

Letter from the Chairman of CIPFA Highlighting the Chief Finance Officer's Legal Duties in Respect of Setting the Budget



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21 December 2011

Dear Colleagues,

We continue to work in challenging times, with the economic downturn continuing to place unprecedented pressure on local authority budgets. Chief Finance Officers (CFOs) continue to be in an exceptionally challenging position – supporting their authorities as they make the difficult choices, whilst ensuring that they fulfil their legal and professional responsibilities in the public interest. In such challenging situations it becomes all the more important for CFOs to provide timely, relevant and reliable advice, in accordance with the law and professional standards, and that they use their statutory powers appropriately.

Last year I wrote to CFOs setting out some advice on their responsibilities around the budget setting process, particularly around the application of s.25 of the 2003 Local Government Act which requires the CFO to make a formal report to the Council on the robustness of the budget and adequacy of reserves. I have received a request to repeat this advice and therefore felt it would be helpful to write to CFOs drawing their attention to the legislation and professional guidance which define their responsibilities, as well as to provide links to some additional material they may find helpful. Whilst the 2003 Act does not apply in Scotland and Northern Ireland, the same professional issues may arise and a number of the other specific responsibilities apply.

Relevant requirements and guidance

The attached note highlights the legal requirements and sources of professional guidance relevant to the budget setting process. It is important to view the CFO's responsibilities under the 2003 Act as part of a continuum of professional advice and in the context that the CFO's formal report is the culmination of a budget process in which a lot of detailed work has already taken place with service managers, corporate management teams and Councillors. Many of the concerns CFOs may have about the robustness of budgets will be well rehearsed and hopefully settled before the report is written.

The note also includes a section on S.114 powers. These should clearly be seen as the last resort if concerns over the robustness of the budget are not addressed and warrant action. I would urge any CFOs considering the use of s.114 to consult their Monitoring Officer at an early stage and consider whether additional legal advice is required.



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CIPFA's Statement on the Role of the Chief Financial Officer in Local Government provides more detailed guidance on the responsibilities and roles of the CFO and will be helpful in ensuring that they are effective in their role. The statement also emphasises the key role CFOs play in positively influencing the budget setting process including helping to find sustainable solutions for the future. The statement also provides further advice on the relevant legislation, including detailed advice on the application of powers under s.114.

Critical role of risk management

Given the uncertainties of the economic environment and the scale of the expenditure reductions required, there will inevitably be significant risks involved in delivering balanced budgets. In carrying out their professional responsibilities, it will be critical that CFOs take a risk management approach in their reports, setting out the key risks associated with the proposed budget and how they can be managed. Depending on the level of assessed risk within the proposed budget, it may be necessary to give consideration to contingency plans.

This approach is likely to be particularly important when it comes to the delivery of savings contained within budgets. CFOs should clearly set out the risks associated with their achievement and, the implications and contingency plans which apply if they are not delivered as planned.

In developing their reports, it is important that CFOs can clearly evidence how and on what basis they have reached their conclusions. This may include copies of detailed plans and other information received from service directorates and notes of meetings with other chief officers, corporate management teams and meetings with portfolio holders and key Councillors. CFOs need to be robust in these meetings and prepared to challenge if they have areas of concern.

Prior to formally presenting their assurance statement to the Council, it is expected that CFOs will have shared it with their Chief Executive, service directors, leading Councillors and their own senior finance community to ensure a mutual understanding of the risks and issues identified. In the current climate risks and the assurance statement are particularly important and CFOs are strongly advised to draw special attention to them in their reports and presentations.

CFOs will be fully aware of the need to raise concerns promptly, at an appropriate level, as they arise throughout the financial year and they will have well established mechanisms in place to enable them to do so. These, of course, become more important if the budget is finely balanced and contains a higher level of risk than would normally be the case.

Conclusions

We recognise that this is a difficult time for CFOs and are working hard to ensure we have the support mechanisms in place should Members need them, including one to one support through the Ethics Sounding Board.

Should any Member need further advice on issues around budget setting, they should initially contact Alison Scott (alison.scott@cipfa.org.uk 01604 889451).

In addition, the Treasurers Societies provide a valuable support network for CFOs and CIPFA will be working closely with them to identify any additional support requirements.

I hope that the guidance sources highlighted in this letter will prove to be of real practical use to CFOs as they face the challenges of the coming months. If you feel there are any further ways in which CIPFA can provide support, please do not hesitate to contact me.

Yours sincerely,



Steve Freer



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The Responsibilities of the Chief Financial Officer in Respect of the Budget Setting Process

Context

In drawing up this note, we fully recognise that CFOs do not act in a vacuum. Rather they work within a framework of pre-existing governance and management arrangements and structures, aspects of which will be unique to individual authorities.

Additionally financial management itself takes place within a broader governance code that will include the responsibilities of the CFO as part of a framework for ensuring effective decision making, risk management and operations.

In approving the budget the Council will expect to be able to rely on the professional skills and advice of its Chief Executive and all its key officers, including the CFO, as well as the normal operation of the wider established governance code within the organisation.

Legislative and other safeguards

There are a range of safeguards in place to help prevent local authorities over-committing themselves financially. These include:

- the balanced budget requirement (England, Scotland and Wales) (sections 32, 43 and 93 of the Local Government Finance Act 1992 and section 85 of the Greater London Authority Act 1999)¹
- chief finance officers' duty to report on robustness of estimates and adequacy of reserves (under section 25 of the Local Government Act 2003) when the authority is considering its budget requirement (England and Wales)
- legislative requirement for each local authority to make arrangements for the proper administration of their financial affairs and that the chief finance officer / proper officer has responsibility for the administration of those affairs (section 151 of the Local Government Act 1972 and section 95 of the Local Government (Scotland) Act 1973)
- the requirements of the Prudential Code
- auditors' consideration of whether audited bodies have established adequate arrangements to ensure that their financial position is soundly based, in the context of auditors' statutory responsibility to satisfy themselves that the body has put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources (the value for money conclusion).

These requirements are reinforced by section 114 of the Local Government Finance Act 1988 which requires the CFO in England and Wales to report to all the authority's councillors, in consultation with the Monitoring Officer, if (in broad terms) there is or is likely to be unlawful expenditure or an unbalanced budget.

Local Government Act 2003

The 2003 Local Government Act places specific responsibilities on Chief Finance Officers in England and Wales. The Act requires the CFO to report on the robustness of the budget and

¹ LAAP Bulletin 77, 2008 .

the adequacy of proposed financial reserves. The Council is required to have regard to this report when it sets the budget.

Extract from 2003 Local Government Act

25 Budget calculations: report on robustness of estimates etc E+W

- (1) Where an authority to which section 32 or 43 of the Local Government Finance Act 1992 (billing or major precepting authority) or section 85 of the Greater London Authority Act 1999 (c. 29) (Greater London Authority) applies is making calculations in accordance with that section, the chief finance officer of the authority must report to it on the following matters—
- (a) the robustness of the estimates made for the purposes of the calculations, and
 - (b) the adequacy of the proposed financial reserves.
- (2) An authority to which a report under this section is made shall have regard to the report when making decisions about the calculations in connection with which it is made.”

In drawing up their reports CFOs will need to clearly identify the risks associated with the proposed decision. These risks will need to be reported along with how they are to be managed and any contingency plans in place to mitigate their impact. The authority's members need to be clear on the risks associated with the budget proposals when making their budget decision. In assessing these risks CFOs will need to consult with service managers to ensure all risks have been identified. Proposals which involve significant changes to current structures, systems and processes, or which have major implications for service design inherently involve higher levels of risk than those which broadly maintain current arrangements. At the most practical level those risks begin with the possibility of slippage and disruption in the transition from old to new arrangements. CFOs should ensure that issues of this type and their potential budgetary implications are appreciated by relevant officers and the Council.

Where savings are included in the budget CFOs must assess their deliverability. CFOs should set out clearly the implications and contingency plans which apply if savings are not delivered as planned.

Robust and timely monitoring of savings delivery plans with ongoing contingency planning will be critically important throughout the year.

LAAP 77 Local Authority Reserves and Balances

In assessing the adequacy of reserves the CFO should have regard to LAAP 77 Local Authority Reserves and Balances. In order to assess the adequacy of unallocated general reserves when setting the budget, CFOs should take account of the strategic, operational and financial risks facing the authority. Account should be taken of the key financial assumptions underpinning the budget and financial strategy within the context of the authority's broader financial management arrangements.

Statement on the Role of the Chief Financial Officer in Local Government

CIPFA's Statement on the Role of the Chief Financial Officer in Local Government provides detailed advice on the CFO's responsibility with regard to financial



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planning and budgeting. In particular, in assessing both the robustness of the budget and the adequacy of reserves, CFOs should have regard to the overall strategic objectives of the local authority and the medium term financial plan. A strong and well informed Medium Term Financial Plan and clear and transparent policy on reserves will help CFOs take a robust stance in their consideration of the proposed budget. The Statement on the Role of the Chief Finance Officer in Local Government gives additional guidance on this aspect.

Standards of Professional Practice, 2002

In fulfilling their responsibilities, CIPFA Members should also be familiar with and observe the principles of the Institute's Standards of Professional Practice, September 2002, and in particular the relevant principles and guidance in relation to Budgetary Planning and Control and Financial Reporting.

Section 114 of the Local Government Finance Act 1988

Section 114 powers are also available to CFOs. Very careful consideration should be given and appropriate advice taken, before these powers are used. Where a CFO judges that, despite the consideration of risks by the Council, the Council intends to set a budget that is insufficiently robust, it will be necessary to consider whether the position warrants use of s.114 powers relating to insufficiency of funds.

Section 114 of the 1988 Act requires the CFO to report to all the authority's members, in consultation with the Council's Monitoring Officer, if (in broad terms) there is, or is likely to be unlawful expenditure or an unbalanced budget. This would include situations where reserves have become seriously depleted and it is forecast that the authority will not have the resources to meet its expenditure in a particular financial year. The issue of a section 114 notice is a serious step and must not be taken lightly. Not least it has serious operational implications for the Council and its services. Indeed, the authority's full council must meet within 21 days to consider the s114 notice and during that period the authority is prohibited from entering into new agreements involving the incurring of expenditure.

Further detailed guidance on the use of s.114 and s.114(a) powers is included in the appendices of the Statement on the Role of the Finance Director in Local Government.

The position in Scotland and Northern Ireland

In Scotland, the requirement to set a balanced budget is established in section 108(2) of the Local Government (Scotland) Act 1973 and section 93(3) of the Local Government Finance Act 1992.

In Northern Ireland, the equivalent duty – whilst not specified in statute – would rest with the authority's CFO in keeping with the statutory responsibility under section 54 of the Local Government Act (Northern Ireland) 1972.

As a matter of professional responsibility, CIPFA Members are expected to provide timely, relevant and appropriate advice and to comply with the Standards of Professional Practice, September 2002. The Statement on the Role of the Chief Financial Officer in Local Government also applies.