

Cabinet Supplementary Agenda



4. Urgent Business (If any)

To receive notice of any business not on the agenda which in the opinion of the Chair, by reason of special circumstances, be considered as a matter of urgency.

a) **Revocation of Section 114 Notice** (Pages 3 - 16)

Cabinet Member: Leader of the Council, Councillor Hamida Ali
Cabinet Member for Croydon Renewal, Councillor Stuart King

Officer: Interim Director of Finance, Investment & Risk, Chris Buss

Key decision: no

JACQUELINE HARRIS BAKER
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REPORT TO:	CABINET 22nd March 2021 COUNCIL 29th March 2021
SUBJECT:	Revocation of Section 114 Notice
LEAD OFFICER:	Chris Buss Interim Director of Finance, Investment and Risk
CABINET MEMBER:	Cllr Hamida Ali, Leader of the Council Cllr Stuart King, Cabinet Member for Croydon Renewal
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT/ AMBITIOUS FOR CROYDON	
Following the formal granting of Capitalisation Directions for 2020/1 and 2021/2 the Council has now a balanced budget. This means that the need for a section 114 notice no longer exists and has been revoked by the statutory Chief Finance officer .	
FINANCIAL IMPACT	
With the granting of the Capitalisation Direction the Council now has resources to fund expenditure in the Current financial year and has set a balanced budget for 2021/22	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

REASON FOR URGENCY: The Statutory Chief Finance officer (Section 151 officer) received notification that the Council’s request for a Capitalisation Direction was formally confirmed by MHCLG on 16th March 2021 for 2020/21. The effect of that is that the conditions that led to the issuing of the section 114 notice in November 2020 no longer apply. Although no formal decision is required to revoke the notice, the Section 151 officer is of the view that the Cabinet and full Council should be formally advised of this change and its impact as a matter of urgency.

While this report does not contain any key decisions, and as such the Council’s procedures for special urgency in relation to key decisions does not apply in this case, the Chair of the Scrutiny and Overview Committee has been consulted prior to seeking the Leader’s approval to accept this report as an item of urgent business.

MHCLG also set out in their letter of the 5th March 2021 that they would be minded to additionally approve a capitalisation of up to £50m for 2021/22, but would not issue a formal Direction approval until the summer of 2021.

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out in the recommendations below

1. RECOMMENDATIONS

The Cabinet recommends to full Council to:

- 1.1 Note that the Statutory Chief Finance officer is of the view that following the receipt of the Capitalisation Directions for 2020/1 and 2021/22 that the previously issued letter under section 114 of the Local Government Finance Act 1988, no longer applies as the Council has sufficient resources to meet likely revenue costs in 2020/1 and has a balanced budget for 2021/22.

2. EXECUTIVE SUMMARY

- 2.1 Since 11th November 2020, the Council has operated under a Section 114 notice issued by the former section 151 officer. The issuing of two Capitalisation directions on 16th March 2021 means that the conditions under which the section 114 notice was issued no longer apply and the section 151 officer has written to all members of the Council to that effect.

3. DETAIL

- 3.1 The former Section 151 Officer issued a notice under section 114 (3) of the Local Government Finance Act 1988 on 11th November 2020 confirming that in her view that the Council was unable to meet expenditure from within its resources in the current financial year. The Council as required by statute considered that report at its meeting on on 1st December 2020 and accepted the views contained in the report.
- 3.2 Subsequent to that meeting a second notice was issued on the 2nd December 2020 and was considered by the Council on 16th December 2020. The council has remained under the restrictions of a Section 114 notice since that date. The Council has requested a capitalisation direction both for 2020/21 of £70 million and 21/22 of £50 million. Granting of those directions would enable the Council to balance the budget for 2021/22 and enable the Council to meet the spending pressures in 2020/21.
- 3.3 When setting the budget for 2021/22, the assumption was that the directions would be awarded and indeed an offer of a Conditional capitalisation direction was received from the government on the 6th March and accepted by the Leader on March 9th 2021. The formal capitalisation directions were received by the section 151 officer on March 15th 2021 and are attached as Appendices to this report.
- 3.4 The receipt of the Capitalisation directions means that the Council is now able to fund expenditure in the forthcoming financial year (2021/22) and is able to balance the budget in 2022/23. As such the conditions under which the section 114 notice was issued falls away. In the light of this the Section 151 officer has written to all members of the Council advising them of this change in circumstances.
- 3.5 When agreeing the Council tax and budget on March 9th 2021, the budget report identified the need for a continued control environment to exist even after the expiration of the section 114 notice. As such the existing spending control panel arrangements will exist, however it is proposed to exempt with immediate

effect expenditure directly chargeable to the Pension Fund and the Housing Revenue Account (the former being a separate legal entity and not capable of being included under the powers of s114, and the latter ring-fenced and thus not impacting on the General Fund position) both of which have no direct impact on the general fund budget from the controls. Removing the Spend Control Panel ('SCP') review of Covid Relief Payments (fully grant-funded) is also proposed in terms of it being removed from requiring SCP approval as they are fully grant funded (thus meeting the s114 criteria and as such the Panel were automatically approving all of these). Further modifications to the controls will be applied in the light of experience and learning from their ongoing application.

- 3.6 Both capitalisation directions are conditional and should the Council fail to meet the conditions then the Government may choose to withdraw the direction. Should this occur then the Section 151 officer would almost certainly need to issue a new section 114 notice. Similarly, if the Council is unable to contain expenditure in 2021/22 within the revenue budget the conditions may exist whereby a new section 114 notice is required. It is therefore of the utmost importance that the Council meets the conditions set out in terms of the conditions in the letters whilst maintaining a much greater rigour in terms of financial discipline than has been the case hitherto. Non-achievement of savings or over spending are not options and containing spending within the Council's means is non-negotiable. The Secretary of state still has reserve powers under statute as indicated in the Capitalisation direction to appoint commissioners.

4. CONSULTATION

- 4.1 In determining that the s114 notice is formally lifted, discussion has taken place with our external auditors. The Finance Review Panel are aware that in commenting on the budget, as part of the s25 Statement, it is implied that the s114 would cease. The panel will be formally notified of its lifting by being sent this report. In addition, the Leader, Deputy Leader and the Chair of the Overview and Scrutiny Committee have been made aware of the contents of this report.

5 PRE-DECISION SCRUTINY

- 5.1 In the light of the timing of the receipt of the directions no pre decision scrutiny was possible. However , it must be noted that the issue of a notice under section 114 of the Local Government finance act 1988 is a matter of professional opinion of the section 151 officer. Similarly, it is the same officer's opinion that determines when a section 114 notice is no longer in operation.

6 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 6.1 The financial and risk assessment considerations of this report are contained in the body of the report.

7. LEGAL CONSIDERATIONS

- 7.1 The Local Government Finance Act 1988 ('the Act') places certain responsibilities on the Chief Finance Officer of a relevant authority. Under section 114(3) of the Act the Chief Finance Officer shall make a report if it appears that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to the Council to meet that expenditure.
- 7.2 The Secretary of State has the power to issue a Capitalisation Direction under the Local Government Act 2003 ('2003 Act'). Section 16(2)(b) of the 2003 Act provides the means by which the government exceptionally permits councils to treat revenue costs as capital costs. The effect of such a Direction is that specified revenue expenditure becomes treated as capital expenditure so that instead of having to be charged to revenue it may be funded from capital sources. Ministers have discretion to impose other conditions under section 20 of the 2003 Act. MHCLG guidance provides further information regarding the process and procedures to be complied with.
- 7.3 Section 31A of the Local Government Finance Act 1992 places the Council under a statutory responsibility to set a balanced budget. Furthermore, additional duties have been placed by the Local Government Act 2003 on the chief finance officer in relation to the robustness of the estimates before setting the budget.
- 7.4 Having regard to these responsibilities the Chief Finance Officer has confirmed that given the issuing of the two Capitalisation directions by the MHCLG the S.114 notice is no longer applicable.

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

8. HUMAN RESOURCES IMPACT

- 8.1 There are no immediate human resources issues arising from this report for Council employees or staff.

Approved by Gillian Bevan, Head of HR, Resources on behalf of Sue Moorman, Director of Human Resources.

9. EQUALITIES IMPACT

- 9.1 There are no immediate equality and inclusion implications arising from this report.
- 9.2 Equality analysis will need to be undertaken to ascertain the potential impact on staff, service users, vulnerable groups and wider communities groups that

share protected characteristics and take actions to mitigate any negative

- 9.3 The Council will ensure that as part of the process of delivering current and future savings, it will protect the most vulnerable in our communities and ensure when making difficult decisions about funding it maintains an absolute commitment to promoting equality for everyone who lives and works in the Borough

Approved by Yvonne Okiyo, Equalities Manager

10. ENVIRONMENTAL IMPACT

- 10.1 There is no direct environmental impact of this report.

11. CRIME AND DISORDER REDUCTION IMPACT

- 11.1 There are no direct Crime and disorder reductions impacts of this report

12. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 12.1 There are no recommendations within this report, which is only for noting.

13. DATA PROTECTION IMPLICATIONS

- 13.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

NO

- 13.2 **HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?**

NO

No personal data was used in the writing of this report

CONTACT OFFICER:	Chris Buss – Interim Director of Finance, Investment & Risk
APPENDICES TO THIS REPORT:	Appendix 1 – Capitalisation Direction letters dated 16 th March 2021
BACKGROUND PAPERS:	None

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16 March 2021

Dear Chris,

CAPITALISATION DIRECTION – CROYDON LONDON BOROUGH COUNCIL

I am writing in relation to your authority's request for exceptional financial support in respect of 2020/21. I appreciate your continued co-operation with the Department throughout this process.

On 5 March 2021 Minister Hall wrote to the leader of Croydon London Borough Council, Councillor Hamida Ali, to set out the Department's proposed package of support. On 8 March, Councillor Ali wrote to formally accept the Department's proposals, and confirmed that the Authority would like to proceed with the approach outlined by Minister Hall. In parallel to this letter, the Ministry of Housing, Communities and Local Government (MHCLG) has issued a capitalisation direction of a total not exceeding £70.0m in respect of the financial year 2020/21, subject to the conditions outlined in the direction.

Charging Minimum Revenue Provision and Other Accounting Standards

Government expects all local authorities to abide by robust financial management practices. Where local authorities have been issued with a capitalisation direction, it is particularly important to demonstrate robust financial management and internal controls to ensure that public money is safeguarded, properly accounted for and used with due regard to value for money. Government expects that the Authority will produce financial reporting of the highest quality and propriety, in accordance with proper accounting practices and relevant guidance, to ensure transparency and accuracy. In undertaking borrowing and investment activities, government expects Authorities should fully comply with the intent of the Prudential Framework and the four statutory codes. The external assurance review outlined in paragraph 4(iii) of the direction will examine the Authority's current financial management practices, and may make recommendations based on their findings for 2021/22 and beyond.

In relation to your charging for Minimum Revenue Provision, the condition outlined in paragraph 4(ii) of the direction states that where expenditure is capitalised under this direction, the Authority must charge annual Minimum Revenue Provision using the asset life method with a proxy 'asset life' of no more than 20 years, as set out in the Department's Statutory Guidance on Minimum Revenue Provision issued by the Secretary of State under section 21(1A) of the Local Government Act 2003.

Paragraph 3 of the direction outlines the Secretary of State's instructions on the definition and treatment of expenditure in the scope of the direction, which must not exceed the total set out in paragraph 3(iii). Paragraph 4(i) specifies as a condition of the direction that you may only capitalise costs as they incur. It is an expectation of the Department that you will therefore capitalise costs commensurate with the pressures or income losses specified in your application for support. I.e. if the expenditure, income losses, or budget gap specified in your application does not fully materialise, we expect that you will not capitalise expenditure in excess of your realised pressures.

External Assurance

The condition outlined in point 4(iii) of the direction states that the Authority must continue to make good progress against its Improvement Plan. I expect the Improvement Panel to provide evidence of this progress in their regular reports to the Secretary of State. The Panel have outlined that they expect to provide their next report to the Secretary of State in April 2021.

In the event of a failure by the Authority to demonstrate progress in its recovery, the Secretary of State will consider whether it is appropriate to use the Best Value powers available, including the appointment of Commissioners.

Borrowing

As outlined in the direction, there will also be additional conditions applied in relation to any borrowing that results from the capitalisation, which will require that this borrowing is from the PWLB (Public Works Loan Board), and must be subject to a 1 percentage point additional interest rate premium. You can make arrangements to undertake this borrowing directly with the United Kingdom Debt Management Office who operate the PWLB lending facility.

Request for financial support in the financial year 2021/22

As outlined in the letter from Minister Hall on 5 March, with respect to the financial year 2021/22, the Secretary of State is minded to approve a capitalisation direction of a total not exceeding £50.0 million. This letter does not constitute a direction in relation to the financial year 2021/22. Such a direction may be subject to conditions, which would be set out in a capitalisation direction when issued.

If the Secretary of State decides to give a direction for 2021/22, he expects to confirm the final amount of capitalisation support and any conditions that would be applied by summer 2021. His consideration will include taking account of the following:

- i. Evidence that the conditions set out in any capitalisation direction in respect of 2020/21 have been complied with;
- ii. Evidence from the Improvement Panel of the Authority's progress against its Improvement Plan, as reflected in forthcoming progress reports from the Panel;
- iii. Evidence from the Improvement Panel of the Authority's financial position and its ability to meet any or all of the identified budget gap without additional borrowing;
- iv. Evidence from the Improvement Panel of the Authority's progress in developing and delivering against an asset disposal plan;
- v. Evidence of progress against the other areas of improvement that were identified in the Panel's February update to the Department: progress in resolving challenges in property ventures; a credible 2021/22 budget including a

- deliverable savings plan; progress in developing a plan to transform front line services; progress made to change the culture of the organisation;
- vi. Evidence and recommendations from the Improvement Panel on the steps that the Authority may need to take to, for example, improve its governance arrangements, financial management, operational delivery and to reduce risk.
 - vii. Officials' understanding of the approach you have taken to capitalising expenditure in 2020/21, which may include assurance that you have not capitalised expenditure beyond your materialised pressures.

The Secretary of State also reserves the right to attach additional bespoke conditions to a direction in respect of 2021/22 depending on the Authority's individual circumstances.

As you will be aware, the Secretary of State has attached certain conditions to your 2020/21 capitalisation direction. We expect that there will be ongoing engagement between the Authority and MHCLG officials going forward to evaluate the progress against or fulfillment of these conditions.

If you have any queries in connection with the above, please do not hesitate to contact me: suzanne.clarke@communities.gov.uk.

Yours sincerely,



Suzanne Clarke
Deputy Director, Local Government Finance Stewardship

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Ministry of Housing,
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LOCAL GOVERNMENT ACT 2003 SECTIONS 16(2)(b) AND 20: TREATMENT OF COSTS AS CAPITAL EXPENDITURE

Dear Chris,

1. I refer to the letter of 15 December 2020 (“the application”) from Councillor Hamida Ali, leader of Croydon London Borough Council, applying for a capitalisation direction to fund revenue expenditure incurred by the Council in respect of the pressures or income losses outlined in your request for exceptional financial support.
2. I can now confirm that the application is given approval at a total not exceeding £70.0m with respect to the financial year 2020/21, subject to the conditions outlined below. This direction takes immediate effect.
3. Accordingly, the Secretary of State directs, in exercise of his powers under sections 16(2)(b) and 20 of the Local Government Act 2003 (“the Act”), that Croydon London Borough Council (“the Authority”) treat as capital expenditure, expenditure which:
 - i. Is either:
 - a. revenue expenditure and meets the definition of an additional cost pressure as identified and agreed with the Ministry of Housing,

Communities and Local Government (MHCLG) through the Authority's formal request for exceptional financial support; or

b. any revenue expenditure not exceeding the value of income losses in the financial period 2020/21 as identified and agreed with MHCLG through the Authority's application;

ii. is properly incurred during the financial period 2020/21; and

iii. does not exceed a total of £70.0m.

4. In a further exercise of the Secretary of State's powers under section 20 of the Act, it is a condition of this direction that:

i. the Authority may only capitalise expenditure when it is incurred;

ii. where expenditure is capitalised, the Authority shall charge annual Minimum Revenue Provision using the asset life method with a proxy 'asset life' of no more than 20 years, in accordance with the Department's Statutory Guidance on Minimum Revenue Provision issued by the Secretary of State under section 21(1A) of the Local Government Act 2003;

iii. the Authority continues to make good progress against its Improvement Plan, as assessed by the Improvement Panel in their regular reports to the Secretary of State; and

iv. where the Authority's capital financing requirement is increased as a result of the capitalisation of expenditure under this direction, any further borrowing from the date of the capitalisation letter up to and including, but not exceeding, the increase in the financing requirement must be obtained from the PWLB (Public Works Loan Board), and must be subject to an additional 1 percentage point premium on the interest rate above the rate the loan would otherwise be subject to. This requirement does not apply to borrowing in relation to your Housing Revenue Account. Where any borrowing to which these conditions initially apply is refinanced, the conditions must continue to apply to the resulting borrowing.

5. This direction is given for the purposes of Chapter 1 of Part 1 of the Act only. It does not convey any other consent that may be required or any view as to the propriety of the expenditure. It is for the Authority to be satisfied that any amount to which this direction is applied is properly incurred in the financial years concerned.

6. Approval of the total not exceeding £70.0m takes into account the Secretary of State's consideration of the effect on the national economy of granting capitalisation directions to local authorities in England for expenditure incurred in the financial year that began on 1 April 2020. It ensures that the total amount of expenditure which may be treated as capital expenditure by virtue of such capitalisation directions does not exceed a limit which the Secretary of State considers prudent.

Yours sincerely,

Matthew Hemsley

*Authorised to sign this direction by the Secretary of State for Housing, Communities
and Local Government*

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