

REPORT TO:	EXTRAORDINARY COUNCIL 12 December 2022
SUBJECT:	Section 114 (3) Report and Response
LEAD OFFICER:	Katherine Kerswell Chief Executive
CABINET MEMBER:	Executive Mayor Jason Perry Cllr Jason Cummings, Cabinet Member for Finance
WARDS:	All
PUBLIC/EXEMPT:	Public

SUMMARY OF REPORT:

On 22 November 2022, the Council's S151 officer, Jane West, Corporate Director Resources, issued a report under Section 114 (3) of the Local Government Finance Act (1988) that stated that available resources are unlikely to meet planned budgetary demands in the financial year 2023/24 and beyond. The Corporate Director of Resources and S151 Officer stated that she had concluded that Croydon currently has no prospects of returning to financial sustainability without significant and extraordinary financial support from government above and beyond their current model of Capitalisation Directions.

Section 115 of the Local Government Finance Act (1988) provides that the authority shall consider the report at a meeting where it shall decide whether it agrees or disagrees with the views contained in the report and what action (if any) it proposes to take in consequence of it (sub-section 2). The meeting must be held not later than the end of the period of 21 days beginning with the day on which copies of the report are sent (sub-section 3).

This report sets out the details of the Section 114 (3) report issued by the Corporate Director of Resources. Members are asked to; a) consider the views stated in the Section 114(3) report; b) decide whether to agree or disagree with the views; c) consider the response by the Chief Executive to the S.114(3) report; and d) decide on proposed action to enable the Council to deliver a balanced budget for the 2023/24 financial year and beyond and return to financial sustainability.

FINANCIAL IMPACT:

The work that has been done in preparation for the 2023/24 Council Tax Setting in February or March 2023 has identified that expenditure the authority is projected to incur in each year of the period 2023/24-2026/27 will exceed resources (including sums borrowed) available to the Council to meet that expenditure. The combination of the ongoing budget requirements of legacy budget adjustments, fundamental structural issues within the Council's finances such as the toxic debt burden of negative equity from historic uncontrolled borrowing and the national and global issues the local government sector is currently facing has undermined the progress being made on the financial recovery.

This report provides details to the options the Council has considered that would help to bring back financial sustainability. However, with the existing financial position and impact of external factors the Council is unable to achieve financial sustainability on its own accord despite a number of options considered throughout this financial year. The report explains that the Council will be unable to deliver a balanced budget for the 2023/24 financial year and beyond until such time as it receives external financial support from the Department for Levelling Up, Housing and Communities.

For this reason the Council will continue to be in a Section 114 position for the foreseeable future.

RECOMMENDATIONS:

Council is recommended to:

1. Accept the views contained in the Section 114 (3) report issued by the Corporate Director Resources and S151 Officer on 22 November 2022 under Section 114(3) of the Local Government Finance Act 1988 and which is attached as Appendix 1. This report concludes that the Council cannot balance its budget in 2023/24 and cannot become financially sustainable without significant and extraordinary financial support from central government.
2. Note the latest projected budget deficit for 2023/24 of £77m.
3. Note that at the meeting on 30 November 2022, the Cabinet agreed savings proposals, a transformation programme and a list of asset disposals which are the subject of public consultation as part of the budget consultation process.
4. Agree that the Council seeks a financial support package with the Department for Levelling Up, Housing and Communities for 2023/24 (and future years) to enable the Council to reach financial sustainability. The details of the options to be referred to DLUHC are set out in paragraph 3.22.4 of this report.
5. Note that the Council will continue to operate under S114 regime until such a time as it reaches agreement with the Department for Levelling Up, Housing and Communities on a support package; and
6. Note that the Spending Control Panel in operation under the current Section 114(3) report shall continue in the manner detailed in this report, including in Appendix 2 to this report, until such time as the Executive Mayor in consultation with the S151 Officer may later determine and acting within the budget framework funding envelope.

1. BACKGROUND

1.1 On 22 November 2022, the Council's S151 officer, the Corporate Director Resources, issued a report under Section 114 (3) of the Local Government Finance Act (1988) that stated that the Council's planned expenditure is likely to exceed the resources available to meet that expenditure in the financial year 2023/24 and beyond. The Corporate Director has stated that her conclusion as the S151 Officer is that Croydon currently has no prospects of returning to financial sustainability without significant and extraordinary financial support from government above and beyond the usual mechanism of Capitalisation Directions. A copy of the S114(3) report is attached as Appendix 1 and provides details of the Council's serious financial position. For the ease of reference paragraphs from the S.114(3) report are inserted below (in Times Roman font).

“1.3 The purpose of this Section 114(3) report is to make it clear to all Members of the Council that it faces a financial situation of an extremely serious nature with significant estimated unfunded financial deficits forecast from 2023/24 onwards. My conclusion as the S151 Officer is that Croydon currently has no prospects of returning to financial sustainability without significant and extraordinary financial support from government above and beyond the usual mechanism of Capitalisation Directions.

2 Details of the Report

2.2 My professional judgement as the S151 Officer for Croydon Council continues to be that in the current financial year (2022/23) it is possible that the Council will be able to balance its budget. This is despite new issues emerging from the Opening the Books project around historic capital charges which are understated in the Council's accounts and of charges made to the capital programme and to the Housing Revenue Account that should have been charged to revenue. In my professional view, even if all these new charges to revenue are required, Croydon Council would technically be able to meet these costs within its current reserves and provisions. Whether it would wish to do so is something that needs to be further explored as this would leave the Council with no contingency for unforeseen challenges.

2.3 The Council has produced a monthly Financial Performance Report each month since May 2022. While its in-year financial position for 2022/23 is challenging, it is currently projected that the Council will be within its budget at the end of the financial year.

2.4 There is an unresolved issue in relation to the capital receipts from Croydon Affordable Homes/Croydon Affordable Tenures that have been applied to £70m in revenue transformation costs under the government's Flexible Use of Capital Receipts rules in the 2019/20 financial accounts. This issue was reported in the 7 March 2022 Budget report as having the potential to require a new Capitalisation Direction from government. If this matter is resolved in the

Council's favour, there will be the need for a £9m charge to reserves which can be accommodated within the Council's current reserves and provisions. However, if the external auditors require the adjustment of £70m, the Council will be in deficit in 2022/23. This would require a S114(3) Notice specifically for 2022/23.

- 2.5 The more significant problem for the Council is that the work which has been done in preparation for the 2023/24 Council Tax Setting in February or March 2023 has identified that expenditure the authority is projected to incur in each year of the period 2023/24-2026/27 will exceed resources (including sums borrowed) available to the Council to meet that expenditure. The combination of the ongoing budget requirements of these legacy budget adjustments, fundamental structural issues within the Council's finances such as the toxic debt burden of negative equity from historic uncontrolled borrowing and the national and global issues the local government sector is currently facing has undermined the progress being made on the financial recovery. The S151 Officer has concluded that this necessitates a S114(3) Notice to be issued.
- 2.6 It is clear that in order to balance the Council's budget in 2023/24, and later years, further assistance will be required beyond the Capitalisation Directions usually deployed by central government. Extraordinary support beyond Capitalisation Directions could include write off of all or part of the Council's outstanding debt, permission to repay debt over a longer period and/or at a lower rate of interest or permission to increase the Council Tax beyond the referendum cap.
- 2.7 The Council has begun a dialogue with the Department for Levelling Up, Housing and Communities (DLUHC) but it is unlikely that it will receive confirmation of potential solutions to the Council's unbalanced budget before February 2023, despite government officials working very closely with Council officers in a very supportive manner.
- 2.8 This S114(3) notice is being issued in accordance with the statutory guidance to instigate formal immediate action to avoid a negative general fund balance within the next financial years of the budget cycle based on current forecasts. 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 which currently has no solution in sight. By 2023/24, expenditure is forecast to be significantly greater than income resulting in a financial deficit being forecast, with insufficient reserves available to fund this.
- 2.9 In reaching the conclusion to issue this S114(3) notice today, I have had to make a number of judgements. At the time of writing this report there is a forecast general fund deficit forecast for 2023/24 financial year in excess of £77m, assuming a council tax increase at the Council Tax Referendum Level of 5% set by government for 2023/24. There are also potential risks in the treatment of 2019/20, 2020/21 and 2021/22 costs arising from the ongoing external audit of the accounts. The Council does not currently have a fully deliverable robust action plan to avoid a negative general fund balance next financial year.

2.10 In reaching my professional judgement I have taken into account the continuing work on the Budget for 2023/24 and the Medium Term Financial Strategy and on the planned application to DLUHC for assistance. However I do not consider these measures are certain in delivering the funds the Council needs at this time to deliver a balanced budget next year. While positive conversations are continuing with DLUHC there continues to be no certainty that any application for assistance 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(3) notice today I will not be undertaking my statutory duties as the Council's S151 Officer.

4 The historical background to the Council's financial position

4.1 The "Opening the Books" programme initiated by the Executive Mayor has revealed further historic legacy issues that have undermined the ability of the Council to not only balance its budget but also become financially and operationally sustainable over the current agreed medium term financial strategy. In particular, the level of debt the Council has to service means its general revenue budget is unable to meet the needs of the people of Croydon.

4.2 In October 2020, the Council's external auditor, Grant Thornton, issued the first of two reports in the public interest (RIPI) into Croydon Council which stated that for many years the Council had failed to pay due regard to the seriousness of its financial position and the urgency with which action needed to have been taken.

4.3 In November 2020, the then Director of Finance, Risk and Assurance and S151 Officer published the first of two Section 114 notices. These notices made clear to all Members of Croydon Council as well as staff and residents that the Council faced an extremely serious financial situation in that financial year (2020/21). It was also made clear that the Council's expenditure was predicted to be significantly greater than its income resulting in a financial deficit being forecast, with insufficient reserves to fund this. The financial year ended with an overspend of £67m, thus confirming the conclusions of the external auditor in the RIPI of the seriousness of the Council's financial position.

4.4 In December 2020, the Council submitted a formal request to the Government (then MHCLG) for £150m of extraordinary financial support otherwise known as a Capitalisation Direction. The Government appointed an Improvement and Assurance Panel (IAP) following the outcome of a non-statutory rapid review report and sought assurance from them on the £150m request. The Government agreed to the extraordinary financial support subject to continued positive assurance from the IAP.

4.5 The Council agreed the Croydon Renewal Plan to address the issues highlighted in the RIPI and the S114 notices to ensure the Council could move to becoming a sustainable local authority, in financial, governance and operational delivery terms. However, the early implementation of the Renewal Plan began to reveal further worrying aspects of the Council's operations and a lack of resilience that needed significant improvement.

- 4.6 Since then, the Council has made progress in delivering the Renewal Plan, as recognised by the Improvement and Assurance Panel and the Minister of State for Equalities and Levelling Up, Housing and Communities who noted the Council's "significant progress" and that the "foundations for a sustainable future were being established". The Council is in its third year of receiving extraordinary financial support and has benefitted from the opportunity to capitalise revenue expenditure of £145m so far.
- 4.7 The two RIPI's and the two S114 notices revealed truly significant deficiencies in the Council's capabilities in financial planning, financial management, risk assessment, governance and a serious deterioration in the Council's financial and operational resilience to withstand external challenges.
- 4.8 As such, and despite significant efforts to fully identify the risks and liabilities the Council faced for the December 2020 submission, it was very likely that further issues were likely to arise that it was not possible to account for in the original £150m request. The March 2021 Regina Road revelations and the deficiencies in the Housing repairs service are an example of this.
- 4.9 Then in March 2022 it was reported to Cabinet and Full Council that a significant issue in relation to Croydon Affordable Homes/Croydon Affordable Tenures (CAH/CAT) had been identified that could mean that adjustments would be required to the accounts for both 2019/20 and 2020/21 and that the adjustments could result in an in year (2022/23) charge to the Council's reserves of £73m.
- 4.10 The S25 comments of the Corporate Director of Resources and S151 Officer in that Council Tax setting report noted that such a significant adjustment to the Council's reserves could result in the Council facing another S114 notice needing to be published. Since then, significant work has been undertaken by officers, external partners and with the external auditor to ensure this historic legacy financial issue is correctly accounted for. This further work has identified that the legacy adjustment required in relation to CAH/CAT is likely to be a reduction to reserves of £9m which is still significant. This is not yet fully resolved and a further adjustment, reducing reserves by a further £61m, may still be necessary.
- 4.11 From both the delivery of the Council's Renewal Plan and the more recent Opening the Books project, initiated by the Mayor in July 2022, further historic legacy issues have been identified that the Council needs to resolve in order to close the three years of outstanding accounts. As well as the CAH/CAT adjustment, further legacy adjustments have been identified for the 2019/20, 2020/21, 2021/22 and 2022/23 accounts arising from historic accounting errors. These total a reduction to reserves in those years of an estimated £74.6m.
- 4.12 The RIPI outlined in some detail the significant level of the Council's debt and its borrowing and highlighted that in three years (2017/18 – 2019/20) the Council borrowed some £545m. The impact of the Council's borrowing and the

toxic debt burden the Council is having to service after historic uncontrolled borrowing has become critical to the sustainability of the Council's revenue budget. The Council owes £1.6bn (including £300m HRA debt) and this costs the Council at present £47m a year to service before the Council can spend any money on services for the people of Croydon. The Council also has significant levels of negative equity on its assets.

- 4.13 Given the emergence of these further historic legacy issues, the significance of the impact of the toxic debt burden on the Council's budget and the lack of financial and operational resilience the Council has to withstand major shocks in the national and local economy, the original 2020/21 Croydon Renewal Plan and the accompanying transitional Capitalisation Directions are unable to cope with the now more fully understood financial position. This is despite significant savings of some £90m and £50m in asset sales being delivered over the past two years.
- 4.14 Many of the legacy issues identified also need to be adjusted in the Medium Term Financial Strategy on an ongoing basis, creating a gap of £47.9m in every year moving forward before any future challenges are accommodated.
- 4.15 The Financial Performance Reports for 2022/23 have set out some of these challenges from mistakes in the budget set for the year. For example three areas in particular have caused a £19m overspend in the current year:-
- Parking income – the reduction in demand for parking in the borough following the pandemic should have been better assessed in the assumptions for projected activity in 2022/23
 - New traffic income projections were included with insufficient contingency built in to reflect the operational challenges of implementing new traffic schemes
 - A deficit in the Housing Benefit budget for 2021/22 should have been recognised earlier. It was only picked up at the very end of the year and therefore was not built into the 2022/23 budget.

5 Medium Term Financial Strategy Outlook

- 5.1 There are a myriad of economic and financial issues facing the whole country and the Council is not immune from these. As well as the legacy issues set out above, the Council is facing the same challenges as other councils, namely rising inflationary costs, the impact of the cost-of-living increases on its residents and businesses and more recently rapidly increasing interest rates. Croydon has been able to act more prudently than many other councils and set aside a £20m ongoing budget for additional pressures from inflation in 2022/23 but further growth will be required in the later years of the MTFS.
- 5.2 Croydon also faces structural issues that have important implications for its annual budget. Croydon is home to many vulnerable children due to having the highest number of children and young people in any London borough and for many years being the main port of entry for unaccompanied asylum seeking children and young people. Croydon also has the highest number of residential

and care homes of any London borough which creates a different intensity of demand for services to older adults. Croydon experiences a disproportionate level of emergency and temporary accommodation costs compared to other London boroughs and we are home to over 1,000 asylum seekers living in local hotels. The Council also has a disproportionately high level of outstanding borrowing, much of which is not asset backed ie it is toxic debt.

- 5.3 The costs arising from historic financial and operational mismanagement, structural challenges in the borough and the current national economic and financial uncertainties have been worked through. The conclusion is that, in order to balance its budget, Croydon needs to reduce its spending by £130m next financial year alone (before any council tax increase) which is simply untenable out of a net budget of some £300m. The current financial projections for 2023/24 to 2026/27 are set out in Appendix A.
- 5.4 This reduction equates to 43% of the Council’s net budget, a reduction the Council is not able to safely meet in 2023/24, 2024/25 or 2025/26 without significant and extraordinary financial support from central government. It is also likely that further cost pressures will arise in the latter two years of the next MTFS period.
- 5.5 The estimated ongoing legacy issues that need to be adjusted for in the base budget are as follows.

	£m
Parking and Traffic income over-estimate	13.8
HRA/General Fund alignment correction	9.5
Housing Benefit budget error	9.0
One off benefit of NHS income built into the ongoing budget	5.0
Minimum Revenue Provision correction	2.6
Correction of private sector landlord licensing income wrongly credited to the general fund (covers the cost of the scheme once this is in place)	1.5
Capitalisation of salaries correction	1.3
Housing structural deficit	5.2
Total additional cost of corrections	47.9

- 5.6 On top of these legacy issues, the other components to the £130m required reduction in the Council’s 2022/23 budget are: the inherited budget gap of £27m from the March 2022 budget setting; plus the £19m in savings and 3% council tax increase already planned for 2023/24; the impact of increased interest rates

on the £300m in temporary borrowing that needs to be financed; and other new pressures facing all local government from increased inflation and demand pressures.

- 5.7 Given the scale of the continuing financial challenge, the Council will need to continue to reduce spending for years to come. To balance the books, the Council is going to need to reduce its expenditure significantly in each of the next three years. That will mean difficult decisions about the services we are able to provide and ultimately, as set out in the Mayor's Business Plan, the Council will need to do less and spend less in the future.
- 5.8 Although still far from identifying sufficient savings to meet the projected budget gap for 2023/24, a range of savings proposals have been developed through a series of Star Chambers over the summer. A Transformation Programme has also been developed. The proposed savings arising from this work are set out in the Medium Term Financial Strategy 2023/24 to 2025/26 Update report to be discussed at Cabinet on 30 November 2022.

6 Conclusions

- 6.1 The combination of these historic legacy, national and global issues have all undermined the progress being made on the financial recovery and has necessitated that, as the Council's S151 Officer, I must take the decision to issue this S114(3) Notice. I have concluded that the expenditure the authority is projected to incur in each year of the period 2023/24-2026/27 will exceed resources (including sums borrowed) available to the Council to meet that expenditure.
- 6.2 It should not be underestimated quite how damaged some of the Council's financial and governance capabilities have been. Delivering the genuine operational and sustainable transformation needed will not happen overnight. While the 2020 Report in the Public Interest (RIPI) from the Council's external auditors, Grant Thornton, identified the root causes of the problems, the depth of the problems facing Croydon was not able to be fully understood at that time.
- 6.3 Significant new issues have been uncovered since late 2020. It is clear that the original 2020/21 Croydon Renewal Plan and the accompanying transitional capitalisation directions were a response to the known issues at that time. Two years on, the Council has made significant progress but now needs to correct further legacy issues which have been identified as necessary to sustainably resolve Croydon's historic financial challenges.
- 6.4 It is estimated that given the scale of the historic financial, governance and operational mismanagement which needs resolving, it is unlikely the Council will be able to become sustainable without significant and extraordinary financial support from central government.
- 6.5 That is why the Mayor has instructed officers to begin discussions with Government to request a funding package that assists the Council with its legacy financial issues and provides extraordinary financial support to safely balance

the Council's ongoing budget whilst providing capacity to deliver the Council's transformation plans safely and sustainably. Discussions have been held with the IAP and they have advised the Council to be prudent in its assumptions about the level of change and the pace of change that can be sustainably delivered.

- 6.6 The Medium Term Financial Strategy 2023/24 to 2025/26 Update report for Cabinet on 30 November 2022 has been published alongside this S114(3) Notice that sets out in more detail the reasons why I have reached this conclusion. It describes the immediate measures that are required under the S114(3) Notice.

2. IMPACT OF THE SECTION 114(3) NOTICE

- 2.1 The purpose of a Section 114 Notice is to make clear to all Members of Croydon Council as well as staff, residents, local businesses and other local organisations that the Council faces an extremely serious financial situation which it is not currently able to balance from its own resources.
- 2.2 The Section 114 Notice necessitates the following requirements of the Council:-
- 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.
 - During the next 21 days the authority must not incur any new expenditure unless the S151 Officer 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 and overtime payments. The use of Purchase Cards (P cards) is not allowed, except in emergency circumstances.
 - During this time the Council will continue to have financial commitments in relation to statutory responsibilities. Throughout this financial year the Council has been operating with a very stringent spending control process in place that allows proposals for urgent spending to be considered and if appropriate approved. This is in the form of a daily Spend Control Panel and Recruitment Control Panel chaired by the S151 Officer or another manager within the Council's Finance team.
- 2.3 Additional financial issues have come to light since the Opening the Books Project was launched in July 2022 and historic legacy issues have crystallised resulting in an overall deterioration of the Council's financial position. The S151 Officer has been allocated a further allocation of £250k from the Council's contingency reserve to add to the £500k allocation already agreed for the Opening the Books project in order to extend the project to review additional

areas of concern that have come to light. It is essential that the Council continues to support this work to ensure that the majority of financial issues are identified.

- 2.4 The S151 Officer has imposed a new, tighter spending control regime to bring the Council into compliance with S114 and S115 of the Local Government Finance Act (1988). The action taken is set out in Appendix 2 Spend Control Panel Arrangements. These arrangements will need to be adhered to until the Corporate Director Resources and S151 Officer is satisfied that the financial support package being offered by the Department for Levelling Up, Housing and Communities is sufficient to balance the Council's budget in 2023/24.
- 2.5 It should be noted that if the eventual position on Croydon Affordable Homes/Croydon Affordable Tenures is that an adjustment to reserves of £70m is required, not £9m, that the Council will be in a Section 114 position in 2022/23 as well with a projected deficit of £46.2m at 31 March 2023.

3. THE RESPONSE FROM THE CHIEF EXECUTIVE TO THE SECTION 114(3) NOTICE

- 3.1 Since 2020, the Council has been on an improvement journey overseen by a government appointed Improvement and Assurance Panel (IAP). The Council approved the Croydon Renewal Plan in late 2020 which drew together a wide range of improvement actions and projects which had been identified through external and internal reviews, with a particular focus on improving the Council's governance systems, structures and processes and a savings programme to address the serious financial challenges. The Renewal Plan was developed at a time when the Council was subject to a S114 notice, where expenditure far exceeded the available budget. The External Auditors had also issued the first of two Reports in the Public Interest, identifying a range of truly significant failings in the Council's governance and operational and financial practice.
- 3.2 The Croydon Renewal Plan enabled the Council to secure Government support in the form of a Capitalisation Direction. This allowed the Council to utilise up to £150m of capital funding to support revenue costs over a period of four years from 2020/21. The Government appointed the Improvement and Assurance Panel (IAP) to provide external advice, challenge and expertise to the Council, along with assurance to the Secretary of State that the Council was delivering against the Renewal Plan. The IAP assessed the £150m request to government and the Renewal Plan proposals and gave assurance to the government on the approach taken.
- 3.3 But the Renewal Plan was not only about fixing the budget. It was also about restoring the overall sustainability of the Council, fixing its governance arrangements and turning around previously failing services. Over the last two years the Council has worked hard to strengthen its core services of Adult Social Care, the Children, Young People and Education service, Housing and Customer Access. Independent Improvement Boards have been established

with external participation from experts in the field but also residents, tenants, leaseholders, children and young people. Great strides have been made in the two former services, and Housing has more recently gained traction in its improvement programme.

- 3.4 Over the last two years the improvements in the way the Council has been managed and the new level of corporate working and transparency has meant that the depth of the dysfunction across the Council has become increasingly visible and better understood. The Council has actively sought external advice on its budgets and liabilities. This has revealed how broken our systems are, that data is missing or not reliable and the culture has needed significant support to rebuild trust from staff that we can uphold the Council's values of One Team, Proud to Serve, Honest and Open, Taking Responsibility and Valuing Diversity. The Council's collapse had taken many years. Its transformation cannot be rebuilt overnight.
- 3.5 More importantly though, the dire financial position of the Council has become clearer and better understood. A range of legacy financial issues have emerged since December 2020 that require historic accounts to be adjusted eg for Croydon Affordable Homes/Croydon Affordable Tenures, the calculation of capital financing charges and the alignment of General Fund/Housing Revenue Account and Capital Programme spend. It has become increasingly clear that the Council will need to request further government support.
- 3.6 The Executive Mayor has made clear that his number one priority is to balance the books and make Croydon a financially and operationally sustainable council which listens to residents and provides good quality services. One of Mayor Perry's first acts was to launch an 'Opening the Books' review to assess the Council's financial assumptions and deal with any outstanding historic accounting issues. The 'Opening the Books' review has identified substantial accounting corrections that have one off and ongoing implications for the Council's budget and has revealed how fragile the Council's level of resilience is to withstand any changes to its planning assumptions over the MTFS. It has also highlighted how structural issues in the Council's finances, such as its level of non-asset backed debt (or negative equity), are holding the Council's recovery back. Those local issues are compounded by the current global and national economic crises which are having an enormous adverse impact on local government as a sector.
- 3.7 Therefore, despite "significant progress" having been made and "the foundations for a sustainable future being established" and significant savings of some £90m over the past two years having already been delivered, the legacy issues which have continued to be revealed and the lack of financial and operational resilience the Council has, all means the scale of the financial challenge facing Croydon is overwhelming.

- 3.8 The Council will not be able to reach financial and operational sustainability without further government assistance over a longer period.
- 3.9 Given the scale of the continuing financial challenge, the Council will need to continue to reduce spending for years to come. To balance the books, the Council is going to need to reduce its expenditure significantly in each and every year into the foreseeable future. That will mean difficult decisions about the services that the Council is able to provide and ultimately, as set out in the Mayor's Business Plan, the Council will need to do less and spend less in the future.
- 3.10 Although unable to identify sufficient savings to meet the projected budget gap for 2023/24, a number of new savings proposals have been developed through a series of Star Chambers over the summer. These savings total over £16m (excluding new directorate budget corrections identified) and are in addition to a further net £19m in savings that were identified in the March 2022 General Fund Budget Report 2022/23-2024/25 for the 2023/24 financial year.
- 3.11 As well as announcing additional funding for local government, the government also announced the Council Tax Referendum Limits for 2023/24 and 2024/25 in the Chancellor's Autumn Statement. These will be 3% for Council Tax and 2% for an additional Adult Social Care Levy, so an overall increase of 5%. The financial model attached to the Section 114 Notice (Appendix A to Appendix 1) assumes that the Council applies the maximum Council Tax increase which will raise £11m in additional funding in each financial year. The actual decision on Council Tax will be made by Full Council in either late February or early March 2023.
- 3.12 The Council will need to minimise the approach of previous years which has left important services hollowed-out and ineffective. Even after the budget for 2023/24 is balanced and Section 114 is lifted, the Council will have to give serious consideration to ceasing more discretionary spending, in order to focus the Council's limited resources on the Executive Mayor's core priorities:
1. The Council balances its books, listens to residents and delivers good, sustainable services.
 2. Croydon is a place of opportunity for business, earning and learning.
 3. Every child and young person in Croydon has the chance to thrive, learn and fulfil their potential.
 4. Croydon is a cleaner, safer and healthier place, a borough to be proud of.
 5. People can lead healthier and independent lives for longer.
- 3.13 Other services will need to be transformed to make them more efficient and cost effective. Work continues to review all areas of the Council's expenditure and income to achieve this outcome.
- 3.14 As detailed above, an immediate action already taken by the Corporate Director Resources and S151 Officer is the imposition of the S114 and S115 spending

control regime. The action taken is set out in Appendix 2 to this report. These arrangements will need to be adhered to until the Corporate Director Resources and S151 Officer is satisfied that the financial support package being offered by the Department for Levelling Up, Housing and Communities is sufficient to balance the Council's budget in 2023/24.

3.15 Beyond this, the Council is also taking action to continue to find savings to return it to long term financial sustainability. The principles being adopted to shape future savings programmes include the following:-

- Efforts are being redoubled to stop all unnecessary spending by tightening Spending and Recruitment Control processes – ensuring maximum value for money from every pound spent.
- The capital programme is in the process of being reduced to reflect core programmes and schemes that are committed commercially, which deliver savings in running costs, which avoid future increases in costs or which are required due to Health and Safety. The approach for identifying new capital projects for next year for funding from Council resources has been limited in the same way.
- Additional asset disposals are being proposed. In future further asset disposals will be identified by co-locating services in community hubs.
- Budgets are being reviewed and income targets will be rebased.
- The Council will embrace new technology to make customer interactions easier while cutting down on back-office and administrative costs.
- The Council has committed to work more closely with partners from the business, statutory and voluntary sectors to bring more resources to the borough and to support residents.
- Communities will be empowered to play their part in transforming the Council and the borough.

These will be in addition to the detailed proposals in the savings, service transformation and asset disposals proposals contained in the 2023/24 budget consultation that was the subject of the MTFS Update Report to Cabinet on 30th November 2022.

3.16 The Council has a high level of short-term borrowing in place currently, circa £300 million at an average rate of 1.7%, (current Public Works Loan Board rates are just under 5%). This will be a cost pressure in 2023/24 with interest rates having risen significantly since the budgets were set for the current year. Repayment through capital receipts will be limited by the level of capitalisation required to fund legacy and future revenue gaps as set out earlier in this report.

3.17 In order to minimise borrowing, the Council's property and other assets have been reviewed to inform the Council's approach to potentially raising finance through sales. Potential property and asset sales estimated to total £100m have already been identified. Further work is underway to schedule additional

property and assets for sale as set out in the Transformation Programme approved at Cabinet on 30 November 2022.

3.18 The Mayor has asked officers to draw up a further programme of cross-directorate transformation projects to drive the Council's financial recovery. The programme will continue to be developed but it already consists of over 30 further projects, many of which require careful reform of the large budget services providing vital adult and children's social care support. So far savings of £8.475m have been identified for 2023/24 from the Transformation Programme.

3.19 Discussions have been held with the IAP and they have advised the Council to be prudent in its assumptions about the level of change and the pace of change that can be sustainably delivered. In particular they have advised that a £10m transformation revenue budget should be established for at least 2023/24. This is included in the financial model, although it is reduced to an ongoing budget of £5m from 2024/25 onwards. They have also advised the Council that the target level of savings deliverable each year beyond 2024/25 should not exceed £20m as continuing to deliver over £40m in savings each year, in line with the last two years and plans for next year, is not sustainable for the Council.

3.20 Following full discussion with the IAP, the Council has begun a dialogue with central government in relation to support that can be offered to the Council. The requests fall into two categories, national; that would be beneficial for all councils and those more specific to Croydon.

3.21 NATIONAL

The national requests that have been submitted to government include:-

- Early announcement on Council Tax referendum cap – this was subsequently included in the Chancellor's Autumn Statement.
- Early statement on treatment of business rates - this was also subsequently included in the Chancellor's Autumn Statement.
- Reversal of proposed policy to revise the Homelessness Prevention Grant
- Review of Housing Benefit burdens on local government, particularly in relation to Supported Exempt Accommodation
- Delay in the Social Care Reforms - this was subsequently included in the Chancellor's Autumn Statement.
- Reform of local government funding to fully reflect need
- Inflation and interest pressures to be built into local government finance settlement.

3.22 LOCAL

3.22.1 The Council believes that the approach taken through the previous support package from government (Capitalisation Direction) is not appropriate to return the Council to financial sustainability in the light of the level of this debt

and the additional debt that would arise as a result of a new Capitalisation Direction.

3.22.2 The previous Capitalisation Direction involved the Council being allowed to charge revenue costs to capital. This meant in-year running costs in 2020/21, 2021/22, 2022/23 and 2023/24 of £70m, £50m, £25m and £5m respectively could be funded from either selling assets or through borrowing with the costs spread over 20 years (a total of £150m over four years). This approach reduced the Council's ability to use asset sales to repay debt and built-in additional borrowing costs for the next 20 years, a burden to future council taxpayers. The Council's current General Fund debt stands at £1.3bn, the annual General Fund cost of servicing this debt is £47m.

3.22.3 Due to the Council's over-ambitious and imprudent borrowing, particularly since 2017/18, the Council's outstanding debt on the General Fund is disproportionately high already compared to most councils (16% of net budget, rising potentially to over 20%, when most councils are in the range of 5-10%). The Council borrowed some £545m in three years. The impact of the Capitalisation Direction approach is to continue to increase this debt in the future. One of the major drivers for the Council's financial unsustainability will continue to grow. The Council is facing an existential question, with the existing government model of extraordinary financial support for local councils based on borrowing and debt repayments, can it ever reach financial sustainability given its current borrowing commitments and levels of negative equity now and in the future?

3.22.4 The Council has therefore proposed alternative approaches to central government, in order of priority:-

- The write off of Croydon's debt, preferably in its totality in line with the government's approach to the NHS debt at the start of the Covid pandemic. If this is not possible, then the request is to write off the Council's debt by the amount that will reduce Croydon's debt management costs to a 'proportion of net budget' more usual across local government. As a minimum, the Council is requesting that the government write off its non-asset backed debt (negative equity), estimated at £320m, or defer its repayment over a long period (40-80 years). The negative equity has built up from capital spend that has failed to deliver any asset value. As a result there are not assets available to sell to clear the outstanding debt. The capitalisation directions have added to this burden. The current estimate of the negative equity where the Council has debt but no asset to sell can be broken down as follows:

	£m
Original Capitalisation Directions from 2020/21 to 2023/24 (net of application of £73m in capital receipts)	77
Capitalisation of Transformation Funding	73
Assets where investment has been higher than commercial value (estimate)	170
Total	320

NB There are also assets that cannot be sold such as roads, bridges and schools.

- Spreading any MRP (principal repayments) for the Capitalisation Directions over a longer period than the 20 years currently specified by government.
 - Reducing the interest rate charged by the Public Works Loan Board on the capitalisation directions by at least the 1% surcharge but preferably further.
 - Reallocation nationally of asylum seekers currently housed in Croydon by government departments, a practice which is creating a disproportionate and unfunded strain to the Council's budgets
 - Reallocation of ex-offenders currently housed in Croydon by government departments, a practice which is creating a disproportionate and unfunded strain to the Council's budgets.
 - Permission to increase Council Tax beyond the national cap.
 - Permission to use the Growth Zone business rates more flexibly within the designated area eg to cover clearing graffiti, all street cleaning and bin collection, all community safety.
 - Capitalisation Directions to deal with legacy issues.
 - Capitalisation Directions to smooth the transition to financial and operational sustainability.
 - Reform of local government funding to fully reflect demographic demand in Croydon.
- 3.23 The levels of uncertainty and challenge faced nationally by local government currently is unprecedented. Attempting to set a medium term financial strategy for the Council as this point in time is impossible to achieve with any accuracy. However, it is clear that the Council's budget gap cannot be bridged for next year, and future years, without significant assistance from central government.
- 3.24 The Council has begun informal dialogue with central government, but it has been made clear that government will not be able to make announcements in relation to future financial support to the Council until just before Christmas 2022 at the earliest, as part of the Local Government Financial Settlement process.

- 3.25 To only utilise the Capitalisation Direction approach, in the absence of new models of government support, would further reduce the Council's asset base and place further financial burdens on council tax payers over the next 20 years. The impact is cumulative and requires more and more budget to be built in each year to meet borrowing costs as assets are depleted through sales. This is a vicious cycle that cannot be broken, Croydon's budget will remain unsustainable into the future.
- 3.26 A response will be required from government on the financial support it is prepared to offer Croydon prior to the Council setting its Council Tax well before the legal deadline of 11 March 2023 to enable Members to discuss and decide upon the council tax setting and budget report.

4 CONSULTATION

- 4.1 There has been extensive consultation about the Council's financial position and the S114 Notice served. The following actions were taken on 22 November 2022:
- the S114 Notice was sent to all Councillors
 - all staff were briefed by the Mayor, the Chief Executive and the Corporate Director Resources and S151 Officer
 - team meetings were held across the Council
 - the external auditors, Grant Thornton, were informed.
- 4.2 Further briefings have been held with:
- political groups across the Council
 - partners of the Council
 - the Improvement and Assurance Panel
 - the Department for Levelling Up, Housing and Communities.

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 5.1 The combination of the legacy, national and global issues facing the Council, as set out above, has undermined the progress being made on the financial recovery. Although the Council is exploring where savings could be possible in the short to medium term, this report sets out the reasons why these alone will be insufficient to return the Council to financial and operational sustainability.
- 5.2 This position has necessitated the Council's S151 Officer to take the decision to issue a S114 Notice. The S151 Officer has concluded that it appears that the expenditure the authority is projected to incur in each year of the period 2023/24-2026/27 is likely to exceed resources (including sums borrowed) available to the Council to meet that expenditure.

- 5.3 The Section 114 Notice that has been issued is attached as Appendix 1 to this report. It has been issued in accordance with the statutory guidance to instigate formal immediate action to avoid a negative general fund balance within the next financial years of the budget cycle (2023/24-2026/27).
- 5.4 Further Capitalisation Direction is not the solution as it either adds to the Council's debt pile or takes capital receipts away from being able to pay down the existing debt. The Council will need extraordinary and targeted measures to reach financial sustainability.

Approved by: Nish Popat, Interim Head of Corporate Finance

6. LEGAL CONSIDERATIONS

- 6.1 Under Section 151 Local Government Act, the Council must make arrangements for the proper administration of its financial affairs and the Council's Chief Finance Officer and Director of Corporate Resources has responsibility for the administration of those affairs.
- 6.2 The Council is under a statutory responsibility to set a balanced budget. Section 114 (3) of the Local Government Finance Act 1988 provides that the Chief Finance Officer shall make a report to the authority 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." In preparing the report, the Chief Finance Officer shall consult with the Head of Paid Service and the Monitoring Officer (sub-section 4). This function must be undertaken by the Chief Finance Officer personally (sub-section 5). Copies of the report are to be sent to each member of the authority and the auditor.
- 6.3 Section 115 provides that the authority shall consider the report at a meeting where it shall decide whether it agrees or disagrees with the views contained in the report and what action (if any) it proposes to take in consequence of it (subsection 2). The meeting must be held not later than the end of the period of 21 days beginning with the day on which copies of the report are sent (sub-section 3). Between the date of sending the report and the meeting of the authority to consider the report, there is a prohibition period during which the authority "shall not enter into any new agreement which may involve the incurring of expenditure (at any time) by the authority [unless the chief finance officer of the authority authorises it to do so] (sub-section 6)". "The chief finance officer may only give authority ...if he considers that the agreement concerned is likely to— (a) prevent the situation that led him to make the report from getting worse, (b) improve the situation, or (c) prevent the situation from recurring." (sub-section 6A). The Chief Finance Officer's authority shall (a) be in writing, (b) identify the ground on which it is given, and (c) explain the chief finance officer's reasons for thinking that the ground applies (subsection 6B). If these requirements are not complied with, the authority shall be taken not to have had power to enter into the agreement (notwithstanding any option to do so under contract or otherwise) (sub-section 8).

- 6.4 The Section 114 (3) report and its consequences are in addition to other powers available to the Chief Finance Officer to issue a report under s114(2) or section 114A if it appears to him that the authority has made or is about to make a decision to incur unlawful expenditure, or has taken or is about to take unlawful action likely to cause a loss or deficiency, or is about to enter an unlawful item of account.
- 6.5 Although the Section 114 Report issued by the Chief Finance Officer compels the Council to take immediate action, the Council is must still obliged to meet its statutory responsibilities and make decisions in accordance with established public law principles.

Approved by: Stephen Lawrence-Orumwense, Director of Law and Governance & Monitoring Officer

7. HUMAN RESOURCES IMPACT

- 7.1 As this report notes, a S114 Notice requires the Council to cease all non-essential expenditure and reduce operational and service delivery costs immediately. These measures will have a significant impact on workforce matters, including the recruitment of directly employed staff, as well as contingency workers, ie, agency staff, interims, and consultants. The current arrangements in place via the Spend Control Panel will require review and tightening to ensure robust expenditure vigilance.
- 7.2 Further consequences arising from this report, and the consequent actions, will be the impact upon the existing workforce, as the Council seeks to implement measures to reduce the cost overhead. The Council will need to ensure careful and consistent communications to all staff, especially staff who will be directly impacted upon. The Council should seek to retain as many vacant posts as possible to either review and delete (to contribute to cost savings) or to provide opportunities for staff redeployment. The Council should also ensure, where appropriate, staff at risk of redundancy are redeployed and retrained into new work. This approach has the benefit of avoiding redundancy costs, as well as the wider local economic impact of ensuring staff are employed, avoiding the local economic and community costs of worklessness.
- 7.3 All staff at potential risk of redundancy must be consulted, along with their trade union representatives, in accordance with the Council's restructure and redundancy policies and procedures. In the event that over 99 staff in any three-month period are at risk of redundancy the Council is required to observe a 45-day statutory redundancy consultation time frame. In the event of the number of staff at risk of redundancy being between 20 to 99 in any three-month period, the statutory redundancy consultation time frame is 30 days. The Council has a legal duty to find suitable alternative employment, where possible, and to take all reasonable measures to prevent compulsory redundancy. The Council should also seek voluntary redundancies through each planned staff restructure

to reduce the impact of compulsory redundancies and selection for redundancy exercises

- 7.4 The Council will produce a standard set of briefing communications for directors, managers and staff to ensure consistency and clarity. Within the communications it will be important to provide all staff with good access to advice and support. The Council has established a comprehensive support network for staff including: an employee assistance programme, a Guardians' network, Staff Network groups for different protected characteristics, mental health first aiders and the trade unions.

Approved by: Dean Shoemith, Director of Human Resources

8. EQUALITIES IMPACT

- 8.1 This report sets out a number of proposals that will change the services and provisions we provide for residents across Croydon. These proposals are subject to further work and the decisions in relation to the budget are reserved for Full Council.
- 8.2 As a public body, the Council is required to comply with the Public Sector Equality Duty [PSED], as set out in the Equality Act 2010. The PSED requires the Council to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Failure to meet these requirements may result in the Council being exposed to costly, time consuming and reputation-damaging legal challenges.
- 8.3 The Council must, therefore, ensure that we have considered any equality implications for each of the budget proposals prior to the budget council meeting. The Council has an established Equality Impact Assessment [EqIA] process, with clear guidance, templates and training for managers to use whenever new policies or services changes are being considered. This approach ensures that proposals are checked in relation to the impact on people with protected characteristics under Equality Act 2010.
- 8.4 Assessing the impact of proposed changes to policies, procedures, services and organisational change is not just something the law requires; it is a positive opportunity for the council to ensure it makes better decisions, based on robust evidence.
- 8.5 Our approach is to ensure the equality impact assessments are data led, using user information, demographic data and forecasts, as well as service specific data and national evidence to fully understand the impact of each savings proposal. This enables the Council to have proper regard to its statutory equality duties.
- 8.6 As an organisation we are committed to protecting the most vulnerable in our communities and to ensure that in making difficult decisions about funding we

maintain an absolute commitment to tackling inequality and disadvantage and promoting equality for everyone who lives and works in the borough.

- 8.7 We have a large number of vulnerable children and asylum seekers who are in need of our services. We have also been faced with the rise of costs of the provision of adult social care, which has been exasperated following the pandemic. Alongside this our residents have been hit with the cost-of-living crisis, we have supported residents by mitigated for changes where possible and signposting to other support organisations in the borough. We will continue to seek mitigation during the equality analysis process where possible. This includes the provision of emergency accommodation for a range of characteristics including disabled people who we have supported during 2022.
- 8.8 Our initial data suggests that residents across all equality characteristics may be affected by changes. National data highlights that this may have a greater impact on race, disabilities, sex and pregnancy and maternity. We will continue to assess the impact and strive to improve our evidence and data collection, to enable us to make informed decisions.
- 8.9 Where consultations take place, we will ensure that we make it accessible for all characteristics including those with disabilities including neurodiversity by ensuring that we adopt Disability standards in our consultation platform. Notwithstanding those residents who are digitally excluded. We will also consult using plain English to support our residents who do not have English as a first language.
- 8.10 With regard to potential staff redundancies, as a diverse borough we will undertake equality analysis and seek mitigation for staff by offering redeployment and employability support. We will also assess the impact of job losses on protected characteristics.

Approved by: Denise McCausland – Equality Programme Manager

9. ENVIRONMENTAL IMPACT

None

10. CRIME AND DISORDER REDUCTION IMPACT

None

11. DATA PROTECTION IMPLICATIONS

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

NO

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

NO

DPIA is not required

The Chief Executive comments that there are no data protection implications.

(Approved by: Katherine Kerswell, Chief Executive)

CONTACT OFFICER: *Katherine Kerswell, Chief Executive, 020 8726 6000*

APPENDICES TO THIS REPORT

Appendix 1 - Section 114 Report

Appendix 2 - Spend Control Panel Arrangements

BACKGROUND DOCUMENTS: None