

SECTION 114 (3) NOTICE AND CHIEF EXECUTIVE'S RESPONSE

Executive Summary

On 7th June 2023 the Council's Section 151 Officer and Interim Director of Finance issued a Notice under Section 114 (3) of the Local Government Finance Act (1988). This is because, in the view of the Section 151 Officer, the expenditure of the Council incurred (including expenditure it proposes to incur) in 2023/24 is likely to exceed resources (including sums borrowed) available to it to meet that expenditure.

Within the Section 114 (3) Notice the Section 151 Officer and Interim Director of Finance clarifies that the Council faces a financial situation of an extremely serious nature. The financial shortfall is unprecedented and there is no prospect that the Council will balance its budget in 2023/24, 2024/25 or the successive years without external financial support on a large scale.

The Notice lays out the stark financial position facing the Council. Against the core funding of £16m available in the 2023/24 financial year the Council faces a deficit of £1.2 billion. The scale of the deficit faced is unprecedented and will require both immediate and ongoing concerted action by Officers and Members over a number of years in order to return the Council to a path of financial and operational sustainability and recovery.

Section 115 of the Local Government Finance Act (1988) provides that the Council shall 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 (sub-section 2). Under the statutory procedure, the Council is required to meet within 21 days of the date on which the Section 114 Notice was issued (7 June 2023). This Extraordinary Meeting of Council has been convened to fulfil that requirement.

This report sets out the details of the Section 114 (3) report issued by the Section 151 Officer and Interim Director of Finance, and the response of the Chief Executive.

Recommendations

The Council is recommended to:

RESOLVE That:

- (i) the Findings stated in the Section 114(3) report issued by the Interim Director of Finance and in particular the points arising in paragraphs 25, 26, 27 and 28 of the Section 114 (3) be endorsed;
- (ii) the Intervention by the Secretary of State, the Directions issued by the Secretary of State under section 15(5) and (6) of the Local Government Act 1999 and the appointment of the Commissioning Team be noted; and
- (iii) the response by the Chief Executive to the Section 114(3) report be noted and the recommended actions in her response at Appendix 2 to this report be agreed as follows;
 - (a) actions be established that will bridge the Council's budget gap of £9m in 2024/25 that will be presented as planning assumptions in the Medium Term Financial Strategy report to the 13th July 2023 meeting of the Executive;

- (b) it be noted that expenditure controls will remain in place beyond the Section 114 Notice and will remain a feature of how the Council conducts its business for some years;
- (c) a revised Budget may need to be prepared and received by Council in the late summer to receive budget proposals to take savings early to assist with balancing the Budget in 2023/24 and 2024/25;
- (d) it be noted that a Financial Recovery Plan is being developed by the Section 151 Officer in liaison with the Corporate Leadership Team and the Commissioning Team;
- (e) the Medium Term Financial Strategy and Plan be reported quarterly to the Executive and Council moving forward;
- (f) actions be established to bring the Housing Revenue Account (HRA) back into balance and to create a 30 year business plan;
- (g) an assets disposals strategy, alongside a Commercial Strategy, be developed to optimise the returns from the disposal of the Council's and Companies' assets for the benefit of the "public purse" in the context of the need to pay off debt; and
- (h) Government be approached to explore the prospect of financial support.

The Council has the authority to determine the recommendations set out above.

Background Papers: None.

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1.0 Introduction and Background

- 1.1 It has been reported through meetings of the Executive since its meeting on 8th December 2022 that the Council needed additional assurance that its expenditure could be contained within resources over the 2023/24 – 2025/26 period.
- 1.2 A Medium Term Financial Strategy (MTFS) 2023/24 report was presented to an Extraordinary Meeting of Council on 23rd February 2023 and included a Section 25 Report from the Section 151 Officer at that date. The headline issues from this Section 25 Report are extracted and included in Appendix 5 for ease of reference.
- 1.3 A further MTFS report was presented to the 23rd March 2023 meeting of the Executive by the incoming Section 151 Officer and Interim Director of Finance, that established 10 (ten) principles to inform balancing the 2024/25 budget. The principles are further extracted and included in Appendix 5 for ease of reference.
- 1.4 These extracts are provided in order to provide context for the issues arising from the Section 114 (3) Notice and Directions under the Local Government Act 1999.
- 1.5 The Section 114 (3) Notice that the Chief Executive is responding to in this report is the result of planned and managed investigations, discovery and recovery work over recent months to address the Council's debt and lack of financial and operational resilience.

2.0 Directions Under The Local Government Act 1999 (See Appendix 3)

- 2.1 On 25th May 2023 the Secretary of State for Levelling Up, Housing and Communities made Directions, under section 15(5) and (6) of the Local Government Act 1999 ("the Act"), in relation to Woking Borough Council.
- 2.2 The Directions implement an intervention package which is attached at Appendix 3 to this report. In the case of Woking, the Secretary of State is exercising his powers under Section 15(11) of the Act to give a Direction without complying with the requirement at Section 15(9) to give the Council an opportunity to make representations about the Directions and the findings of the External Assurance Review that has informed them.
- 2.3 The Secretary of State has intervened in the Council because he considers that the Council (i.e., Woking Borough Council) is failing to meet the 'Best Value Duty' which all councils have, to secure continuous improvement in how they deliver their functions. The intervention is formed of a set of actions which the Council is directed to take, and the appointment of Commissioners who have been given powers over certain functions of the Council. The range of functions which the Commissioners will exercise is broad, relating to financial and commercial governance, strategic decision making and the Council's operating model, as well as other functions.
- 2.4 The Secretary of State has appointed the team that undertook the Non-Statutory Review as the Commissioners based on their individual knowledge and experience in local authority leadership, governance, and commercial development. The report from the Non-Statutory Review is included at Appendix 4.
- 2.5 The Secretary of State envisages that most decisions will be carried out by the Council, but with the oversight of the Commissioners: they will uphold proper standards and due process and recommend action to the Council. The Directions set out, though, that the functions set out in the Directions shall be exercised by Commissioners; and the Council must comply with any instructions of the Commissioners relating to them. Further, the Council is directed, to

undertake in any of its functions, actions that the Commissioners may reasonably require in order to avoid giving rise to the risk of further failures to meet the Best Value Duty.

2.6 The Secretary of State's intention is that the powers he is providing to the Commissioners be used to ensure that the Council takes the necessary steps to achieve the best possible outcome for Woking residents and the public purse. The exercise of these functions should enable the Commissioners to make sure that the Council has made sufficient improvement within the next five years to be able to comply with its best value duty on a sustainable basis.

2.7 The Directions require the Council to take certain actions:

- Prepare and agree an Improvement and Recovery Plan to the satisfaction of the Commissioners, within six months, with resource allocated accordingly. This should draw upon the contents and recommendations of the External Assurance Review published on 25 May 2023. The Plan is to set out measures to be undertaken, together with milestones and delivery targets against which to measure performance, in order to deliver rapid and sustainable improvements in governance, finance and commercial functions, thereby securing compliance with the best value duty. The minimum requirements from an Improvement and Recovery Plan are included in the Directions issued by the Secretary of State and specifically within Annex A of the Directions which set out the action the Council is required to take.
- To report to the Commissioners on the delivery of the Improvement and Recovery Plan after three months, six months and thereafter at six-monthly intervals, or at such intervals as Commissioners may direct.
- To undertake in the exercise of any of its functions any action that the Commissioners may reasonably require to avoid, so far as practicable, incidents of poor governance, poor financial governance or financial mismanagement that would, in the reasonable opinion of the Commissioners, give rise to the risk of further failures by the Council to comply with the best value duty.

2.8 The response from the Chief Executive to the Section 114 (3) Notice will be established within the Directions given by the Secretary of State and specifically the required Improvement and Recovery Plan and oversight from the Commissioning Team.

3.0 Section 114 (3) Notice (See Appendix 1)

3.1 On 7th June 2023 the Council's Section 151 Officer and Interim Director of Finance, issued a Notice under Section 114 (3) of the Local Government Finance Act (1988) which was sent to all Councillors.

3.2 The Notice issued by the Section 151 Officer and Interim Director of Finance is attached at Appendix 1.

4.0 Chief Executive's Response (See Appendix 2)

4.1 On 7th June 2023, the Chief Executive issued a statement recognising the very serious financial situation the Council is in and supported the Section 114 (3) Notice recognising it reflected the scale and acute financial situation facing the Council.

4.2 The report of the Chief Executive at Appendix 2 sets out the detail of actions and controls in place and being enhanced with the issue of the Section 114 (3) Notice and the Secretary of State's Directions, under section 15(5) and (6) of the Local Government Act 1999 ("the Act"), in relation to Woking Borough Council.

4.3 The report from the Chief Executive includes recommendations to Council which seek acknowledgement of the current position of the Council. This report:

- Includes actions proposed by the Chief Executive in her response at Appendix 2 to this report.
- Includes references for the need to integrate the findings of the Non-Statutory Review with the Directions from the Secretary of State and the expectations of what the Improvement and Recovery Plan needs to include.
- Acknowledges the scale of the financial challenge and the actions it needs to support and take to address the challenges.
- Establishes the actions the Council are recommended to adopt in order to move the Council towards financial recovery and build confidence in the Council's direction for meeting its Best Value duty.
- Sets out Improvement and Recovery progress to date, acknowledging that this recovery in the most part remains in its infancy and concerted efforts are required to enable sustainability.
- Welcomes the appointment of Commissioners by the Secretary of State and recognises the significant experience, expertise and critical oversight that they are able to bring to the Council's Improvement and Recovery Programme.

5.0 Engagement And Consultation

5.1 Consultation between the Council's Statutory Officers has taken place in producing this report.

6.0 Financial Considerations

6.1 The Section 151 Officer has set down his advice in the Section 114 Notice at Appendix 1 and has no further matters to report at this time.

7.0 Legal Considerations

7.1 These are set out in the Legal Framework Section at points 10-21 of the Section 114(3) Notice.

8.0 Human Resources Impact

8.1 As this report notes, a S114 Notice requires the Council to cease all non-essential expenditure and reduce operational and service delivery costs immediately. These measures will have a significant impact on workforce matters, including the recruitment of directly employed staff, as well as contingency workers, i.e. agency staff, interims, and consultants. It is important to confirm that staff will continue to be paid.

8.2 The current arrangements in place for recruitment to vacant posts through the Employee Change Form will need to remain and requested through the Spend Control Panel rather than to a meeting of the Corporate Leadership Team.

8.3 Further consequences arising from this report, and the consequent actions, will be the impact upon the existing workforce, as the Council consults on implementing measures to reduce

the cost overhead. The Council will need to ensure careful and consistent communications to all staff, especially staff who will be directly impacted.

- 8.4 The Council has a change management policy which will need to be applied to changes arising from actions taken as a result of the Section 114 Notice.

9.0 Equalities Impact

- 9.1 This report sets out a number of actions that will lead to changes to the services and provisions the Council provides for residents across Woking. These proposals are subject to further work and the decisions in relation to the budget are reserved for Council.
- 9.2 As a public body, the Council is required to comply with the Public Sector Equality Duty (PSED), as set out in the Equality Act 2010. The PSED requires the Council to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Failure to meet these requirements may result in the Council being exposed to costly, time consuming and reputation-damaging legal challenges.
- 9.3 The Council must, therefore, ensure that it has considered any equality implications prior to decisions taken on proposals that will arise from these actions.