

Report made under part VIII s.114(3) of the Local Government Finance Act 1988 ('The Act')

To: All Councillors of Nottingham City Council

From: Ross Brown, Corporate Director of Finance & Resources, and s.151 Officer

Date of Report: November 29th, 2023

1. Purpose of report

1.1 Members of the Council are required to consider this report made by me as the Council's Chief Finance Officer and s.151 Officer under s.114(3) of the Local Government Finance Act 1988, because in my professional opinion the expenditure of the authority incurred (including expenditure it proposes to incur) in the 2023/24 financial year is likely to exceed resources (including sums borrowed) available to it to meet that expenditure. The purpose of this report is for me to formally notify the Council that in my opinion the Council is unable to meet its statutory requirement to deliver a balanced budget for 2023/24.

2. Executive summary and context

2.1 My reasons for issuing this report are:

- At the end of Period 2 (May 2023) the gross forecast General Fund position was a £28.076m overspend and a net forecast General Fund position overspend of £25.894m against the approved net budget for the General Fund in 2023/24 of £261.8m (net 9% adverse variance)
- In June 2023 the Council mobilised a Financial Intervention Strategy to address the in-year pressures which realised £5.048m of in year reductions
- During the subsequent months, the operating environment and wider economic context continued to be highly volatile with small changes in demand disproportionately materialising in large financial pressures, particularly in social care and homelessness
- As these further pressures began to emerge, the Council developed corrective actions up to the end of October 2023, in response to the issuance of a formal notice of concern by the CFO (s.151) to the Head of Paid Service which yielded an additional £13.251m of in year reductions
- In addition to the above, Council considered the appropriateness of the deployment of service held reserves alongside the release of technical and treasury items. This resulted in the application of £9.492m, and £5.758m respectively, reducing the gross pressure by a £15.250m
- At the end of Period 6, the Council was forecasting a gross General Fund pressure of £56.899m with over 80% of the forecasted pressures being in People's services.
- The cumulative impact of the one-off in-year management and corrective actions (including the use of reserves set out above) and the deployment of technical options resulted in a net forecasted General Fund pressure for the year of £23.351m
- As part of my CFO (s.151) assessment of the Council's ability to deliver a balanced budget in year as required under part VIII of the Local Government Finance Act 1988, I have considered the suitability of deploying further reserves in year. This assessment was undertaken on a

multi-year basis (4-year medium-term financial plan), considered the overall adequacy of reserves, considered all relevant CIPFA guidance, and an assessment of risk exposure. I have concluded that it would not be prudent for the Council to act in this way.

- 2.2 Council must meet within 21 days of the date of this s.114(3) report to decide if it
 - a) agrees with the views contained within the report and
 - b) to agree what action, if any, it proposes to implement.
- 2.3 For the duration of up to 21 days, a Prohibition Period that legally stops all new agreements that may incur expenditure (at any time) is implemented immediately and will end the first business day after the Council meeting. Spend control measures will continue after Council meets, if this is part of the agreed action plan the Council decides to implement to mitigate the overspend.
- 2.4 I have undertaken extensive engagement with key stakeholders including Corporate Leadership Team, Leader and Deputy Leader, the Executive, External Auditors(Grant Thornton LLP), the Improvement and Assurance Board (IAB), Local Government Association advisors and Department for Levelling Up, Housing and Communities (DHLUC) over the last few months
- 2.5 This s.114(3) report is issued following extensive engagement with both the Chief Executive (Head of Paid Service) and the Director of Legal Governance (Council's Monitoring Officer).

3. Actions that the Council must now take in response to this s.114(3) report

- 3.1 A Prohibition Period starts immediately from the date of this report. During this period the Council must undertake the following:
 - a) A Full Council meeting must be convened within 21 days from date of this report to discuss and decide if it agrees or disagrees with my views and confirms what actions, if any, it proposes to take.
 - b) Financial Controls during the Prohibition Period will be exercised by a s.151 Spend Control Board, chaired by the s.151 Officer. Specifically, this will mean:
 - i. The spend controls instigated from June 2023 are to be extended and/or enhanced.
 - ii. The Council is prevented, without explicit written agreement of the s.151 Officer, from entering into any new agreement or commitment for expenditure until Full Council has met to consider the s.114(3) report. It may be deemed necessary to extend these controls after Full Council has met as part of the proposed recovery plan.
 - iii. All new expenditure must stop with immediate effect unless there is written confirmation from the s.151 Officer. To be clear, all non-compliance with this requirement will be considered a disciplinary matter by the Council. There are no exemptions, exclusions, or financial delegations of authority to either CLT, Officers or Members.
 - iv. The controls outlined in (i), (ii) and (iii) above will apply to the following, where individual business cases will need to be reviewed by the s.151 Spend Control Board

- all Council services regardless of funding, including those where the Council has a legal duty, and
 - all services being delivered through companies controlled by the Council, or where the Council supplies funding to companies that are jointly or partly owned by the Council.
- 3.2 To note that during the Prohibition Period failure to comply, without authority, with the restrictions as set out in 3.1(b) above, will be deemed a disciplinary matter
- 3.3 If Council agrees with the views detailed in this report, it will take immediate steps to mitigate the forecast 2023/24 overspend by proposing a financial recovery plan to deliver a balanced budget as legally required which should include:
- a) Delegation to the s.151 Officer to further develop and implement the financial recovery plan which will bring the General Fund back to a balanced position, including reporting requirements.
 - b) Continuation of s.151 Spend Control Board implemented during the Prohibition Period.
 - c) Review of existing commitments which includes assessment of the capital programme (including delaying existing projects and expediting assets for sale).
 - d) Consideration of the delivery of any 2024/25 draft budget proposals in 2023/24
 - e) The consideration of any service cessation in 2023/24 that the Council does not have a legal duty to fulfil
- 3.4 Note that the CFO (s.151) will formally engage with Government through the Department for Levelling Up, Housing and Communities (DLUHC), to request Exceptional Financial Support (EFS).
- 3.5 If controls are not adhered to, or do not achieve the required outcomes, a further s.114 report will need to be issued.

4. The Council's Financial Position

- 4.1 Since my appointment as the Council's permanent s.151 Officer in January 2023 I have been conscious of the limited financial control environment in place at the Council and have instigated significant controls through the Finance Improvement Plan to improve clarity and transparency that have shaped and influenced my professional assessment of the Council's financial position.
- 4.2 At Period 2 (May 2023) the Council's gross forecast General Fund position was £28.076m overspend and its net forecast General Fund position overspend was £25.894m against the approved net budget for the General Fund in 2023/24 of £261.8m (net 9% adverse variance). This was reported and discussed at Executive Board with Members in July 2023. The key drivers of the overspends were:
- Increased demand (Adult social care volume and need, Childrens' social care package volumes and complexities , home to school transport and temporary accommodation)

- Non-delivery of Transformation savings
 - Increased costs (particularly in Childrens' social care packages and temporary accommodation) and broader provider inflationary pressures
 - Nationally agreed pay agreement, above the 2023/24 budgetary provision
 - Income shortfalls
 - Pressures relating to non-qualifying capital recharges
- 4.3 At this point a Financial Intervention Strategy that was intended to facilitate better grip of the Council's financial position and reduce the overspend was implemented. This introduced a range of measures including proactive vacancy management, directorate led targeted non-essential spend control including agency and interim spend and technical reviews, alongside department led management action plans reflecting other actions being undertaken.
- 4.4 As described in the Executive Board report regarding Period 6 published on November 13th, 2023 despite the considerable efforts of the Council since July to manage its position, the operating environment and wider economic context continues to be volatile with small changes in demand disproportionately materialising in large financial pressures. These are particularly in Children's social care packages in terms of volumes and complexities, Adult social care volumes, home to school transport and temporary accommodation volumes and costs of provision. The Council is also dealing with the impact of rising costs due to continued high level of provider inflationary pressures, and the impact of cost-of-living crisis which also affects important income streams of the Council.
- 4.5 At Period 6 the Council is forecasting a gross pressure of £56.899m, which after management and corrective actions including the use of reserves of £9.492m to fund gross service pressures, is reduced to a forecast net pressure of £23.351m.
- 4.6 As set out in the Executive Board Budget report in February 2023, the Council was forecasting to hold substantial levels of reserves when viewed as a global figure, but it is important to understand the composition of reserves on an individual basis to fully assess the context of the Councils financial resilience. As described in the provisional 2022/23 outturn budget report to Executive Board on July 18th, 2023, the Council needed to use £9.766m of reserves (unplanned) to deliver a balanced budget.
- 4.7 In setting a balanced budget for 2023/24, the Council temporarily repurposed £20m of earmarked reserves in 2023/24 to establish an adequate balance on the Financial Resilience Reserve. This repurposing is repayable and contained as part of the revised medium-term financial plan (MTFP). It should be recognised that pursuing such a course of action highlighted the fragility of the Councils financial resilience position.
- 4.8 The assessment as to the suitability of deployment of reserves to deliver an in year balanced budget is the responsibility of the Councils Chief Finance Officer (s.151). It sits in a broader context than just an in-year assessment, and in accordance with all relevant CIPFA guidance I have considered not only the immediate circumstances faced in the current year, but also the 4 year MTFP (specifically the significant budget gap for 2024/25) and the overall adequacy of reserves.
- 4.9 I have considered the unique operating context of Nottingham City Council and have judged that the following financial risks need to be considered when determining adequacy of reserves and financial resilience:

- Organisational ability to develop and progress plans
- Delivery record on savings programmes to date
- Likelihood of further in year variances (overspends) against approved budget
- Unforeseen shocks or circumstances resulting in financial cost spikes
- Subsidiary company risk - loans and risk of liabilities materialising
- Prior year accounts and historic accounting treatments & practice corrections
- Assumptions regarding debt collection and impact on the collection fund
- Economic factors such as inflation and interest rate environment
- Major project challenges and failure
- Capital receipts not being sufficient to meet existing capital obligations

Given the Councils recent history, and in the context of the strategic risks set out above it is reasonable and prudent to set aside material amounts within reserves to provide for either a single or multiple scenarios manifesting.

4.10 As CFO (s.151) I have made an assessment that a hypothetical £13.165m of reserves could technically be deployed in year, but this would not only be insufficient to close the gap it would also significantly undermine the financial resilience of the Council, as the consequences of not keeping a minimum prudent level of reserves can be serious. In the event of a major problem, or a series of events (including further overspends in year), the Council could be forced to cut spending during the year in a damaging and arbitrary way, that given the current context of the Councils budget setting methodology of Duties and Powers, could result in the breaching the Council's legal duty.

5. Legal framework for the issuance of a s.114(3) report

- 5.1 S.114(3) of the Act requires that: *“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.”*
- 5.2 The process for issuing a s.114(3) report and its impact are set out in various sections under the 1988 Act. Although there is no statutory requirement to consult with the Head of Paid service and the Council's Monitoring Officer when considering the issuance of a report under s.114(3), both statutory officers have been fully briefed and engaged regarding the issuance of this report.
- 5.3 S.115(3) requires Full Council to consider and decide on the report made under s.114(3) within 21 days beginning on the day the report is issued. 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.
- 5.4 S.115(9) 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 first business day after 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) unless the chief finance officer (s.151 Officer) authorises it to do so.*
- 5.5 Subsection (6A) states *the chief finance officer (s.151 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,*
 - c. prevent the situation from recurring.*

- 5.6 Subsection (6B) requires that the authority for the purposes of subsection (6) all approvals shall:
 - a) be in writing,*
 - b) identify the ground on which it is given, and*
 - c) explain the chief finance officer's (s.151 Officer) reasons for thinking that the ground applies.*

- 5.7 S.115(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.

- 5.8 S.116(1) requires the Council to notify its external auditors of the s.114(3) 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 I have instigated.

- 5.9 CIPFA guidance recommends that contact is made with DLUHC, lead members and statutory officers in advance of issuing a s.114(3) report. To date all relevant stakeholders have been kept informed on the emerging budget position. This has included Executive Board, key statutory officers, Corporate Leadership Team (CLT), IAB, DLUHC officials and external auditors(Grant Thornton LLP).

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Nottingham City Council

