

## Corporate Scrutiny Committee – 9 January 2024

### Written question from Cllr Chris Jarman to the Corporate Scrutiny Committee

#### Background:

The current IWC Constitution of 13th October 2023 page 223 provides for the submission of multiple proposed budgets and for potential amendments to each. The relevant clause from our Constitution states: "In relation to budget proposals: (a) The Leader and Cabinet are entitled to confidential information and discussions with officers regarding options and proposals. These will remain confidential until determined by the Executive or until published in advance of Cabinet/ Committee/ Council meetings, whichever is the earlier; and (b) Opposition groups are also entitled to confidential information and discussions with officers to enable them to formulate alternative budget proposals. These will remain confidential until determined by the respective political groups or until published in advance of Cabinet/Committee/ Council meetings, whichever is the earlier. Officers giving such advice must not be named in public."

Since mid-November 2023, 'Opposition groups' have declared their intention of submitting an 'alternative budget proposal' and specifically that this would be a full budget and not merely a budget amendment. Such work necessarily requires access to confidential information and officer resources. Multiple engagements with each of the Statutory Officers has failed to establish a common understanding of the interpretation of our Constitution above with the result that the data required has not been provided. The Statutory Officers have sought, contrary to the explicit provisions in our Constitution, to limit budget submissions only to amendments to any Alliance proposal, and then only providing amendments are not substantial.

The consequence of this has been to significantly delay progress and potentially to thwart submission of an alternative budget proposal by opposition Groups, contrary to our Constitution. We are now advised that due to the delay some policy measures cannot be included as the consultation time is insufficient – for example increasing Council Tax Relief by up to 100% by combining the existing core and discretionary programmes with no net increase in budget and potential savings in management costs.

It is critical that the interpretation of our Constitution is agreed, and that Statutory Officers recognise that their actions over the past 6 plus weeks have not met the provisions of our Constitution.

#### Question:

Will Corporate Scrutiny therefore confirm the following?

Corporate Scrutiny confirms its interpretation of our Constitution as below and requires all Statutory Officers to now fully adhere to this interpretation and to provide all data and support required to opposition groups and/or ungrouped Members to enable them to prepare and submit full budget proposals and/or budget amendments.

1. 'Groups' is to be taken as meaning Group, Groups or ungrouped Members.
2. All Groups are entitled to submit alternative full budget proposals and/or budget amendments. This entitlement is not limited to the current Cabinet but is a right available to all Groups.
3. Officers are required to provide necessary data and support to enable such preparations and submissions.
4. The Constitution provides equal clauses of entitlement to Cabinet and to other Groups. There is no provision for limiting access only to Cabinet or to making data available to Cabinet first or to making the release of data conditional upon Cabinet permission as has been wrongly claimed by Statutory Officers. All Groups are entitled to receive factual data, officer mitigation options and all other budget preparation material concurrently and at the same time as such material is available to Officers and/or to Cabinet.
5. Budget preparations, proposed new policies, option selections and submissions by Groups will be held in confidence by Officers until published by or otherwise made public by the respective Groups.
6. Resources necessary to discussions and budget preparation will be fully available to Groups including officers' articulation of their current and future respective departmental financial pressures, discussion of mitigation options and analysis of Groups policy contributions.
7. This clarity confirms the explicit entitlement defined in our current Constitution.

## ***Response***

*This matter was discussed by the Corporate Scrutiny Committee at its meeting held on 9 January 2024, under Minute item 63 - Budget Proposals 2024-25. It was:*

**RESOLVED:**

***THAT the three statutory officers be requested to provide a written response to the written question (MQ-01/24), to be reported back to the questioner and the Corporate Scrutiny Committee within seven days. (overleaf)***

## Corporate Scrutiny Committee – 9 January 2024

### Written points from Cllr Chris Jarman to the Corporate Scrutiny Committee

1. 'Groups' is to be taken as meaning Group, Groups or ungrouped Members.

*Yes, agreed.*

2. All Groups are entitled to submit alternative full budget proposals and/or budget amendments. This entitlement is not limited to the current Cabinet but is a right available to all Groups.

*In light of the significance in law of the council's responsibility to set a Budget and follow proper process and ensuring that the Council understands the respective roles and responsibilities of forming a budget, the council has sought external legal advice from a former monitoring officer who now works within a private practice. The advice is attached in full but a summary is set out below that addresses particular aspects of the questions raised.*

*The cabinet, who are the council's executive, is responsible for all "executive functions", which comprise the majority of a Council's business. Non-executive functions remain the preserve of the full council, exercisable by the full council itself, or by a committee, subcommittee or officer as a delegatee. Those non-executive functions include approving the budget at the February full council budget meeting.*

*The Executive are a legally defined entity with specific statutory duties defined by legislation. The use of the term "administration" whilst a common shorthand can result in this crucial point being missed and the assumption arising that the group in power have rights because of their numbers / status rather than the legal position of the Executive.*

*However, whilst approving the budget is by law a matter for Full Council, under regulation 4(9)–(11) of Local Authorities (Functions and Responsibilities) (England) Regulations 2000, the cabinet must prepare and submit to the full council estimates of the amounts to be aggregated for the purposes of those calculations. The specific wording in the 2000 Regulations which states this is an executive functions is as below:*

*(a) the preparation, for submission to the authority for their consideration, of—*

*(i) estimates of the amounts to be aggregated in making the calculation or of other amounts to be used for the purposes of the calculation and estimates of the calculation; or*

*(ii) the amounts required to be stated in the precept;..*

*Therefore, the preparation of the estimates forming the submission to full council for their consideration to become the budget is the sole responsibility of the cabinet. It is for this reason that it is the Cabinet's proposed budget that forms the agenda item and against which amendments may be tabled.*

*Any councillor may submit alternative budget proposals/amendments to the cabinet budget, provided they are seconded, lawful and otherwise in accordance with the council procedural rules, such as being approved by the s151 officer. Those amendments may be called alternative budgets but they are nevertheless amendments to the proposal that the cabinet are by law obliged to table. Those amendments may be minor or significant and this is matter for the councillor(s).*

*There is no other lawful entity that has the duty or power to prepare and submit a Budget to full council, although alternative budgets may be submitted as an amendment to the degree that they have been approved as lawful.*

*The Council's Constitution is clear in terms of rules of procedure. The Constitution also cannot overrule a duty placed by Parliament on the Executive. Almost all councils describe opposition amendments as alternative budgets or something similar. And in moving their amendments opposition members will describe them as their alternative budget (or similar). But such alternative budgets are amendments to the budget proposals submitted by the Executive. This is made very clear in the Council's Constitution Procedure Rules. And it is a legal duty on the Executive.*

- 3.** Officers are required to provide necessary data and support to enable such preparations and submissions.

*Opposition members have a right to propose alternative budget proposals/amendments to that budget and are entitled to data and access to support as set out above.*

*As set out above, in an executive form of governance the formation of the budget proposal is an executive function and therefore a matter for Cabinet, the practicalities of this mean that the resources available are not unlimited as capacity is not unlimited and is also timing driven.*

*Officers work for and serve the local authority as a whole. Nevertheless, as the majority of functions will be the responsibility of the Executive, it is likely that in practice many Officers will be working to the Executive for most of their time.*

*The Executive have a statutory duty to prepare in essence a budget for Full Council to approve. Opposition members have a right to propose amendments to that. Both are entitled to support but to suggest that they should be equal ignores the different status.*

4. The Constitution provides equal clauses of entitlement to Cabinet and to other Groups. There is no provision for limiting access only to Cabinet or to making data available to Cabinet first or to making the release of data conditional upon Cabinet permission as has been wrongly claimed by Statutory Officers. All Groups are entitled to receive factual data, officer mitigation options and all other budget preparation material concurrently and at the same time as such material is available to Officers and/or to Cabinet.

*Any councillor(s) wishing to submit alternative budget proposals/amendments to the cabinets budget are entitled to have access to finance staff, access to Directors, information as to the Council's financial position, published data on in year financial positions, and service budget details.*

*But what information the Executive seek, their discussions and their proposals remain confidential until they choose to disclose them or they are formally made public during the budget process prior to the meeting of the Executive on 8 February 2024.*

*If opposition councillors seek detailed information from officers as to what the cabinet are thinking, officers cannot supply that. But if the Opposition members happen to pursue a similar line to Cabinet' proposals, and seek information on that, that is acceptable. However, the Cabinets budgetary proposals and discussions behind that remain confidential until determined by the Cabinet or until published in advance of Cabinet/Committee/Council meetings, whichever is the earlier.*

*This is one reason why work on any opposition amendments is undertaken after the executive's budget proposal have been completed. As time is then tight, it is also the case that sometimes amendments have to be at least in part qualified as being subject to due diligence / financial appraisal*

5. Budget preparations, proposed new policies, option selections and submissions by Groups will be held in confidence by Officers until published by or otherwise made public by the respective Groups.

*Agreed.*

6. Resources necessary to discussions and budget preparation will be fully available to Groups including officers' articulation of their current and future respective departmental financial pressures, discussion of mitigation options and analysis of Groups policy contributions.

*This is being facilitated through meetings with Directors and Service Directors within the parameters set out in the responses to the questions above.*

7. This clarity confirms the explicit entitlement defined in our current Constitution.

*Noted*