

## **BUDGET SETTING ADVICE NOTE**

1. This advice note is written further to the legal implication advice contained in the Cabinet Revenue Budget and Council Tax Levels 2024/25 Report on 14<sup>th</sup> February 2024. This is contained in Pages 192 to 198 of the agenda pack for the Full Council meeting on 28<sup>th</sup> February 2024. The web link to the Agenda pack is available here [Full Council Budget Reports Pack 28022024 1830 Council.pdf](#)

### **Members obligations**

2. Full Council is required to decide on the Council's budget for the next financial year. This is one of the most important decisions that Full Council is called upon to make during the year.
3. In the signed acceptance of office declaration, all elected Members agree to fulfil their duties as councillors to the best of their ability and judgement. Members also agree to abide by the Members' Code of Conduct which provides that "... on all occasions: I act lawfully" and "I do not bring my authority into disrepute". These declarations apply to the duty on Members to set a lawful budget.

### **Executive legal duty**

4. The Executive Mayor is required (by law) to prepare the Council's budget proposals which comprises the revenue budget, capital budget, council tax base, council tax levels, borrowing requirements and uncommitted reserves. The Executive has discharged this legal duty by presenting to Full Council for decision a set of proposals which result in a lawful and balanced budget.

### **Full Council's legal duty**

5. Full Council must agree to set the budget and by 11<sup>th</sup> March 2023. This legal duty arises from the Local Government Act 2000, Local Authorities (Functions

& Responsibilities) Regulations 2000 and the Local Government Finance Act 1992. This duty is both individually owned and collectively shared between all elected Members that make up Full Council.

6. In deciding how to exercise its duty to set a lawful budget, Full Council must have regard to the advice of the Chief Finance Officer and the Monitoring Officer. Full Council must act in accordance with the Council's statutory duties, common law duties and administrative law principles (See Paragraphs 14.18 – 14.23 of the Cabinet budget report at pages 118 to 119 of the Full Council Agenda pack).
7. Failure to meet the 11<sup>th</sup> of March 2023 deadline to set a budget will have significant financial, legal, and reputational impact on the Council and its residents. Full Council will be acting unlawfully.
8. With no agreement on the budget, no budgetary allocations exist and there can be no provision for services, staff, or contractual commitments of the Council. The Council's ability to perform its statutory responsibilities, will be in jeopardy and will in effect 'grind to a halt'. This will have a significant impact on most residents, in particular vulnerable adults, and children. At its basic level, bills and staff wages will not be able to be paid, new contracts cannot be entered into and there will be breach of existing contracts.
9. The Council will not be able to process and send out council tax bills to residents, direct debits will not be set up and payment demands cannot be sent out. The whole council tax payment process will be delayed, and not just for the Council but also for the GLA. Delays in billing and chasing council tax collection reduces the probability of collecting what is due. This would also include what is due to the GLA and the GLA would expect Croydon to compensate it for losses of income given that the delay would be entirely of Croydon's making.
10. This would also mean that the initial council tax payments the Council receives would be delayed and the Council's cash reserves will be undermined by over £20m in April 2024 and thereafter every month that the delay continues. This

missing cash would need to be borrowed from the market, typically from other local authorities. The fact that the Council requires these loans due to its inability to set a budget would reduce the number of sources prepared to lend to the Council and would significantly impact the rate of interest demanded. This would obviously significantly worsen the Council's financial position and at a time when revenue is most needed. All this and the uncertainty that follows will damage the Council's reputation locally and nationally and with central government, other local authorities, staff, partners, businesses, contractors, residents, and potential investors in the borough. The Council and Members will be at risk of litigation in these circumstances.

11. Member's fiduciary duty (i.e., legal duty as trustee of the public purse)<sup>1</sup> is a material consideration to reflect upon. This includes the duty to council taxpayers to avoid unlawful action (i.e., not to set a budget by 11<sup>th</sup> March) that would result in the loss of significant revenue to the Council or a failure to deliver services with consequential litigation and adverse financial implications to the Council. Personal liability may arise in the form of misfeasance in public office<sup>2</sup> depending on the nature and extent of conduct at Full Council meeting and its impact.

### **Dispute Resolution**

12. The law recognises that there can be disputes in agreeing the budget and therefore has built in a dispute resolution process. This is clearly set out in the

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<sup>1</sup> *Bromley London Borough Council v Greater London Council*<sup>2</sup> "It is well established ... that a local authority owes a fiduciary duty to the ratepayers from whom it obtains moneys needed to carry out its statutory functions, and that this includes a duty not to expend those moneys thriftlessly but to deploy the full financial resources available to it to the best advantage .... (Lord Diplock)" *Roberts v Hopwood*<sup>3</sup> "... [a] body charged with the administration for definite purposes of funds contributed in whole or in part by persons other than the members of that body, owes, in my view, a duty to those latter persons to conduct that administration in a fairly business like manner with reasonable care, skill and caution, and with a due and alert regard to the interest of those contributors who are not members of the body. Towards these latter persons the body stands somewhat in the position of trustees or managers of the property of others. (Lord Atkinson)"

<sup>2</sup> **Misfeasance in public office** is an action against a holder of **public office**. It provides a remedy for persons who are injured by the actions of a **public** officer who has exercised his powers in bad faith. It is an unusual tort in that the prime focus is on the motivation of the defendant. The ingredients of the tort a) The defendant must be a **public** officer; b) The defendant must have exercised power as a **public** officer; c) The defendant must have acted with malice or in bad faith, either with the intention of injuring the claimant or, being aware of the risk of such injury, without an honest belief that his conduct was lawful; d) That conduct must have caused the claimant material injury or damage of a sort foreseen by the defendant.

Budget and Policy Framework Procedure Rules in Part 4.C of the Constitution and provides for a 1<sup>st</sup> Meeting of Full Council (i.e., 28<sup>th</sup> February 24) at which the Executive proposals can be agreed by a simple majority, or objection to the Executive proposals and instructions to reconsider.

13. At the 2<sup>nd</sup> Meeting of Full Council on 6<sup>th</sup> March 2023, Members can vote to amend the Executive budget proposal by two-thirds majority. The Council has received Labour Group amendment ([here \(Public Pack\)NEW - SUPPLEMENT - LABOUR GROUP BUDGET AMENDMENT Agenda Supplement for Council, 28/02/2024 18:30 \(croydon.gov.uk\)](#)) and Green Group amendment ([here \(Public Pack\)NEW SUPPLEMENT GREEN GROUP BUDGET AMENDMENT Agenda Supplement for Council, 28/02/2024 18:30 \(croydon.gov.uk\)](#)) to the Executive budget proposals and both have been approved by the Corporate Director of Resources as capable of delivering a balanced budget.
14. The Labour Group amendments are for £220k savings in the General Fund budget to be achieved by, amongst others, reducing and deleting Special Responsibilities Allowances (SRAs) in the Members Allowance Scheme.
15. The Green Group amendments include savings of £161k to be achieved by reduction in the SRAs in the Members Allowance Scheme.
16. The amendments conflate the two separate and distinct decisions to be made by Full Council i.e., Budget for 2024-25 (include allocation of financial resources to appropriate heads of expenditure) and Member Allowance Scheme for 2024-25 (to, amongst others, determine the basic allowance and SRA payable to members). The established practice and based on two separate statutory schemes (Local Government Finance Act 1992 and Local Authorities (Members' Allowances) (England) Regulations 2003) is that Full Council decides separately the revenue budget and the Members Allowance Scheme. The agenda business items reflect this position.
17. Under the Budget item, if the amendments (indicated in Paragraphs 14 and 15 above) are agreed, they only amend the provision in the expenditure budget in

the General Funds for the Members Allowance Scheme. In my view, they do not amend the Members Allowance Scheme per se which, as advised, is the subject of a separate report and recommendation before Full Council. Any proposal to change the SRA payable to members must be dealt with under the Members Allowance Scheme agenda item. This is the established practice to date.

18. If the Labour and Green amendments fail to secure the required two-thirds majority vote and fall, Full Council must then proceed to vote on the Executive budget proposals (which is the default position). To discharge Members individual and collective legal duty and avoid the financial, legal, and reputational consequences alluded to in this advice note, Full Council could vote by a simple majority to approve the Executive budget proposals. Members could also abstain from voting to ensure the legal duty to set a budget is discharged.
19. The dispute resolution process provides that in the event of an impasse (i.e., no two thirds majority to amend and no simple majority to approve), the Chief Finance Officer should identify the minimum decisions and resolutions required at the 2<sup>nd</sup> Meeting of Full Council to comply with statutory requirements. Once identified, there will be no time limit on the length of the meeting and the Council shall continue to meet until it has reached a final decision on the matter. The Chief Finance Officer has advised that the minimum decision required to meet the statutory requirements under the Local Government Finance Act 1992 are those in the budget proposal which is before Full Council as these are all integral to setting the budget and the council tax level.
20. In the event of an impasse (as indicated above), Members will be reminded of their legal obligations and duties which collectively requires them through Full Council to set a lawful budget based on the proposals before them. Mindful of the legal duties, the adverse consequences of not setting a budget and potential personal liability arising from any wilful misconduct, Members must work collaboratively (across party divides) to facilitate rather than frustrate the setting of a lawful budget.

21. If Members wilfully and persistently refuse to set a budget and this is found to have caused financial loss to the Council, they may be liable to a claim of misfeasance in public office. There could be a potential breach of the Members' Code of Conduct by bringing the Council into disrepute and failing to act lawfully. Further, under Section 66 of the Local Government Finance Act 1992, the failure to set or delays in setting the budget, could give rise to a judicial review challenge by any person with sufficient interest (which could include a council taxpayer).

### **Chief Finance Officer and Monitoring Officers reports**

22. The Chief Finance Officer (CFO) is responsible for the financial administration of the Council. The Monitoring Officer (MO) is responsible for ensuring the Council conducts its business in a lawful manner. In the event of a failure by Full Council to set a budget and Council Tax by 11<sup>th</sup> March 2023, which invariably will lead to the worsening of the Council's financial position, the CFO may have to issue another Section 114 report under the Local Government Finance Act 1988. The MO may also have to issue a report under Section 5 Local Government and Housing Act 1989 as the Council will be in breach of its statutory duty/acting unlawfully. Therefore, it is imperative that Full Council discharge its legal duty to set a lawful budget.

### **Secretary of State's (SoS) Improvement & assurance Panel intervention**

23. Although the Council is responsible for decision making on all its functions and responsibilities, the Council is the subject of statutory intervention and Directions ([Statutory intervention: London Borough of Croydon - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/statutory-intervention-london-borough-of-croydon)) by the Secretary of State (SoS) and in the form of a SoS appointed Improvement & Assurance Panel (IAP). The failure to set a budget and the likely adverse impact, could result in the IAP exercising its powers to instruct the Council to act (i.e., set a budget) to meet its best value duty. The SoS Directions requires the Council to adopt any recommendations from the IAP.

## **Member Allowance Scheme 2024/25**

24. In accordance with the Constitution, General Purposes Committee (GPC) has undertaken a review of the Scheme of Members' Allowance and had due regard to the Independent Panel on the Remuneration of Councillors in London report on the remuneration of Councillors in London for 2023 ("Remuneration Report") and made recommendations to Full Council that include adopting Scheme of Members Allowance for 2024/25 with no uplifts and that GPC undertake a review of the Scheme in 2024.
25. As advised in the officer report on the Members' Allowance Scheme 2024/25 report under Legal Implications, Full Council must adopt the Scheme before the beginning of the year for the payment of allowance for that year (Regulation 10 Local Authorities (Members' Allowances) (England) Regulations 2003) "Members Allowances Regulation"), i.e., by 31<sup>st</sup> March 2024.
25. Regulation 19 of the Members Allowances Regulations requires Full Council to have regard to the Independent Panel's Remuneration Report and recommendations before making or amending the Scheme for 2024/25. The Independent Panel's recommendations include with regards to annual uplifts, that all allowances should be updated annually in line with the percentage pay award agreed by the National Joint Council for Local Government Services Staff (LPSS). This represents a 3.88% increase from April 2023. GPC has agreed and recommended to Full Council no uplifts and a review of the Scheme in 2024 to address Member feedback. Therefore, if the Labour and Green budget amendments to reduce the SRA for a targeted group of Members is proposed under the Members Allowance Scheme agenda item, this will be in contradiction with the GPC recommendations and a radical departure from the Independent Panel's recommendation.
26. In reaching a decision on the Scheme for 2024/25, Members must comply with established public law principles. Members must adhere to the law (i.e., Members Allowance Regulations) that regulates its decision making and must give effect to it. Members must act reasonably, take into account all relevant

considerations, disregard any irrelevant considerations, and any decision made must be one which only a reasonable authority, properly directing itself, could have reached. Members must not act in bad faith or for an improper motive. Members must ensure decisions are properly informed and exercise discretionary powers for proper purposes only. If Members are minded not to agree with the recommendations of GPC and fundamentally depart from the Independent Panel's recommendations, Members must have good reasons for doing so and this needs to be clearly articulated in the decision making.

27. If Members are minded to reduce the SRA, then very careful consideration needs to be given to how it can be achieved lawfully, fairly and properly. This is especially the case if it will involve targeting specific allowances for certain Members, as opposed to reducing all allowances across the board, because it will increase the gap between allowances recommended by the Independent Panel and the allowances set by the Council under the Scheme. Also, the allowances paid by other councils.
28. In addition, a significant reduction in allowances, or removal of allowances altogether, paid to certain Members whilst preserving (at current levels) the allowances paid to others will significantly alter the balance of the Scheme. It is bound to create an imbalance between those Members in receipt of SRA and may give rise to substantive and procedural issues (such as fairness) which need exploring. In other words, significant changes to Members' allowances should be made following a full and proper review.
29. In fact, GPC has already committed to a review of the Scheme later this year and which allows for proposed changes to be fully and properly reported on and discussed. This includes a proper evaluation of the rationale as well as the financial, legal, equalities and practical impacts. Following such a review, Full Council can make changes to a Scheme in year.

## **Conclusion**

30. It is imperative that Full Council acts lawfully and approves a balanced budget and the Members Allowance Scheme for 2024/25 at its meeting on 6<sup>th</sup> March 2023.

Stephen Lawrence-Orumwense  
Director of Legal Services and Monitoring Officer

5<sup>th</sup> March 2024