

The Role of the Elected Member in the Budget Setting Process

Role of the Cabinet Member in setting the Council's Budget

The budget setting protocol is set out at part 5.10 of the Council's Constitution. The budget and council tax will be considered and set by Council, following recommendations from Cabinet.

Cabinet will review the draft budget and make any adjustments considered necessary. If there is no overall control in the Council, Cabinet will inform the leaders of any group not represented on the Cabinet of its budget proposals before consulting with each of the Scrutiny and Performance Panels and stakeholders. Cabinet will ensure that each of the committees has at least one opportunity to scrutinise the draft budget proposals relating to the services within their remit and make comments on recommendations to Cabinet. Consultation on the draft budget will take place with a range of stakeholders, the time which will be sufficient for Cabinet to consider any comments and recommendations at its meeting which will fall in late January or early February. Cabinet will consider the comments and recommendations and scrutiny stakeholders.

Cabinet will make a final recommendation on the budget and capital programme to Council before 8 February. The Council will consider and approve a revenue budget and capital programme for the following year before 11 March, in accordance with the local government Finance Act 1992.

The role of the Individual Elected Member in the budget setting process

When elected to office a councillor undertakes on acceptance of office to fulfil their duties to the best of his/her judgement and ability, and undertakes to observe his authority's code of conduct.

In meetings or when making decisions a councillor must avoid doing anything that may encourage an allegation of unlawfulness or maladministration against the Council, and is expected in meetings:

- to comply with standing orders;
- to behave in an orderly manner;
- to refrain from taking part in the consideration of discussion and voting on any matter in which he may have a pecuniary or other interest;
- to observe the law.

There are circumstances in which a Council member may incur personal liability in law which may apply if the Council fails to wilfully set a balanced budget.

It is important for elected members to make informed decisions where they are involved in a decision making process and this applies to the setting of the Council budget. It is important therefore that all elected members fully consider the budget papers prior to the budget being set, and listen carefully to any points that may be made in the course of debate when the budget is set. Officers have to assist members in understanding information presented to them, and the information should be in a clear format. If elected members are unsure as to any aspect of the budget they should ask questions of officers. This is important to ensure that a proper process has been followed in reaching a decision on the budget, for example where consultation is required if there are proposals to cease or reduce service levels.

The obligation to set a council tax under the Local Government Finance Act 1992 (“the 1992 Act”), under which the Council is a billing authority is set out below, some of the provisions referred to (sections 32 and 33) have been repealed for England and have been replaced by sections 31A and 31B, and the new Chapter 4ZA (sections 52ZA- 52Z).

Section 31A(11) provides for England:-

(11) Calculations to be made in relation to a particular financial year under this section must be made before 11th March in the preceding financial year, but they are not invalid merely because they are made on or after that date.

A failure to set a budget by 11th March would amount to a breach of the Council’s duties under the 1992 Act amenable to judicial review. Only rarely will a breach of duty by members in the discharge of their public functions give rise to a cause of action against them however in Westminster City Council v Porter (no 2) [2003] Ch 436, it was decided that the authority itself could sue its members for losses arising from breach of duties owed by members to it, regardless of and separately from the operation of the surcharge machinery which existed at the time of facts of the Westminster case. The extent of the duties owed by members to the Council is not clear. However in Porter no 2, Hart J proceeded on the basis that an authority could claim for losses arising out of “wilful misconduct” of members. This was the same term used in the legislative provisions relating to surcharge in the Local Government Finance Act 1982. For those purposes Lord Bingham in Porter v Magill [2002] 2 AC 357 at paragraph 19(3) accepted that the phrase meant “deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not”.

Therefore if (say) the Council were unable to collect council tax because members had wilfully failed to set a budget, members could probably be held liable for such losses as accrued to the Council as a result. Clearly if members had received advice from the Chief Executive, Chief Finance Officer and Monitoring Officer about the council’s statutory duty to set a budget, it would be very hard for them to argue that their breach of that duty was not wilful. Those officers are under an obligation to inform council of the duty to set a lawful budget.

Equality Duty

The council's duty under section 149 of the Act is to have “due regard” to the matters set out in relation to equalities when considering and making decisions on the provision of services. Accordingly due regard to the need to eliminate discrimination, advance equality, and foster good relations must form an integral part of the decision making process. Members must consider the effect that implementing a particular policy will have in relation to equality before making a decision.

There is no prescribed manner in which the equality duty must be exercised. However, the council must have an adequate evidence base for its decision making. This can be achieved by means including engagement with the public and interest groups, and by gathering details and statistics on those who use a council service, and how the actual service is used. The potential equality impact of any proposed changes to a service should be assessed. A careful consideration of an assessment is one of the key ways in which members can show “due regard” to the relevant matters.

If it were to be apparent from the analysis of the information that a policy would have an adverse effect on equality then adjustments should be made to avoid that effect (mitigation). Members should be aware that the duty is not to achieve the objectives or take the steps set out in s 149. Rather, the duty on public authorities is to bring these important objectives relating to discrimination into consideration when carrying out its public functions (which includes the functions relating to libraries). “Due regard” means the regard that is appropriate in all the particular circumstances in which the authority is carrying out its functions. There must be a proper regard for the goals set out in s 149. At the same time, Members must also pay regard to any countervailing factors, which it is proper and reasonable for them to consider. Budgetary pressures, economics and practical factors will often be important. The weight of these countervailing factors in the decision making process is a matter for members in the first instance.

Informed Decision Making

In R (Sky Blue Sports & Leisure Ltd) v Coventry City Council [2014] EWHC 2089 (Admin), in which the Claimants unsuccessfully sought judicial review of the City Council’s Decision to lend £14.4 million to the company, ACL, that manages the stadium, the Ricoh Arena, at which Coventry City Football Club played, the Claimants’ assertions included that Council Members had failed to take into account relevant considerations in making the Decision because their Officers’ Report that recommended the Decision had allegedly been deficient and misleading.

Hickinbottom J rejected these allegations as not being arguable. As regards the legal principles to be applied when considering a challenge of this kind, the Judge said, at paragraph 139 (emphasis added):-

“i) A local authority acts unlawfully if, in making a decision, it fails to take into account a material consideration ... For these purposes, a consideration is material if the decision-maker might have decided the matter differently had he taken it into account ...

ii) Decision-makers ... (usually councillors, in full Council or in a committee to which decision-making is delegated) often act on the basis of information provided by its officers in the form

of a report. Such a report usually also includes a recommendation as to how the application should be dealt with. In the absence of contrary evidence, it is a reasonable inference that, where a recommendation is adopted, the decision-making councillors follow the reasoning of the report.

iii) The councillors are not deemed to know something that the officers know, but which is not transmitted to them ...

iv) The officers' report is therefore often a crucial document. It has to be sufficiently clear and full to enable councillors to understand the important issues and the material considerations that bear upon them; and decide those issues within the limits of judgment that the law allows them. However, the courts have stressed the need for reports also to be concise and focused, and the dangers of reports being too long, elaborate or defensive. The councillors do not have to be provided with every detail of every relevant matter, but only those matters which are so relevant that they must be taken into account, i.e. the salient facts which give shape and substance to the matter such that, if they are not considered, it can be said that the matter itself has not been properly considered ...

The assessment of how much and what information should go into a report to enable it to perform its function is itself a matter for the officers, exercising their own judgment ...

v) Of course, if the material included is insufficient to enable the decision-making councillors to perform their function, or if it is misleading, a decision taken on the basis of a report may be challengeable. However, when challenged, officers' reports are not to be subjected to the same exegesis that might be appropriate for the interpretation of a statute: what is required is a fair reading of the report as a whole ...

vi) In construing reports, it also has to be borne in mind that they are addressed to a "knowledgeable readership", including councillors "who, by virtue of that membership, may be expected to have a substantial local and background knowledge" ... As in this case, they may have been given briefings prior to the meeting at which the decision is taken. Furthermore, in deciding whether they have got sufficient information to make a properly informed decision or request further information or analysis, again that involves the exercise of judgment on their part. They are entitled to ask for more. Given the experience and expertise of councillors, coupled with the fact that they are democratically elected, the judicial approach to challenges to their decisions should be marked by particular prudence and caution ..."

At paragraph 160 the Judge said (emphasis added):-

"... As I have indicated, officers' reports are to be read broadly and as a whole. Reading the Hastie Report thus, I consider the belated criticism of it unfounded. In my view, it set out, properly and succinctly, the important relevant matters that the councillors were required to take into account, including the relevant risks of the proposal as well as the potential benefits. The courts have been rightly cautious about requiring officers' reports to be too full (see paragraph 139(iv) above): the dangers of such a requirement are obvious. A focused and succinct report, such as Mr Hastie's Report in this case, is in my judgment positively to be commended."

Elected Members decision in making setting the budget has been considered by the courts when there have been challenges particularly in respect of consultation and the reduction of public services. On occasions elected members have also had to provide evidence to the courts of their role in the decision making process.