Appendix N – Monitoring Officer Advice on the Budget Setting Report

Introduction

This advice supplements the legal implications that specifically relates to the decisions to be made on the budget. This appendix 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. There is significant level of detail but this is because the budget is the most significant decision the Council will make each year and the setting of the Council Tax has implications for all residents.

Members’ Fiduciary Duties

The Council must set a balanced budget in each year. The obligation to make a lawful budget each year is shared equally by each individual member. In discharging this obligation, members owe a fiduciary duty to the council tax payer. This means the Council’s resources must be used to their best advantage including:

- Expenditure must be on items within 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
- The budget setting powers must be used in good faith and for the purposes conferred, i.e. the delivery of the duties and powers of the Council for the benefit of the residents of Newham.
- Members must have regard to the level of Council Tax necessary to sustain it
- Members must have regard to the advice of the Chief Finance Officer and Monitoring Officer.

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.

Party loyalty and party policy are capable of being relevant considerations for the individual member when setting the budget 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.

Members should take into account the advice of the Chief Finance Officer (the Director of Finance) and the Monitoring Officer (Director of Governance and Law).

Members’ Participation in the Meeting: Required Declarations

The Code of Conduct – dispensation to vote on the Council Tax

Members must declare any disclosable pecuniary interest (DPI) in the budget and not participate in the meeting, in accordance with the Council’s Code of Conduct. Details of DPIs are set out in the Agenda pack. However, all members have been granted a dispensation by the Monitoring Officer under the Localism Act 2011 which allows all members to participate and vote in the budget and council tax decisions, notwithstanding that they are council tax payers.
Appendix N – Monitoring Officer Advice on the Budget Setting Report

If a member considers they have a DPI falling outside of the dispensation, please contact Daniel Fenwick, the monitoring officer.

Section 106: Arrears of Council Tax

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 budget and council tax setting decisions in this report.

If the declaration is made, the member may speak but not vote. Members should check their Council tax accounts in advance to ensure they do not have any arrears at the time of the meeting, even if the amount is small.

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.

This applies to:

- Full Council meetings;
- Cabinet meetings
- Committee meetings;

where the budget and council tax calculations and estimates or decisions relating to them are considered.

Any member who considers that this section may apply to them should seek advice from the Monitoring Officer (Daniel Fenwick) and / or the Chief Finance Officer (Mike O'Donnell) before the meeting and as soon as possible.

The Role of the Chief Finance Officer

The Chief Finance Officer is the Director of Finance and is responsible under s.151 for the financial affairs of the Council. Section 114 of the Local Government Finance Act 1988 places the s151 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. A failure to take note and act on such a report could lead to a complaint to the Monitoring Officer. Similarly, the Council’s Monitoring Officer is required to report to Full Council if it appears to him/her 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 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.

In addition to advising on the robustness of the estimates as set out above, the s151 Officer is also required to report on the robustness of the proposed financial
Appendix N – Monitoring Officer Advice on the Budget Setting Report

reserves. The same advice applies to these as to the other calculations required to be made by the Council.

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 31A(2)(b) and (c) 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.

If Council proposes to amend the budget as set out in this report, the Chief Finance Officer must first be satisfied that the proposed budget is a lawful balanced budget and be able to advise Council of this. This may require an adjournment of the meeting to make such an assessment for a short period. If the budget does not balance, the Chief Finance Officer may be required to exercise his powers under s.114 of the Local Government Finance Act 1988 set out above.

Expenditure Charged to the Housing Revenue Account

Members will be aware that the Housing Revenue Account (HRA) is by law to be maintained separately from the General Fund and there are strict rules which determine to which account any expenditure must be charged. There are only very limited areas of discretion here. Members should bear in mind that if they wished to review any current determination which affects the apportionment of charges between the General Fund and HRA, they would need to do so on the basis of an officers’ report and specific legal advice. The Housing Revenue Account must be maintained in balance throughout the year by Section 76 Local Government and Housing Act 1989.