

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
<b>Departmental Total</b>	<hr/> 66,998
Non-Departmental Items	11,430
<b>Total General Fund</b>	<hr/> 78,428
Corporate Covid-Grants	-38,017
<b>Net GF Position after Grants</b>	<hr/> 40,411
Savings Programme	-10,200
Savings Identified	<hr/> -500
	<hr/> <b>29,711</b> <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