

## **1 INTRODUCTION**

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

## **2 LEGAL REQUIREMENTS**

Section 31A of the Local Government Finance Act 1992 requires budget calculations to be made before 11th March, but they are not invalid merely because they are made on or after 11th March. Nevertheless, delay in setting the Council Tax would have significant legal and financial consequences.

## **3. PROCESS FOR AGREEING THE BUDGET & CONSIDERING ALTERNATIVE BUDGET**

The Cabinet has the responsibility to prepare and propose a draft Budget to Council for its approval.

The Cabinet have formulated a budget proposal and Council Tax recommendation for the Council meeting on 21 February 2023. Such budget proposal may either take the form of a composite proposal or may include agreed core proposals and options for allocating parts of the budget.

The Council has two options available to it at the budget setting meeting. It can object to specific parts of the proposals and if it does so, must require the Leader on behalf of Cabinet to reconsider its proposals. The Council is required to give the Cabinet reason(s) why it considers those proposal(s) should be changed and it is then for the Cabinet to consider those proposed changes and the reasons put forward. Alternatively, it is open to the Council to accept the budget in its proposed form at the meeting, in which case no further action is necessary.

Council may then determine the budget on the basis of the Cabinet's recommendations, plus any insignificant changes adopted as amendments at the Council meeting.

## ALTERNATIVE PROPOSALS

If alternative proposals to those contained in this report are moved at the budget setting meeting, the Chief Finance Officer will need to consider if the estimates or proposed financial reserves contained in this report are affected and whether a further report (which may be oral) is required under section 25 of the Local Government Act 2003.

If the Chief Finance Officer is unable to report on the estimates or the reserves because of the lateness of the alternative proposals, then he will **not** be able to comply with this statutory requirement.

The Constitution provides that the meeting itself (on advice from the Chief Executive) will decide whether any amendment to the budget proposals is of such significance as to amount to an "objection" to the budget to require reconsideration by the Cabinet.

If a significant proposal is accepted on a vote at Council (from those proposals notified at the Cabinet meeting), this stands as a formal objection within the terms of the law and will be referred to the Leader to secure consideration by the Cabinet and report back to the Council meeting on 2 March 2023.

When the Cabinet has considered the objections, it is required to put its proposals (which may or may not be revised) back to the Council Meeting. If the Cabinet does not agree with Council's views on a proposed change, it is required to state why and the Council can then take those reasons into account, along with its original thoughts as to why the change was desirable. At the meeting, it is open to Council to take such decision as it sees fit on any variation from the budget as originally proposed that has been the subject of consideration under the process outlined above.

#### **4. FAILURE TO AGREE A BUDGET**

This renders the Council vulnerable to judicial review proceedings because legislation requires the Council to set the Council Tax.

It also renders Councillors individually liable for failure to fulfil 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 Taxpayer.

#### **5. FIDUCIARY DUTY**

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 for the purpose for which they are conferred, and any ulterior motives risk 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. The interests of the Council Taxpayer must be balanced against those of the various service recipients.

Setting a budget is not the same as deciding what expenditure will in fact be incurred. To budget for expenditure is to estimate likely expenditure and/or make financial provision for such expenditure. In setting the budget, commitments are being entered which will have an impact on future years. Some commitments may change in future years, such as staff numbers which are capable of upward or downward adjustment at any time. Other commitments impose upon the Council future obligations which are binding and cannot be adjusted, such as loan charges to pay for capital schemes. For some specific proposals within the overall Budgetary framework, Cabinet decisions have already been made. For some other proposals, subject to relevant consultation where necessary, decisions by the Cabinet will need to be made, especially where the making of such a decision would result or would be likely to result in the permanent closure of a facility used

by the public or a permanent and significant reduction in the level of services or facilities provided to the public other than where such closure or reduction in service is considered necessary by the relevant strategic director for reasons of health and safety.

Only relevant and lawful factors may be considered, 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 considering 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 they properly exercise discretion and do not blindly follow the party line without considering the relevant factors and professional advice.

## **6. CODE OF CONDUCT CONSIDERATIONS**

Finally, under the Bath & North East Somerset Council Member Code of Conduct, members are required when reaching decisions to have regard to relevant advice from the Chief Finance Officer and the Monitoring Officer (the Chief Legal Officer). If the Council should fail to set a budget at all or fail to set a lawful budget, contrary to the advice of these two officers there may be a breach of the Code by individual members if it can be demonstrated that they have not had proper regard to the advice given.

### **DISCLOSABLE PECUNIARY INTERESTS**

Members are reminded to consider whether they have a Disclosable Pecuniary Interest (DPI) or, Other Registerable Interest (ORI) or, Non-Registerable Interest (NRI) in the setting of the council's budget. If a member has a relevant interest they must disclose the interest at the meeting, subject to the provisions in the Code in respect of sensitive interests. If the interest is a Disclosable Pecuniary Interest as set out in the Bath & North East Somerset Council Members Code of Conduct) the member may not participate in the discussions or vote on the matter, although if the interest is an Other Registerable Interest (ORI) or Non

Registerable Interest (NRI), the member may remain for the purposes of making representations or asking questions as a member of the public could but must not vote or take part in the debate.

Members should seek early advice to avoid any confusion on the night of the meeting if they consider they have a relevant interest.

### Dispensations

The Council's Monitoring Officer may, on written request from a Member, grant a dispensation to relieve the applicant from the restrictions on participation and voting.

Dispensation may be granted if: -

- Without the dispensation the number of persons prohibited from participating would be so great a proportion to impede the effectiveness of the meeting.
- The representation of different political groups would be affected and likely to alter the likely outcome of any voting at the meeting.
- Granting the dispensation is in the interests of persons living in the area.
- Every Member of the Council's Cabinet would be precluded from participating in the meeting; -
- It is appropriate to grant a dispensation.

A dispensation will mean that the Member to whom it is granted can speak and vote on a matter in which they have a relevant interest.

Michael Hewitt, Head of Legal & Democratic Services (Monitoring Officer)