

Protocol for the Section 151 Officer (also known as the Chief Finance Officer)

Introduction

The Chief Finance Officer occupies a critical position in the Council. The issues set out in this protocol reflect the core principles identified in the statement of the role of the Chief Financial Officer in Local Government published by the Chartered Institute of Public Finance & Accountancy.

A. Statutory Responsibilities

The responsibilities of the Chief Finance Officer role rest with the Director of Resources who is the Council's Section 151 Officer. The over-riding duty of the Chief Finance Officer is to fulfil the statutory responsibilities attached to the position in a manner that enhances the overall reputation of the Council. The Chief Finance Officer's statutory duties derive from the 6 principle sources of law as set out below:

- **Case law** - In *Attorney General -v- De Winton (1906)*. It was established that the Treasurer is not merely a servant of the Council but holds a fiduciary relationship to the local taxpayers;
- **Responsible Finance Officer - Section 151 of the Local Government Act 1972** requires every Council in England and Wales to "... *make arrangements for the proper administration of their Finance affairs and shall secure that one of their Officers has responsibility for the administration of those affairs*". Legal opinion taken states that the term "*administration*" means responsibility for managing the totality of the Finance affairs of a local Council in all of its dealings.
- The Officer appointed as the responsible Chief Finance Officer must, by **section 113 of the Local Government Finance Act 1988**, be a Member of a specified accountancy body. The statutory role must be performed by an "Officer" of the Council. **Unlawful Expenditure and an Unbalanced Budget** - the Chief Finance Officer's duties are significantly extended by **section 114 of the 1988 Act** which requires a report to all Members to be made by that Officer in consultation with the Monitoring Officer and Head of Paid Service if there is, or is likely to be, unlawful expenditure or an unbalanced budget. Section 114 also requires the Council to provide its Chief Finance Officer with such staff, accommodation and other resources as are in his opinion sufficient to allow his duties under that section to be performed. When a decision may involve unlawful expenditure or a loss or deficiency or an unlawful item of account as a result of the exercise of executive functions then the Chief Finance Officer must submit his/her report to the Executive. He or she must also send copies of the report to every Member of the Council and the External Auditor.

The Executive must consider the report within 21 days and all action in respect of the report must be suspended until it has been considered by the

Executive. This is referred to as the "prohibition period". After considering the report the Executive must provide a report to the Council, the Chief Finance Officer and the External Auditor explaining what action if any is to be taken and the reasons for that action or for not taking action.

- **Local Government Act 2000** - the Chief Finance Officer and the Monitoring Officer have a role in advising whether particular decisions are likely to be contrary to the policy framework or budget of the Council. The Council must ensure that the Chief Finance Officer and the Monitoring Officer have access as necessary to meetings and papers and that Members must consult with him/her regularly. The model Code of Conduct for Members requires Members to have regard to advice provided by the Chief Finance Officer in any formal report that s/he submits under section 114 of the Local Government Finance Act 1988.

The Chief Finance Officer (like the Head of Paid Service & the Monitoring Officer) may not be suspended for more than 2 months for the purpose of investigating misconduct unless it is in accordance with the recommendation in a report made by an independent person.

The Section 151 role is categorised under the 2000 Act as a non-executive function and the Chief Finance Officer is designated as a "Statutory Chief Officer". This means that his/her appointment is the responsibility of the Council and not the Executive. The appointment cannot be delegated to the Head of Paid Service or his/her nominee.

- **Accounts and Audit Regulations** - the Accounts and Audit Regulations 2003 emphasise the need for effective Finance management and sound systems of internal control. They require that the Council should maintain an adequate and effective system of internal audit for their accounting records and control systems. It is a function of the Chief Finance Officer to direct Internal Audit and ensure that it is adequate for the Council's purposes.

- **Local Government Act 2003** - the Chief Finance Officer is required to: Report to the Council at the time that the budget is considered and the Council Tax set on both the robustness of the budget estimates and the adequacy of Finance reserves. He/she must ensure that the guidelines and ratios set down for the purposes of Prudential Capital regime are adhered to once fixed and report to Council if they are going to be infringed.

B. The Position and Influence of the Director of Resources

At Burnley Council, there is a single Chief Finance Officer designated as the Director of Resources who is a qualified member of a specified accountancy body and who is vested with the statutory responsibilities for maintaining Finance administration and stewardship including the responsible Finance Officer duties and with strategic and corporate roles.

The Director of Resources is a member of the The Council's Management Team with specific responsibility of ensuring that finance and funding implications are factored into discussions from the outset. The Director has

rights of access to all meetings of the Executive, Council and its committee and panel meetings. This right shall include the right to address all those bodies.

In order to ensure that there is an appropriate and clearly defined division of responsibilities for the corporate management of the Council such that no one individual has unfettered powers of decision, the role of Director of Resources/Chief Finance Officer should not be combined with the role of Chief Executive.

In order to ensure that the statutory duties are discharged effectively the Director of Resources should be able to control and influence both the work programme of Internal Audit in relation to those duties and the quantity and quality of staff made available to undertake the relevant internal audit projects.

C. Key Roles and Activities of the Director of Resources

Maintaining strong Finance management underpinned by effective Finance controls - the key activities that the Director of Resources is responsible for in this area are:

Advising on corporate risk management including safeguarding assets, risk avoidance and insurance - this will encompass having a systematic risk management strategy;

Advising on effective systems of internal control and putting these in place. These will include Finance controls;

Providing a formal assurance or commentary as to the effectiveness or otherwise of the internal control environment;

Ensuring that Finance management arrangements are sound and effective;

Ensuring a prudential Finance framework is in place so that the Council keeps its commitments in balance with available resources and monitors these;

Ensuring that budget calculations are robust and reserves adequate (his/her view of adequacy expressed to the budget making Council meeting) and that a sound medium term Finance strategy exists for both revenue and capital spending;

Securing effective arrangements for prudential borrowing and treasury management including compliance with CIPFA Codes on Capital Finance and Treasury Management;

Ensuring that there is an effective Internal Audit function including the right of independent access to Officers and Members;

Securing effective systems of Finance administration;

Ensuring that statutory and other accounts and associated claims and returns in respect of grant are prepared - this would include certifying that the annual Statement of Accounts presents fairly the Finance position and transactions of the Council;

Contributing to Corporate Management and Leadership - the key activities in this area are:

Playing a full part in the Council's policy and strategy development, ensuring that resourcing issues are taken into account;

Providing input to key policies which contribute to the demonstration of effective corporate governance arrangements (Anti-Fraud and Corruption Strategy, Code of Corporate Governance, Risk Management Policy and Strategy, Whistle-blowing etc.);

Maintaining strong working relationships with leading Members, Executive Members, Senior Management Team Officers and the Council's partners;

Ensuring that the Council's Finance resources are well managed giving timely, accurate and impartial Finance advice and ensuring that there are rigorous processes for constructing and monitoring budgets.

Supporting and advising democratically elected representatives - the key activities in this area are:

Providing advice to Members on developing an overall Finance strategy that serves policy and service objectives;

Advising Members in identifying priorities setting the budget and identifying how resources will be used;

Helping Members to monitor Finance performance against budgets including the provision of Finance monitoring information and regular reports;

Providing training for Members so that they will be able to undertake their duties with regard to finance;

Ensuring that all Members of the Council, not just Executive Members, receive advice and information.

Supporting and advising Officers in their operational roles - the key activities in this area are:

Ensuring that there is an effective approach to Finance management including widespread understanding of the role of finance and the importance of sound Finance management;

Advising Officers of the Finance consequences of development proposals and partnership opportunities and risks to support strategy development;

Ensuring that the Council's resources are well managed including the provision of Finance information to facilitate the efficient and effective use of resources;

Ensuring that budgets are properly managed by making clear Officers' roles and responsibilities and ensuring that budget managers have access to Finance skills and information;

Ensuring that Finance advice and information is provided in an appropriate, complete and timely fashion;

Leading and Managing an effective and responsive Finance service - the key activities in this area are:

Demonstrating accountability to Members of the Public by providing robust Finance and performance information including at Council Tax consultation and during the inspection of the accounts;

Establishing good professional working relationships with External Auditors, Inspectors and other statutory agencies;

Ensuring that the services provided by Finance are in line with the expectation and needs of internal stakeholders;

Ensuring that high standards of performance are in place throughout the function;

Exercising leadership of the function by conducting him/herself in accordance with highest standards of personal and professional behaviour;
Acting as Head of Profession for all finance staff in the Council.

D. Working Arrangements

It is important that Members and Officers work together to promote the Finance health of the Council. The Director of Resources plays a key role in this and it is vital that Members and Officers work with the Chief Finance Officer (and his/her staff) to enable him/her to discharge his/her statutory responsibilities and other duties. The following arrangements and understandings between the Chief Finance Officer, Members and Chief Officers are designed to ensure the effective discharge of the Council's business and functions.

The Director of Resources must:-

Be alerted by Members and Officers to any issue(s) that may become of concern to the Council, including in particular, issues around the Finance affairs of the Council and probity that are likely to (or do) arise;

Have advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the Council at which a binding decision of the Council may be made (including a failure to take a decision where one should have been taken) at or before the Council, the Executive, committee meetings and/or Executive Team (or equivalent arrangements);
Have formal input into all reports to Council, the Executive, committees and/or Executive Team, which have Finance implications;

Have the right to attend any meeting of the Council (including the right to be heard) before any binding decision is taken by the Council (including a failure to take a decision where one should have been taken) at or before the Council, Executive, Committee meetings and/or Executive Team (or equivalent arrangements);

In carrying out any investigation(s), have unqualified access (subject to overriding legal constraints) to any information held by the Council and to any Member or Officer who can assist in the discharge of his/her functions;

Ensure the other statutory Officers (Head of Paid Service and the Monitoring Officer) are kept up-to-date with relevant information regarding any Finance or probity issues that are likely to (or do) arise;

Meet regularly with the Head of Paid Service and the Monitoring Officer to consider and recommend action in connection with Corporate Governance issues and other matters of concern regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;

In accordance with statutory requirements, make a report to the Council as necessary, on the staff, accommodation and resources s/he requires to discharge his/her statutory functions;

Have an effective working liaison and relationship with the Leader of the Council, Deputy Leader and the Chairs of Audit & Standards Committee and Scrutiny Committee with a view to ensuring the effective and efficient discharge of Council business;

Have an effective working liaison and relationship with the External Auditor;

Oversee the implementation and monitor the operation of the Code of Corporate Governance and report annually to the Audit & Governance Committee on compliance with the Code, in conjunction with the Monitoring Officer;

Appoint as a deputy the Head of Finance and keep him briefed on any relevant issues that he may be required to deal with in the absence of the Chief Finance Officer. The Deputy will only act in the absence of the Chief Finance Officer if urgent action is required which cannot await his/her return. To ensure the effective and efficient discharge of the arrangements set out above, Members and Officers will report any breaches of Council Finance policies or procedures to the Chief Finance Officer, as soon as practicable. Where the Chief Finance Officer receives information of a potential Finance irregularity s/he shall authorise the investigation of it by Internal Audit and shall report regularly to the Standards Panel on the progress in dealing with that matter. S/he will have power to insist on the carrying out of any action points in the final audit report's recommendation in consultation with the Standards Panel.

To ensure the effective and efficient discharge of this Protocol, the Council will ensure adequate insurance and indemnity arrangements are in place to protect and safeguard the interests of the Council and the proper discharge of the Director of Resources role.