:	Response to the 2nd Section 114 Report issued on the 2 December 2020
LEAD OFFICER:	Lisa Taylor, Director of Finance, Investment and Risk and Section 151 Officer
CABINET MEMBER:	Councillor Hamida Ali, Leader of the Council Councillor Stuart King, Cabinet Member for Croydon Renewal
WARDS:	All
FINANCIAL IMPACT: This report confirms that the Council continues to be unable to deliver a balanced budget for the 2020/21 financial year and will continue to be unable to until such time as it receives external financial support in the form of a capitalisation direction with the Ministry of Housing, Communities and Local Government.	

1. RECOMMENDATIONS

Council is recommended to:

- 1.1 Accept the views contained in the second Section 114 report issued by the Director of Finance, Investment and Risk, Section 151 Officer (Chief Financial Officer - CFO) on 2 December 2020 under Section 114 (3) of the Local Government Finance Act 1988 included at appendix 2 to the report;
- 1.2 Note the latest forecast overspend for 2020/21 of £66m;
- 1.3 Note that the Council cannot balance its budget in 2020/21 without external support and therefore continues to seek a capitalisation direction with the Ministry of Housing, Communities and Local Government;
- 1.4 Note that if the Council cannot balance the budget at the end of this 21 day period detailed in Section 114 (3) of the Local Government Finance Act 1988, or after the date of the Extraordinary Council meeting whichever is earlier then it will be necessary for the Director of Finance, Investment and Risk to issue a third Section 114 report which will need to be responded to within a further statutory 21-day period, as detailed in the Act; and
- 1.5 Agree that irrespective of whether the Council's Chief Finance Officer issues a third "Section 114" report, the spending control panel in operation under the current Section 114 report shall continue in the manner detailed in this report until such time as the Council may later determine.

2. EXECUTIVE SUMMARY

- 2.1 This report asks Members to consider and accept the views contained in the second Section 114 report issued by the Director of Investment, Finance and Risk and Section 151 Officer on 2 December 2020, contained at appendix 2 of this report and agree what action (if any) it proposes to take in consequence of it.
- 2.2 The report reiterates that the Council will not be able to balance its budget in the 2020/21 or over the Medium Term Financial Strategy Period (2021/24) until such time as it receives external support in the form of a capitalisation direction request from the Ministry of Housing, Communities and Local Government (MHCLG).

3. BACKGROUND

- 3.1 On 11 November 2020, the Council's Director of Finance, Investment and Risk and Section 151 officer, also known as the Chief Finance Officer, issued a "Section 114" report, a copy of which is attached at appendix 1.

- 3.2 Such reports are issued by Chief Finance Officers of Local Authorities in accordance with their responsibilities under the Local Government Finance Act 1988. Section 114(3) of that Act states that:

'The chief finance officer of a relevant authority shall make a report under this section if it appears to him that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed resources (including sums borrowed) available to it to meet that expenditure.'

- 3.3 The views contained in that report were considered at an Extraordinary Meeting of the Council on 1 December 2020. At that meeting, Members resolved to agree with the Chief Finance Officer's views and agreed a further £0.5million in-year savings. However, Members also noted that as expenditure remained forecast to significantly exceed resources available, it would not be possible for the Council to deliver a balanced budget in the 2020/21 financial year until such time as it receives external support.
- 3.4 The Extraordinary Council Meeting on 1 December marked the end of the 21-day period available to the Council to seek to remedy its forecast overspend following the publication of the first Section 114 report. Following the Extraordinary Council meeting, the Chief Finance Officer remains of the professional opinion that the Council's forecast expenditure will significantly exceed the resources available to it and as such, the Council remains unable to deliver a balanced budget for the 2020/21 financial year. On that basis, the Chief Finance Officer issued a second Section 114 Report on 2 December 2020.

4. THE SECOND SECTION 114 REPORT

- 4.1 In issuing a second Section 114 Report, the Chief Finance Officer took into consideration the additional savings that were agreed by Council in response to the first report and the application to the Ministry of Housing, Communities and Local Government (MHCLG) for a capitalisation direction, which is planned to be submitted to on 15 December 2020.
- 4.2 However, the Chief Finance Officer also took into account that the additional savings that had been agreed were not sufficient to achieve a balanced budget forecast in the current year and that, while discussions with MHCLG have been positive, there was no certainty that any application for a capitalisation directive would be agreed.
- 4.3 The table below details the Council's latest budget forecast, including all identified in-year savings. It also shows that since the issuing of the second Section 114 report, the budget remains unbalanced and that without the approval of a capitalisation direction the budget will remain unbalanced and further Section 114 reports will need to continue to be issued.

Table 1 Budget movements 2020/21

	£'m	£'m	£'m	£'m
	1.4.20	in year	total	Movement from original budget
2020/21 net cost of services	313.00			
Forecast Overspend q1		49.00		
Total Forecast spend			362.00	49.00
In year savings identified – Sept 2020		-27.90		
Total Forecast Spend			334.10	21.10
Correction of in year Savings		17.70		
Total Forecast Overspend			351.80	38.80
Forecast overspend q2		66.70		
Total Forecast Spend			379.70	66.70
Savings identified since issue of S114		-0.50		
Total Forecast Overspend			379.20	66.20
Capitalisation Direction required		-66.20		
2020/21 net cost of services			313.00	

- 4.4 On 2 December 2020, the Chief Finance Officer concluded, in consultation with the Head of Paid Service and the Council's Monitoring Officer, that the Council's forecast expenditure continued to have a significant unfunded financial deficit this year and that it was her duty to issue a second Section 114

report to all Members of the Council and to the Council's external auditors, Grant Thornton.

4.5 Having issued the second Section 114 report, Members are required to:

- i) Consider the report at a meeting of Full Council within 21 days of the report being issued;
- ii) At that meeting, Council must decide whether it agrees or disagrees with the views contained within the report; and
- iii) Agree what action (if any) it proposes to take in consequence of it.

4.6 Having received the second Section 114 report on the 2 December 2020 the Council has been prohibited from incurring any new expenditure during the period between the issuing of the report and the date on which this report is considered at an extraordinary meeting of Council, this is a maximum period of 21 days.

4.7 This prohibition on new expenditure continues to be managed through a daily Spending Control Panel, which considers if requests for new expenditure meet the strict criteria for essential spend that have been set by the Chief Finance Officer in compliance with the exceptions set by the Local Government Finance Act 1988.

4.8 The only expenditure allowed during the Section 114 period must meet the following criteria:

- i) existing staff payroll and pension costs;
- ii) expenditure on goods and services which have already been received;
- iii) expenditure required to deliver the council's provision of statutory services at a minimum possible level;
- iv) urgent expenditure required to safeguard vulnerable citizens;
- v) expenditure required through existing legal agreements and contracts;
- vi) expenditure funded through ring-fenced grants; and
- vii) expenditure necessary to achieve value for money and / or mitigate additional in year costs.

4.9 And, the only grounds for approval of **new** expenditure are:

- i) To prevent the situation that led to the report being issued from getting worse;
- ii) To Improve the situation; or
- iii) To prevent the situation from recurring

4.10 Members should note that the issuing of a second Section 114 report is a reflection of the seriousness of the financial issues that the Council faces. The report still has a general fund overspend forecast in excess of £66m, which is significantly greater than the £7m that the Council currently has available in reserves.

5. NEXT STEPS

- 5.1 Section 115 of the Local Government Finance Act requires Members to consider what actions, if any, it proposes to take in consequence of the Section 114 Report that was issued on the 2 December 2020
- 5.2 The Extraordinary Meeting of Council on 1 December 2020, held in response to the first Section 114 report, agreed a further £0.5m of in-year revenue budget savings and £0.5m of in-year capital budget savings. The meeting also heard that additional savings would be generated as a result of the prohibition of new expenditure, though it is currently too early to accurately forecast what level of savings this will achieve.
- 5.3 The Council has also identified a number of further measures that it will take to improve its financial position over the next three years in ‘the Croydon Renewal Plan’, which was agreed by Council at its meeting on 30 November 2020. As there is now less than one third of the financial year remaining in which to deliver a balanced budget, the savings delivered by the Croydon Renewal Plan will not be made in time to help achieve a balanced budget in this financial year.
- 5.4 To that end, it continues to not be possible to make savings recommendations to Council that will allow it to deliver a balanced budget in the 2020/21 financial year. As a consequence, the Chief Finance Officer will be required to give consideration to issuing a third Section 114 report following this Extraordinary Meeting of Council, as the Council will remain unable to balance its budget for the financial year. Any further Section 114 report would serve to re-impose the prohibition of expenditure (other than as may be authorised in accordance with the controls referred to in paragraph 4.8 and 4.9) and would start another 21-day prohibition period.
- 5.5 Irrespective of whether the Council’s Chief Finance Officer issues a third Section 114 report, Members are recommended to agree to continue operating under the spending control restrictions described in paragraphs 4.7 for the foreseeable future and until such time as the Council’s financial position has improved adequately enough to allow them to be lifted.

6. THE 2021/22 GENERAL FUND BUDGET

- 6.1 ‘The Croydon Renewal Plan’ report considered by Council at its meeting on 30 November 2020 detailed the Council’s ongoing financial challenge for the period 2021-24.
- 6.2 That report detailed a number of additional savings to be made to improve the Council’s financial position and its effectiveness over the next three years, but also confirmed that the Council will not be able to deliver a balanced budget during that period without external support.
- 6.3 The Council is seeking to remedy that position through a capitalisation direction agreement with MHCLG.

- 6.4 Given that the projected maximum shortfall for the 2021/22 general fund budget is currently £64.2m, Members should be aware that if the budget cannot be balanced and should the capitalisation direction not be agreed by February 2021, the Chief Finance Officer will have to issue a further Section 114 report at that time.

7. CONSULTATION

- 7.1 The second Section 114 report was issued to all Members of the Council and the Council's external auditor, Grant Thornton, on 2 December 2020. This followed consultation with MHCLG, CIPFA and the Council's Head of Paid Service and Monitoring Officer.
- 7.2 The Croydon Renewal Plan, which contains details of the proposed additional in year savings, was considered at both the Cabinet meeting on 25 November 2020 and the meeting of Council on 30 November 2020.

8. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 8.1 This report details that the Council cannot currently deliver a balanced budget and will need support in the form of a capitalisation direction from MHCLG to enable a balanced budget to be delivered and the S114 notice removed. Without support the budget will remain unbalanced and the S114 notice will need to remain in place.

Approved by: Lisa Taylor, Director of Finance, Investment and Risk and Section 151 Officer

9. LEGAL CONSIDERATIONS

- 9.1 The Head of Litigation and Corporate Law comments on behalf of the interim Director of Law and Governance that the Local Government Finance Act 1992 section 31A places the Council under a statutory responsibility to set a balanced budget.
- 9.2 As noted in paragraph 3.4 a second Section 114(3) report was issued on the 2 December 2020 as it appears to the Chief Finance Officer *“that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed resources (including sums borrowed) available to it to meet that expenditure.”* As such, a further prohibition period has come into effect and the Council has the duty to consider the second Section 114(3) report in the manner described in paragraph 4.6.
- 9.3 There is no statutory or other legal provision to govern what actions the Council must take in response to the Section 114(3) notice. That is a matter for the Council. The requirement is to meet within a 21 day period beginning on the day upon which copies of the report were served upon Members and decide if it

agrees or disagrees with the views in the report and what action to take in consequence. It is possible for more than one notice to be issued (as was the case in Northamptonshire County Council). However, ultimate responsibility rests with the Council to deliver a lawful budget.

- 9.4 The Section 114(3) report and its consequences are in addition to powers available to the Chief Finance Officer to issue a report to the Council under section 114(2) of the LGFA 1988 or under section 114A of the LGFA 1988 if it appears that the Council has made or is about to make a decision which involves or would involve the council incurring unlawful expenditure, would be unlawful and likely to cause a deficiency on the part of the council or is about to enter an item of account which is unlawful.
- 9.5 In addition, the Council should be aware that the Monitoring Officer has a duty, under section 5 of the Local Government and Housing Act 1989, if it appears that any proposal, decision or omission by the Council would give rise to a contravention by the Council of any enactment or rule of law or any such maladministration or injustice, to prepare a report to the authority with respect to that proposal decision or omission.
- 9.6 There are also powers set out in Part I of the Local Government Act 1999 regarding Secretary of State intervention in a local authority of which the Council should likewise be mindful.
- 9.7 Equally, the Council's auditor has power available under the Local Audit and Accountability Act 2004 (section 31) to issue an advisory note and apply to the High Court for judicial review where a decision or failure to act would have an effect on the accounts of the Council.
- 9.8 In pursuing certain potential courses of action to address its financial position, the Council will be subject to (i) its duties to consult under section 3 of the Local Government Act 1999, and under general principles established by case law, and (ii) its public sector equalities duties. In the case of *WX, R (On the Application Of) v Northamptonshire County Council* [2018] EWHC 2178 (Admin) that Council failed on both these counts when seeking to find budget savings (and in the context of a Section 114 report at that time).
- 9.9 In that case the budget cuts and changes in the delivery of library services following the issue of a Section 114 report were held to be unlawful (and therefore quashed) because the Council had failed to take proper account of consultation responses or consider its public sector equalities duties, even though it was (rightly) motivated to address its budgetary position. Therefore, in making decisions about service-provision, these duties do not fall away in the teeth of the urgent need to take action as a consequence of the new Section 114 report.
- 9.10 Although the new Section 114 report therefore compels the Council to take action, it must do so in light of these duties and in accordance with general principles of public law, including the Council's fiduciary duty to act prudently with public monies entrusted to it, as well as to give due and proper consideration to all relevant factors (disregarding irrelevant factors).

Approved by Sandra Herbert Head of Litigation and Corporate Law on behalf of the interim Director of Law and Governance & Deputy Monitoring Officer.

10. HUMAN RESOURCES IMPACT

- 10.1 It is recognised that issuing a Section 114 notice has consequent implications for the workforce, as the council determines how it plans to reorganise its services.
- 10.2 Any proposals that have a direct staffing impact will be consulted on with our recognised trade unions and individual staff in line with the agreed HR policies and procedures

Approved by: Sue Moorman, Director of Human Resources

11. EQUALITIES IMPACT

- 11.1 In making decisions pertaining to changes in spending and budgets which could impact on service delivery, the Council has obligations under the Equality Act 2010. In particular, the requirement to have due regard to the three aims of the Public Sector Equality Duty (the Equality Duty) in designing policies and planning / delivering services; this is particularly important when taking decisions on service changes. The three aims of the Equality Duty are to:
- a) Eliminate unlawful discrimination, harassment and victimisation;
 - b) Advance equality of opportunity; and
 - c) Foster good community relations between people who share any of the defined Protected Characteristics and those who do not.
- 11.2 The Equality Act lists nine Protected Characteristics: age, disability, race, religion or belief, sex (gender), sexual orientation, gender reassignment, marriage and civil partnership and pregnancy and maternity. Depending on the nature of the decisions or changes, different protected characteristics are likely to be engaged or more impacted.
- 11.3 Whilst the Council must have due regard to the Equality Duty when taking decisions, there is a recognition that local authorities have a legal duty to set a balanced budget. The Council will undertake Equality Impact Assessments to ascertain the potential impact on groups that share protected characteristics. However, where a decision is likely to result in detrimental impact on any group with a protected characteristic it must be justified objectively. This means that the adverse impact must be explained as part of the formal decision-making process and attempts to mitigate the harm need to be explored. If the harm cannot be avoided, the decision maker must balance the detrimental impact against the strength of legitimate public need to pursue the service change to deliver savings. Finances cannot be the sole consideration.

Approved by: Yvonne Okiyo, Equalities Manager

12. DATA PROTECTION IMPLICATIONS

12.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?

NO

The Head of Democratic Services and Scrutiny comments that the recommendations of this report do not involve the processing of personal data and as such, there are no data protection implications arising from this report.

Approved by Lisa Taylor, Director of Finance, Investment & Risk and s151 Officer.

CONTACT OFFICER: Lisa Taylor, Director of Finance, Investment and Risk, s151 Officer.

APPENDICES TO THIS REPORT

Appendix 1 - 1st Section 114 Report dated 11 November 2020

Appendix 2 - 2nd Section 114 Report dated 2 December 2020

This page is intentionally left blank

To: - All Elected Members – Croydon Council

From: - Lisa Taylor, Director of Finance, Investment and Risk and Section151 Officer

Date: - 11/11/20

Subject: - Report under Section 114(3) of the Local Government Finance Act 1988.

Recommendations: -

1. That the Elected Members of Croydon Council must consider this report from the Director of Finance, Investment and Risk, Section151 Officer (Chief Financial Officer - CFO) issued under Section114 (3) of the Local Government Finance Act 1988.
2. That this report must be considered at a Meeting of the Full Council which must be held no later than the end of the period of 21 days of issue of this report beginning with the date of issue of this report (date above) and
3. That the authority must decide whether it agrees or disagrees with the views contained within the report and what action (if any) it proposes to take in consequence of it.

1 Purpose of this report

1.1 Members of Croydon Council must consider this report from the Director of Finance, Investment and Risk, Section151 Officer (the Chief Financial Officer – CFO), and respond as required by the Local Government Finance Act 1988.

1.2 The Local Government Finance Act 1988, places certain responsibilities on the Chief Finance Officer. Section 114(3) states:-

‘The chief finance officer of a relevant authority shall make a report under this section if it appears to him that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed resources (including sums borrowed) available to it to meet that expenditure.’

1.3 At the start of the Covid19 pandemic earlier this financial year the Chartered Institute of Public Finance and Accountancy (CIPFA) and the Ministry Of Housing, Communities and Local Government (MHCLG) agreed a temporary modification to the existing S114 guidance. The rationale for the temporary modification was to allow Local Authorities to explore what further options or financial assistance may be available ahead of formally issuing a S114 notice. This temporary modification included Local Authorities engaging in informal conversations with MHCLG to make the Ministry aware of financial concerns ahead of issuing a S114 notice. These conversations have continued to take place in Croydon since the early summer 2020.

1.4 In very early September 2020, I issued a draft S114 notice to the then Leader of the Council, the then statutory Deputy Leader and the then Interim Chief Executive and the Council’s Monitoring Officer, expressing my concerns about the Council’s ability to deliver a balanced budget this financial year. This draft notice was also shared with colleagues at MHCLG, The Local Government Association (LGA) and the External Auditors, Grant Thornton. There is reference to this in the Report in the Public Interest which was issued on the 23 October 2020. I did not issue a formal S114 notice as the conversations with MHCLG were ongoing.

1.5 Since the 23 October 2020, mindful of my statutory duty under section 114, I have kept the need to issue a S114 notice under constant review. It is now my professional judgement as the CFO for Croydon Council that in the current financial year (2020/21) despite the ongoing conversations with MHCLG and the presentation of amendments to the General Fund budget at Cabinet on the 21 September 2020 that the forecast expenditure continues to significantly exceed resources, and plans to rectify this financial position are insufficient, leaving the Council with a significant unfunded financial deficit this year. Therefore I have a duty to issue all Members of the Council with this S114 notice. My reasons for the timing of this notice, detailed below, can be summarised as follows:

- CIPFA clarification – on the 6 November 2020 the Chief Executive of CIPFA clarified in a letter to Croydon Council that the modified guidance regarding the issue of S114 notices was as a direct result of costs incurred by the Covid19 pandemic. Croydon’s financial pressures are not all related to the pandemic.
- Letter from MHCLG – on the 10 November 2020 the Director General, Local Government, Strategy and Analysis stated in a letter to the interim Chief Executive that the Ministry are understandably unable to advise Ministers on the financial position of the council while the Rapid Review is underway. The Ministry have informed us that as soon as that is complete and we have sent the remaining information to them they will take stock of the position and speak with Ministers and then advise us accordingly. The letter states that the S151 Officer will need to judge the Council’s ability to balance its budget on that basis. It is unlikely that we will receive confirmation before the end of this calendar year despite officials working very closely with us in a very supportive manner. In my view this confirmation will arrive too late, for Croydon to be in a position where it is able to deliver a balance budget this financial year and therefore we will be required to issue this S114 notice.
- Quarter 2 2020/21 revenue budget forecast outturn – As has already been briefed to elected members, the quarter 2 forecast as detailed in paragraph 1.7 of this report has increased compared to the figures presented to Cabinet on the 21 September 2020, resulting in a larger forecast overspend in the financial year, and unable to deliver a balanced budget.
- In year savings not delivered – £17.7m of the £27.9m of the ‘new’ savings presented to Cabinet on 21 September 2020 and the Council meeting on the 28 September 2020 were incorrectly identified as new savings and as a result the forecast overspend has not reduced by as much as previously reported.
- Brick By Brick - The strategic review of Group Companies currently being undertaken has identified that there is a greater risk than previously anticipated around Brick by Brick being able to make interest and dividend payments due to the Council this year and for previous years. The non-delivery of this income adds to the financial pressures and the Council’s inability to deliver a balanced budget this financial year.
- Budget Development Meetings – The Council’s internal Budget Development Meetings designed to identify budget savings in the medium term 2021/24 is failing to deliver the amount of necessary savings proposals and reduce growth demand to date.
- Spending controls – Despite the Council having put in place spending controls over the summer 2020, non-essential cost have continued to be incurred. As a result a formal spending control panel has now been

implemented but as the CFO I am still not seeing an organisation that is taking the necessary radical decisions to stop all but essential expenditure.

- The Finance Review Panel – The Panel set up in May 2020 meets biweekly to undertake a root and branch review of the Council’s finances, chaired and attended by external senior officers from other London Boroughs and Croydon Health Services. The Panel gave a very strong steer at the meeting on the 5 November 2020 that they believed a S114 notice should now be issued and gave their support to the issuing of such notice.
- Report in the Public Interest – Our External Auditors, Grant Thornton published a Report in the Public Interest on the 23 October 2020 under section 24 and schedule 7 of the Local Audit and Accountability Act 2014. This report detailed the deteriorating financial resilience of the Council over a number of years, and raised concerns with regards to financial stability. This report is the subject of an Extraordinary Council Meeting on 19 November 2020.
- Time – There is now less than half the financial year remaining in which to deliver the savings required to balance the budget. I am not seeing the necessary level of pace, urgency or radical options to be presented to members to take decisions upon to give me confidence that the Council can make the level of savings required to deliver a balance budget in year, without external support in the form of a capitalisation direction. This is unlikely to be confirmed before Christmas, leaving just three months in which to deliver balancing savings if the request is not approved.

- 1.6 This S114 notice is being issued in accordance with the statutory guidance to instigate formal immediate action to avoid a negative general fund balance at the end of this financial year. The purpose is to make clear to all Members of Croydon Council as well as staff and residents that the Council faces an extremely serious financial situation in the current financial year (2020/21). Expenditure is still forecast to be significantly greater than income resulting in a financial deficit being forecast, with insufficient reserves available to fund this.
- 1.7 In reaching the conclusion to issue this S114 notice today, I have had to make a number of judgements. At the time of writing this report there is a forecast general fund overspend at the end of the 2020/21 financial year in excess of £30m. This together with further risks of circa £36m likely to arise before the end of the financial year, as a result of undeliverable income, in the form of dividends and interest payable from Brick By Brick. There are also potential risks in the treatment of the 2019/20 costs arising from the ongoing external audit of the accounts. This all results in a forecast overspend in the region of £66m, (see appendix 1). The Council does not currently have a fully deliverable robust action plan to avoid a negative general fund balance this financial year.
- 1.8 Saving proposals to date have offered some additional savings in this financial year but not the required level of recurring reductions in expenditure necessary to bring about a balanced forecast. Emerging plans are not delivering at sufficient quantity or pace. The future impact of the current Covid19 pandemic remains uncertain and it is becoming increasingly unlikely that local authorities will be reimbursed by government for the full financial impact.

- 1.9 In reaching my professional judgement I have taken into account the delivery of the Immediate Measures Programme and the planned application to MHCLG for a Capitalisation Direction. However I do not consider these measures are certain in delivering the funds we need at this time to deliver a balanced budget this year. While positive conversations are continuing with MHCLG there continues to be no certainty that any application for a Capitalisation Direction will actually be approved. Time to the end of the financial year is rapidly running out and I now consider that if I do not issue this S114 notice today I will not be undertaking my statutory duties as the Council's S151 Officer.

2 Background – S114

- 2.1 Under the Local Government Finance Act local authorities are required by law to have a balanced budget. However, what is meant by balanced is not defined in law and the CFO is required to use their professional judgement to ensure the local authority's budget is robust and sustainable.
- 2.2 A S114 requires the CFO, in consultation with the Council's Monitoring Officer to report to all the authorities' members if there is, or is likely to be an unbalanced budget.
- 2.3 As the Chartered Institute of Public Finance and Accountancy (CIPFA) state in their publications, such a notice is only given in the gravest of circumstances and the issuing of a S114 notice should not be seen as a failure. I can assure all Members that the decision to issue this notice has been carefully considered in conjunction with the Council's Monitoring Officer and Interim Chief Executive who fully support me in this. It is being issued today as I am not being presented with the evidence that gives assurance that the required level of savings options and pace of restraint in spending and delivery of savings will be implemented during the remainder of this financial year.
- 2.4 A S114 notice has serious operational implications. Section 115 (3) of the Local Government Finance Act 1988 states that the:
- 'Full Council must meet not later than the end of the period of 21 days beginning with the day on which copies of the report are sent' to consider and respond to this notice.'*
- 2.5 During the next 21 days the authority must not incur any new expenditure unless the CFO has specifically authorised the spend. In practice this means that all new spending is prohibited between now and when the Council meeting takes place. All new expenditure must stop with immediate effect, this includes, amongst other things, the appointment of new permanent or temporary staff, all avoidable spend for example on ICT, supplies and services, equipment, expenses, overtime payments, and community ward budgets . The use of Purchase Cards (P cards) is not allowed, except in emergency circumstances.
- 2.6 During this time the Council will continue to have financial commitments in relation to statutory responsibilities and I have already introduced a process that allows proposals for urgent spending to be considered and if appropriate approved. This is in the form of a daily spending approval panel chaired by myself, or my deputy S151 Officer or another manager within the Council's Finance team.

3 Croydon Context

- 3.1 A financial crisis doesn't appear overnight and Croydon Council has been experiencing rising financial and service demand pressures for a number of years as the report in the public interest has described. While General Fund reserves have been held stable at £10m for a number of years, they have now reduced to £7m at the end of the 2019/20 financial year and these are not enough to fund the predicted overspend costs this year, and therefore action must be taken.
- 3.2 At the time of writing this report there is a forecast general fund overspend at the end of the 2020/21 financial year in excess of £66m. This forecast is after the delivery of the Immediate Measures programme that commenced in May 2020 when the finance pressures became apparent, the amendment to the General Fund budget presented in September 2020 and includes an assumption regarding the announced scheme to refund local authorities for lost sales, fees and charges as a result of Covid19. The forecast position will leave the council at the end of the 2020/21 financial year with a negative General Fund Balance and no reserves.
- 3.3 When the Cabinet approved the 2020/21 budget in February 2020 the report contained a statement from myself as the S151 officer stating that:

'All Members of the Council have been advised of the financial challenges the Council faces over the next financial year, the medium and longer term. The levels of government funding for 2020/21 have been clearly identified in this report and it must be recognised and understood that a one year funding settlement creates a level of uncertainty and therefore creates a financial planning risk.'

The report also made elected members aware that:

'These continue to be very challenging times for local government and therefore it is certain that further difficult choices will be required over the coming budget cycle if the Council is to maintain a continued solid financial foundation and achieve the delivery of a balanced outturn in 2020/2021 and in future years.'

This report was written ahead of the full impact of the Covid19 pandemic which has worsened the financial position of Croydon.

- 3.4 In July 2020 Cabinet was presented with two reports: Responding to the Local Government Financial Challenge and the July Financial Review. These reports made Cabinet aware that the Covid19 Pandemic had put significant pressure on the Council's in year budget position, costs had risen rapidly, whilst income had dramatically decreased, and the planned savings programme was undeliverable. The reports informed elected Members that these are challenging times for the whole of local government and very difficult choices were required if the Council is to maintain a balanced financial position in 2020/21 and future years. The reports also stated that whilst the government is providing additional funding that will underwrite some of the financial gap we must take urgent action to ensure that spending remains within the bounds of available resources in order to avoid breaching our statutory duty and to avoid issuing a S114 notice.
- 3.5 These two cabinet reports have also been the subject of two Scrutiny and Overview Committees in July and August where Members of the committee were provided with more information on the financial position of the Council, details of the work of the Finance Review Panel including the Immediate Measure Programme and information relating to the staffing reduction project, as well as the Council's risk register.

- 3.6 At the Scrutiny and Overview Committee on the 25th August 2020 the committee were advised in the report of the following:-

'At the time of writing this report, I as the S151 Officer for Croydon Council cannot give full assurance that the Council will be able to deliver a balanced budget in 2020/21 or future years. This is as detailed above (in the Scrutiny and Overview Committee report), due to a number of different factors and financial pressures that have impacted the Council since the start of the Covid19 pandemic in March 2020.'

'I can confirm that the Executive Leadership Team and Cabinet are working together supported by the work of the Financial Review Panel and external partners including MHCLG and CIPFA to manage the budget and balance it. This work and the development of these plans at the current time mean that as per the CIPFA guidance I have not had to issue a S114 notice. However, if at any time I do not feel that these plans are developing at the right pace or are actually not deliverable I will have no choice but to issue a S114 notice.'

- 3.7 In September, the Cabinet and full Council meetings received a report detailing amendments to the 2020/21 General Fund budget, and since then further potential in year financial pressures have been identified.
- 3.8 Given we are now in month 8 of this financial year and the plan in place to balance the budget this financial year is not yet robust, including the ongoing uncertainty around future funding from government and support in the form of a Capitalisation Direction, I therefore have no option but to issue this S114 notice.

4 Medium Term Financial Planning – 2021 - 2024

- 4.1 The Medium Term Financial Strategy (MTFS) work remains on going and the Strategy presented to Cabinet in September 2020 is continuing to be refreshed to incorporate the work from the recent internal Budget Development Meetings. The strategy currently continues to have significant financial gaps for the next three years with the first year being the most significant. Conversations are also on going with MHCLG regarding support in the form of a Capitalisation Direction for these future years too. If this work cannot be concluded by February 2021 when the budget for 2021/22 is presented to Cabinet and full council for approval I will again have to issue a further S114 notice.
- 4.2 It is essential that action is taken immediately to reduce spending, temper growth demands for future years and balance the budget both this year and next year whilst building a level of reserves that can provide stability in future years.

5 Summary

- 5.1 The requirement of this S114 notice is that the Council must meet within 21 days of issue, in order to consider the concerns raised. At this stage I am unable to offer remedies and elected members must take responsibility to make choices and decisions to reduce costs immediately to ensure the council is able to deliver a lawful financial outturn in 2020/21 (a balanced outturn) and to have measures in place to enable it to set a balanced budget in 2021/22 and future years.
- 5.2 Elected members must agree to cease all non-essential expenditure and reduce our operational and service delivery costs immediately and the Executive Leadership team must put in place effective plans to deliver the required reductions.

Appendix 1 – Budget gap month 6

	Month 6
	Forecast
	Variance
	(£,000's)
Children Families and Education	19,928
plus UASC	5,438
	<hr/> 25,366
Health, Wellbeing and Adults	25,748
Place	12,306
Resources	3,578
Departmental Total	<hr/> 66,998
Non-Departmental Items	11,430
Total General Fund	<hr/> 78,428
Corporate Covid-Grants	-38,017
Net GF Position after Grants	<hr/> 40,411
Savings Programme	-10,200
	<hr/> 30,211 <hr/>

Additional Risks	£'000
Additional Pressures - BxB Pre 20/21 Interest	
Write Off	14,255
Brick By Brick 2020/21 Dividend	5,200
BxB 2020/21 Interest	11,500
MRP From Report in the Public	
Interest	200
Transformation Funding IN 19/20	
Accounts	5,600
 Additional Social care costs?	 unknown
Covid19 spike 2	unknown
Cost of Report in the Public	
Interest	TBC
	<hr/> 36,755 <hr/>

To: - All Elected Members – Croydon Council

From: - Lisa Taylor, Director of Finance, Investment and Risk and Section151 Officer

Date: - 02/12/20

Subject: - Report under Section 114(3) of the Local Government Finance Act 1988.

Recommendations: -

1. That the Elected Members of Croydon Council must consider this, the second report from the Director of Finance, Investment and Risk, Section151 Officer (Chief Financial Officer - CFO) issued under Section114(3) of the Local Government Finance Act 1988.
2. That this report must be considered at a Meeting of the Full Council which must be held no later than the end of the period of 21 days of issue of this report beginning with the date of issue of this report (date above) and
3. That the authority must decide whether it agrees or disagrees with the views contained within this report and what action (if any) it proposes to take in consequence of it.

1 Purpose of this report

- 1.1 Members of Croydon Council must consider this, the second report from the Director of Finance, Investment and Risk, Section151 Officer (the Chief Financial Officer – CFO), and respond as required by the Local Government Finance Act 1988.
- 1.2 The Local Government Finance Act 1988, places certain responsibilities on the Chief Finance Officer. Section114(3) states:-

‘The chief finance officer of a relevant authority shall make a report under this section if it appears to him that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed resources (including sums borrowed) available to it to meet that expenditure.’
- 1.3 A Section114(3) notice was issued to all members of Croydon Council on the 11 November 2020 and work has been taking place since it was issued to reduce costs and secure a Capitalisation Direction with the Ministry of Housing, Communities and Local Government (MHCLG). Whilst savings have been identified of £0.5m and positive conversations are ongoing with MHCLG in this regards it has not been possible to conclude any formal agreement on the capitalisation direction within the timescale set in law for the Section114 process.
- 1.4 Full Council on the 1 December 2020 agreed all of the recommendations in the report and noted that at this time, as presented at the Extraordinary Council Meeting on the 1 December 2020, it has not been possible to deliver a balanced budget and therefore I must issue all Members of the Council with this a second Section114(3) notice.
- 1.5 It must be recognised that the Local Government Finance Act 1988 has a very strict and rigid timeframe regarding a Section114(3) notice and the 21 day requirement for the Council to hold a full Council, meeting cannot be exceeded.

- 1.6 It continues to be my professional judgement as the CFO for Croydon Council that in the current financial year (2020/21) despite the presentation of amendments to the General Fund budget and the ongoing productive conversations with MHCLG that the forecast expenditure continues to significantly exceed resources. Plans to rectify this financial position continue to be ongoing but insufficient, leaving the Council with a significant unfunded financial deficit this year. Therefore I have a duty to issue all Members of the Council with this a second Section114(3) notice.
- 1.7 There is now less than one third of the financial year remaining in which to deliver a balanced budget and without external support in the form of a capitalisation direction, it will now be impossible for a balanced budget to be delivered.
- 1.8 This second Section114(3) notice is being issued in accordance with the statutory guidance to continue formal immediate action to avoid a negative general fund balance at the end of this financial year. The purpose of this report is to make it clear to all Members of Croydon Council as well as staff and residents that the Council continues to face an extremely serious financial situation in the current financial year (2020/21). Expenditure is still forecast to be significantly greater than income resulting in a financial deficit continuing to be forecast, with insufficient reserves available to fund this.
- 1.9 In reaching the conclusion to issue this Section114(3) notice today, I have had to make a number of judgements. At the time of writing this report there remains a forecast general fund overspend at the end of the 2020/21 financial year of almost £30m. This together with further risks of circa £31m likely to arise before the end of the financial year, as a result of undeliverable income, in the form of dividends and interest payable from Brick By Brick. And potential risks in excess of £5m in the treatment of some 2019/20 costs arising from the ongoing external audit of the accounts. This all results in a forecast overspend in the region of £66m, (see appendix 1). The Council does not currently have a fully deliverable robust action plan to avoid a negative general fund balance this financial year.
- 1.10 Since the 11 November 2020 work has been ongoing to develop the Croydon Renewal Improvement Plan and Cabinet on the 25 November 2020 received two reports detailing the Plan and information on the submission to MHCLG for the Capitalisation Direction. These reports were then debated at Council on the 30 November 2020.
- 1.11 Saving proposals identified since the issuing of the first Section114(3) notice on the 11 November 2020 have offered some additional savings in this financial year but not the required level of recurring reductions in expenditure necessary to bring about a balanced forecast. Plans to secure a Capitalisation Direction from MHCLG remain positive and ongoing and officers are grateful for the support being given by MHCLG officials.
- 1.12 In reaching my professional judgement I have taken into account the delivery of the additional savings identified in the response to the Section114(3) notice presented to the Extraordinary Council Meeting on the 1 December 2020 (see appendix 3), and the planned application to MHCLG for a Capitalisation Direction which will be made on the 15 December 2020. It is acknowledged that the Council has agreed with the views contained within my first report. However, it was also noted that while positive conversations are continuing with MHCLG there continues to be no certainty that any application for a Capitalisation Direction will actually be approved. Time to the end of

the financial year is rapidly running out and I now consider that if I do not issue this second Section114(3) notice today I will not be undertaking my statutory duties as the Council's S151 Officer.

2 Background – Section114

- 2.1 As detailed in my Section114(3) Notice issued on the 11 November 2020 under the Local Government Finance Act 1988 local authorities are required by law to have a balanced budget. However, what is meant by balanced is not defined in law and the CFO is required to use their professional judgement to ensure the local authority's budget is robust and sustainable.
- 2.2 A Section114(3) requires the CFO, in consultation with the Council's Monitoring Officer to report to all the authorities' members if there is, or is likely to be an unbalanced budget.
- 2.3 This is the second Section114(3) notice to be issued this financial year, with the first notice having been issued on the 11 November 2020 and detailed at appendix 2 of this report.
- 2.4 As the Chartered Institute of Public Finance and Accountancy (CIPFA) state in their publications, such a notice is only given in the gravest of circumstances and the issuing of a Section114(3) notice should not be seen as a failure. I can assure all Members that the decision to issue the first Section114(3)notice and this notice has been carefully considered in conjunction with the Council's Monitoring Officer and Interim Chief Executive who fully support me in this. It is being issued today as I am not being presented with the evidence that gives assurance that that the required level of savings options and pace of restraint in spending will be implemented during the remainder of this financial year.
- 2.5 To remind all Councillors, a Section114 (3) notice has serious operational implications. Section 115 (3) of the Local Government Finance Act 1988 states that the:

'Full Council must meet not later than the end of the period of 21 days beginning with the day on which copies of the report are sent' to consider and respond to this notice.'
- 2.6 During the next 21 days or until the first business day after the Council meets to decide whether it agrees or disagrees with the views contained in this notice and what action to take (whichever is the earlier date) the authority must continue not to incur any new expenditure unless the CFO has specifically authorised this spend. In practice this means that all new spending continues to be prohibited between now and when the Council meeting takes place. All new expenditure must continue to be stopped. This includes, amongst other things, the appointment of new permanent or temporary staff, all avoidable spend for example on ICT, supplies and services, equipment, expenses, non-contractual overtime payments, and community ward budgets . The use of Purchase Cards (P cards) is not allowed, except in emergency circumstances. Expenditure will be allowed to prevent the situation that led to the report being issued from getting worse, to improve the situation or to prevent the situation from reoccurring.
- 2.7 During this time the Council will continue to have financial commitments in relation to statutory responsibilities and I have already introduced a process that allows

proposals for urgent spending to be considered and if appropriate approved. This is in the form of a daily spending control panel chaired by myself, or my deputy S151 Officer or another manager within the Council's Finance team, with procedures in place to manage and agree urgent requests within one working day if appropriate.

3 **Croydon Context**

- 3.1 As previously advised financial crises don't appear overnight and Croydon Council has been experiencing rising financial and service demand pressures for a number of years as the Report in the Public Interest described. While General Fund reserves have been held stable at £10m for a number of years, they have now reduced to £7m at the end of the 2019/20 financial year and these are not enough to fund the predicted overspend costs this year, and therefore action must be taken.
- 3.2 At the time of writing this report there is a forecast general fund overspend at the end of the 2020/21 financial year in excess of £66m. This forecast is after the delivery of the additional £0.5m of savings detailed in the report to Extraordinary Council on the 1 December 2020. The revised forecast position continues to leave the council at the end of the 2020/21 financial year with a negative General Fund Balance and no reserves.

4 **Medium Term Financial Planning – 2021 - 2024**

- 4.1 The Medium Term Financial Strategy (MTFS) work remains on going and the Strategy presented to Cabinet in September 2020 and as detailed in the 25 November 2020 Cabinet report 'Croydon Renewal Financial Recovery Plan' is continuing to be refreshed to incorporate the work from the recent internal Budget Development Meetings. The strategy currently continues to have significant financial gaps for the next three years. Conversations are also on going with MHCLG regarding support in the form of a Capitalisation Direction for these future years too. If this work cannot be concluded by February 2021 when the budget for 2021/22 is presented to Cabinet and full council for approval I will again have to issue a further Section114(3) notice.
- 4.2 It is essential that action is taken immediately to reduce spending, temper growth demands for future years and balance the budget both this year and next year whilst building a level of reserves that can provide stability in future years.

5 **Summary**

- 5.1 The requirements of this Section114(3) notice are the same as before in that the Council must meet within 21 days of issue, in order to consider the concerns raised. At this stage I am unable to offer a remedy and elected members must take responsibility to make choices and decisions to reduce costs immediately to ensure the council is able to deliver a lawful financial outturn in 2020/21 (a balanced outturn) and to have measures in place to enable it to set a balanced budget in 2021/22 and future years.
- 5.2 Elected members must agree to cease all non-essential expenditure and reduce our operational and service delivery costs immediately and the Executive Leadership team must put in place effective plans to deliver the required reductions.

5.3 Work will continue with MHCLG and we are planning to submit the formal Capitalisation Direction request on the 15 December 2020. MHCLG officials are aware of this time table and continue to work very closely with council officers.

Appendix 1 – Budget gap – 1.12.2020

	Forecast
	Variance
	(£,000's)
Children Families and Education	19,928
plus UASC	5,438
	<hr/> 25,366
Health, Wellbeing and Adults	25,748
Place	12,306
Resources	3,578
Departmental Total	<hr/> 66,998
Non-Departmental Items	11,430
Total General Fund	<hr/> 78,428
Corporate Covid-Grants	-38,017
Net GF Position after Grants	<hr/> 40,411
Savings Programme	-10,200
Savings Identified	<hr/> -500
	<hr/> 29,711 <hr/>

Additional Pressures - BxB Pre 20/21 Interest	
Write Off	14,255
Brick By Brick 2020/21 Dividend	5,200
BxB 2020/21 Interest	11,500
MRP From Report in the Public	
Interest	200
Transformation Funding In 19/20	
Accounts	5,600
Additional Social care costs?	unknown
Covid19 spike 2	unknown

Cost of Report in the Public
Interest

TBC
36,755

Appendix 2 – Section 114 Notice issued on the 11 November 2020

Appendix 3 – Response to the Section 114 Notice – Presented to the Extraordinary Council
on 1 December 2020