

Report to all Elected Members of Slough Borough Council

s.114 Local Government Finance Act 1988

Steven Mair, Chief Finance Officer (Section 151 Officer) - 2 July 2021

1. Purpose of report and executive summary

- 1.1 Members of the Council are asked to consider this report by the Section 151 Officer (the Chief Finance Officer).
- 1.2 The purpose of this Section 114 report is to make it clear to Members of the Council that it faces a financial situation of an extremely serious nature: with a significant estimated unfunded financial deficit forecast.
- 1.3 Following an ongoing review of the Council's finances by the Council's new finance team the main issues that have been identified and that have led to this notice include that the Council:
 - has been incorrectly calculating Minimum Revenue Provision since 2016/17, over stating asset lives, incorrectly using capital receipts and omitting some expenditure from the calculation
 - has quadrupled its borrowing from circa £180m to £760m over the same period with a consequential revenue impact
 - faces a range of financial pressures and issues
 - has effectively no unallocated general reserves
 - has been incorrectly charging some revenue costs to capital
- 1.4 Overall the projected in-year spending on services is significantly above the approved revenue budget and the level of revenue reserves held by the Council. The current estimated negative General Fund balance as at 31 March 2021 is £56 million. The additional in-year deficit is for 2021/22 is estimated to be £40 million (assuming the £15m existing capitalisation direction is agreed). If further action is not taken, it is estimated that by 31 March 2025 there will be a negative General Fund balance of £159 million. Local Authorities are not permitted legally to exceed their revenue funding including reserves.
- 1.5 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.
- 1.6 The issuing of this s.114 report means that the entering into any new agreements for any expenditure will stop until at least 22 July 2021, unless there is explicit written consent from the s.151 officer. 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 endorse further measures to control spending and improve the finances of the Council.
- 1.7 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.

- 1.8 Spending controls will need to remain in place for the foreseeable future i.e. at least for 2021/22 and a progress report on the action plan underpinning the further measures will be made to full Council in November 2021.
- 1.9 If the action plan is not adhered to or does not achieve the results planned a further s.114 report will be issued.
- 1.10 Approval of the measures supplemented by the action plan will not resolve the Council's budget position, this will require full delivery of the action plan and a further capitalisation direction or other support from MHCLG. This is explained later in this report.

2. Legal framework

- 2.1 S.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."
- 2.2 The process for issuing a s.114 report 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.
- 2.3 The Council's chief executive and monitoring officer have been fully engaged prior to this report being issued. The officer strategic finance board was also consulted and all of their views have been considered in finalising this report.
- 2.4 S.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.
- 2.5 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 to do so.

2.6 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.

2.7 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.

2.8 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.

2.9 S.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 2018/19 accounts which remain unsigned.

2.10 CIPFA guidance recommends that informal contact is made with MHCLG, 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 MHCLG officials and CIPFA.

2.11 The Council's legal duties around budget setting are set out in s.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, other than a BID 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,
- (da) 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,
- (e) 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
- (f) 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.

3. Details of the Report

- 3.1 Slough have been in dialogue with MHCLG since December 2020 in order for them to provide support to the Council. They approved a capitalisation directive of up to £15.2m, subject to an independent review, in order that the Council could balance its 2021/22 budget. Although helpful in the short-term these resources are one-off, require the Council to either generate capital receipts or undertake further borrowing which increases its liabilities and mean it needs to identify savings to fill the gap in addition to those required in the subsequent year.
- 3.2 Since the budget was approved in March 2021 a growing number of significant financial issues have been identified that mean that the Council will not be able to balance its budget even with this additional funding unless it receives further support through an increased capitalisation direction. Discussions are ongoing with MHCLG but the capitalisation direction is not guaranteed, particularly given its size and is dependent on an independent review by CIPFA commissioned by MHCLG on the Council's financial management and governance due to commence in July 2021. The work that uncovered the deficit only commenced in April 2021 and it is likely that more issues will arise in the coming months as more work is completed. The financial position is thus not certain and will change but is very significantly adverse
- 3.3 Slough's financial problems have not arisen in the past few months. The approach to financial decision-making, leadership and management, processes, quality assurance and review etc that has been adopted by the Council over a number of years was not robust and consequently highly detrimental to the Council.

3.4 All areas of finance examined since April have uncovered either severe weaknesses or poor practice across the Council:

- i. A number of the issues now uncovered relate to previous years and if known at the time the Council would have had difficulty in setting a legal balanced budget in 2019/20, 2020/21 and 2021/22. The financial position the Council finds itself in should have been addressed in previous years.
- ii. The current estimated negative General Fund balance prior to any additional support by MHCLG as at 31 March 2021 is £56 million. The additional in-year deficit for 2021/22 is estimated to be £40 million (assuming £15m existing capitalisation direction is agreed). If further action is not taken, it is estimated that by 31 March 2025 there will be a negative General Fund balance of £159 million. Local Authorities are not permitted legally to exceed their revenue funding including reserves.
- iii. Minimum Revenue Provision (MRP) set aside is not in line with MHCLG and CIPFA guidance and will need to be re-calculated significantly impacting on the Council's finances. In my view and that of external audit 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.
- iv. The Council's various budget reports (the MTFS/budget, Treasury Management and the Capital Programme) approved by Council in March 2021 were all flawed, in several respects and require considerable improvement which is being planned and actioned.
- v. By way of example the Treasury Management strategy does not link accurately to the capital programme, and the risks associated with high levels of borrowing and in particular high levels of temporary borrowing, have not been explained to Members nor a plan drawn up to address the risk.
- vi. The accounts for the Council for 2018/19 are still to be signed off by external audit and 2019/20 and 2020/21 audits are not yet complete. General Fund reserves reduced to £550k at 31.03.19 as a result of the audit and further changes are expected as this work continues.
- vii. The External Auditor issued four statutory recommendations in relation to the 2018/19 accounts and these were subject to a report to Council in May 2021. The external auditor will be following up progress on all these matters and is considering what future statutory action is required.
- viii. The Council has a number of wholly or partly owned companies and connected entities. Governance and financial management processes in relation to these arrangements are weak, some of these companies require ongoing financial support and others involve contractual arrangements which expose the Council to significant financial risk. These concerns were also reflected in the external auditor's statutory recommendations.

- ix. There is no insurance reserve or PFI sinking fund, both reserves appear to have been used to balance previous years' budgets and revenue spending, particularly on IT projects, has been charged to capital and will need to be reversed.
 - x. A number of finance staff have left the organisation in the past few months taking with them organisational knowledge. The whole of the finance management team is now comprised of interim or temporary staff, and the majority have only been in post since April 2021.
 - xi. Financial processes, reporting and internal controls are weak – budget monitoring has to be more robust; data input has to be more accurate, bank balances and control accounts need to be reconciled more regularly and payment processes need to be reviewed. Longer term financial planning needs to be significantly improved.
 - xii. The Dedicated Schools Grant (DSG) deficit is forecast to be £43m by 31.03.25 and no action has been taken until recently to reduce spending or to address these deficits which have increased significantly in recent years.
 - xiii. Estimates of local tax income and collection rates, critical to budget estimates, have not been accurate in recent years.
 - xiv. Inadequate provision appears to have been made for NNDR, and the level of other provisions previously made also appears to have been insufficient. This has also been raised by the external auditor.
 - xv. Spending on Transformation projects has not been closely monitored to consider how project spend is being funded, whether spend at individual project level is within budget, and whether the anticipated savings or improvements are being achieved.
 - xvi. The HRA has not been examined as yet and the 30-year business plan was not updated for the 2021/22 budget and will need to be reviewed.
 - xvii. The Council has committed large sums with external consultants that will need to be re-considered based on affordability and value for money.
- 3.5 There has been full acceptance and understanding of the issues identified by the Council's Executive Management Board and Cabinet and a total commitment to work to address these going forward.

3.6 Current estimates of the general fund reserve deficit balance are set out below:

General Fund Deficit	2021/22	2022/23	2023/24	2024/25
Balance	£m	£m	£m	£m
Brought forward deficit	56	96	130	149
In-Year Deficit*	40	34	19	10
Deficit carried forward	96	130	149	159

* assuming £15m MHCLG capitalisation directive.

3.7 At this stage there are no straightforward remedies. There are no ways out of this financial situation other than seeking additional support from MHCLG and a willingness on the part of the Council to take the decisions that will be required to achieve a balanced outturn in 2021/22 and to set a lawful budget in 2022/23. This process must be performed with pace and the decisions taken must be implemented.

3.8 At the very least this will involve detailed attention to all costs that can be safely and legitimately minimised. All accounting adjustments and one-off interventions have now been exhausted.

3.9 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 2021/22 financial year.

3.10 Legal advice has been sought on the legality of the Council's ongoing situation and the Council is fully engaging with its external auditors.

Budget Setting 2022/23

3.11 The Council's Medium Term Financial Strategy approved in March 2021 was extremely challenging with total savings of £43m required over the three years with just £23m identified, leaving further savings needing to be identified and delivered of £20m in 2022/23 and 2023/24. This assumed the delivery of all of the £23m savings identified, £16m in the 2021/22 budget and the requirement to increase reserves to an acceptable level. These figures have changed considerably since the MTFS was approved in March 2021. It appears that for a number of years that the Council has focussed on setting the following year's budget and not about balancing it over the medium term.

3.12 This was before the issues identified subsequent to the budget being approved. Unless a capitalisation direction from MHCLG is forthcoming and additional savings to a least balance the 2022/23 budget are identified by September 2021 ready for delivery in April 2022 the Council, without adequate reserves is at risk of not being able to set a legal budget by the statutory deadline of 11 March 2022, per Section 30(6) LGFA 1992.

3.13 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 Chief Finance (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. A great deal of work is currently ongoing to seek to ensure that the Council is able to have a robust 2022/23 budget.

4. Future Operating of the Council

4.1 The issuing of a s.114 report is a serious matter and will impact on how the Council operates. Local Authorities however cannot go into liquidation or bankruptcy as they are Government backed. This means all creditors are secured, contracts that are in place are secure and the Council will continue to deliver its statutory services, particularly services to vulnerable children and adults.

5. Next Steps/Timescales

Activity	Date
Issue of s.114 Notice	2 July 2021
Issue of Papers for Full Council	14 July 2021
Full Council - Endorse the contents of the s.114 Notice - Approve response to s.114 and Actions	22 July 2021
Cabinet Recommend Draft Budget and MTFS for 2022/23 – 2025/26	21 February 2022
Full Council Approve Budget and MTFS for 2022/23 – 2025/26	8 March 2022

6. Future Intervention

I will monitor the Council's response to this Notice to ensure that sufficient action is taken at pace to address the issues I have identified. If I am not so satisfied I will consider a further Notice under s114, but trust that this will not be necessary.