

2010/2011 REVENUE ESTIMATES AND COUNCIL TAX

THE LEGAL FRAMEWORK GOVERNING BUDGET DECISIONS

- 1) The Council is required to set a Council Tax for 2010/11 before 11 March 2009. It may not be set before all precepts have been issued or before 28th February 2010, whichever is the earlier, and the decision cannot be delegated to a committee or to Officers. Before setting the level of the tax the Council must have agreed a balanced budget, differentiated by services, which is sufficient to meet estimated revenue expenditure, levies, contingencies, any deficit estimated to be brought forward from previous years, and any amounts required to be transferred between funds. The tax itself must be sufficient to cover the difference between the agreed budget less government grants credited to the consolidated revenue account, and any other expenditure which must be met from the Collection Fund, less any surplus (or plus any deficit) brought forward from previous years.
- 2) In reaching decisions on these matters, Members are bound by the general principles of administrative law. Where there is discretion, it must not be abused or fettered. All relevant considerations must be taken into account and no irrelevant ones. Any decision made must be one that only a reasonable authority, properly directing itself, could have reached. Members must also balance the interests of service users against those who contribute to the Council's finances. The full resources available to the Council must be deployed to their best advantage and Members must act prudently and in a business like manner at all times.
- 3) Among the relevant considerations, which Members must take into account in reaching their decisions are the advice of officers. In considering the advice of officers, and the weight to be attached to that advice, Members should have regard to the personal duties placed upon the Corporate Director of Finance and Risk Management, the Council's Section 151 Officer. The Council may take decisions which are at variance with his advice, providing there are reasonable grounds to do so. However, Members may expose themselves to risk if they disregard clearly expressed advice, for example as to the level of provision required for contingencies, bad debts and future liabilities.
- 4) The Section 151 Officer is required by the Local Government Act 1972 and by the Accounts and Audit Regulations 2003 to ensure that the Council's budgeting, financial management, and accounting practices meet relevant statutory and professional requirements. Furthermore Section 25 of the Local Government Act 2003 requires the Corporate Director of Finance and Risk Management to comment on the robustness of the budget estimates and the adequacy of reserves.
- 5) Members must also have regard to, and be aware of the wider duties placed upon the Council by various statutes governing the conduct of its financial affairs. These include the distinction between revenue and capital expenditure, specified within the Local Government and Housing Act 1989. The Local Government Act 2003 requires that the prudential

borrowing limits are set by the Council having regard to the Chartered Institute of Public Finance and Accountancy (CIPFA) Prudential Code ("the code"). This sets out a framework for self-regulation of capital spending, in effect allowing Councils to invest in capital projects without any limit, so long as they are affordable, prudent and sustainable. To facilitate this arrangement the code requires the Council to agree and monitor a number of prudential indicators.

- 6) Section 106 of the Local Government Finance Act 1992 makes it a criminal offence for any Member with arrears of Council Tax which have been outstanding for two months or more to attend any meeting of the Council or one of its committees at which a decision affecting the budget is to be made, unless the Member concerned declares at the outset of the meeting that he or she is in arrears, and will not be voting on the decision for that reason. The Member concerned must also, of course then abstain from voting. The application of Section 106 is very wide and there have already been several successful prosecutions under this legislation. It can include meetings held at any time during the year, not just the annual budget meeting, and it may include meetings of committees or subcommittees as well as Council meetings. Members should be aware that the responsibility for ensuring that they act within the law at all times rest solely with the individual Member concerned.
- 7) Having set a budget at the beginning of the year, the Council is also under a duty to monitor that budget during the course of the year and to take remedial action if at any time it appears likely that expenditure will exceed available resources. Members should also be aware of the duty of the Section 151 Officer under Section 114(3) of the 1988 Act to report to the Council if it appears that this will happen, and of the impact of Section 115(6) which prohibits any new agreement which would incur expenditure from being entered into following the issuing of such a report and pending its consideration by the Council. The members of the Council, having received a Section 114 report are obliged to take all reasonable practicable measures to bring the budget back into balance.
- 8) A Section 114 report can create great instability within an authority and can only be avoided by prudent budgeting and effective budgetary control. This adds emphasis to the need for an adequate contingency provision and a strong corporate commitment to holding chief officers accountable for containing expenditure within cash limits approved during the budget process.
- 9) Finally, Members are reminded of their fiduciary duty to weigh the needs of the interests of service users against those who contribute to the authority's funds, and to act prudently at all times. Lawful discretions must not be abused or fettered, and in reaching their decisions Members must take account of all relevant considerations, disregard irrelevant considerations, and not come to a decision which no reasonable authority could reach. Among the relevant considerations which Members must take into account are the views of commercial ratepayers which are set out in Appendix 10 of the report.

- 10) It is the duty of the Corporate Director of Finance and Risk Management as the Section 151 Officer to provide the relevant financial information, which is or ought to be available and advise on the financial prudence of options before Members, and Members must take account of such information and advice in reaching their decisions. However, officers are not permitted to second guess the wisdom of the Council's Policy or to substitute their judgement for that of Members. The Council is therefore free to take decisions which are at variance with the advice of those officers, providing there are reasonable grounds to do so.
- 11) The Corporate Director of Finance and Risk Management must consider whether in his view the Council has agreed a balanced budget which is capable of delivery taking all known factors into account. In the event that he considers this not to be the case, then he has a personal duty to indicate this by issuing the Council with a notice under Section 11.