

To: - All Elected Members – Croydon Council

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

Date: - 11/11/20

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

**Recommendations: -**

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

**1 Purpose of this report**

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

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

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

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

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

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

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

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

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

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

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

## **2 Background – S114**

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

## **3 Croydon Context**

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

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

The report also made elected members aware that:

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

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

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

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

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

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

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

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

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

#### **5 Summary**

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

## Appendix 1 – Budget gap month 6

	Month 6 Forecast Variance (£,000's)
Children Families and Education plus UASC	19,928 5,438
	<hr/> 25,366
Health, Wellbeing and Adults Place	25,748 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
	<hr/> <b>30,211</b> <hr/>

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

