

Birmingham City Council

City Council

25th September 2023



Subject: **Response to Section 114 Notice –
Financial Recovery Plan**

Report of: **Deborah Cadman, Chief Executive**

Report author: **Richard Brooks, Director of Strategy, Equality &
Partnerships**

Does the report contain confidential or exempt information? Yes No

1 Executive Summary

- 1.1 On 5th September, the Section 151 Officer (Interim Director of Finance) issued a notice under Section 114 of the Local Government Finance Act 1988. The Council must now agree and implement a Financial Recovery Plan which balances our expenditure with our income, and funds or finances our liabilities. Our work to address the situation must be urgent, will involve hard choices about what we deliver and how we operate, and will result in a smaller organisation.
- 1.2 This report sets out the elements of our Financial Recovery Plan and how these are being taken forward. Further reports and decisions will be required as the detail is developed, including on savings and a revised Emergency Budget for 2023/24; on asset disposals; on redesigning our organisation to achieve a sustainable Medium Term Financial Plan; and on generating additional income. The Council is likely to require Exceptional Financial Support from government, including agreement to

capitalise some of our revenue liabilities and repay the associated borrowing over a period of time.

- 1.3 Developing our full Financial Recovery Plan must proceed quickly. Given the scale of the challenge, implementation is likely to be lengthy and there will need to be an extended period of rigorous spending control and tight financial constraint. We must find the best possible ways of working more effectively with our partners and more efficiently as an organisation. Throughout this we must remain focused above all on our citizens, protecting our vulnerable residents and communities, and must always put their needs first.

2 Recommendations

2.1 Full Council is recommended to:

- I. Agree to accept the Section 114 notice issued on 5th September 2023 and the views set out within it, as described in section A below and Appendix 1.
- II. Agree to continue Spending Control measures under the direction of the Section 151 Officer until such date as the Council has passed an approved balanced Budget for 2024/25, as described in section B below and Appendix 2.
- III. Endorse the following activity now underway as part of our Financial Recovery Plan and described in section C below:
 - a. Measures to reduce spending and mitigate budget pressures for 2023/24, leading to a revised Emergency Budget for 2023/24.
 - b. Organisational Redesign work to reshape our services around citizens and within our available resources, to inform the 2024/25 Budget and deliver a balanced MTFP.
 - c. A Capital Strategy and Assets Review to identify options to raise funds and minimise borrowing costs.
 - d. A review of council-controlled companies and traded services to identify options to raise funds, reduce costs and reduce risk.
 - e. An Income Review to maximise sustainable income from all sources, including Business Rates, Council Tax, Grants and other income.

- f. Measures to achieve pay equity and stop the growth of our equal pay liability, including work to reduce the value of the potential liability and fund the actual liability.
 - g. Formal dialogue with DLUHC to explore options for Exceptional Financial Support, including potential capitalisation of revenue liabilities.
- IV. Agree to receive a further report and revised Emergency Budget for 2023/24 at an Extraordinary Council Meeting in late October; to note equalities considerations; to involve Overview & Scrutiny Committees; and to undertake public consultation and engagement as described below in section D below.

3 Background, considerations and proposals

A. Section 114 Notice

- 3.1 On 5th September, the Section 151 Officer (Interim Director of Finance) issued a notice under Section 114 of the Local Government Finance Act 1988. This was on the basis of a potential liability relating to Equal Pay claims in the region of £650m to £760m. The Council does not have sufficient resources to cover this potential liability.
- 3.2 In addition, the Council has also identified a budget shortfall for the current financial year (2023/24) of £87m, which is projected to rise to £165m in 2024/25; £177m in 2025/26, £172m in 2026/27 and £180m in 2027/28. These recurrent budget gaps highlight the seriousness of the underlying financial challenges faced by the council in addition to its potential Equal Pay liability.
- 3.3 Birmingham City Council set a budget for net expenditure of £925m in 2023/34. The scale of our financial challenge, and especially our potential Equal Pay liability, is large relative to the organisation's budget.
- 3.4 At the time the Section 114 notice was issued, the Council had moved into a negative General Fund position. In addition, the Council was not able to agree a solution for funding or financing its liabilities. For these reasons the Section 151 Officer was required in line with their statutory responsibilities to issue the Section 114 notice. **Members are recommended to consider the notice at Appendix 1 and accept it and the views expressed within it.**

- 3.5 Our work to address the situation must be urgent, will involve hard choices about what we deliver, how we operate, and the shape and size of the organisation. The Council acknowledges that the current situation will create uncertainty and in some cases disruption, and unreservedly apologises. It is committed to ensuring that citizens, partners and our own staff are regularly updated on the current situation and its future implications.
- 3.6 These serious challenges will not diminish the Council's ambition in supporting the upward trajectory of the City of Birmingham. Record levels of investment continue to flow into the city, and the Council will work with our partners to ensure this remains the case.
- 3.7 The Council also remains committed to working with key stakeholders in our diverse communities across the city, taking full account of equalities issues, and using all possible means to mitigate the impacts of the current cost of living crisis on our most vulnerable citizens.

What the Council needs to do, as a result of the Section 114 notice

- 3.8 Only approve new spending if it is essential during the period in which the restrictions brought in by the Section 114 notice remain in place – the spending controls that have been implemented are described in Section D.
- 3.9 Reduce spending to tackle the current budget gap in the 2023/24 financial year and the forecast budget gap for the 2024/25 financial year – the scope of this Financial Recovery Plan is described in Section E.
- 3.10 To set a balanced budget for the 2024/25 financial year (i.e. in which expenditure is covered by income), the Council must tackle the following financial pressures:
- a. Forecast financial pressures – as laid out in the Medium-Term Financial Plan update to Cabinet on 25th July 2023); and
 - b. Equal pay pressures – to quantify and cover the costs of the new Equal Pay claims.
- 3.11 These financial pressures must be tackled in time to enable Full Council to approve a balanced budget for 2024/25 by the end of February 2024.

B. Spending controls

3.12 Spending controls were already in place prior to the issuance of the Section 114 notice. Since the Notice was issued, these controls have been strengthened in line with the requirements of the law. A Spend Control Board is in place, chaired by the Section 151 Officer, and a rigorous spend control process has been established across the organisation. No new non-essential spending is allowed, and any new essential spending must follow the agreed approval process. All financial delegations have been removed and no new agreements or commitments for expenditure are allowed without the explicit agreement of the Section 151 Officer.

3.13 To be considered essential, spending must meet one of the following criteria:

- a. It delivers a clear and referenced statutory obligation.
- b. It delivers a cashable saving compared to a current spending within a quantified time period.
- c. It is already legally committed.
- d. It is required to safeguard vulnerable citizens.
- e. Or, it is fully funded by an external grant. If partially funded, it must be considered against a-d above.

3.14 The Spending Control Manual, which sets out the full process, is included as Appendix 2. The Manual includes examples and some of the main categories of essential expenditure (version as of 18.09.23). To ensure transparency, the decisions of the Spend Control Board are published on the Council's public website (CMIS).

3.15 Continued Spending Control is an important element of the Council's Financial Recovery Plan, as all new spending creates additional pressures that must be funded. For this reason, **Members are recommended to continue Spending Control measures under the direction of the Section 151 Officer until such date as the Council has passed an approved balanced budget for 2024/25.**

C. Financial Recovery Plan

3.16 The Council's Financial Recovery Plan will be overseen by a Financial Recovery Board working alongside the Spend Control Board. These will both report to a Strategic Team chaired by the Chief Executive, which will set direction, manage risk and ensure delivery. The Strategic Team will engage with both Elected Members and external partners of the Council. A Communication and Staff Engagement group supporting this structure will ensure that we communicate openly and transparently with all our key stakeholders in a consistent way.

Approach to in-year 2023/24 savings

3.17 The Cabinet received an update on the Council's Medium Term Financial Plan (MTFP) on 25th July 2023, including Quarter 1 of Financial Year 2023/24 (see Appendix 3). The report presented forecast budget pressures and inflation forecasts over the current financial year (2023/24) and the remaining financial years that make up the MTFP. It projected an in-year budget shortfall of £87m in 2023/24, rising to £165m in 2024/25, £177m in 2025/26, £172m in 2026/27 and £180m in 2027/28. These projected budget shortfalls did not reflect any additional costs relating to Equal Pay, including potential future liabilities or the cost of implementing any scheme of job evaluation. A budget of up to £20m for implementing a scheme of job evaluation was agreed by Cabinet on 25th July 2023 and will need to be reflected in an updated MTFP.

3.18 Many of the underlying forces driving these overspends are being felt by councils across the country. These include:

- a. **Rising demand and complexity pressures in essential services**, including provision of temporary accommodation; provision of social care and SEND services for children; and provision of adult social care. In total, demand and complexity growth adds £56m to the 2023/24 budget gap.
- b. **Rising costs of inflation**, primarily general inflation on costs of premises, transport, supplies and services costs. In total, inflation adds £21m to the 2023/24 budget gap.
- c. **Undelivered savings** which were agreed as part of the 2023/24 budget process but which are now considered to be at high risk. In total, savings considered to be at high risk add £33m to the 2023/24 budget gap.

d. **Additional costs of Oracle implementation** have added to the pressures on the Budget and MTFP.

3.19 Services are now developing options for the maximum deliverable 2023-24 cashable revenue savings or additional 2023/24 income in their areas of responsibility. These may be one-off for 2023/24 or recurrent, but the more that is recurrent the more we can close the future MTFP gap. Proposals will include delivery timescales, milestones and an assessment of impact on services and citizens. Each proposal will have an identified officer below Director level to lead the development and implementation of the proposal. Savings must impact the General Revenue Fund, but within this we are not excluding any budget or service up front.

3.20 On the basis of this work, a revised Emergency Budget for 2023/24 will be presented to a further Extraordinary City Council meeting in late October.

Organisational redesign for 2024/25 onwards

3.21 The Council's expenditure is a consequence of our organisational design. The way we organise our resources to deliver services determines our cost base. Our latest review of our medium-term financial plan – with large imbalances currently forecast for all four years of the plan – demonstrates that our organisational shape and size is now out of balance with our income. We must therefore redesign our organisation around citizen needs in a way that fits our future budgets and delivers a balanced MTFP. We must also meet our Best Value duty under the Local Government Act 1999. We must be able to show that we have arrangements in place to secure continuous improvement and value for money in how we carry out our work, including our use of resources (one of seven themes in the Draft Best Value framework¹).

3.22 There are some key opportunity areas and building blocks for creating a more economical, effective and efficient organisation through organisational redesign. These include:

- a. Leaner corporate services, based on successful implementation of Oracle and associated savings.

¹ [Best value standards and intervention draft guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

- b. Leaner service structures, cutting out duplication of functions and a focus on what value each role adds.
- c. Greater clarity about our service offers to citizens.
- d. More effective early intervention to reduce demand and cut costs of failure.
- e. More effective partnership with other public, private and community sector orgs, and a reduction in our own service provision.

3.23 In reviewing the design of the organisation, we will apply some key principles:

- a. Use a Values Framework that puts citizens first to guide decisions.
- b. Use evidence about citizen needs, value for money and impact.
- c. Develop a service offer and organisational design that fits the MTFP.
- d. Plan for staff reductions and support our staff through the process.
- e. Avoid crude ring-fencing and salami slicing of budgets.

3.24 Services that are considered statutory, and spending which is considered essential, are within the scope of this work. Even where we are meeting statutory duties, we need to consider how best to do this in the interests of citizens, in the most efficient and effective way. We will put citizen needs at the heart of this process and design our organisation around them, not simply seek to make existing services more efficient. In some cases this is likely to involve transfers of services and assets to other organisations.

3.25 We recognise that this process will result in a smaller organisation that employs fewer people. We have already launched a Mutually Agreed Resignation Scheme (MARS) which allows staff to express an interest in voluntarily resigning and, if this is agreed, receiving a non-negotiable exit payment. In addition, we are identifying a range of potential savings from the use of consultancy, interim and agency staff, which will inform the revised 2023/24 Budget as well as longer term organisational design thinking. To deliver best value for our citizens it is vital that we keep the best people in the organisation and attract the best talent to the Council.

3.26 Organisational Redesign work will be taken forward through the Financial Recovery Board, drawing on all other elements of the wider Financial Recovery Plan outlined in this report. The results will inform the development of a balanced Budget for 2024/25 and the Medium-Term Financial Plan.

Limitation and funding of Equal Pay potential liability

- 3.27 Our estimated potential equal pay liability was made public in a Council statement on 28 June 2023. That statement gave a range of between £650m and £760m and an accrual rate of £5m to £14m per month. The potential liability of £650-760m is calculated as at 31st March 2025. The principal solution to the Council's equal pay issues is the delivery of new terms and conditions of employment following a job evaluation study and a new pay structure that complies with the Equality Act 2010. Once we are paying all our people fairly and in accordance with the law, the liability stops accruing.
- 3.28 On 1st September 2023 the Council Business Management Committee met to consider options for a renewed Pay Equity System (PES) consisting of a job evaluation study and new pay structure, to be delivered by no later than 1st April 2025. This is the date at which the £650-760m potential liability is assumed to end. A new PES removes job inequality and means, from that date, employees should not have a further Equal Pay claim. If our implementation of the new pay structure is delayed beyond then, the potential liability will continue to increase.
- 3.29 There have been extensive discussions between the recognised trade unions and the Council with the intention of ensuring that employee interests are properly represented and protected through this process. It is strongly in the interests of all parties to conclude the job evaluation study and implement the new pay structure without delay, and for the whole process to be robust and fair. Delays will increase financial strain for the Council, which may result in the need for further spending reductions. If the process is not robust and fair, it will be open to challenge and may generate future claims.
- 3.30 Whilst the potential liability has been estimated at £650-760m, we do not yet know with certainty the actual amount the Council will pay to settle claims. An important next stage of work will involve examining whether and how we can reduce the overall liability, for example by agreeing to pay some claims early.
- 3.31 Equal Pay claims are a revenue liability, and normally it is not allowed to use capital receipts or borrowing to fund revenue costs. Given the size of the potential liability relative to our net expenditure budget of £925m in 2023/24, we will need to seek permission from the Department for Levelling Up, Housing and Communities

(DLUHC) to capitalise some or all of the costs. See sub-section below on Exceptional Financial Support arrangements.

Asset sales and capital strategy

3.32 The Council holds a large portfolio of assets, including extensive land and buildings around the city; ownership or part ownership of companies; and financial assets. The Council holds a large portfolio of liabilities including Gross Loan Debt of £3.3bn at 31st March 2023, and budgeted debt servicing costs are £239m for 2023/24.

3.33 A Capital Strategy and Assets Review will develop options for generating capital receipts and to reduce borrowing costs. This will involve reviewing:

- a. Committed capital spend: a review of all current capital programmes to understand what can be paused and what should continue.
- b. Borrowing costs: a review of existing borrowing to assess whether refinancing could reduce interest costs.
- c. Existing reserves: a review of all reserves and capital receipts that are committed to future spending plans.
- d. Assets: a review of all assets to assess which can and should be sold (and estimate the potential sale price). This will likely lead to an assets disposal programme.

3.34 Capital receipts will be necessary to help fund the potential Equal Pay liability (on the assumption that the liability can be fully or partly capitalised). They will also reduce the need for further borrowing and will therefore reduce the strain of debt on the Council's revenue budgets, allowing us to protect services for our citizens.

Maximising income

3.35 Alongside reducing expenditure and sales of assets, the Council must consider options for maximising income. Our main sources of income are Business Rates, Council Tax, grants and other income including fees and charges. We will need to consider a wide range of options to balance income against expenditure over the period of Medium-Term Financial Plan.

Requirement for Exceptional Financial Support

3.36 Since 2020, the government has agreed to provide a small number of local authorities with support via the Exceptional Financial Support framework, following

requests from these councils for assistance with financial pressures that they considered unmanageable within the normal local government financial arrangements. Such support comes with significant conditions, including:

- a. An external assurance review focused on the council's financial position, and its ability to meet its budget gap without additional borrowing, for example through additional cost reductions.
- b. An effective response by the council to any recommendations from the external review, and regular progress reports (to DLUHC).
- c. An assumption that the council meets its own cost of exceptional financial support over time.

3.37 It is important to recognise that Exceptional Financial Support is almost never provided in the form of grant, but as permission to borrow or to apply capital receipts from asset sales. If Exceptional Financial Support is agreed, this is usually via a Capitalisation Directive from the Secretary of State. Any borrowing will then create future costs of servicing and paying off the debt.

3.38 The Council maintains regular communication with the Department for Levelling Up, Housing and Communities, and has been in discussions about a range of financial matters over recent months. This has included open and transparent discussions about our potential Equal Pay liabilities and wider financial pressures.

3.39 The Council has not up to this point formally sought Exceptional Financial Support. However, given the scale of the Equal Pay liabilities, such support is likely to be required, and this will require agreement with the Secretary of State for the Department for Levelling Up (DLUHC). Agreement of Exceptional Financial Support (EFS; likely a loan from DLUHC) is subject to negotiations. To enable the Council to set a balanced budget for 2024/25, such agreement will need to be in place (at least in principle) by the end of February 2024.

3.40 To get this agreement by end of February 2024, the Council will need to:

- a. Apply for EFS from DLUHC – including final confirmation of the Equal Pay liability, based on latest estimates.
- b. Carry out the work required to obtain an EFS – this will include review of savings, additional income (including potential additional Council Tax increases) and asset sales – to demonstrate to DLUHC that any funding

request would come after BCC had made tough choices and used existing assets.

- c. DLUHC Officials have confirmed that any EFS is only normally offered “for the residual funding amount” once a council has demonstrated a plan to reduce the amount required through savings proposals, asset sales and other activities as part of its Financial Recovery Plan.

D. Engagement with Overview & Scrutiny, public consultation and engagement

3.41 Overview and Scrutiny (O&S) is a key element of good governance and central to achieving best value for citizens. The Council’s O&S Committees have already held a round of meetings about the Section 114 notice and its implications, and have challenged specific factors contributing to our budget deficit including the non-delivery of savings. Going forward, O&S Committees will continue to have a key role both before and after decision making, challenging and improving proposals, and providing additional accountability for the effective implementation of agreed plans.

3.42 As we further develop and implement our Financial Recovery Plan, we will engage with residents and consult on how we will meet our Best Value Duty. Key opportunities for public engagement at the level of the whole local authority include setting our budgets and the medium-term financial plan. Further details of the Financial Recovery Plan will need to be developed by the end of October, to enable sufficient review and consultation prior to a draft budget for 2024/25 being completed, in time for formal consultation. In addition, there will be individual services where citizen engagement will be important as part of co-designing and changing what we do and how we do it, to best meet our residents’ needs within our available resources.

4 Legal Implications

4.1 Section 114 (3) 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.” The process for issuing a Section 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.

- 4.2 Section 115 of the 1988 Act requires Full Council to consider and decide on the report made under Section 114 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.
- 4.3 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. Section 115(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.
- 4.4 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 2019/20 and subsequent accounts which remain unaudited at the date of this report.
- 4.5 The Council's legal duties around budget setting are set out in Section 31A of the Local Government Finance Act 1992, which states:
- a. In relation to each financial year a billing authority in England must make the calculations required by this section.
 - b. The authority must calculate the aggregate of:
 - i. 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.

- ii. 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.
- iii. the financial reserves which the authority estimates it will be appropriate to raise in the year for meeting its estimated future expenditure.
- iv. 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.
- v. 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,
- vi. 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
- vii. 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.

5 Financial Implications

5.1 Financial issues are the subject of this report and are addressed in the body text.

6 Public Sector Equality Duty

6.1 The Council is strongly committed to equality and has statutory responsibilities to comply with both the Public Sector Equality Duty and the Equality Act 2010. These duties are concurrent with the duties imposed by the Section 114 notice, and we will continue to consider equalities implications in all relevant decision making, including decisions of the Spend Control Board. All spending control decisions are supported by information about the equalities implications of proceeding or not proceeding with the spending.

6.2 Birmingham is a superdiverse city with a high level of poverty and deprivation, and poor outcomes for key measures such as health and employment are associated

with specific protected characteristics. We will use the information now available through the City Observatory to inform decision making through our Financial Recovery Plan, including by providing evidence and insight about the pattern of need to allow more accurate targeting of our resources.

7 Background Papers / Appendices

Appendix 1: Section 114 Notice issued 5th September 2023

Appendix 2: Section 114 Spending Control Manual

Appendix 3: Medium Term Financial Plan (MTFP) Refresh – update to Cabinet at Quarter 1 of the 2023/24 Financial Year (25th July 2023)