

9 January 2023		ITEM: 3
Extraordinary Council		
Section 114 Report and Chief Executive's Response		
Wards and communities affected: All	Key Decision: Key	
Report of: Councillor Graham Snell, Portfolio Holder for Finance		
Accountable Assistant Director: N/A		
Accountable Director: Jonathan Wilson, Acting Director of Finance and s151 Officer		
This report is Public		

Executive Summary

On 19 December 2022, the Council's Acting Director of Finance & Section 151 Office issued a report under Section 114 of the Local Government Finance Act 1988. This advises Councillors that the Council faces 'a financial situation of an extremely serious nature'.

Councillors are asked to note the Chief Executive's response to the report and endorse a series of actions to put the Council in a stronger financial position in future.

1. Recommendation(s)

That Council:

- 1.1 Endorse the findings set out in the Section 114 report.**
- 1.2 Endorse the Chief Executive's response to the Section 114 report, including the specific recommendations to Council set out in section 1 of the report. This includes the approval of Expenditure Control Processes put in place (and as set out in Appendix 4).**
- 1.3 Note the Council's ongoing discussions with DLUHC in relation to the agreement of the exceptional financial support.**
- 1.4 Note the Chief Executive's response and that if it is not delivered, and/or sufficient savings are not identified, the s.151 Officer may issue a further s.114 report.**

Reason: Council is required to meet and formally consider the s.114 report and agree an action plan to address the issues raised in it.

2. Introduction and Background

- 2.1 On 23 February 2022 the Council agreed the Revenue and Capital budget.
- 2.2 The report identified that a balanced position could only be set with support from capital receipts to support transformational activity and the continued use of reserves.
- 2.3 Furthermore it noted the investment strategy remained paused and that, despite significant savings identified, there remained 'significant further action' required from members to address future funding gaps.
- 2.4 In July 2022, the Council was made aware of significant concerns around the valuation of specific investments. A review process commenced, and the initial review highlighted significant concern with three investments and the position was shared informally with the Department of Levelling Up, Housing and Communities (DLUHC).

On the 2 September 2022 DLUHC announced directions to implement an intervention package at the Council.

- 2.5 The Secretary of State exercised his powers under section 15(11) of the Local Government Act 1999 to give a Direction without complying with the requirement at section 15(9) to give Thurrock an opportunity to make representations about the Directions, as he considered the failures of the Council's compliance with its Best Value duty in respect of the functions specified in the Directions sufficiently urgent. This was because of the following:

- the scale of the financial and commercial risks potentially facing the Authority, which were compounded by the Authority's approach to financial management and the seriousness of the allegations that were made by third parties about the processes applied to the operation of the Authority's commercial strategy, and;
- the failure of the Authority to provide assurance to Ministers and the Department on the adequacy of the actions that they were taking to address the issues, taking account of the scale and pace of the response required.

- 2.6 Taken together, the Secretary of State considered that there was a pressing case for urgent government action to protect the interests of the residents and taxpayers of Thurrock, as well as to provide assurance to the sector that action was being taken. The scale and nature of the issues was emerging rapidly, and the Secretary of State was concerned that further evidence of failure could come to light very quickly and require prompt action.
- 2.7 The Secretary of State nominated Essex County Council to the role of Commissioner. The intervention package included two complementary parts:

- The first is that the Council's functions over managing its financial resources, exercise of the statutory requirement to arrange for the proper administration of the Council's financial affairs, and all functions associated with the strategic financial management of the Authority will be overseen by Essex County Council, in the role of Commissioner.
 - The second part is that the Secretary of State appointed Essex County Council as a Best Value inspector, to inspect the governance, audit (internal and external), risk management, overview and scrutiny functions of the Council, and consider their impact on service delivery.
- 2.8 Both parts share a common goal, which is to protect the interests and services of the people of Thurrock.
- 2.9 As part of the intervention process the scale of the financial risk faced by the Council has been provisionally quantified as part of the Quarter 2 financial report presented to Cabinet on 14 December 2022. This confirmed a projected gross funding gap of £469m for 2022/23 and a further projected funding gap of £184m in 2023/24.
- 2.10 The projected funding gaps have confirmed the need for exceptional financial support from government. Further assessment of the Medium-Term Financial Strategy has confirmed that, as currently projected, the actions the Council can take to mitigate the scale of financial losses reflected will not be sufficient to address these losses. Consequently, there is no clear path to financial sustainability without exceptional support from government. Discussions continue with officials at DLUHC to consider this position.

Section 114 Report

- 2.11 On 19 December 2022 the Council's Acting Director of Finance & s151 Officer issued a report under s114 of the Local Government Finance Act 1988, which was sent to all Councillors. This advised them that the Council faces "that it faces a financial situation of an extremely serious nature and significant steps are now necessary to restrict expenditure as set out in the report. The report is at Appendix 1.
- 2.12 The issue of a Section 114 report is a serious step and has only been issued at a small number of other local authorities.
- 2.13 The Section 114 report details the findings supporting the issue of the report and explains that 'Thurrock Council will not have the resources available to meet its expenditure. The Council will need to seek Exceptional Financial Support from the Department for Levelling Up, Housing and Communities (DLUHC) for the financial year 2022/23 and to support budget setting for 2023/24. This is based on the conclusion of the Section 151 Officer that Thurrock Council has no prospect of returning to financial sustainability

without significant and extraordinary financial support from government including Capitalisation Directions’.

- 2.14 In accordance with the statutory requirements, the Council’s Acting Chief Executive and the Interim Monitoring Officer have been consulted on and support the issue of the Section 114 report. The external auditors have also been informed, as have DLUHC officials.

Chief Executive Response

- 2.15 On the 23 December 2022, the Chief Executive issued a public response stating that Councillors and Officers recognised the gravity of the situation and committing to all efforts needed to put the Council on a secure long term financial footing. The response identified all the work areas either under way or planned to bring this about. The response is at appendix 2.
- 2.16 The report sets out the detail of the spending controls put in place in parallel with the issue of the Section 114 report.
- 2.17 The report acknowledges the scale of the financial challenge and the levers available to the Council to mitigate these gaps. It also concurs with the Section 114 report that exceptional financial support is required from government.
- 2.18 The report sets out progress made since Intervention was announced at the Council on 2 September 2022 and notes there is an Improvement Recovery Plan in place that has been agreed with Commissioners and will be further iterated once the findings of the Best Value Inspection have been received.
- 2.19 The report includes recommendations to Council members as set out in Section 1 which seek acknowledgement of the current position of the Council and references the need to consider the further findings of the Best Value Inspection and seeks member approval of the expenditure control processes put in place.

3. Reasons for Recommendation

- 3.1 The purpose of the recommendations is to seek endorsement of the Section 114 report and the associated Chief Executive Response and to note the ongoing discussion with DLUHC on the form of exceptional support. Finally, members are asked to note that if the response as set out in the Chief Executive response is not delivered then a further Section 114 report may be required.

4. Consultation (including Overview and Scrutiny, if applicable)

- 4.1 The form and content of the Section 114 report has been consulted on with Commissioners, DLUHC and with officials from the Chartered Institute of Public Finance and Accountancy (CIPFA). Commissioners have also been consulted with on the form and content of the Chief Executive response.

5. Impact on corporate policies, priorities, performance and community impact

- 5.1 The Section 114 report and the Chief Executive response reference the impact of responding to the report. The report specifically requires additional spending controls are implemented within the authority with immediate effect. These controls were implemented on 19 December 2022. The response to the wider financial position is included within the wider Improvement and Recovery Plan developed by the Council in response to the intervention. The first iteration has been agreed with Commissioners.

To address the funding gaps identified the Council has continued and extended the asset disposal process which continues to evolve, and projections are included within the Medium-Term Financial Strategy to date.

6. Implications

6.1 Financial

Implications verified by: **Jonathan Wilson**
Acting Director of Finance and s151 Officer

The financial implications are set out in the body of the report. The Section 114 Notice has been issued following the assessment and quantification of the financial risk attaching to the Investment Strategy of the Council. This has been set out clearly in the Quarter 2 Financial Report to Cabinet which was considered by members on 14 December 2022.

Significant action has been taken to address the risks arising from specific investments and to consider the wider action the Council can take to mitigate the financial impacts. However, it is clear the Council will require exceptional financial support from Central Government to balance the 2022/23 financial position and to set a budget in 2023/24.

Discussions continue with DLUHC to consider the request for this exceptional support. The wider context has been shared to understand the current medium and longer-term financial position in the absence of this support. This confirms the financial losses now attached to the Investment Strategy cannot be managed by the Council itself.

The Council commits to taking all actions possible improve the financial position. As the report sets out, this action is included in the Improvement and Recovery plan which was shared with government on 3 December 2022.

6.2 Legal

Implications verified by: **Mark Bowen**
Interim Project Lead - Legal

The need to issue a s.114 report is triggered in prescribed circumstances, including where the chief finance officer believes that the expenditure of the authority incurred (including expenditure it proposed to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure.

The process for the issuing of the report is set out in the 1988 Act and have been followed. s.115 of the 1988 Act requires full Council to consider the report within 21 days and 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.

s.115(6) states that pending consideration of the report by full Council, there is a prohibition period which runs from the date the report is made to the date of the full Council meeting. During this period, the Council must 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 in writing, specifying a prescribed reason.

The chief finance officer may only give authority for the purposes of subsection (6) 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.

Failure to comply with the procedure set out in paragraph 3.2.3 above will result in the Council being deemed not to have had the power to enter into the agreement and as such the Council's actions will be deemed unlawful.

The formal prohibition period set out in paragraph 3.2.3 will cease on 9 January 2022, however full Council is then being asked to endorse the Section 114 report which requires controls to be extended to the end of the 2023/24 financial year, which will restrict the Council's ability to incur further expenditure.

The Council's legal duties around budget setting are set out in s.31A of the Local Government Finance Act 1992, which requires the Council to set its council tax, taking account of the need to balance its expenditure with its revenue. Section 30 (6) of the 1992 Act requires that the Council Tax is set before 11 March 2023.

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.

The Council's external auditor also has power available under the Local Audit and Accountability Act 2004 to issue an advisory note, make statutory recommendations and issue a public interest report if it has concerns about the effect of the Council's decision making in relation to the Council's accounts.

Case law has determined that the issue of a s.114 report does not alleviate the Council from following a fair and lawful process in relation to decision-making on service reductions or realignment. Whilst a lawful budget must be set and this can provide an evidence base for a local authority to take a revised approach to service provision motivated by its financial position, this does not relieve the Council of the need to act lawfully. This includes the need to conduct needs assessments, consider whether proposals should be subject to consultation and if so, conscientiously consider the results of such consultation, assess, and have due regard to equality implications and to take all other relevant information into account to inform its decision.

There will be clear roles for Cabinet and Overview and Scrutiny Committees in terms of future decision-making regarding service proposals to inform the future budget setting process for 2023/24.

6.3 **Diversity and Equality**

Implications verified by: **Natalie Smith**
Strategic Lead, Community Development and Equalities

As set out in the legal implications section, the Council must demonstrate that it has complied with its wider duties when making decisions to reduce or change services. It will be expected that equality implications will be assessed and reported to decision-making as part of the budget setting process.

6.4 **Other implications** (where significant) – i.e., Staff, Health Inequalities, Sustainability, Crime and Disorder, or Impact on Looked After Children

The Council continues to consider the wider implications of the Section 114 report.

7. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Quarter 2 Financial Report 2022/23
- Medium Term Financial Strategy

8. Appendices to the report

- Appendix 1 – Section 114 report
- Appendix 2 – Chief Executive response to the Section 114 report
- Appendix 3 – Thurrock Directions
- Appendix 4 – Expenditure Control Process

Report Author:

Jonathan Wilson

Acting Director of Finance and Section 114 report

Corporate Finance