

AUDIT COMMITTEE	AGENDA ITEM NO. 5
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THE COUNCIL'S AUTHORITY TO ALLOCATE MONEY TO PROJECTS SUCH AS THE INVEST TO SAVE SCHEME

R E C O M M E N D A T I O N S	
FROM : Kim Sawyer, Head of Legal Services and Monitoring Officer	Deadline date : None
<p>It is recommended that Audit Committee:</p> <ul style="list-style-type: none"> • Reviews the update provided in respect of the Invest to Save Scheme's decision making process; and • Considers guidance on the Council's authority to allocate money to projects such as the Invest to Save Scheme. 	

1. ORIGIN OF REPORT

1.1 This report is submitted to Audit Committee as an update from the Head of Legal Services and Monitoring Officer on the Council's authority to allocate money to projects such as the Invest to Save Scheme.

2. PURPOSE AND REASON FOR REPORT

2.1 At the meeting of 24th June 2013 the Committee received a report from PwC concerning their external findings on the decision making process for the Invest to Save Scheme. The Committee was advised that a scope of work was conducted at a request of the Audit Committee to explore the decision making process and whether it was in line with the Council's Constitution and whether the three project schemes within the Invest to Save Scheme funds had been conducted in accordance with the set of principles that were set out in the budget book presented to full Council of 22nd February 2012. The Committee were informed that PwC were not minded to challenge the Council on the allocation of Invest to Save funding to date.

2.2 The purpose of this report is to meet the Committee's request to be provided with an overview of the Council's authority to allocate an unspecified amount of money to projects such as the Invest to the Save Scheme and, in particular, to set out factors and requirements which members of the Council must consider when reaching decisions in relation to the Invest to Save Scheme.

3. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	N/A
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4. ISSUES AND BACKGROUND

- 4.1 Invest to Save is described as ‘venture capital’ for the public sector and gives additional cash sums, in addition to main funding sources, to experiment with original ideas. The Invest to Save budget will only see funds allocated where a return on the investment, increased income or savings, is the expected outcome of the project. Individual proposals are be prioritised based on return on investment and service improvement criteria set out by each project.
- 4.2 A generic scheme, such as the Invest to Save Scheme, is made up of one identified provider of funding but constitutes a number of projects, concerning the exercise of a number of functions and the delivery of a number of services, some of which are statutory duties and some discretionary in their nature. That single provision of funding for the Scheme may, in itself, be made up of a number of sources, be that Council funding, government funding, grant or commercial income.
- 4.3 Aside from asking who may make these decisions, there are two principal considerations on the Council’s legal authority to operate a general scheme like the Invest to Save Scheme. The first concerns the ability to establish the Invest to Save Scheme as a budget fund and the purpose behind that intended allocation of spending. The second is the individual application of spending under the Scheme as a project, questioning the legality of the means and outcome of the individual project itself and the legal implications arising from the way that the project may affect the delivery of service or exercise of responsibility of the function concerned.
- 4.4 The allocation of funding to individual projects under the Invest to Save Scheme should therefore be looked at in its individual parts, the establishment and purpose of the scheme and the allocation and implementation of the project under the scheme.

5. ESTABLISHMENT OF THE SCHEME

- 5.1 Regardless of its source, and of any strings attached to that source such match-funding, ring-fencing and so forth, the authority for Cabinet to spend that money derives from the Council’s Budget. The revenue Budget is made up of a number of ‘funds’ making up the Council’s estimates for the following year¹.
- 5.2 Put simply, except where the law says otherwise, every single function of the Council falls to be exercised as a responsibility of the Leader of the Cabinet. The agreement of the Budget is one of those exceptions, the formulation of which is a responsibility of the Leader but the final determination is the responsibility of Full Council.²
- 5.3 Once agreed, the Leader and those authorised to make executive decisions under his or her scheme of delegation are bound by the limitations set out in the Budget. The only exception is for where monies may be moved between budget headings (virement), the limits of which are set by Council at the same as the Budget is agreed.
- 5.4 This process is set out in mandatory standing orders³ and explained in the Council’s Budget and Policy Framework Procedure Rules⁴. These rules include a particular form of call-in for Members, or advice sought by the decision maker, where the opinion of the monitoring officer or s.151 officer is given as to whether certain expenditure is within the confines of the Budget or not. Any proposed expenditure by the executive outside of the Budget or virement limits must be referred back to Council for approval.

¹ *As defined by the Local Government Finance Act 1992*

² *Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended)*

³ *Schedule II, Local Authorities (Standing Orders) (England) Regulations 2001*

⁴ *Part 4, Section 6 of the Constitution*

- 5.5 In respect of the Invest to Save Scheme, the Council agreed to set aside £100M within a budget heading for this purpose, which may then be supplemented with reinvested income from the Scheme, central government grants to kick start particular Invest to Save projects and so forth.
- 5.6 The power of the Council to establish such a fund can be seen to derive from two sources, which would need to be considered in formulating the Scheme. The ‘power of first resort’ (as it has become known) is that the Localism Act 2011 granted to the Council the power *“to do anything that an individual person generally may do”*. It should always be noted that this is limited to the actions of a natural person, not a corporation or governmental body, and has associated with it a multitude of exceptions⁵. Beyond that, the Council is specifically empowered *‘to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions’*⁶.
- 5.7 The Invest to Save Scheme encompasses the development of projects that will either save the Council money or generate income and, over the period of the Medium Term Financial Strategy (MTFS) the Council needs investment to deliver on its priorities. The purpose of the Scheme is thus to better deliver the authority’s functions within the financial world it finds itself in. The decisions of Full Council in establishing the Invest to Save Scheme fund as part of the Budget, and of the Leader and Cabinet in agreeing and implementing the funding of individual projects under the Scheme fund, fall squarely within those legal powers granted to the Authority.
- 5.8 As expenditure within the Scheme has remained within the limits of this fund, the Leader and Cabinet are thus considered to be fully authorised and at liberty to determine the allocation of those monies to such projects as they think fit, subject to the law associated with each individual decision and function associated with the particular project concerned.

6. ALLOCATION OF MONIES TO PROJECTS UNDER THE INVEST TO SAVE SCHEME - POLICY AND PROCESS

- 6.1 In policy terms the Council has recognised the need to deliver efficiencies, seek additional funding and periodically review both the consumption of the capital reserves and stated priorities in order to achieve its objectives. It ensures this happens through four core principles. Promoting capital investment which enable Invest to Save outcomes is part of Principle one - ‘Managing the impact of investment decisions on revenue budgets’.
- 6.2 The capital programme contains funding for Invest to Save Schemes. This budget is included on the basis that any projects funded via this budget will deliver savings to the Council, for example renewable energy schemes. Business cases for future proposals are required to demonstrate how the cost of borrowing will be covered, e.g. through income generation etc. Therefore, each scheme will be self-financing with Invest to Save Schemes have no overall impact against the Council’s bottom line.
- 6.3 The following set of principles are applied in the assessment of each scheme:
- Each project needs to complete the Council’s standard full business case. This includes the required officer evaluation and approvals as for all business cases.
 - Schemes should deliver savings that improve the financial position of the Council as presented in the MTFS.
 - Schemes will also be considered that maintain the MTFS, but contribute towards delivery of service improvements, or contribute to achievement of Council priorities.

⁵ Part 1, Localism Act 2011

⁶ S.111, Local Government Act 1972

- The MTFSS assumes that payback from schemes commence in the same year the project starts. If this is not the case, proposals will need additional analysis in the business case.
- Proposals will need to be subject to the Council's decision making requirements, e.g. any schemes above £500k will be subject to a CMDN approved by the Cabinet Member for Resources and the relevant portfolio holder.

7. ALLOCATION OF MONIES TO PROJECTS UNDER THE INVEST TO SAVE SCHEME - AUTHORITY AND LEGALITY

7.1 In coming to decisions in general the Council and Councillors will have various duties. The Council must act in accordance with its statutory duties and responsibilities, including public sector equality duty, crime reduction, etc. The Council must act reasonably and must not breach its fiduciary duty to its ratepayers and taxpayers.

7.2 Preceding that stage to invest in each project, the business case will be considered in terms of its exercise of the individual function or functions of the Council concerned.

7.3 The measures related to the Invest to Save Scheme will almost all be executive functions that are the responsibility of the Cabinet and Leader. Where they are not, such as a liquor licensing measure⁷, the decisions would be taken in partnership with the relevant Committee as appropriate.

7.4 To establish whether the particular invest to save proposal is legal, therefore, it is a measure of the assessment of the business case that it asks the right questions concerning that proposal. These include:

- Is there a duty to perform this function?
- If a use of the Council's general power of competence, are there any limitations on exercising this function?
- Are there any statutory minimum levels of service or professional or statutory rules associated with the performance of this function?
- Could the implementation of this proposal diminish the current standards of service, particularly if that could mean the service falls below that minimum standard?
- Are there contractual implications to the delivery of this project?
- Are there employment or accommodation implications to the delivery of this project?

7.4 Each of those questions may lead to an insistence on legal research or a form of due diligence to be carried out before the project can be recommended to the Cabinet member for approval.

8. IMPLEMENTATION

8.1 This process of assessment does not, and should not, stop at the moment of allocation. The business case will include details of project management and project governance. That project governance, the project manager (alone in smaller projects) and through the lawyer allocated to the project team (in large projects) will ask the questions relevant to the initial assessment throughout the life of the project.

8.2 Risk management is a key aspect of any project and this includes legal risk, be that in terms of the Council's transactions with others or the Council's statutory and common law duties to act in the public interest. Accordingly, negative implications for the Council's contractual, legal or reputational position will be referred through the governance arrangements for assessment and decision.

⁷ *By virtue of s7 of the Licensing Act 2003 All matters relating to the discharge by a licensing authority of its licensing functions are referred to its licensing committee and, accordingly, that committee must discharge those functions on behalf of the authority*

8.3 An update on schemes be included in future financial reports to Cabinet during the year.

9. CONSULTATION

9.1 There has been consultation between the Council's Monitoring Officer and the Deputy Monitoring Officer/Legal and Governance Lawyer.

10. ANTICIPATED OUTCOMES

10.1 That Audit Committee notes the position.

11. REASONS FOR RECOMMENDATIONS

11.1 To update the Audit Committee on the position of the Invest to Save Scheme's decision making process and the Council's authority to allocate money to such projects.

12. ALTERNATIVE OPTIONS CONSIDERED

12.1 The purpose of this report is to update the Committee, therefore no alternative options have been considered.

13. IMPLICATIONS

13.1 There are no financial or legal implications arising from this update paper.

14. BACKGROUND DOCUMENTS

14.1 All background documents used in the drafting of this report have been referred to within the report.

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