County Council

28 February 2024

Budget 2024/25 – Report under Section 25 of Local Government Act 2003

Report of Paul Darby, Corporate Director of Resources

Councillor Richard Bell, Deputy Leader and Cabinet Portfolio Holder for Finance

Electoral division(s) affected:

Countywide

Purpose of the Report

1 To provide members with information on the robustness of the estimates and the adequacy of reserves in the Cabinet's budget proposals for 2024/25. Provision of this information is a legal requirement and ensures that all Members have regard to the professional authoritative advice provided by the authority's Chief Financial Officer (the Corporate Director of Resources) when budget decisions are made at this meeting.

2 The report also sets out Members' legal responsibilities to facilitate the setting of a balanced budget, and the implications of a failure to do so, to assist Members in considering their approach to the budget meeting.

Executive Summary

3 Section 151 of the Local Government Act 1972 requires local authorities to make arrangements for the proper administration of their financial affairs and to appoint a S151 Officer, also known as a Chief Financial Officer (CFO), to have responsibility for those arrangements. The Corporate Director of Resources is the Councils appointed S151 Officer.

4 Section 25 of the Local Government Act (LGA) 2003 requires that when a local authority is considering its budget and setting its council tax for the forthcoming financial year, its Chief Financial Officer must report to Full Council on:

(a) the robustness of the estimates made for the purposes of the council tax requirement calculations; and

(b) the adequacy of the proposed financial reserves allowed for in the budget proposals.

5 Section 25 of the LGA 2003 requires members to have regard to this report in making their decisions in relation to the budget and the setting of council tax for 2024/25.

6 Under section 31A of the Local Government Finance Act 1992, the Council has a duty to set a budget (and the associated Council Tax charges) before 11 March. In setting the budget, Members jointly and severally (collectively and individually) have a fiduciary duty to Council taxpayers. This means that all members have a duty to facilitate, rather than obstruct, the setting of a lawful budget.

7 In reality, if the Council had to wait until 11 March 2024 to set the 2024/25 budget, it would mean that there would not be sufficient time to complete the necessary annual billing processes and issue the bills in time to provide the necessary 10 working days notice before the first instalments were due on 1 April 2024. This would result in inevitable confusion to customers and cash flow implications for the Council and it is therefore preferable that the budget is set before the statutory deadline.

8 Appendix 2 sets out Members' legal responsibilities to facilitate the setting of a balanced budget to assist Members in considering their approach to the budget meeting. Appendix 2 replicates the Monitoring Officers Advice note which is attached to the Budget report at Appendix 7.

Recommendation

9 That members have regard to this report and the opinions set out in it when considering and approving the budget and the level of Council Tax for 2024/25.

Background

10 Section 151 of the Local Government Act 1972 requires local authorities to make arrangements for the proper administration of their financial affairs and to appoint a S151 Officer, also known as a Chief Financial Officer (CFO), to have responsibility for those arrangements. The Corporate Director of Resources is the Councils appointed S151 Officer.

11 Local Authorities must decide every year how much they are going to raise from Council Tax. Decisions are based on a budget that sets out estimates of what the Council plans to spend on each of its services in the forthcoming year in order to deliver its strategic objectives as set out in the Council Plan.

12 The Government places a cap on the annual council tax increases that can be applied through what is called the Council Tax Referendum Limit. This sets out the maximum increase the council can apply without a positive outcome from a referendum to exceed the statutory maximum amount.

13 The decision on the level of the Council Tax is taken before the financial year begins and it cannot be changed during the year, so allowance for risks and uncertainties that might increase service expenditure above that planned, must be made by:

(a) making prudent allowance in the estimates for each of the services; and

(b) ensuring that there are adequate reserves to draw on if the service estimates turn out to be insufficient or unexpected events occur that were not anticipated.

14 Section 25 of the Local Government Act (LGA) 2003 requires that when a local authority is considering its budget and setting its council tax for the forthcoming financial year, its Chief Financial Officer must report to Full Council on:

(a) the robustness of the estimates made for the purposes of the Council Tax requirement calculations; and

(b) the adequacy of the proposed financial reserves allowed for in the budget proposals.

15 Section 25 of the LGA 2003 also requires members to have regard to this report in making their decisions in relation to the budget and the setting of council tax for 2024/25. Under section 31A of the Local

Government Finance Act 1992, the Council has a duty to set a budget before 11 March.

16 The 2024/25 Budget report on this agenda includes at Appendix 7 the full responsibilities for Council members when considering and setting the budget. The Monitoring Officer Advice Note is replicated at Appendix 2 to this report. Members should note that they are jointly and severally (collectively and individually) have a fiduciary duty to Council taxpayers. This means that they have a duty to facilitate, rather than obstruct, the setting of a lawful budget.

17 Failure to set a lawful budget in time can lead to a loss of revenue, significant additional administrative costs and reputational damage. It may leave the Council at risk of a legal challenge from council taxpayers and/or intervention from the Secretary of State under section 15 of the Local Government Act 1999.

18 Failure to set a lawful budget in time may also lead to personal liability for individual Members for misfeasance in public office, negligence, or breach of statutory duty.

19 As noted above, the Council has a duty to set a budget before 11 March. However, if the Council had to wait until 11 March 2024 to set the 2024/25 budget, it would mean that there would not be sufficient time to complete the necessary annual billing processes and issue the bills in time to provide the necessary 10 working days notice before the first instalments were due on 1 April 2024. This would result in inevitable confusion to customers and cash flow implications for the Council and it is therefore preferable that the budget is set before the statutory deadline (i.e. at this meeting).

Robustness of Estimates

20 Service groupings have been building detailed budgets throughout the year. This includes identification of unavoidable service pressures and inflationary / demographic changes that need reflecting in the base budget next year. Reports have been presented to Cabinet and Corporate Overview and Scrutiny Management Board throughout the year as part of the budget planning process.

21 The 2024/25 budget proposals are based on extensive analysis and assurances from Corporate Directors and their Service Management Teams plus their finance support staff. Cabinet Members have worked with Corporate Directors throughout the process. Overview and Scrutiny Members have been able to question Service Groupings on budgets, performance and proposals throughout the year. Area Action Partnerships, the County Durham Partnership, Trade Unions, Business

Ratepayers and their representatives have also had the opportunity to be consulted on the proposals. The feedback from these consultations, alongside the outcomes from the consultation undertaken with Area Action Partnerships, our partners and the wider public via an online survey that was made available on our website, is included in the budget report.

22 The council has faced significant financial challenges from continuing high inflation levels during 2023/24, which will continue into 2024/25. This has impacted upon the price of goods and services purchased, particularly adult social care, where the 9.8% increase in the National Living Wage alongside CPI rates are driving significant contractual uplifts to care providers. In addition, the 2023/24 pay award averaged 6.6% against a 5% allowance in the base budget, meaning that the shortfall has had to be accommodated in the 2024/25 base budget alongside a forecast 4% additional uplift next year.

23 The council continues to face significant budget pressures in Children's Services particularly in relation to costs relating to children looked after and home to school transport. Details of the enduring unfunded pressures in these budgets, which are replicated in other local authorities, are set out in detail in the budget report.

24 Although significant in year budget pressures are being faced, through prudent financial management, including deferring borrowing, the Quarter 2 forecast of outturn report to Cabinet on 15 November 2023 highlighted a forecast £4.2 million underspend within the council, with a forecast £3.3 million increase in the General Reserve forecast for the year end. Although there is not an overspend forecast in 2023/24 for the council as a whole, a range of significant base budget pressures are being offset by one off budget underspends.

25 The significant inflationary and demand led pressures, particularly in our Adult Social Care and Children's Social Care budgets, have resulted in additional base budget pressures of £51.797 million being included in the 2024/25 budget build process. As part of the local government finance settlement, Government have provided £33.122 million of additional grant funding and business rate inflation uplifts next year, however, £2.885 million of this is specific grant funding which comes with additional spending requirements. The net additional funding provided next year is therefore £30.237 million.

26 Government has provided additional council tax raising powers to local government and expects local authorities to take up these additional tax raising powers to help meet the inflationary and other pressures the sector is facing.

27 The base council tax referendum limit is 2.99% and an additional 2% adult social care precept can also be utilised. In total therefore the council can increase council tax in 2024/25 by 4.99%. The Government have assumed that all upper tier authorities increase their council tax by a total of 4.99% in 2024/25 and have build this assumption into their Core Spending Power calculations.

28 Even with a 4.99% council tax increase, and after factoring in tax base growth and the receipt of an additional £30.237 million of government funding and business rate uplifts the council is unable to balance its budget. After factoring in £8.083 million of budget savings, the council will still be required to utilise £3.720 million of the MTFP Support Reserve to balance the 2024/25 budget. Utilising earmarked reserves to balance budgets at this level for more than the short term is not a sustainable budget strategy to adopt.

29 In August 2023 CIPFA were commissioned to carry out an independent Finance Review as part of the emerging Office of Local Government (OFLOG) requirement for local authorities to fulfil their Best Value Duty.

30 The review included the provision of reports and strategies followed by interviews and on-line surveys of a range of key staff and members. The output from this work has enabled CIPFA to assess the council against their CIPFA Financial Management Code.

31 CIPFA have assessed the council as a strong 3* star against a maximum score of 4*. The final score is 3.25 out of 4 with at least 3 scored in 11 of the 12 scoring criteria and a score of 4 in the other. A small number of actions have been identified by CIPFA to seek to bring the councils rating up to a 4*, with CIPFA considering that progress could be made over a 12 month period to get the Council to a 4* rating.

32 One of the actions related to the need for the council to identify sufficient savings options to balance the MTFP over the four year period and to ensure clear plans are in the place, which do not place an over-reliance on use of reserves to balance the budget. In addition, CIPFA also advised that the council consider the size and scope of its capital programme in light of its financial forecasts.

33 Given the current level of uncertainty over funding and the stage in the political cycle (both nationally and locally), it is not realistic to have had a fully developed set of four years of savings proposals worked up and published for MTFP(14), though this must remain a key focus for senior officers and for the Cabinet over the coming twelve months.

34 Every 1% of council tax increase generates circa £2.675 million of additional resources. A failure to increase the council tax in line with the proposals set out in the budget report would increase the use of the

MTFP Support Reserve and make the job of balancing the budget in future years more difficult, resulting in the need for additional cuts and efficiencies to public services. This is a not a strategy that the Council should adopt.

35 During the development of MTFP(14) extensive work has also been carried out to produce an indicative balanced Medium Term Financial Plan (MTFP). A range of broad assumptions have been utilised and robustly challenged as part of the MTFP(14) process.

36 The 2024/25 budget and MTFP(14) forecasts are underpinned by a robust Risk Assessment, with full details set out in the budget report. Of particular concern is the significant uncertainty beyond 2024/25, with more difficult financial settlements widely expected from 2025/26 onwards when the Chancellor of the Exchequer will face some very tough choices over taxation levels and public expenditure restraint given the level of borrowing nationally at this time.

37 If public spending and borrowing remains in line with the Chancellors forecasts then spending reductions for some government departments are likely to be required from 2025/26. Local Government is an unprotected government department and both the Office for Budget Responsibility and the Institute for Fiscal Studies have questioned the ability of Local Government to absorb any further grant reductions. Should these ultimately be implemented, then the forecasts included in the MTFP, which currently include a cash flat position, will need to be reviewed. It is likely that in such a scenario there would be widespread financial difficulties across the sector, where a number of Councils have already issued or signalled they are close to issuing s114 notices due to their funding and budget position.

38 Further work is needed for years 2025/26 to 2027/28 to identify additional savings, with a forecast savings requirement of £37.833 million across that period, but in my professional view we have taken all reasonable and practical steps to identify and make provision for the County Council’s commitments in 2024/25 in order to achieve a balanced budget next year and that the use of £3.720 million of the MTFP Support Reserve to balance the budget is justified.

39 Work will commence immediately on developing strategies to tackle the savings requirements for years 2025/26 to 2027/28, with a particular focus on 2025/26 where a budget deficit of £16.789 million is presently anticipated, to ensure there is no long term reliance on the use of reserves to balance the budget as this is not a sustainable budget strategy for the Council to adopt long term.

Adequacy of Reserves

40 The Chartered Institute of Public Finance and Accountancy's (CIPFA) Local Authority Accounting Panel (LAAP) has a guidance note on Local Authority Reserves and Balances (LAAP Bulletin 77) to assist local authorities in this process. This guidance is not statutory, but compliance is recommended in CIPFA's Statement on the Role of the Finance Director in Local Government. It is best practice to follow this guidance.

41 The guidance however states that no case has yet been made to set a statutory minimum level of reserves, either as an absolute amount or a percentage of the council's budget. Each Local Authority should take advice from its Chief Financial Officer and base its judgement on local circumstances.

42 Reserves should be held for three main purposes:

(a) as a working balance to help cushion the impact of uneven cash flows and avoid unnecessary temporary borrowing – this forms part of general reserves;

(b) as a contingency to cushion the impact of unexpected events or emergencies – this also forms part of general reserves; or

(c) as a means of building up funds known as 'earmarked reserves', to meet known or predicted funding requirements.

43 The CIPFA Guidance highlights a range of factors in addition to cash flow requirements that Councils should consider including:

(a) the treatment of inflation;

(b) the treatment of demand led pressures;

(c) efficiency savings;

(d) partnerships; and

(e) the general financial climate, including the impact on investment income.

44 The guidance also refers to reserves being deployed to fund recurring expenditure and indicates that this is not a long-term or sustainable option.

45 It is of significant concern and disappointment therefore that the Government, in the 5 December 2023 Policy Statement, openly encouraged local authorities to utilise reserves to balance their budgets

and invest in statutory social services rather than address the underlying position. Given the financial pressures facing councils, using reserves to continually balance annual budgets is not as sustainable approach.

46 The accounting code of practice requires unapplied grants or partnership funds to be carried over at year end in an earmarked reserve. This can often skew the balances held from year to year, particularly where funding for the upcoming years commitments is paid early. It is for this reason that the earmarked reserves held by the Council are categorised as sums held for corporate purposes, sums held on behalf of partner organisations / external grants and other sums earmarked for specific purposes when reported to Cabinet on a quarterly basis as part of the forecast of outturn reports.

47 The risk assessment process has identified a number of key risks which could impact on the Council's resources. The Council continues to face significant uncertainty in relation to the future levels of Government funding – in fact, it is difficult to recall a period in recent times when there is so much uncertainty in relation to local government funding, especially in relation to how funding will be distributed.

48 The outcome of any Fair Funding Review will not be known now until at least 2026/27 and the outcomes from that will dictate how funding will be allocated to individual local authorities. At this stage there remains a significant risk that the outcome of a review may not be favourable to County Durham, which if allied to a cash flat or reduce quantum of funding being made available to the sector, could result in reduced funding being made available. This is particularly concerning given that despite additional funding and business rates increases of £30 million next year and despite a 4.99% council tax increase overall, the council was circa £11.8 million short of balancing its budget in 2024/25.

49 The budget proposals include a prudent assumption that the Council will receive a cash flat financial settlement from government in 2025/26 and 2027/28. This could ultimately prove to be an optimistic assumption.

50 The council is also continuing to face significant ongoing budget pressures. There are significant and continuing pressures in social care services and in particular Children's social care and home to school transport. Whilst these pressures are being faced across the sector, the pressures in Durham are magnified by the relatively higher levels of deprivation in the county and by our geography. In addition, the current levels of inflation and the significant increase in the National Minimum Wage from April 2024 all continue to place significant pressures upon the budget. Whilst the MTFP modelling includes estimates of future cost pressures for these areas, Council needs to be aware that further

sustained pressures in these areas remain a significant risk. The Low Pay Commission has been tasked with developing proposals for the National Living Wage beyond 2024/25 and the outcome of this review could have significant implications on our forecasts.

51 CIPFA recently published details of their Resilience Index information. This provides comparisons across local government for a range of financial indices or measures of financial resilience. The council has always had a strong position in these comparators but the most recent published information for the period to March 2023 highlights the relatively high level use of reserves by the council in recent years compared with other local authorities.

52 The Resilience Index highlights change in reserves levels over the previous three years with this comparator expected to show local authorities in distress as they utilise high levels of reserves. The updated Resilience Index information covers the period 2020/21 to 2022/23. Local authority reserve levels were inflated during 2020/21 and 2021/22 due to additional one off grant funding received during the pandemic. Regardless of this, over the three year period 2020/21 to 2022/23 the council has had a 3% reduction in reserves whereas our nearest neighbour group of authorities and a unitary council comparator group have both seen increase in reserves of circa 30%.

53 It is important to note that the use of reserves within the council over this period has been focussed upon the utilisation of earmarked reserves rather than any reduction in the General Reserve or the quantum available in the MTFP Support Reserve, which would be of greater concern.

54 The council’s overall level of reserve is nationally still slightly above average when compared with the net revenue budget but the 2023/24 Quarter 2 Forecast of Outturn report to Cabinet on 15 November 2023 includes an estimated further reduction in reserves of £30 million (13.5%) during 2023/24. It is likely therefore that the CIPFA Resilience Index when published for the period ending March 2024 will highlight a continuing trend of high utilisation of reserves and a further reduction in overall reserves available to the council – most likely in excess of the reductions being experienced elsewhere.

55 The following table shows the Councils reserves position over the three years and the latest forecast to 31 March 2024:

<table>
<tr><th></th><th>Position at 31 March 2020 £m</th><th>Position at 31 March 2023 £m</th><th>Forecast Position at 31 March 2024 £m</th></tr>
<tr><td>General Reserve</td><td>23.950</td><td>26.017</td><td>29.285</td></tr>
<tr><td>Cash Limit Reserves</td><td>11.757</td><td>8.056</td><td>8.147</td></tr>
<tr><td>Other Earmarked Reserves</td><td></td><td></td><td></td></tr>
<tr><td>- Corporate</td><td rowspan="3">192.938</td><td>73.643</td><td>62.375</td></tr>
<tr><td>- Grants/Other Bodies</td><td>37.888</td><td>22.525</td></tr>
<tr><td>- Other Earmarked</td><td>76.951</td><td>69.135</td></tr>
<tr><td>Total Reserves (Excl Schools)</td><td>228.645</td><td>222.555</td><td>191.467</td></tr>
</table>

56 On 13 December 2023, Cabinet considered a report setting out updated forecasts for High Needs Special Educational Needs spending, which showed an increasing in-year deficit of spending over High Needs Block grant income received. That report highlighted a forecast cumulative deficit of £67.5 million by the end of 2027/28, an increase of £56.8 million from the forecast cumulative deficit of £10.8 million at the end of the current year.

57 The significant and increasing HNB deficit position is a serious concern for the Council and many other local authorities. The deficit is not reported as part of our reserves position and is subject to special accounting treatment. The exceptional accounting override that allows councils to exclude HNB deficits from their main council general revenue funding position is however due to end in 2025/26, at which point the HNB deficit may need to be funded by council resources requiring a significant (and unaffordable / unsustainable) call on reserves and further annual budget pressures that are not factored into the current MTFP(14) forecasts. Should this accounting override be removed and additional funding is not provided then many authorities will be forced into a s114 position as the cumulative deficits accrued in some authorities already runs well into the tens of millions.

58 With all of these risks in mind, as part of the budget report it is recommended that the County Council adopts a policy for reserves as follows:

(a) set aside sufficient sums in earmarked reserves as it considers prudent. The Corporate Director of Resources be authorised to establish such reserves as are required in line with the Council's Strategy, to review them for both adequacy and purpose on a regular basis reporting appropriately to the Cabinet Portfolio Holder for Finance and to Cabinet; and

(b) aim to maintain General Reserves in the medium term of between 5% and 7.5% of the Net Budget Requirement which in cash terms is between £28.2 million and £42.4 million.

59 Earmarked reserves have been established to provide resources for specific purposes. Of these reserves, the use of schools' balances is outside of the control of the Council.

60 The recommended budget for 2024/25 requires the utilisation of £3.720 million of the MTFP Support Reserve to balance the budget. This will reduce the balance on this reserve to support the 2025/26 budget and MTFP(15) planning period to £23.248 million.

61 In my professional view, if the Council were to accept the Cabinet's recommended Council Tax increase of a 2.99% base council tax increase and a 2% increase for the Adult Social Care Precept, make budget provision for the unavoidable service pressures and investments set out in the budget papers, agree the proposals for savings and limit capital investment to the levels set out in the report, then the level of risks identified in the budget process, alongside the Authority's financial management arrangements means that whilst the Councils financial resilience has reduced in recent years, the current level of reserves is adequate – provided the Cabinet and Council consider and agree the savings necessary to balance the budget going forward.

Conclusions

62 In forming my opinion on the budget proposals put forward by Cabinet I have carefully considered the financial management arrangements and control frameworks that are in place, the underlying budget assumptions, the adequacy of the service planning process, the financial risks facing the Council and the adequacy of the councils reserves.

63 Members are advised to have regard to this statement when approving the budget and the level of Council Tax for 2024/25.

Author(s)

Paul Darby Tel: 03000 261943

Appendix 1: Implications

Legal Implications

Section 151 of the Local Government Act 1972 requires local authorities to make arrangements for the proper administration of their financial affairs and to appoint a S151 Officer, also known as a Chief Financial Officer (CFO), to have responsibility for those arrangements.

Section 25 of the 2003 Local Government Act requires the Authority’s Chief Financial Officer to provide assurance upon the robustness of estimates and the adequacy of reserves.

All members have a fiduciary responsibility for managing public finances and for facilitating the setting of a balanced budget. These responsibilities are set out at Appendix 2.

Finance

This report sets out the view of the Council’s Section 151 Officer (as identified in the Local Government Act 1972) in relation to the robustness of estimates and the adequacy of reserves determined in the 2024/25 budget build.

Consultation

None.

Equality and Diversity / Public Sector Equality Duty

None.

Climate Change

None.

Human Rights

None.

Crime and Disorder

None.

Staffing

None.

Accommodation

None.

Risk

All relevant risks have been considered by the Section 151 Officer in coming to this view.

Procurement

None.

Appendix 2 – Legal Responsibilities – Budget Setting : Monitoring Officer Advice Note

1. Summary

1.1 Under section 31A of the Local Government Finance Act 1992, the Council has a duty to set a budget before 11 March. In setting the budget, Members jointly and severally (collectively and individually) have a fiduciary duty to Council taxpayers. This means that they have a duty to facilitate, rather than obstruct, the setting of a lawful budget.

1.2 Failure to set a lawful budget in time can lead to a loss of revenue, significant additional administrative costs and reputational damage. It may leave the Council at risk of a legal challenge from council taxpayers and/or intervention from the Secretary of State under section 15 of the Local Government Act 1999.

1.3 Failure to set a lawful budget in time may also lead to personal liability for individual Members for misfeasance in public office, negligence, or breach of statutory duty.

1.4 This advice note sets out the position in more detail and is intended to assist Members in considering their approach to the Council meeting on 28 February 2024.

2. The Local Government Finance Act 1992 – Duty to set a budget

2.1 Section 30(6) of the Local Government Finance Act 1992 provides that the Council has to set its budget before 11 March in the financial year precenting the one in respect of which the budget is set. This means that the Council has a duty to set the 2024/25 budget before 11 March 2024.

2.2 If the budget is set after that date, the Act says the failure to set a budget within the deadline does not, in itself, invalidate the budget. However, such a delay is likely to have significant financial, administrative and legal implications, including potential liability of any Member who contributed to the failure to set a budget.

2.3 Section 66 of the Local Government Finance Act 1992 provides that failure to set a Council tax (or delay in setting a Council tax) shall not be challenged except by an application for judicial review. The Secretary of State and any other person with an interest or “standing” (e.g. a council taxpayer within County Durham) may apply for judicial review.

3. Financial Implications of Delay

3.1 A delay in setting the Council Tax means a delay in collecting the tax due not only to the Council but also the other precepting authorities such as

Police and Fire as well as Town and Parish Councils on whose behalf the Council acts as collection authority.

3.2 The Council has a legal duty to provide a range of statutory services (such as children's and adults social care), which continues notwithstanding the delay in setting Council tax. It must also pay the monies due to the precepting authorities whether or not it collects any Council Tax.

3.3 A delay in setting the budget may also impact on the Council's ability to enter into new agreements with significant financial commitments until and unless the budget is agreed. Otherwise, they would be potentially unlawful unfunded commitments.

3.4 If the Council sets the budget by 10 March but later than the planned February budget Council meeting, there is still likely to be disruption to the administrative arrangements for Council tax (printing, posting, delivery of bills) which will have cost implications.

4. Duty to take the advice of the Section 151 Chief Financial Officer

4.1 Sections 25 to 28 of the Local Government Act 2003 impose duties on the Council in relation to how it sets and monitors its budget. These provisions require the Council to make prudent allowance for the risk and uncertainties in its budget and regularly monitor its finances during the year. The Council has a discretion as to how such allowances are made and the action to be taken.

4.2 Section 25 also requires the Council's section 151 Officer to make a report to full Council when it is considering its budget and Council tax. The report must deal with the robustness of the estimates and the adequacy of the reserves allowed for in the budget proposals, so that members will have authoritative advice available to them when they make their decisions. Members must have regard to this report in making their decisions. Any decision that ignores this advice, including the implications of delay, is potentially challengeable.

5. Section 114 and Section 5 Reports

5.1 Section 114 of the Local Government Finance Act 1988 puts an obligation on the Section 151 Officer to issue a report "if it appears to him that the expenditure (including proposed expenditure) is likely to exceed the resources (including borrowing) available to the Council." A similar duty arises if he becomes aware of a course of action which, if pursued, would be unlawful and likely to cause loss or deficiency on the part of the authority.

5.2 Section 5 of the Local Government & Housing Act 1989 imposes similar obligations on the Monitoring Officer, if it appears to her that what the Council has done or is proposing to do is likely to contravene a rule of law or any code of practice made or approved by or under any enactment or maladministration. The Monitoring Officer is also under a duty to warn Members of the consequences under the Member Code of Conduct.

5.3 In the event Council failed or looked likely to fail to set a budget before 11 March, the s.151 Officer and Monitoring Officer would be required to issue a report in accordance with the duties above.

6. Member Code of Conduct

6.1 The Localism Act 2011 imposes a duty on Members to abide by the Code of Conduct for Members. In interpreting the Code, regard must be had to the seven Principles of Public life, including the requirement that Members should make decisions in accordance with the law.

6.2 Members have an active duty to ensure that the Council sets a lawful budget. Voting against proposals repeatedly, knowing that the result means no lawful budget will be set, is incompatible with Members' obligations under the Code as failure to set a lawful budget is likely to bring the Council into disrepute.

7. Personal Liability of Members

7.1 If a Member's wilful misconduct is found to have cause loss to the council, the Member may be liable to make good such loss.

7.2 Depending on the role played by a Member and the seriousness of the loss incurred, a Member could in principle, be guilty of misfeasance in public office. The indemnity cover provided to Members by the Council does not include actions that constitute an offence or are reckless.

7.3 There is also a possibility that a Member might be liable in negligence and/or breach of statutory duty.

7.4 In order for an action against a Member to succeed, it would be necessary to prove that their actions were deliberate or reckless and involved persistent failure to facilitate the setting of a lawful budget. The longer the budget is delayed and the more repeatedly the Member(s) "blocks" the setting of a lawful budget, the more likely it is that personal liability will arise.

8. Intervention by the Secretary of State

8.1 The Local Government Act 1999 imposes a duty on the council "…to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness".

8.2 Section 15 of the Local Government Act 1999 gives the Secretary of State the power to intervene and take a range of measures. The powers of the Secretary of State are extensive and include:

a) directing the council to take any action which he/she considers necessary or expedient to secure its compliance with the requirements of this Part (setting a budget by a specified date).

b) the Secretary of State/or a person nominated by them, exercising the Council's functions (such as setting the Council Tax) for a specific period or such time as the Secretary of State considers appropriate.

c) requiring the Council to comply with any instructions of the Secretary of State or their nominee in relation to the exercise of that function and to provide such assistance as the Secretary of State or their nominee may require for the purpose of exercising the function.

8.3 If the Secretary of State were to intervene on the issue of setting Council Tax, he/she need not set the full budget and could, for example, direct the Council to set a budget at a specified Council tax level by a set date, leaving the Council to work out the detailed savings for each service.

8.4 Intervention by the Secretary of State is a measure of last resort and is usually preceded by a report from external auditors, an inspector appointed by the Secretary of State or a regulatory body. However, the Secretary of State can intervene directly in cases of urgency. It is unlikely that the Secretary of State would intervene and set a budget for the Council immediately after 11 March deadline. Given the complexities involved and the calculations and assumptions required in setting a budget, it is more likely that the Secretary of State would give directions to the Council to set its budget by a particular date and take particular steps rather than set it themselves.

9. Reputational Damage

9.1 Failure to set a budget, even in the absence of legal challenge and/or formal/informal intervention by the Secretary of State will have a significant impact on the Council's reputation locally and nationally. It will have an impact in terms of investor confidence, people's preparedness to work with the Council and on Council Tax collection rates as residents may see the council as residents may see the Council as wasteful, procrastinating and/or inefficient. Reputation and credibility is hard to earn, but once lost, difficult to regain.

10. Failure to set a budget at the February Council meeting

10.1 If Council fails to agree the budget proposed by the Cabinet at its meeting in February, the Council's Constitution requires the Cabinet to meet and consider the reasons why the budget was rejected. At that meeting, it would need to decide whether to re-submit the budget unamended or to make changes. Council would then need to meet again to consider the Cabinet's proposals.

10.2 The Council must set the budget at this second meeting. There is no provision for further objections being referred to the Cabinet to consider. If it looked as if the Council were unlikely to agree the budget at this meeting, it is likely that the section 151 Officer and Monitoring Officer would suggest adjourning the meeting to allow Groups to negotiate a way to agreement. If after an adjournment, agreement still looks unlikely (as a measure of last resort) those Members unable to vote in favour of the budget may be advised to abstain.

11. Section 106 of the Local Government Finance Act 1992

11.1 Under section 106 of the Local Government Finance Act 1992, a member who has not paid an amount due in respect of their Council tax for at least two months after it became payable is unable to vote on any matters affecting the level of Council Tax or arrangements for administering the Council Tax (they are entitled to speak).

11.2 Any members unable to vote by virtue of section 106, must make a declaration to that effect at the start of the meeting. Failure to make such a declaration and/or voting when the provisions are engaged may constitute a criminal offence (maximum fine £1000).

Helen Bradley

Head of Legal & Democratic Services, Monitoring Officer

31 January 2024