

REPORT TO:	EXTRAORDINARY COUNCIL 1 December 2020
SUBJECT:	Response to the Section 114 Notice and Amendments to the General Fund Budget
LEAD OFFICER:	Lisa Taylor, Director of Finance, Investment and Risk and Section 151 Officer
CABINET MEMBER:	Councillor Hamida Ali, Leader of the Council Councillor Stuart King, Cabinet Member for Croydon Renewal
WARDS:	All
FINANCIAL IMPACT:	
<p>While there are no additional costs directly associated with the recommendations in this report, it details proposed additional savings to reduce the in-year budget deficit for the 2020/21 financial year. The report also explains that the Council will continue to be unable to deliver a balanced budget for the 2020/21 financial year until such time as it receives external financial support in the form of a capitalisation direction with the Ministry of Housing, Communities and Local Government.</p>	

<p>1. RECOMMENDATIONS</p> <p>Council is recommended to:</p> <p>1.1 Accept the views contained in the Section 114 report issued by the Director of Finance, Investment and Risk, Section 151 Officer (Chief Financial Officer - CFO) on 11 November 2020 under Section 114 (3) of the Local Government Finance Act 1988 included at appendix 1 to the report;</p> <p>1.2 Note the latest maximum forecast overspend for 2020/21 of £67m;</p> <p>1.3 Agree the in-year savings of £0.5m detailed in paragraph 5 and Appendix 2 of the report;</p> <p>1.4 Note that the Council cannot balance its budget in 2020/21 without external support and therefore continue to seek a capitalisation direction with the Ministry of Housing, Communities and Local Government; and</p> <p>1.5 Note that if the Council cannot balance the budget at the end of this 21 day period detailed in Section 114 (3) of the Local Government Finance Act 1988, then it will be necessary for the Director of Finance, Investment and Risk to issue a second Section 114 notice which will need to be responded to following a further statutory 21-day period, as detailed in the Act.</p> <p>1.6 Agree that irrespective of whether the Council's Chief Finance Officer issues a second "Section 114" report, the spending control panel in operation under the</p>
--

current Section 114 report shall continue in the manner detailed in this report until such time as the Council may later determine.

2. EXECUTIVE SUMMARY

- 2.1 This report asks Members to consider and accept the views contained in the Section 114 report issued by the Director of Investment, Finance and Risk (S151 Officer) on 11 November 2020, contained at appendix 1 of this report.
- 2.2 While noting that it remains not possible at this time to set a balanced general fund budget for 2020/21, this report asks Members to agree in-year savings of a further £0.5m to reduce the Council's forecast overspend for the 2020/21 budget year, and to continue to develop savings options to further reduce in year spend.
- 2.3 The report requests Members to note that the Council will not be able to balance its budget in the 2020/21 or over the Medium Term Financial Strategy Period (2021/24) until such time as it receives external support in the form of a capitalisation direction request from the Ministry of Housing, Communities and Local Government (MHCLG).

3. BACKGROUND

- 3.1 The Council agreed its revenue and capital budget for the 2020/21 financial year at its meeting on 2 March 2020. In that report Members were advised that:
- 3.2 *'Setting a budget for 2020/21 that is robust, balanced and deliverable has been extremely challenging and has involved a number of difficult decisions for the Council. The Council faces increasingly challenging choices over the medium-term period within the context of its own funding position, the national economy and the level of funding available to the public sector as a whole. If any of the projections change significantly, these will have to be taken into account in year and urgent action taken to address these.'*
- 3.3 Table 1 shows the net cost of services at the start of the financial year and the budget movements in year resulting in the capitalisation request of £67m in 2020/21 to ensure we can deliver a balanced budget.
- 3.4 The table also shows that the Council has identified savings in year but at the time of issuing the Section 114 notice on the 11 November 2020 was unable to deliver a balanced budget.
- 3.5 It also shows that since the issuing of the Section 114 notice the budget remains and unbalanced and that without the approval of a capitalisation direction the budget will remain unbalanced and Section 114 notices will need to continue to be issued.

Table 1 Budget movements 2020/21

	£'m	£'m	£'m	£'m
	1.4.20	in year	total	Movement from original budget
2020/21 net cost of services	313.00			
Forecast Overspend q1		49.00		
Total Forecast spend			362.00	49.00
In year savings identified – Sept 2020		-27.90		
Total Forecast Spend			334.10	21.10
Correction of in year Savings		17.70		
Total Forecast Overspend			351.80	38.80
Forecast overspend q2		66.70		
Total Forecast Spend			379.70	66.70
Savings identified since issue of S114		-0.50		
Total Forecast Overspend			379.20	66.20
Capitalisation Direction required		-66.20		
2020/21 net cost of services			313.00	

- 3.6 The general fund budget was amended by Council at its extraordinary meeting held on 28 September 2020. At that meeting, Members considered a report that forecast a significant in-year overspend. The report detailed how the Council's limited reserves and options for further in-year savings were not sufficient to deliver a balanced budget in 2020/21.
- 3.7 The current budget continues to contain a number of structural challenges in both adults and children's social care which have been experienced for a number of years as demand for services has significantly exceeded budgets. These structural budget deficits do not occur overnight and whilst savings have been planned annually, they have not always been fully delivered.
- 3.8 The 2021/22 budget being prepared and presented to Council in draft on the 25 November as part of the Croydon Renewal plan details that the budget for future years remains unbalanced. Details are provided in table 2 below.
- 3.9 In considering that report, Council agreed to the development of the Croydon Renewal Plan and that a formal approach be made to the Ministry of Housing, Communities and Local Government to seek a capitalisation direction in order to enable the 2020/21 budget and MTFs to be balanced.
- 3.10 Since the Extraordinary Council Meeting on 28 September 2020, the Council has undertaken a significant amount of work to more fully understand its financial position, prepare its Croydon Renewal Plan proposals and to strengthen its financial governance.
- 3.11 During this period, the Council has also:

- i) Received a Report in the Public Interest from its external auditor regarding the council's financial position, its financial governance and its overall effectiveness;
 - ii) Supported a non-statutory rapid review by MHCLG to give assurance to the Secretary of State, with particular reference to the Croydon Renewal Plan and to the Council's request for a capitalisation direction as per Council's decision on 28 September 2020; and
 - iii) Commissioned an independent review of the Council's group of companies and other entities, which is anticipated to be considered by Council at its meeting on 30 November 2020.
- 3.12 The Council has developed its Croydon Renewal Plan in order to tackle its financial challenge and improve the effectiveness of the organisation. The Plan is an integral part of providing assurance to MHCLG in the ongoing negotiations to agree a capitalisation direction for the 2020-24 financial years.

4. SECTION 114 REPORT

- 4.1 On 11 November 2020, the Council's Director of Finance, Insurance and Risk and Section 151 officer, also known as the Chief Finance Officer, issued a "Section 114" report, attached to this report at Appendix 1.
- 4.2 Such reports are issued by Chief Finance Officers under statutory powers under Section 114(3) of the Local Government Finance Act 1988 (LGFA 1988). This Act places certain responsibilities on the Chief Finance Office, namely: *'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.'*
- 4.3 The Chief Financial Officer, amongst others, has held concerns regarding the Council's ability to deliver a balanced budget for the 2020/21 financial year since early summer 2020 and, in line with amended Chartered Institute of Public Finance and Accountancy (CIPFA) and MHCLG guidance, has been in dialogue with MHCLG since that time.
- 4.4 Having previously drafted an initial Section 114 report in early September and having consulted upon it with MHCLG, the Local Government Association (LGA) and the Council's external auditors, Grant Thornton, the Chief Finance Officer had kept the need to issue a Section 114 Report under constant review.
- 4.5 Despite the significant fast paced and focused work that has been undertaken by the Council since September 2020; on 11 November 2020 the Chief Finance Officer concluded, in consultation with the Head of Paid Service and the Council's Monitoring Office that the Council's forecast expenditure had a significant unfunded financial deficit in this financial year. She affirmed that it was her duty to issue a Section 114 report to all Members of the Council and to the Council's external auditors, Grant Thornton.

- 4.6 In issuing the Section 114 report, the Chief Finance Officer summarised the reasons for the timing of her notice as follows:
- i) “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.
 - ii) “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 balance budget this financial year and therefore we will be required to issue this S114 notice.
 - iii) “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.
 - iv) “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.
 - v) “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.
 - vi) “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.
 - vii) “Spending controls – Despite the Council having put in place spending controls over the summer 2020, non-essential expenditure has 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.

- viii) "The Finance Review Panel – The Panel set up in May 2020 meets bi-weekly 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.
- ix) "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.
- x) "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".

4.7 Having issued the Section 114 report, Members are required to:

- i) Consider the report at a meeting of Full Council within 21 days of the report being issued;
- ii) Decide whether Council agrees or disagrees with the views contained within the report; and
- iii) Agree what action (if any) Council proposes to take in consequence of it.

4.8 Having received the Section 114 report, the Council has been prohibited from incurring any new expenditure during the 21 day period between the issuing of the report and the date on which this report is considered at an extraordinary meeting of Council. This has been managed through a daily Spending Control Panel, which has considered if requests for expenditure meet the strict criteria for essential spend that have been set by the Chief Finance Officer in compliance with the exceptions set by the Local Government Finance Act 1988.

4.9 The only expenditure allowed during the Section 114 period must meet the following criteria:

- i) existing staff payroll and pension costs;
- ii) expenditure on goods and services which have already been received;
- iii) expenditure required to deliver the council's provision of statutory services at a minimum possible level;

- iv) urgent expenditure required to safeguard vulnerable citizens;
- v) expenditure required through existing legal agreements and contracts;
- vi) expenditure funded through ring-fenced grants; and
- vii) expenditure necessary to achieve value for money and / or mitigate additional in year costs.

4.10 And, the only grounds for approval of **new** expenditure are:

- i) To prevent the situation that led to the report being issued from getting worse;
- ii) To improve the situation; or
- iii) To prevent the situation from recurring

4.11 Members should note that the issuing of a Section 114 report is a serious measure. These reports are issued rarely, with only a few such reports being issued by local authorities in the last 20 years. Members are required to take collective responsibility to make decisions to reduce expenditure immediately to ensure the Council is taking every measure to reduce its in-year deficit.

5. AMENDMENTS TO THE 2020/21 GENERAL FUND BUDGET

5.1 Having issued the Section 114 report, the Council has to consider proposals from the Chief Finance Officer to address its' severe financial pressures.

5.2 Council approved in-year additional revenue budget savings of £27.9m on 28 September 2020 which are now being implemented. In addition, capital expenditure was reduced by £155m (45%) in-year against a programme totalling £343m. However, the Section 114 notice clarified that £17.7m of those revenue budget savings were incorrectly identified as new savings and therefore reduced the projected overspend by less than the anticipated amount.

5.3 At its meeting on 25 November 2020, it is anticipated that Cabinet will give its support to the further and tougher measures to reduce expenditure that are detailed in Appendix 2.

5.4 The further savings set out in the schedule in Appendix 2 include more stringent controls on non-essential expenditure and recruitment, the reduction of agency staff, the stopping of all overtime, the temporary reduction of highways maintenance to the minimum safe level and other measures.

5.5 The total value estimated is £0.5m revenue and £0.5m capital spending. For some savings it is not possible to provide an estimate of the sums that will be achieved because work is in progress to understand what has already been included in departmental forecasts or because the outcome of the savings exercise is difficult to predict. In these cases, in line with prudent financial management, the schedule offers a range in which the minimum figure is taken as the forecast or a zero forecast. Actual savings will be closely monitored and reported.

- 5.6 The spending control panel is expected to deliver further savings but until this panel has been operational for a longer time period it is not possible to accurately identify the savings it has achieved at the time of writing this report.

6. NEXT STEPS

- 6.1 The additional in-year savings identified in Appendix 2 are not sufficient to mitigate the Council's projected overspend in the 2020/21 financial year.
- 6.2 That overspend is currently projected as a maximum of £67m, which is significantly greater than the £7m that the Council currently has available in reserves.
- 6.3 To that end, it is not possible to make savings recommendations to Council that will allow it to deliver a balanced budget in the 2020/21 financial year. As a consequence, the Chief Finance Officer will be required to give consideration to issuing a second Section 114 report following the extraordinary meeting of Council as the Council will remain unable to balance its budget for the financial year. Any further Section 114 report would serve to re-impose the prohibition of expenditure (other than as may be authorised in accordance with the controls referred to in paragraph 4.8), and would start another 21 day period.
- 6.4 Members should be aware that the Council does not have the required level of savings options or remedies available to it in order to balance its budget in 2020/21. This means that whether or not a further Section 114 report is issued the Council will have to continue to operate in the restricted conditions of a Section 114 report until such time as it receives external support or agrees a capitalisation directive with MHCLG.

7. THE 2021/22 GENERAL FUND BUDGET

- 7.1 In considering the 2020/21 budget deficit, Members should also be cognisant of the Croydon Renewal Plan report that is to be considered by Council at its meeting on 30 November 2020.
- 7.2 That report will detail the Council's ongoing financial challenge for the period 2021-24. Even though the Council has identified a number of additional savings to improve its financial position and effectiveness over the next three years, it will not be able to deliver a balanced budget during that period without external support.
- 7.3 The projected shortfall across the 2021-24 period is described in that report as:

Table 2 draft 2021/24 budget

	<-- Incremental Annual Change -->			<-- Cumulative Annual Change -->		
	2021/22 (£,000's)	2022/23 (£,000's)	2023/24 (£,000's)	2021/22 (£,000's)	2022/23 (£,000's)	2023/24 (£,000's)
<u>Efficiencies Proposals</u>						
Children, Families & Education	(6,467)	(3,521)	(1,564)	(6,467)	(9,988)	(11,552)
Health, Wellbeing & Adults	(9,708)	(10,614)	(9,505)	(9,708)	(20,322)	(29,827)
Place	(11,755)	(5,749)	(4,426)	(11,755)	(17,504)	(21,930)
Resources	(3,491)	(1,536)	(1,230)	(3,491)	(5,027)	(6,257)
Total Efficiencies Proposals	(31,421)	(21,420)	(16,725)	(31,421)	(52,841)	(69,566)
<u>Growth Requests</u>						
Children, Families & Education	24,870	85	77	24,870	24,955	25,032
Health, Wellbeing & Adults	28,891	6,919	6,880	28,891	35,810	42,689
Place	6,082	(400)	1,000	6,082	5,682	6,682
Resources	8,541	(565)	(355)	8,541	7,976	7,621
Corporate Budgets	10,463	10,673	10,886	10,463	21,136	32,022
Total Growth Requests	78,847	16,712	18,488	78,847	95,559	114,046
Net	47,426	(4,708)	1,762	47,426	42,718	44,480
Corporate Pressures	26,245	7,994	7,052	26,245	34,239	41,291
Corporate Funding (C/Tax & NNDR)	(9,423)	(5,756)	(5,872)	(9,423)	(15,179)	(21,051)
Net Remaining Gap	64,248	(2,470)	2,942	64,248	61,778	64,720

7.4 As mentioned earlier in this report, the Council is seeking to remedy that position through a capitalisation direction agreement with MHCLG.

7.5 Given that the projected maximum shortfall for the 2021/22 general fund budget is currently £64m, Members should be aware that if the budget cannot be balanced and should the capitalisation direction not be agreed by February 2021, the Chief Finance Officer will have to issue a further Section 114 report at that time.

8. CONSULTATION

8.1 The Section 114 report was issued to all Members of the Council and the Council's external auditor, Grant Thornton, on 11 November 2020. This followed consultation with MHCLG, CIPFA and the Council's Head of Paid Service and Monitoring Officer.

8.2 The Croydon Renewal Plan, which contains details of the proposed additional in year savings, is anticipated to be discussed at both the Cabinet meeting on 25 November 2020 and the meeting of Council on 30 November 2020.

9. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

9.1 This report details that the Council cannot currently deliver a balanced budget and will need support in the form of a capitalisation direction from MHCLG to enable a balanced budget to be delivered and the Section 114 notice removed. Without support the budget will remain unbalanced and the Section 114 notice will need to remain in place.

Approved by: Lisa Taylor, Director of Finance, Investment and Risk and Section 151 Officer

10. LEGAL CONSIDERATIONS

- 10.1 The Head of Head of Litigation and Corporate Law comments on behalf of the Director of Law and Governance that the Local Government Finance Act 1992 section 31A places the Council under a statutory responsibility to set a balanced budget. As noted in paragraph 4.2 the Section 114 report issued on the 11 November 2020 means that if it appears to the Chief Finance Office *“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.”* As such, the 21-day prohibition period came into effect and the Council has the duty to consider the report in the manner described in paragraph 4.7.
- 10.2 There is no statutory or other legal provision to govern what actions the Council must take in response to the Section 114 notice. That is a matter for the Council. It is possible for more than one notice to be issued (as was the case in Northamptonshire County Council (see below)). However, ultimate responsibility rests with the Council to deliver a lawful budget.
- 10.3 The Section 114 report and its consequences are in addition to powers available to the Chief Finance Officer to issue a report to the Council under s114(2) of the LGFA 1988 or under section 114A of the LGFA 1988 if it appears that the Council has made or is about to make a decision which involves or would involve the council incurring unlawful expenditure, would be unlawful and likely to cause a deficiency on the part of the council or is about to enter an item of account which is unlawful.
- 10.4 In addition, the Council should be aware that Monitoring Officer has a duty, under section 5 of the Local Government and Housing Act 1989, if it appears that any proposal decision or omission by the Council would give rise to a contravention by the Council of any enactment or rule of law or any such maladministration or injustice, to prepare a report to the authority with respect to that proposal decision or omission.
- 10.5 There are powers set out in Part I of the Local Government Act 1999 regarding Secretary of State intervention in a local authority of which the Council should likewise be mindful. Equally, the Council’s auditor has power available under the Local Audit and Accountability Act 2004 (section 31) to issue an advisory note and apply to the High Court for judicial review where a decision or failure to act would have an effect on the accounts of the Council.
- 10.6 In pursuing certain potential courses of action to address its financial position, the Council will be subject to (i) its duties to consult under Section 3 of the Local Government Act 1999, and under general principles established by case law, and (ii) its public sector equalities duties. In the case of *WX, R (On the Application Of) v Northamptonshire County Council [2018] EWHC 2178 (Admin)* that Council failed on both these counts when seeking to find budget

savings (and in the context of a Section 114 report at that time).

- 10.7 Although the Section 114 report therefore compels the Council to take action, it must do so in light of these duties and in accordance with general principles of public law, including the Council's fiduciary duty to act prudently with public monies entrusted to it, as well as to give due and proper consideration to all relevant factors (disregarding irrelevant factors).

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

11. HUMAN RESOURCES IMPACT

- 11.1 It is recognised that issuing a Section 114 notice has consequent implications for the workforce, as the council determines how it plans to reorganise its services.
- 11.2 Any proposals that have a direct staffing impact will be consulted on with our recognised trade unions and individual staff in line with the agreed HR policies and procedures

Approved by: Sue Moorman, Director of Human Resources

12. EQUALITIES IMPACT

- 12.1 In making decisions pertaining to changes in spending and budgets which could impact on service delivery, the Council has obligations under the Equality Act 2010. In particular, the requirement to have due regard to the three aims of the Public Sector Equality Duty (the Equality Duty) in designing policies and planning / delivering services; this is particularly important when taking decisions on service changes. The three aims of the Equality Duty are to:
- a) Eliminate unlawful discrimination, harassment and victimisation;
 - b) Advance equality of opportunity; and
 - c) Foster good community relations between people who share any of the defined Protected Characteristics and those who do not.
- 12.2 The Equality Act lists nine Protected Characteristics: age, disability, race, religion or belief, sex (gender), sexual orientation, gender reassignment, marriage and civil partnership and pregnancy and maternity. Depending on the nature of the decisions or changes, different protected characteristics are likely to be engaged or more impacted.
- 12.3 Whilst the Council must have due regard to the Equality Duty when taking decisions, there is a recognition that local authorities have a legal duty to set a balanced budget. However, where a decision is likely to result in detrimental impact on any group with a protected characteristic it must be justified objectively. This means that the adverse impact must be explained as part of the formal decision-making process and attempts to mitigate the harm need to

be explored. If the harm cannot be avoided, the decision maker must balance the detrimental impact against the strength of legitimate public need to pursue the service change to deliver savings. Finances cannot be the sole consideration.

Approved by: Yvonne Okiyo, Equalities Manager

13. DATA PROTECTION IMPLICATIONS

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

NO

The Head of Democratic Services and Scrutiny comments that the recommendations of this report do not involve the processing of personal data and as such, there are no data protection implications arising from this report.

Approved by Lisa Taylor, Director of Finance, Investment & Risk and s151 Officer.

CONTACT OFFICER: Lisa Taylor, Director of Finance, Investment and Risk, s151 Officer.

APPENDICES TO THIS REPORT

Appendix 1 - Section 114 Report

Appendix 2 - Schedule of further in-year savings for 2020/21