



## AUDIT AND RISK MANAGEMENT COMMITTEE

Monday, 27<sup>th</sup> September 2021

<b>REPORT TITLE:</b>	<b>FINANCIAL SUSTAINABILITY - COMPARISON WITH OTHER LOCAL AUTHORITIES</b>
<b>REPORT OF:</b>	<b>DIRECTOR OF RESOURCES (SECTION 151 OFFICER)</b>

### REPORT SUMMARY

A review of the financial position and governance of Wirral has been undertaken following a number of Councils issuing Section 114 notices and receiving Public Interest Reports (PIR) from their external auditors, the Councils which the circumstances and financial sustainability are reviewed in this paper are Croydon Council, Nottingham City Council and Slough Borough Council. This report sets out their PIR and compares them with Wirral's financial position and governance alongside any lessons learnt. Wirral has some similarities to these Councils and the concerns raised by the external auditors are being addressed and are set out in this report.

### RECOMMENDATION

The Audit and Risk Management Committee is recommended to note and comment on the contents of the report, lessons learnt and actions. To review the lessons learnt and how Wirral is ensuring it moves to a more financial sustainable position.

## **SUPPORTING INFORMATION**

### **1.0 REASON/S FOR RECOMMENDATION/S**

- 1.1 This report ensures Audit Risk and Management Committee is provided with sufficient information to keep the governance and financial arrangements of Wirral Council under review, in light of other Councils financial failings. To ensure members of Audit and Risk Management Committee have an opportunity to comment on the comparison of authorities and to comment on lessons learnt to improve practices and to avoid the same experiences in other Councils occurring in Wirral.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 This report is for information and comment and the Committee could choose not to comment on issues being borne out in other Councils, however this is not recommended.

### **3.0 BACKGROUND INFORMATION**

- 3.1 Under the Local Government Act 1988, a Chief Finance Officer (CFO) has responsibility to issue a s114 notice where in their judgement a Local Authority is unable to set or achieve a balanced budget. This ‘triggers’ a sequence of events, within set timeframes, leading to the suspension of any further expenditure unless authorised by the CFO.
- 3.2 In the wake of Covid-19, the Chartered Institute of Public Finance and Accountancy (CIPFA) has issued amendments to the guidelines to allow Councils under budgetary pressure, as a result of the pandemic, the time and space to explore alternatives to freezing spending via issuing a s114 notice, this included informal discussions to be held with government via the Ministry of Communities and Local Government (MHCLG) without the assumption that a s114 notice will be issued.
- 3.3 A number of local authorities were issued with Public Interest Reports (PIR) by their external auditors and have either before the PIR or subsequently then issued s114 notices for varying reasons. In 2020 and 2021 two authorities Croydon and Slough along with Nottingham in 2019 all declared s114 notices and received PIR, which are explained further in para 3.8 of this report.
- 3.4 It is important to note that Wirral Council has not received a PIR or issued a s114 but did receive by their external auditors a qualified adverse conclusion in respect of financial planning and sustainability as part of the Annual Audit Letter for the year ending 31 March 2020. It is noted that along with other local authorities (see appendix 3) Wirral secured a capitalisation directive for 2020/21 ‘not exceeding’ £9m and a conditional offer of support for 2021/22 of £10.7m. This financial support has help in certain circumstances Councils from issuing s114 notices. By securing the capitalisation directive it allows the Council (on an exceptional basis) to treat revenue costs as capital costs (funded either from borrowing or capital receipts).
- 3.5 For further background, the Institute for Fiscal Studies published a report in 2020, with information from the financial risk and resilience of different Councils and by the

Local Government Association (LGA) on the impact of pandemic crisis. It was noted that the public health and economic effects of the pandemic are creating a perfect storm for Council's finances, simultaneously increasing spending and reducing income. The full report is available in the background papers. Although significant one-off financial support has been funnelled through local authorities to support expenses, the medium and longer-term financial impact is difficult to measure as there is significant variation in forecast pressures across local authorities.

- 3.6 The financial planning for future years in such an environment is extremely difficult, with considerable uncertainty on the length/severity of any further restrictions that may be required to contain the spread of the pandemic. A difficult medium-term situation has been further compounded by the publication of a Local Government Finance Settlement for 2021/22 only (rather than the expected Comprehensive Spending Review i.e. multi-year settlement) and confirmation of the deferral of:

- Fair Funding Review
- Business Rates Review

3.7 **S114 Notice and Public Interest Report**

Within the Local Government Finance Act 1988, Section 114 (3) dictates 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".

In general terms this means that for Local Government, it is the Chief Finance Officer or Section 151 officer who has the role under law of being the most senior financial advisor to the wider Council's leadership on its financial plans. Uniquely across the public sector however, the CFO also has the power and responsibility to legally suspend spending for a period of time if they judge the Council does not have a balanced budget or the imminent prospect of one.

- 3.7.1 When a s114 notice is issued it means that no new expenditure is permitted, with the exception of that funding statutory services, including safeguarding vulnerable people, however existing commitments and contracts will continue to be honoured.

Council officers must therefore carry out their duties in line with contractual obligations and to acceptable standards, while being aware of the financial situation. Any spending that is not essential or which can be postponed should not take place and essential spend will be monitored.

The only allowable expenditure permitted under an emergency protocol would include the following categories:

- existing staff payroll and pension costs.
- expenditure on goods and services which have already been received.
- expenditure required to deliver the council's provision of statutory services at a minimum possible level.
- urgent expenditure required to safeguard vulnerable citizens.

- expenditure required through existing legal agreements and contracts.
- expenditure funded through ring-fenced grants.
- expenditure necessary to achieve value for money and / or mitigate additional in year costs.

Councillors have 21 days from the issue of a Section 114 notice to discuss the implications at a Full Council meeting.

- 3.7.2 A public interest report is issued by the external auditors when under the Local Audit and Accountability Act 2014 the external auditors believe it is in the public interest to use these powers to make written recommendations regarding the arrangements for securing economy, efficiency and effectiveness of the Council's resources. These powers also allow the external auditors powers to apply to the Court for a declaration that an item is contrary to law, and to give electors the opportunity to raise questions about the Council's accounts or raise objections.

### **3.8 Comparison and Lessons Learnt**

- 3.8.1 Where local authorities are experiencing significant financial pressures resulting from both the pandemic and deteriorating financial resilience, Councils have sought financial support through capitalisation directives for financial years 2020/21 and/or 2021/22. A degree of commonality is evident in some areas, and will be common for most local authorities, but there are also financial pressures that are more specific to each locality. These are explored below (based on a review of available public information):

The table below sets out a comparison of the key elements of the Public Interest Reports issued comparing the financial and governance position of Wirral Council, it is important to make note that no Public Interest Report or s114 has been issued for or by Wirral Council.

We have concluded that comparing Wirral's financial and governance position with these three Councils there are elements of similarity, however, the most significant failings of these Councils are not reflected in Wirral, such as over reliance of investment/commercial income, significant borrowing for group entities, poor financial controls in statutory reporting.

The outlying factor similar in all the Councils including Wirral, is the deterioration of reserves and our relatively static general fund position in recent years, but again for different reasons. A further factor for Wirral is the delay to the significant organisational savings planned for 2020/21, where resource effort was reassigned to meet the pandemic response and the uncompensated element of Sales Fees and Charges income losses as a result of services being closed.

Wirral is seeking to address these through improved budget planning, greater member involvement in budget planning, stronger effective decision making through the Committee system and further improved governance around financial controls. It is important to note that the actions being taken by Wirral to further strengthen our financial position over a period of time is progressing well. Furthermore, there is a strong Audit, Risk and Management Committee that scrutinises and challenges

internal audit findings, financial governance and controls, including the risks facing the authority.

The Council in June presented to the Policy and Resources Committee its proposal for the delivery of the budget planning and monitoring process, this will ensure the Council is not exposed to late budget planning issues. This process has been radically changed from previous years to ensure a number of critical stages are introduced or taken much earlier in the budget planning process and these include:

1. Each committee is accountable for identifying, developing and agreeing saving proposals to ensure a balanced budget.
2. Budget consultation will start early.
3. The Medium Term Financial Plan and Medium Term Financial Strategy will be set out early to coincide with the budget process.
4. Committee workshops will be set up from mid Summer to early Autumn to consider recommendations, identify savings, alternative savings and pressures.

Below are the comparisons with other Councils.

Council	Finding from Public Interest Reports	Wirral (Comparison and Update)
Slough	<ol style="list-style-type: none"><li>1. Internal control deficiencies were significantly contributing to the failure of the financial control of the Council over a number of years.</li><li>2. Insufficient skills and capacity to prepare and produce reliable financial statements and working papers. See para 3.8.3 for further details.</li><li>3. Concerns about the financial sustainability.</li><li>4. Concerns regarding the level of reserves.</li><li>5. Weaknesses in financial governance arrangements, monitoring and control in relation to Group entities.</li></ol>	<ol style="list-style-type: none"><li>1. No internal deficiencies are noted and work in recent years has/is moving the authority toward greater control and improved governance.</li><li>2. Wirral Council has a good track record and recently significantly improved since 2020 with a specific finance function tasked with the production of the accounts and an experienced Senior Finance Manager appointed.</li><li>3. External auditors provided a unqualified opinion on the financial statements, however they did issue qualified adverse conclusion in respect of financial planning and sustainability.</li><li>4. Concerns have been raised by the external auditors as to the level of reserves and the need to build these and reduce the use of one-off reserves to fund the budget. In the 21/22 budget there is no planned use of one-off reserves.</li><li>5. Stakeholder meetings are held, and this is an area where improvements are required,</li></ol>

Council	Finding from Public Interest Reports	Wirral (Comparison and Update)
	6. Lowest levels of earmarked reserves nationally	support for entities during Covid has been on-going. 6. The level of reserves of Wirral are six times higher than that of Slough at £42.8m at the end of March 2021.
Croydon	<p>1. Deteriorating financial resilience over a number of years and due to Covid-19 this further increased in 2020/21. They commented on 'collective corporate blindness' to the seriousness of the financial position and repeated failed attempts to tackle increased spending.</p> <p>2. Significant investments of £545m, insufficient knowledge/expertise in these areas and potential risks associated with the investments. This included £200m loan to its own development company.</p> <p>3. Significant financial pressures on the Adult and Children's Social Care (following a critical Ofsted Report) with a failure to exercise sufficient financial control with the resultant overspends.</p> <p>4. Concerns raised by the external auditors and their recommendations for both 2017/18 and 2018/19 were not implemented and the financial position further deteriorated. Adverse Value for Money conclusions were issued.</p> <p>5. The level of reserves held by the authority were unsustainable, the lowest level of all London Boroughs.</p> <p>6. Investing in activities where they have no experience and they subsequently failed at a cost of £30m.</p>	<p>1. Wirral has been facing deteriorating financial reserves in recent years and work is underway to ensure we balance the budgets year on year, have improved budget planning and monitoring in place. Covid significantly impacted the Council and is no different to any other Council in the Country for this specific issue.</p> <p>2. Wirral does not have significant investment in Council created entities at the same level of liability as Croydon and the liabilities for the entities at the end of March 2021 (excluding pension liabilities) was in the region of £2.3m</p> <p>3. All Councils are experiencing pressures in Childrens and Adult services equally. In a Ofsted report in 2016, Wirral was required to invest from the transformation reserves between 2016 to 2019 £20.9m.</p> <p>4. Recommendations from external auditors are taken seriously and implemented as quickly as possible.</p> <p>5. Wirral's level of reserves are roughly double that of Croydon at £42.8m at the end of March 2021.</p> <p>6. Wirral investment in Wirral Growth Company is primarily Capital investment and should be fully returned by the forward funder once in place. This is closely monitored.</p>

Council	Finding from Public Interest Reports	Wirral (Comparison and Update)
	7. Insufficient rigour and control of Council established entities and no significant return received.	7. Stakeholder meetings are held and this is probably a area were improvements are required and consideration of experience of Councillors and Officers when they are board members.
Nottingham	<p>1. Losses of group company Robin Hood Energy (RHE) of £34.4m</p> <p>2. Increased internal loans to RHE</p> <p>3. RHE failing due to number of factors deemed 'institutional blindness' by the auditors.</p> <ul style="list-style-type: none"> <li>a. Market expertise</li> <li>b. Impact on Council position</li> <li>c. Lack of appreciation of risks</li> <li>d. Lack of clarity of governance and roles</li> </ul> <p>Rapid Review Summary below:</p> <p>4. Failed to act on warning by auditors and Section 151 Officer to manage budgets. Not taking advice and action of S151 Officer.</p> <p>5. Capital programmed relatively uncontrolled</p> <p>6. Pursued a strategy of commercialisation without understanding the risks and implications.</p> <p>7. Criticism of Councillors level of experience and skills when appointed to company boards.</p>	<p>1. Losses of a group company is estimated at 31 March 2021 to be £5.4m of which £2.3m is Wirral liability as the remainder is shared with Cheshire West.</p> <p>2. Loans to group companies are closely monitored and risk fully recognised the accounts at the end of March 2021.</p> <p>3. Section 151 Officer is clear about the consequences of not balancing the budgets and significant work is on going to ensure Councillors and Committees make effective and timely decisions. Failure to do this will lead to an unbalanced and ineffective delivery of essential services.</p> <p>4. Commercial portfolio of the Council is relatively small and expert advise is sought prior to entering into any major investments. It is worthy of note all investments carry risk.</p> <p>5. The Wirral capital programme is managed through the Capital Programme Board who sit monthly and only approved projects are taken forward.</p>

- 3.8.2 The latest position on capitalisation directions that have been issued by the Government is set out in Appendix 3. A total of 10 local authorities have been granted Capitalisation Directives, with a financial value of £153m in 2020/21 and £138m in 2021/22. The vast majority of local authorities in England have not applied for short term, exceptional financial support.
- 3.8.3 Slough – The Council's auditors issued a PIR in May 2021 where the internal control deficiencies were significantly contributing to the failure of the financial control of the Council along with concerns about the governance of its groups companies and

partnerships. These weaknesses had been occurring over a number of years. The following were reported by Grant Thornton:

- Poor quality and incomplete financial statements, including working papers
- Lack of internal audit trail of financial systems
- No critical review of accounts prior draft accounts being published
- Lack of routine control account reconciliations
- Inadequate maintenance of fixed asset register
- Poor governance, oversight and reporting of group accounts and relationships
- Lowest level of Earmarked reserves nationally
- Group company/partnerships accounts not fully audited

3.8.4 The following recommendations are reflective of Wirral's financial and governance position. Officers have identified a number of recommendations from the comparison above, that need to be addressed urgently. These recommendations also consolidate some of the issues raised by the Council's external auditors, Grant Thornton, under Value for Money, in their audit findings report presented to the Committee in January 2021. The table below is a summary of proposed actions for Officers and members to deliver.

Ref#	Recommendation from Comparison	Action
1	Reserves are low and need to be increased. Review and increase the level of reserves (general fund and earmarked).	To increase reserves in the 22/23 budget. Set out in the MTFS a plan for increasing over the next five years.
2	Lack of capacity in finance to meet demand is leading to delays in business support.	Review current staffing and expertise and recruit to bring additional capacity into specific areas of finance.
3	Concerns over the financial sustainability of the authority to be reviewed.	Produce a pre-budget report and MTFS by October where clear requirements to deliver a balanced budget will be set out.
4	Ensure greater financial awareness and the business delivery of stakeholders on Council owned boards to ensure expertise and decision making is appropriate.	To review stakeholder and experience, provide training and appoint a dedicated Business Partner to work with group companies and stakeholders.
5	Review capital programme to ensure relevant and financially sustainable	Wider review of the capital programmes, policy and procedures including governance.
6	Review the member training programme for P&R members.	Deliver annual training programme to P&R.

### 3.9 Financial table of comparisons at 31/03/20

The table below draws the key reserves that should be viewed when looking at the financial sustainability of an authority to allow members to compare Wirral with the three Councils identified in this report.

Slough Borough Council\* have not published their draft accounts for 2019/20 and the information below is from a report issued on 6 July by the Council and Northamptonshire Council have not reported the Dedicated Schools Grant position.

Wirral Council's external Annual Audit Letter gave a qualified adverse conclusion in respect of financial planning and sustainability. When comparing with the two authorities who have issued s114 (Croydon and Northampton) they have also been granted capitalisation directions from MHCLG, Wirral's Earmarked reserves and General Fund are significantly higher, albeit, low in comparison to other authorities of a similar size.

Council	Public Interest Report issued	Earmarked reserves (exclude DSG and Covid) £m	General fund Surplus/(deficit) £m	Deficit DSG £m
Croydon	Yes	23.6	7.5	-14.5
Nottingham	Yes	28.5	4.0	
Slough *	Yes	7.5	-96	-43 by 2025
Wirral	No	42.8	10.7	-1.3

### **3.10 Governance and Management Matters**

3.10.1 As mentioned all three Councils have been subject to Public Interest Reports under Section 24 of the Local Audit and Accountability Act 2014.

3.10.2 The publication of a Public Interest Report (PIR), and or a s114 Notice is a sign that political and managerial leadership has failed and is not capable of listening and acting. These events could be avoided if authorities take the necessary corrective action that is in their power beforehand.

3.10.3 A Rapid Review usually follows a PIR, and this seeks to provide assurance to the Secretary of State on the governance, commercial and investment issues within the PIR, and often provides a series of recommendation to rectify these issues.

3.10.4 An extract of the rapid review for Croydon, Nottingham and Slough Council's can be found in the appendices and the full reports are accessible in the background papers, however there are some common themes identified across the two Councils.

- Governance
- Leadership

- Financial Management
- Capacity and/or capability to improve

## **4.0 FINANCIAL IMPLICATIONS**

4.1 This is a report for information only and there are no financial implications arising.

## **5.0 LEGAL IMPLICATIONS**

5.1 This is a report for information only and there are no legal implications arising. Recent changes to guidance around the issuing of s114 notices means that Chief Finance Officers must now first discuss their financial position with MHCLG in order to explore what further options and/or financial assistance may be available.

## **6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

6.1 This is a report for information only and there are no resource implications arising.

## **7.0 RELEVANT RISKS**

7.1 This is a report for information only and there are no risk implications arising.

## **8.0 ENGAGEMENT/CONSULTATION**

8.1 This is a report for information only and there is no requirement to consult with stakeholders.

## **9.0 EQUALITY IMPLICATIONS**

9.1 This is a report for information only and there are no equality implications arising.

## **10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

10.1 This is a report for information only and there are no environment and climate implications arising.

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## **APPENDICES**

Appendix 1 – Rapid Review Extract, Nottingham City Council

Appendix 2 – Rapid Review Extract, Croydon Council

Appendix 3 – Local Authorities in receipt of a Capitalisation Directive

## **BACKGROUND PAPERS**

[Report in the Public Interest concerning the Council's governance arrangements for Robin Hood Energy Ltd \(nottinghamcity.gov.uk\)](#)

[Microsoft Word - Report in the Public Interest - London Borough of Croydon Blank \(slough.gov.uk\)](#)

- [Council announces changes to financial management – Slough Borough Council](#)
- [London Borough of Croydon: rapid review - GOV.UK \(www.gov.uk\)](#)
- [Nottingham City Council: rapid review - GOV.UK \(www.gov.uk\)](#)
- [Northamptonshire County Council: lessons learned report - GOV.UK \(www.gov.uk\)](#)

## **SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>
Not applicable – New Report	

