

Council Supplementary Agenda No. 3



6. The Council's Budget 2024/25 (Pages 3 - 16)

- Exceptional Financial Support Letter – London Borough of Croydon
- The Monitoring Officer's Budget Setting Advice Note

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Department for Levelling Up, Housing & Communities

Simon Hoare MP
Minister for Local Government

**Department for Levelling Up, Housing and
Communities**
2 Marsham Street
London
SW1P 4DF

Mayor Jason Perry
London Borough of Croydon
By email

27 February 2024

Dear Mayor Perry,

EXCEPTIONAL FINANCIAL SUPPORT FOR LONDON BOROUGH OF CROYDON

I write in relation to the London Borough of Croydon's request of 12 January 2024 for exceptional financial support in respect of the 2019-20 and 2024-25 financial years.

As a result of the Council's continued financial challenges you have made a request for exceptional financial support for 2019-20 and 2024-25. While I welcome the steps that have been taken thus far by the Council overseen by the Improvement and Assurance Panel, it is important to recognise that there is still significant work to be done given the extent of the financial issues. Government's view continues to be that councils requiring exceptional financial support, particularly where it is apparent that several concurrent years of support will be needed, should take all possible steps locally to manage their budget pressures and restore long-term financial sustainability.

It is within this context that the Secretary of State has considered very carefully the Council's position including the interest of local people in Croydon and the need to provide sufficient stability to the Council and to make sure that service delivery, especially for the most vulnerable citizens, is not disrupted.

This letter sets out the Department's current position but does not constitute a capitalisation direction.

The consideration of your request has been based on the estimates that the Council has provided to date of its budget position. The Improvement and Assurance Panel have provided assurance, as far as possible, that these estimates are reasonable and appropriate. I recognise, however, that these estimates are based in significant part on assumptions, and that the final amount of the required capitalisation direction will only be confirmed when the Council's financial accounts for previous years are closed.

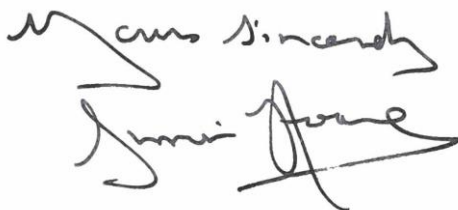
With respect to the financial years 2019-20 and 2024-25 the Secretary of State is minded to approve a capitalisation direction of a total not exceeding £47.439 million. The total is broken down by each financial year as follows, as per your request:

- 2019-20 - £9.439 million
- 2024-25 - £38 million

Before the capitalisation direction can be approved, your Council will need to demonstrate that it continues to take all necessary steps towards improvement. The Secretary of State will require assurance from the Panel that you are making good progress against the London Borough of Croydon Renewal Plan, as per the Best Value Directions issued to your Council on the 20 July 2023. If the Secretary of State decides to approve any capitalisation directions, he would confirm in due course any conditions that would be applied. This is fully addressed in the attached annex.

You will be aware that on 24 January, the Secretary of State announced the expectation for all councils to produce a productivity plan focused on improving service performance and reducing wasteful expenditure. I wish to emphasise that this productivity plan should be completed alongside your ongoing improvement and recovery work.

I would be grateful if the Council could confirm in writing by 28 February that it wishes to proceed in accordance with the position set out in this letter. I am copying this letter to Chair of the Improvement and Assurance Panel, your Chief Executive and Section 151 Officer. This letter will also be published on GOV.UK.

A handwritten signature in black ink, appearing to read 'Yours sincerely Simon Hoare'. The signature is written in a cursive style with a long horizontal stroke at the end.

SIMON HOARE MP
Minister for Local Government

Annex – Assurance required for approving exceptional financial support

Assurance

If the Secretary of State decides to give any directions, he would confirm in due course the final amount of capitalisation support and any conditions that would be applied. The Department's consideration will include evidence from the Improvement and Assurance Panel of the Council's progress against the actions it is required to take, as per the Secretary of State's Best Value Directions (dated 20 July 2023) made under section 15(5) of the Local Government Act 1999. This will include evidence of the Council's:

- continued delivery of the agreed Exit Strategy, progress of which will be reported to the Department via the Improvement and Assurance Panel in their regular reports to the Secretary of State;
- progress in identifying assets for disposal to increase the generation of capital receipts to reduce future borrowing requirements;
- development and approval of a Transformation Programme that sets out plans to deliver significant efficiency savings and minimises the need for future Exceptional Financial Support. This should be developed working with the Improvement and Assurance Panel and completed within three months of the in-principle capitalisation direction.

Conditions

Such directions may be subject to conditions, which would be set out in any capitalisation directions should the Secretary of State decide to exercise his powers under sections 16(2)(b) and 20 of the Local Government Act 2003.

If the Secretary of State decides to give any directions, he is minded to attach the following conditions:

- the Authority may only capitalise expenditure when it is incurred;
- where expenditure is capitalised, that the Authority shall charge Minimum Revenue Provision using the asset life method with a proxy 'asset life' of no more than 20 years, in accordance with relevant guidance;
- 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 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;
- the Authority makes good progress against the London Borough of Croydon Renewal Plan, as assessed by the Improvement and Assurance Panel, in their regular reports to the Secretary of State.

With this in mind the Secretary of State may also attach additional bespoke conditions to any directions issued in respect of the financial years above, depending on the Council's individual circumstances.

Confirming final amounts

Although the Secretary of State is minded to approve a capitalisation direction for the 2019-20 and 2024-25 financial years this would be contingent on the Council reporting to the Department the final

amount identified for which it requires capitalisation for this year, with the agreement of the Council's external auditors and endorsed by the Improvement and Assurance Panel.

BUDGET SETTING ADVICE NOTE

1. This advice note is written further to the legal implication advice contained in the Cabinet Revenue Budget and Council Tax Levels 2024/25 Report on 14th February 2024. This is contained in Pages 192 to 198 of the agenda pack for the Full Council meeting on 28th February 2024. The web link to the Agenda pack is available here [Full Council Budget Reports Pack 28022024 1830 Council.pdf](#)

Members obligations

2. Full Council is required to decide on the Council's budget for the next financial year. This is one of the most important decisions that Full Council is called upon to make during the year.
3. In the signed acceptance of office declaration, all elected Members agree to fulfil their duties as councillors to the best of their ability and judgement. Members also agree to abide by the Members' Code of Conduct which provides that "... on all occasions: I act lawfully" and "I do not bring my authority into disrepute". These declarations apply to the duty on Members to set a lawful budget.

Executive legal duty

4. The Executive Mayor is required (by law) to prepare the Council's budget proposals which comprises the revenue budget, capital budget, council tax base, council tax levels, borrowing requirements and uncommitted reserves. The Executive has discharged this legal duty by presenting to Full Council for decision a set of proposals which result in a lawful and balanced budget.

Full Council's legal duty

5. Full Council must agree to set the budget and by 11th March 2023. This legal duty arises from the Local Government Act 2000, Local Authorities (Functions

& Responsibilities) Regulations 2000 and the Local Government Finance Act 1992. This duty is both individually owned and collectively shared between all elected Members that make up Full Council.

6. In deciding how to exercise its duty to set a lawful budget, Full Council must have regard to the advice of the Chief Finance Officer and the Monitoring Officer. Full Council must act in accordance with the Council's statutory duties, common law duties and administrative law principles (See Paragraphs 14.18 – 14.23 of the Cabinet budget report at pages 118 to 119 of the Full Council Agenda pack).
7. Failure to meet the 11th of March 2023 deadline to set a budget will have significant financial, legal, and reputational impact on the Council and its residents. Full Council will be acting unlawfully.
8. With no agreement on the budget, no budgetary allocations exist and there can be no provision for services, staff, or contractual commitments of the Council. The Council's ability to perform its statutory responsibilities, will be in jeopardy and will in effect 'grind to a halt'. This will have a significant impact on most residents, in particular vulnerable adults, and children. At its basic level, bills and staff wages will not be able to be paid, new contracts cannot be entered into and there will be breach of existing contracts.
9. The Council will not be able to process and send out council tax bills to residents, direct debits will not be set up and payment demands cannot be sent out. The whole council tax payment process will be delayed, and not just for the Council but also for the GLA. Delays in billing and chasing council tax collection reduces the probability of collecting what is due. This would also include what is due to the GLA and the GLA would expect Croydon to compensate it for losses of income given that the delay would be entirely of Croydon's making.
10. This would also mean that the initial council tax payments the Council receives would be delayed and the Council's cash reserves will be undermined by over £20m in April 2024 and thereafter every month that the delay continues. This

missing cash would need to be borrowed from the market, typically from other local authorities. The fact that the Council requires these loans due to its inability to set a budget would reduce the number of sources prepared to lend to the Council and would significantly impact the rate of interest demanded. This would obviously significantly worsen the Council's financial position and at a time when revenue is most needed. All this and the uncertainty that follows will damage the Council's reputation locally and nationally and with central government, other local authorities, staff, partners, businesses, contractors, residents, and potential investors in the borough. The Council and Members will be at risk of litigation in these circumstances.

11. Member's fiduciary duty (i.e., legal duty as trustee of the public purse)¹ is a material consideration to reflect upon. This includes the duty to council taxpayers to avoid unlawful action (i.e., not to set a budget by 11th March) that would result in the loss of significant revenue to the Council or a failure to deliver services with consequential litigation and adverse financial implications to the Council. Personal liability may arise in the form of misfeasance in public office² depending on the nature and extent of conduct at Full Council meeting and its impact.

Dispute Resolution

12. The law recognises that there can be disputes in agreeing the budget and therefore has built in a dispute resolution process. This is clearly set out in the

¹ *Bromley London Borough Council v Greater London Council*² "It is well established ... that a local authority owes a fiduciary duty to the ratepayers from whom it obtains moneys needed to carry out its statutory functions, and that this includes a duty not to expend those moneys thriftlessly but to deploy the full financial resources available to it to the best advantage (Lord Diplock)" *Roberts v Hopwood*³ "... [a] body charged with the administration for definite purposes of funds contributed in whole or in part by persons other than the members of that body, owes, in my view, a duty to those latter persons to conduct that administration in a fairly business like manner with reasonable care, skill and caution, and with a due and alert regard to the interest of those contributors who are not members of the body. Towards these latter persons the body stands somewhat in the position of trustees or managers of the property of others. (Lord Atkinson)"

² **Misfeasance in public office** is an action against a holder of **public office**. It provides a remedy for persons who are injured by the actions of a **public** officer who has exercised his powers in bad faith. It is an unusual tort in that the prime focus is on the motivation of the defendant. The ingredients of the tort a) The defendant must be a **public** officer; b) The defendant must have exercised power as a **public** officer; c) The defendant must have acted with malice or in bad faith, either with the intention of injuring the claimant or, being aware of the risk of such injury, without an honest belief that his conduct was lawful; d) That conduct must have caused the claimant material injury or damage of a sort foreseen by the defendant.

Budget and Policy Framework Procedure Rules in Part 4.C of the Constitution and provides for a 1st Meeting of Full Council (i.e., 28th February 24) at which the Executive proposals can be agreed by a simple majority, or objection to the Executive proposals and instructions to reconsider.

13. At the 2nd Meeting of Full Council on 6th March 2023, Members can vote to amend the Executive budget proposal by two-thirds majority. The Council has received Labour Group amendment ([here \(Public Pack\)NEW - SUPPLEMENT - LABOUR GROUP BUDGET AMENDMENT Agenda Supplement for Council, 28/02/2024 18:30 \(croydon.gov.uk\)](#)) and Green Group amendment ([here \(Public Pack\)NEW SUPPLEMENT GREEN GROUP BUDGET AMENDMENT Agenda Supplement for Council, 28/02/2024 18:30 \(croydon.gov.uk\)](#)) to the Executive budget proposals and both have been approved by the Corporate Director of Resources as capable of delivering a balanced budget.
14. The Labour Group amendments are for £220k savings in the General Fund budget to be achieved by, amongst others, reducing and deleting Special Responsibilities Allowances (SRAs) in the Members Allowance Scheme.
15. The Green Group amendments include savings of £161k to be achieved by reduction in the SRAs in the Members Allowance Scheme.
16. The amendments conflate the two separate and distinct decisions to be made by Full Council i.e., Budget for 2024-25 (include allocation of financial resources to appropriate heads of expenditure) and Member Allowance Scheme for 2024-25 (to, amongst others, determine the basic allowance and SRA payable to members). The established practice and based on two separate statutory schemes (Local Government Finance Act 1992 and Local Authorities (Members' Allowances) (England) Regulations 2003) is that Full Council decides separately the revenue budget and the Members Allowance Scheme. The agenda business items reflect this position.
17. Under the Budget item, if the amendments (indicated in Paragraphs 14 and 15 above) are agreed, they only amend the provision in the expenditure budget in

the General Funds for the Members Allowance Scheme. In my view, they do not amend the Members Allowance Scheme per se which, as advised, is the subject of a separate report and recommendation before Full Council. Any proposal to change the SRA payable to members must be dealt with under the Members Allowance Scheme agenda item. This is the established practice to date.

18. If the Labour and Green amendments fail to secure the required two-thirds majority vote and fall, Full Council must then proceed to vote on the Executive budget proposals (which is the default position). To discharge Members individual and collective legal duty and avoid the financial, legal, and reputational consequences alluded to in this advice note, Full Council could vote by a simple majority to approve the Executive budget proposals. Members could also abstain from voting to ensure the legal duty to set a budget is discharged.
19. The dispute resolution process provides that in the event of an impasse (i.e., no two thirds majority to amend and no simple majority to approve), the Chief Finance Officer should identify the minimum decisions and resolutions required at the 2nd Meeting of Full Council to comply with statutory requirements. Once identified, there will be no time limit on the length of the meeting and the Council shall continue to meet until it has reached a final decision on the matter. The Chief Finance Officer has advised that the minimum decision required to meet the statutory requirements under the Local Government Finance Act 1992 are those in the budget proposal which is before Full Council as these are all integral to setting the budget and the council tax level.
20. In the event of an impasse (as indicated above), Members will be reminded of their legal obligations and duties which collectively requires them through Full Council to set a lawful budget based on the proposals before them. Mindful of the legal duties, the adverse consequences of not setting a budget and potential personal liability arising from any wilful misconduct, Members must work collaboratively (across party divides) to facilitate rather than frustrate the setting of a lawful budget.

21. If Members wilfully and persistently refuse to set a budget and this is found to have caused financial loss to the Council, they may be liable to a claim of misfeasance in public office. There could be a potential breach of the Members' Code of Conduct by bringing the Council into disrepute and failing to act lawfully. Further, under Section 66 of the Local Government Finance Act 1992, the failure to set or delays in setting the budget, could give rise to a judicial review challenge by any person with sufficient interest (which could include a council taxpayer).

Chief Finance Officer and Monitoring Officers reports

22. The Chief Finance Officer (CFO) is responsible for the financial administration of the Council. The Monitoring Officer (MO) is responsible for ensuring the Council conducts its business in a lawful manner. In the event of a failure by Full Council to set a budget and Council Tax by 11th March 2023, which invariably will lead to the worsening of the Council's financial position, the CFO may have to issue another Section 114 report under the Local Government Finance Act 1988. The MO may also have to issue a report under Section 5 Local Government and Housing Act 1989 as the Council will be in breach of its statutory duty/acting unlawfully. Therefore, it is imperative that Full Council discharge its legal duty to set a lawful budget.

Secretary of State's (SoS) Improvement & assurance Panel intervention

23. Although the Council is responsible for decision making on all its functions and responsibilities, the Council is the subject of statutory intervention and Directions ([Statutory intervention: London Borough of Croydon - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/statutory-intervention-london-borough-of-croydon)) by the Secretary of State (SoS) and in the form of a SoS appointed Improvement & Assurance Panel (IAP). The failure to set a budget and the likely adverse impact, could result in the IAP exercising its powers to instruct the Council to act (i.e., set a budget) to meet its best value duty. The SoS Directions requires the Council to adopt any recommendations from the IAP.

Member Allowance Scheme 2024/25

24. In accordance with the Constitution, General Purposes Committee (GPC) has undertaken a review of the Scheme of Members' Allowance and had due regard to the Independent Panel on the Remuneration of Councillors in London report on the remuneration of Councillors in London for 2023 ("Remuneration Report") and made recommendations to Full Council that include adopting Scheme of Members Allowance for 2024/25 with no uplifts and that GPC undertake a review of the Scheme in 2024.
25. As advised in the officer report on the Members' Allowance Scheme 2024/25 report under Legal Implications, Full Council must adopt the Scheme before the beginning of the year for the payment of allowance for that year (Regulation 10 Local Authorities (Members' Allowances) (England) Regulations 2003) "Members Allowances Regulation"), i.e., by 31st March 2024.
25. Regulation 19 of the Members Allowances Regulations requires Full Council to have regard to the Independent Panel's Remuneration Report and recommendations before making or amending the Scheme for 2024/25. The Independent Panel's recommendations include with regards to annual uplifts, that all allowances should be updated annually in line with the percentage pay award agreed by the National Joint Council for Local Government Services Staff (LPSS). This represents a 3.88% increase from April 2023. GPC has agreed and recommended to Full Council no uplifts and a review of the Scheme in 2024 to address Member feedback. Therefore, if the Labour and Green budget amendments to reduce the SRA for a targeted group of Members is proposed under the Members Allowance Scheme agenda item, this will be in contradiction with the GPC recommendations and a radical departure from the Independent Panel's recommendation.
26. In reaching a decision on the Scheme for 2024/25, Members must comply with established public law principles. Members must adhere to the law (i.e., Members Allowance Regulations) that regulates its decision making and must give effect to it. Members must act reasonably, take into account all relevant

considerations, disregard any irrelevant considerations, and any decision made must be one which only a reasonable authority, properly directing itself, could have reached. Members must not act in bad faith or for an improper motive. Members must ensure decisions are properly informed and exercise discretionary powers for proper purposes only. If Members are minded not to agree with the recommendations of GPC and fundamentally depart from the Independent Panel's recommendations, Members must have good reasons for doing so and this needs to be clearly articulated in the decision making.

27. If Members are minded to reduce the SRA, then very careful consideration needs to be given to how it can be achieved lawfully, fairly and properly. This is especially the case if it will involve targeting specific allowances for certain Members, as opposed to reducing all allowances across the board, because it will increase the gap between allowances recommended by the Independent Panel and the allowances set by the Council under the Scheme. Also, the allowances paid by other councils.
28. In addition, a significant reduction in allowances, or removal of allowances altogether, paid to certain Members whilst preserving (at current levels) the allowances paid to others will significantly alter the balance of the Scheme. It is bound to create an imbalance between those Members in receipt of SRA and may give rise to substantive and procedural issues (such as fairness) which need exploring. In other words, significant changes to Members' allowances should be made following a full and proper review.
29. In fact, GPC has already committed to a review of the Scheme later this year and which allows for proposed changes to be fully and properly reported on and discussed. This includes a proper evaluation of the rationale as well as the financial, legal, equalities and practical impacts. Following such a review, Full Council can make changes to a Scheme in year.

Conclusion

30. It is imperative that Full Council acts lawfully and approves a balanced budget and the Members Allowance Scheme for 2024/25 at its meeting on 6th March 2023.

Stephen Lawrence-Orumwense
Director of Legal Services and Monitoring Officer

5th March 2024

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