

## **SETTING THE BUDGET: MEMBERS DUTIES AND RESPONSIBILITIES**

### **1. INTRODUCTION**

This note sets out in some detail members' responsibilities to set a legal budget and how members should approach the task. It also reminds members about the rules concerning disclosable pecuniary interests.

### **2. NOTICE**

There is a requirement to publish notice of the amount set for Council Tax in at least one local paper within 21 days. There is also a duty to consult with representatives of Non Domestic Ratepayers about the proposed revenue and capital expenditure before the budget requirement is calculated.

### **3. MEMBERS' FIDUCIARY DUTIES**

The obligation to make a lawful budget each year is shared equally by each individual member. In discharging that obligation, members owe a fiduciary duty to the council tax payer.

The budget must not include expenditure on items which would fall outside the Council's powers. Expenditure on lawful items must be prudent and any forecasts or assumptions such as rates of interest or inflation must themselves be rational. Power to spend money must be exercised in good faith and for the purpose for which they were conferred. A power exercised for an ulterior motive risks a finding of illegality. In determining the Council's overall budget requirement, members are bound to have regard to the level of Council Tax necessary to sustain it.

Within this overall framework, there is considerable scope for discretion. Members will bear in mind that in making the budget commitments are being entered which will have an impact on future years. Some such commitments are susceptible to change in future years, such as staff numbers which are capable of upward or downward adjustment at any time. Other commitments however impose upon the Council future obligations which are binding and cannot be adjusted, such as loan charges to pay for capital schemes.

Only relevant and lawful factors may be taken into account and irrelevant factors must be ignored. A member who votes in accordance with the decision of his or her political group, but who does so after taking into account the relevant factors and professional advice, will be acting within the law. Party loyalty and party policy are capable of being relevant considerations for the individual member provided the member does not blindly follow the party line without considering the relevant factors and professional advice and without properly exercising any real discretion.

### **4. ARREARS OF COUNCIL TAX AND VOTING**

In accordance with section 106 of the Local Government Finance Act 1992, where any payment of Council Tax that is payable by a member has been outstanding for two months or more at the time of a meeting, the member must disclose the fact of their arrears (though they are not required to declare the amount) and cannot vote on any of the following matters if they are the subject of consideration at a meeting:

- (a) Any decision relating to the administration or enforcement of Council Tax.
- (b) Any budget calculation required by the Local Government Finance Act 1992 underlying the setting of the Council Tax.
- (c) Any recommendation, resolution or other decision which might affect the making of the Annual Budget calculation.

Failure to disclose such arrears and / or to participate in a vote on any of the matters in (a) to (c) above is a criminal offence. The disclosure should be made as soon as possible after the start of the meeting.

These offences apply to Council, committee and Cabinet committees. Any member who considers that this section may apply to them should seek advice from the Monitoring Officer or the Chief Finance Officer before the meeting and as soon as possible.

## 5. THE CODE OF CONDUCT

Under the Code of Conduct, a member with a disclosable pecuniary interest in an agenda item must declare the interest and withdraw from the meeting.

If any member considers they have any other interest to declare under the Code of Conduct (noting the list of disclosable pecuniary interests and non-pecuniary interests set out at the start of the agenda), they should seek advice from the Monitoring Officer, as early as possible and prior to the meeting where possible.

## 6. RESPONSIBILITIES OF CHIEF FINANCE OFFICER & MONITORING OFFICER

Section 114 of the Local Government Finance Act 1988 places the Chief Finance Officer under an obligation to prepare a report (to full Council) if it appears to him that the expenditure the Authority proposes to incur in a financial year is likely to exceed its resources available to meet that expenditure.

Similarly, the Council's Monitoring Officer is required to report to Full Council under s.5 of the Local Government & Housing Act 1989 if it appears to them that a decision has been or is about to be taken which is or would be unlawful or would be likely to lead to maladministration.

Under section 25 of the Local Government Act 2003 the Chief Finance Officer is now required to report to the authority on the robustness of the estimates made for the purposes of the calculations required to be made by the Council. These are the estimates which the Cabinet is required to determine and submit to Full Council and are contained within this report. However, if the Council were minded to agree a budget based on different estimates e.g. if Council did not agree with the estimates provided by the Cabinet then those estimates which the Council would adopt would effectively become 'the estimates' for the purpose of Section 25 and as such should be subject to a report by the Chief Finance Officer.

## 7. SPECIFIC BUDGET ADVICE

Increases in Council Tax

The Localism Act 2011 introduced new provisions into the Local Government Finance Act 1992 regarding a requirement on local authorities to hold a referendum if they propose to increase Council Tax above certain levels.

*Balances and Other Budget Calculations:*

A local authority must budget so as to give a reasonable degree of certainty as to the maintenance of its services. In particular, local authorities are required by section 32 of the Local Government Finance Act 1992 to calculate as part of their overall budget what amounts are appropriate for contingencies and reserves. The Council faces various contingent liabilities set out in the main budget report. Furthermore, the Council must ensure sufficient flexibility to avoid going into deficit at any point during the financial year. Members will need to pay careful attention to the advice of officers here.

In addition to advising on the robustness of the estimates as set out above, the Chief Finance Officer is also required to report on the robustness of the proposed financial reserves. The same advice applies to these as to the other calculations required to be made by the Council. The Chief Finance Officer's view of the level of reserves is contained within the report.

Having considered the officer's report, the Council is then required to "have regard to the report" but it is not required to adopt the recommendations in it. However, members must demonstrate they have acted reasonably if they do not adopt the recommendations.

*Capital Programme:*

The requirements of the "Prudential Code" established in the Local Government Act 2003 are set out in the report.