

# Report to all Elected Members of Thurrock Council s.114 Local Government Finance Act 1988

Jonathan Wilson, Acting Director of Finance and Section 151 Officer –  
19th December 2022.

## 1. Purpose of report and executive summary

- 1.1. Members of the Council are asked to consider this report by the Acting Director of Finance and Section 151 Officer. The report is written to meet my statutory and professional responsibilities. Members of Thurrock Council must consider this report and respond as required by the Local Government Finance Act 1988, by the 9th January 2023 (21 days from the notice).
- 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.'*

This is a mandatory duty placed upon the Chief Finance Officer in these circumstances.

- 1.3. The purpose of this Section 114 notice is to make it clear to Members of the Council 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. As reported to Cabinet on the 14th December 2023, in 2022/23 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.
- 1.4. The provisional deficit for the 2023/24 budget is £452m against a budget of £153m. It is already clear that Thurrock Council cannot contain its expenditure budget in 2023/24 within available resources. This is a pattern that continues for later years. Further assistance will be required including Capitalisation Directions covering future financial years. Indications are that Thurrock Council will need to seek extraordinary support beyond Capitalisation Directions and dialogue has commenced with DLUHC.
- 1.5. The scale of the financial issue as quantified above supports the issue of this report.
- 1.6. A copy of this report has also been sent to the Council's auditors BDO. This report is supported by the Interim Head of Paid Service and the Interim Monitoring Officer.

## 2. Current Position

- 2.1. Following intervention and the appointment of Essex County Council as Commissioner by the Secretary of State on the 2nd September 2022, a review of the Council's finances has identified a series of material financial issues that have led to a previously unreported material financial deficit as outlined below. There is also a Best Value Inspection due to

report its findings in early 2023 which may identify further financial matters that require consideration.

- 2.2. As reported to Cabinet on 14th December 2022, there is an in-year deficit of £452m, significantly in excess of the resources available to Thurrock Council to meet that expenditure. The causes of the deficit are outlined below and should be seen within the context of the Council holding very limited unrestricted and general fund reserves:
- Write down of investment assets to reflect the latest assessed fair (market) value of those investments.
  - Requirement to rectify the historic under assessment of Minimum Revenue Provision for the repayment of debt on capital investments
  - Exposure to rising interest rates as a consequence of reliance on short term loans to finance the Council's borrowing requirement
  - Loss of investment income
  - Unfunded financial pressures linked to demand levels and inflationary impacts.
- 2.3. Overall, the projected impact of these issues is significantly above the approved revenue budget and the level of revenue reserves held by the Council. The current estimated revenue deficit projected for 2022/23 of £452m is after applying revenue reserves and capital receipts of £17m to offset the gross £469m pressure. Consequently, the expenditure Thurrock Council is projecting to incur in 2022/23 exceeds the resources available to it, leading to the issuing of this Section 114 notice.
- 2.4. It should be noted that these figures are estimates and are expected to change as work continues on reviewing the financial position of the Council and the 2023/24 budget is set.
- 2.5. The issuing of the Section 114 notice means that entering into new agreements for expenditure will stop until at least 31 March 2024, unless there is explicit written consent from the Section 151 Officer to do so. In addition, temporary measures will be put in place to stop all further non-essential expenditure prior to the Full Council meeting, when members will be asked to approve further measures to control spending and improve the finances of the Council. Details of these measures will be set out by the interim Head of Paid Service separately to this notice.
- 2.6. The prohibition on entering into new agreements and restrictions on other spending applies to all Council services, including statutory services, those delivered through Council controlled companies and connected entities. A control framework will be put in place to ensure this happens while ensuring that key services to for example vulnerable children and adults, are not impacted.
- 2.7. Spending controls will need to remain in place for the foreseeable future and at least for the remainder of 2022/23 and 2023/24. A progress report on the action plan underpinning the further measures will be made to full Council in February 2023.

### **3. Legal framework**

- 3.1. Section 114(3) requires the "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 the resources (including sums borrowed) available to it to meet that expenditure."

- 3.2. The process for issuing a Section 114 notice and the effect of it are set out in various sections under the 1988 Act. Subsection 3(A) requires the chief finance officer to consult, so far as reasonably practicable, the head of paid service and the monitoring officer.
- 3.3. The Council's interim chief executive and interim monitoring officer have been fully engaged in all budget discussions. The Finance Recovery Board, part of the governance of the statutory intervention, were also consulted, and their views have been considered in finalising this report.
- 3.4. Section 115 requires full Council to consider and decide on the report within 21 days beginning on the day the report is sent. Full Council must consider the report at a meeting where it shall decide whether it agrees or disagrees with the views contained in the report and what action (if any) it proposes to take in consequence of it. The meeting must be held not later than 21 days beginning with the day the report was sent and this decision is reserved to full Council.
- 3.5. Section 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 to do so.
- 3.6. Subsection (6A) states 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.
- 3.7. Subsection (6B) requires that authority for the purposes of subsection (6) shall:
  - (a) be in writing,
  - (b) identify the ground on which it is given, and
  - (c) explain the chief finance officer's reasons for thinking that the ground applies.
- 3.8. Subsection (8) states that if subsection (6) is not complied with, the Council shall be taken not to have had power to enter into the agreement (notwithstanding any option to do so under contract or otherwise). Therefore, the Council's actions will be deemed unlawful.
- 3.9. Section 116 requires the Council to notify its external auditors of the report and the time, date, and place of the full Council meeting. The external auditors also need to be informed of the outcome of the meeting as soon as practicable. The external auditors have been kept informed of the emerging financial position and the planned work. The external auditors will need to consider the implications of this report on their statutory functions and the implications for their opinion on the 2020/21 accounts which remain unsigned.
- 3.10. Guidance issued by the Chartered Institute of Public Finance and Accountancy (CIPFA) recommends that informal contact is made with DLUHC, lead members and statutory officers in advance of issuing a s.114 report, to undertake some scenario testing and to ensure a robust action plan to address the issues raised. Lead members have been kept up to date on the emerging budget situation, as have the executive board including the key statutory officers and there has been regular liaison with DLUHC officials and CIPFA.

3.11. The Council's legal duties around budget setting are set out in Section 31A of the Local Government Finance Act 1992, which states:

- (1) In relation to each financial year a billing authority in England must make the calculations required by this section.
- (2) The authority must calculate the aggregate of:
  - (a) the expenditure which the authority estimates it will incur in the year in performing its functions and will charge to a revenue account for the year in accordance with proper practices,
  - (b) such allowance as the authority estimates will be appropriate for contingencies in relation to amounts to be charged or credited to a revenue account for the year in accordance with proper practices,
  - (c) the financial reserves which the authority estimates it will be appropriate to raise in the year for meeting its estimated future expenditure,
  - (d) such financial reserves as are sufficient to meet so much of the amount estimated by the authority to be a revenue account deficit for any earlier financial year as has not already been provided for,
  - (e) any amounts which it estimates will be transferred in the year from its general fund to its collection fund in accordance with regulations under Section 97(2B) of the 1988 Act,
  - (f) any amounts which it estimates will be transferred in the year from its general fund to its collection fund in accordance with Section 97(4) of the 1988 Act, and
  - (g) any amounts which it estimates will be transferred from its general fund to its collection fund pursuant to a direction under Section 98(5) of the 1988 Act and charged to a revenue account for the year.

#### **4. Details of the Report**

4.1. Thurrock have been in dialogue with DLUHC since July 2022. On 2nd September 2022 the Secretary of State announced there would be a statutory intervention at the Council and Essex County Council were appointed as Commissioner. The intervention was made due to the Council's exposure to significant financial risk. In response to the intervention the Council has worked with Commissioners to deliver the requirements of the statutory Directions. As part of this process the Council has reviewed the specific exposure to the financial risk linked to investments specifically and the Quarter 2 reported to Cabinet on the 14th December 2022 reports a £452m funding gap (after application of revenue reserves and capital receipts of £17m).

4.2. The Directions specifically required:

- An action plan to achieve financial sustainability and to close any short and long-term budget gaps identified by the Authority across the period of its medium-term financial strategy (MTFS), including a robust multi-year savings plan;
- An action plan to ensure the Authority's capital, investment and treasury management strategies are sustainable and affordable;

- A strict debt reduction plan, and an updated minimum revenue provision (MRP) policy in line with all relevant rules and guidelines;
- An action plan to ensure the Authority is complying with all relevant rules and guidelines relating to the financial management of the Authority; and
- A suitable scheme of delegations for financial decision-making.

4.3. The work undertaken since intervention has highlighted several financial issues with a significant impact:

- i. The value of investment assets held by the Council are significantly overstated and the initial assessment of this requires a write down of £275m. The issues that underly this assessment are likely to need to be reflected in prior year accounts. As the 2020/21 accounts are still open, pending conclusion of the external audit for that year, it is likely that a prior period restatement will be required in the 2020/21 accounts.
- ii. Minimum Revenue Provision (MRP) has not been set aside in respect of capital investments in line with DLUHC and CIPFA guidance and the recalculation indicates a further £129m of set aside is required to ensure the guidance is applied appropriately. This is subject to a further view from external audit which is expected to confirm the MRP has not been calculated in a prudent manner as required by the regulations and hence the Council may have breached its statutory duties.
- iii. The current estimated negative General Fund balance prior to any additional support by DLUHC as at 31 March 2023 is £452 million.
- iv. The Council's Treasury Management and Capital strategy approved by Council in February 2022 requires considerable improvement. Specifically, this will need to reflect how the Council will deliver the specific requirements of the directions, such as the managed reduction of debt aligned to a strategy to divest of commercial investments.
- v. The accounts for the Council for 2020/21 have yet to be signed off by BDO, the Council's external auditor. As the 2020/21 audit is not yet complete, it is expected that the issues identified will need to be rectified in the 2020/21 Accounts, including by prior period restatement of comparative figures for earlier years. Consequently, the 2020/21 accounts are likely to remain open for some time and will be subject to significant change.
- vi. The Council has two wholly owned companies and is the majority shareholder in a third company. Governance and financial management arrangements remain under review and will be subject to further reporting in due course.
- vii. The impact of the intervention is that significant capacity is required to address the range of actions identified. This remains challenging for the existing finance team and further support has been sought in several areas and this continues to remain under review to support the transformation required.
- viii. Financial processes, reporting and internal controls are under review as part of both the intervention. Budget monitoring was improved in response to the recent LGA peer review and further improvements are being made in conjunction with Commissioners. The wider review of financial governance is also a focus of the intervention and issues identified will be built into the Improvement Plan.

- ix. There has been inadequate monitoring of transformation projects and the monitoring arrangements in place have sat separately to budget monitoring. As such, there is insufficient clarity on whether anticipated savings or improvements are being achieved and on actions taken to manage the risk of non-delivery.
  - x. The HRA and the associated 30-year business plan remains subject to review.
- 4.4. There has been full acceptance and understanding of the issues identified by the Council's Directors Board and Cabinet and a commitment to work to address these going forward.
- 4.5. The current level of the general fund reserves is £11m and this level will only be maintained by the Council securing exceptional financial support for the projected deficit in 2022/23.
- 4.6. The current position reported at Quarter 2 confirms that the Council needs to seek this support from DLUHC. There must be a willingness on the part of the Council to take the decisions including reducing expenditure, that will be required to achieve a balanced outturn in 2022/23 and to set a lawful budget in 2023/24. This process must be performed at pace and the decisions taken must be implemented.
- 4.7. As a minimum this will require that appropriate action is taken in areas where costs that can be safely and legitimately reduced. All accounting adjustments and one-off interventions have now been exhausted.
- 4.8. Given that no immediate remedy is available it is likely that the restrictions to control in-year spending will need to remain in place for the remainder of the 2022/23 financial year and for the 2023/24 financial year.
- 4.9. Legal advice has been sought on the legality of the Council's ongoing situation and the Council's interim Monitoring Officer has been consulted on and supports the contents of this report. The Council is also fully engaging with its external auditors.

### **Budget Setting 2023/24**

- 4.10. The Council's Medium Term Financial Strategy (MTFS), as approved in March 2022, had a funding gap of £14m required over the three-year period, leaving further savings needing to be identified in 2023/24 and 2024/25. This assumed the delivery of £18m savings including £14.2m in the 2023/24 budget and the requirement to increase reserves to an acceptable level. These figures have deteriorated considerably since the MTFS was approved in March 2022. A draft MTFS was reported to Cabinet on the 14th December 2022.
- 4.11. As a result of the issues now identified and set out above, exceptional financial support is being sought from DLUHC as well as additional savings. The decision on exceptional financial support will be required to enable the Council to be able to set a legal budget by the statutory deadline of 11 March 2023, per Section 30(6) Local Government Finance Act 1992.
- 4.12. The provisions of Section 25 Local Government Act 2003 require that, when the council is making the calculation of its budget requirement, it must have regard to the report of the Section 151 Officer as to the robustness of the estimates made for the purposes of the calculations and the adequacy of the proposed financial reserves. Work is currently ongoing to seek to ensure that the Council can set a robust 2023/24 budget.

## 5. Future Operating of the Council

- 5.1. The issuing of a Section 114 notice is a serious matter and will impact on how the Council operates. Local Authorities however cannot go into liquidation or bankruptcy as their operations cannot be discontinued without statutory prescription. The Council will pay all existing creditors and make payments on all existing contracts that are in place and the Council will continue to deliver its statutory services including services to vulnerable children and adults.

## 6. Next Steps/Timescales

- 6.1. The requirement of this Section 114 notice is that the Council must meet within 21 days of issue, to consider this report 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.
- 6.2. Elected Members must take responsibility to make choices and decisions to immediately reduce costs immediately to support Thurrock Council reducing the deficit (that is the gap between expenditure and available resources) in 2022/23.
- 6.3. This will also be the case for 2023/24 and potentially future financial years. It will not be possible for Thurrock Council to achieve financial sustainability without exceptional financial support from DLUHC.

Activity	Date
Issue of Section 114 Notice	19 December 2022
Issue of Papers for Full Council	22 December 2022
Full Council <ul style="list-style-type: none"><li>• Endorse the contents of the Section 114 Notice</li><li>• Approve response to Section114 Notice and Actions</li></ul>	9 January 2023
Cabinet <ul style="list-style-type: none"><li>• Recommend Draft Budget and MTFs for 2022/23 – 2025/26</li></ul>	08 February 2023
Full Council <ul style="list-style-type: none"><li>• Approve Budget for 2023/24 and MTFs for 2024/25 – 2026/27</li></ul>	22 February 2023

- 6.4. The Section 114 notice will cover the financial year 2022/23 and 2023/24. The Section 151 officer will monitor the Council's response to this notice to ensure that sufficient action is taken at pace to address the issues identified. If he is not satisfied that this is the case, there will be a need to issue a further notice under Section114.