

Brighton & Hove City Council

Policy & Resources Committee

Agenda Item 103

Subject: General Fund Budget Process and Resources Update

Date of meeting: 19 January 2023

Report of: Chief Finance Officer

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Ward(s) affected: All

For general release

1 Purpose of the report and policy context

- 1.1 This report provides an interim update on the forecast position for the current financial year, 2022/23, as well as updating on the projected funding and resource position for next year, 2023/24, following the publication of the provisional Local Government Financial Settlement.
- 1.2 The report also provides information about the budget process including the guideline criteria used to help inform options for investments, service pressure funding and savings, together with information about a Budget Categorisation exercise that has been undertaken to provide an alternative analysis of the different types of budgets that the council is responsible for as a further aid to informing the development of options.
- 1.3 Finally, the report seeks agreement to a Budget Protocol that will determine the process for receiving and signing off alternative budget proposals (budget amendments) and provides important advice to all members regarding the legal requirements and responsibilities for setting the Council Tax and approving a balanced budget.

2 Recommendations

- 2.1 That the Policy & Resources Committee notes the Legal Advice regarding the setting of the Budget and Council Tax in Section 8 and Appendix 1 and notes that this will be provided to all councillors for the Budget Council meeting.
- 2.2 That the Policy & Resources Committee agrees the Budget Protocol set out in Section 7 of the report.
- 2.3 That the Policy & Resources Committee notes the latest interim forecast for 2022/23, indicating a General Fund outturn overspend of £10.601m.
- 2.4 That the Policy & Resources Committee notes the latest resource position for 2023/24 indicating an overall budget shortfall of £20.929m with a remaining budget gap of £8.333m to be addressed in order to achieve a balanced budget.

- 2.5 That the Policy & Resources Committee notes the Guideline Criteria and Budget Categorisation information used to inform the development of budget options, including savings proposals.

3 Interim Revenue Budget Forecast 2022/23 (Month 8, November)

- 3.1 The council's financial monitoring process, Targeted Budget Management (TBM), is updated on a monthly basis and reported periodically to Policy & Resources Committee, usually to around 5 meetings per annum. This is due to the timing and availability of meetings and how this fits with the monthly timetable for generating and collating forecasts from across the authority.
- 3.2 The next scheduled report is to February Policy & Resources Committee which will receive the forecast position as at Month 9 (December). This forecast is all important because any forecast under or over-spend impacts directly on the availability of one-off resources to support the following year's budget. An underspend will increase available resources, while an overspend will reduce resources and must be covered by drawing down existing one-off resources, including reserves.
- 3.3 Given the very challenging forecast overspends experienced this year, driven by high inflation, higher than anticipated pay awards, and other impacts on demand caused by the cost-of-living and economic situation, an interim forecast is provided here to keep members abreast of the latest position. A summary is provided with full details to be provided to February Policy & Resources Committee as normal.
- 3.4 The latest position at Month 8 (November) indicates an improvement of approximately £1m from Month 7 with the forecast overspend now standing at £10.601m. This is summarised across directorates as shown in the table below.

Forecast Variance Month 7 £'000	Directorate	2022/23 Budget Month 8 £'000	Forecast Outturn Month 8 £'000	Forecast Variance Month 8 £'000	Forecast Variance Month 8 %
3,173	Families, Children & Learning	103,668	106,884	3,216	3.1%
587	Health & Adult Social Care	75,204	75,732	528	0.7%
2,447	Economy, Environment & Culture	42,809	44,746	1,937	4.5%
862	Housing, Neighbourhoods & Communities	26,166	26,322	156	0.6%
1,241	Governance, People & Resources	31,730	32,803	1,073	3.4%
8,310	Sub Total	279,577	286,487	6,910	2.5%
3,327	Corporately-held Budgets	(34,708)	(31,017)	3,691	10.6%
11,637	Total General Fund	244,869	255,470	10,601	4.3%

- 3.5 This remains a very significant overspend and would severely impact on reserves and balances if sustained at this level. Recruitment and spending controls previously reported to Policy & Resources Committee will therefore remain in force until the end of the financial year to mitigate the position as far as possible. Early implementation of increases to fees & charges will also be considered wherever possible via the January Service Committee cycle.
- 3.6 If a large overspend is forecast at Month 9, consideration will need to be given as to how this can be managed, with options set out in the General Fund budget report alongside any other demands or calls on one-off resources. However, it should be noted that the previous forecast for the Council Tax and Business Rate Collection Funds indicated a combined net deficit of £3.309m due to the economic situation and continuing high numbers of Council Tax Reduction Claimants, alongside the third and final repayment of the deficit sustained during the pandemic. This would also need to be funded from one-off resources.

4 General Fund Budget and Resource Update 2023/24

- 4.1 The Local Government Financial Settlement (LGFS) for 2023/24 was announced on 19 December. The announcement follows on from a 'Policy Statement' issued by government on 12 December which set out the principles and mechanisms the government will apply to Local Government funding over the next 2 years (i.e. remainder of this government's normal term). The Policy Statement contained both positive and negative financial impacts for the council but the net overall impact is negative compared to the resources estimated to be provided from the earlier Autumn Statement.
- 4.2 The LGFS subsequently confirmed the detailed outcome of the Autumn Statement and Policy Statement for each local authority in the country. The overall impact of the LGFS is a decrease in resources compared to those expected to be provided by the Autumn Statement. The main reasons for this are:
- Government is protecting local authorities for the loss of revenues from the freezing of Business Rates but has elected to provide protection based on the lower CPI rate rather than RPI which had always been used in previous years;
 - Government has chosen to protect local authorities with resource increases of less than 3% (mainly non-social care authorities) and has removed the Lower Tier Grant in order to fund this. This council will not benefit from this and therefore loses this grant;
 - The government has top-sliced the Services Grant (effectively Revenue Support Grant) to fund the Supporting Families programme. This is effectively a cut in funding.
- 4.3 Overall, the financial settlement is expected to provide additional funding and resources of approximately £18.2m through a mixture of social care and other grants, an allowable Council Tax increase assumed at 2.99%, and an Adult Social Care precept assumed at 2%. However, this is £2.039m lower than estimated from the Autumn Statement for the reasons outlined above.
- 4.4 While the settlement provides a significant increase in resources it does not even cover the impact of inflation on the cost of services, which is estimated

at £22.5m. This primarily relates to the higher cost of pay awards and increases in social care provider costs, together with other inflationary impacts on energy, supplies and transportation. When other demographic changes (increases in demand), cost pressures and income pressures are added (mainly driven by economic conditions that are suppressing fees & charges incomes), this brings total cost pressures up to £39.1m. When compared to the increase in funding of £18.2m, this means that the council is now facing a budget gap of £20.9m for 2023/24; an increase of £2m compared to the estimated gap advised in the Draft Budget report to Policy & Resources Committee on 1 December.

- 4.5 The Draft Budget report to Policy & Resources Committee included first draft savings proposals of £12.6m toward meeting the budget gap. Assuming that these remain intact and were to be accepted by Budget Council in February, this would reduce the gap to £8.3m which will need to be addressed to achieve a legally balanced budget.
- 4.6 The situation for 2023/24 is therefore very challenging due primarily to abnormal inflationary impacts, resulting in a very large budget shortfall when compared to the resources available from government grant and allowable local taxation. It is, however, a legal requirement for local authorities to set a balanced budget. The council must address any projected budget shortfall (gap) and officers have therefore continued to develop options for addressing the remaining budget gap of £8.3m next year. This is likely to mean identifying increasingly more challenging proposals that will need to consider the impact on services and residents.
- 4.7 Like many councils across the country, the council's financial position means that it will need to consider which services it can afford to continue to provide at the current level of service but must, in the first instance, ensure that it is able to fulfil its statutory responsibilities and duties. Further savings proposals will therefore need to be brought forward to the February Policy & Resources Committee and Budget Council for all councillors to consider when setting the Council Tax and approving the budget for 2023/24.

5 Developing Options for the 2023/24 Budget

Scenario Planning

- 5.1 The 'General Fund Budget Planning & Resources Update 2023/24' report to July Policy & Resources Committee set out potential scenarios for the 2023/24 budget based on best, midpoint and worst case estimates of inflation, demographic changes (demand), funding, and resources (taxation). This indicated potential budget shortfalls ranging from £13m (best case), to £21m (midpoint), and £31m (worst case). Officers embarked on developing savings proposals to address the minimum shortfall (£13m), together with additional 'back-stop' proposals to address the midpoint shortfall (£21m) until further information was available from government. As noted above, at the Draft Budget stage, first draft proposals of £12.6m have been identified.

Developing Options

- 5.2 The development of budget savings proposals requires directorates to review all activities and services and consider potential savings opportunities which can come from:

- Efficiencies through changing or modernising processes or utilising new systems or technologies;
- Economies through procurement savings, commissioning or providing services differently, working through partnerships, or by re-providing services with alternative, lower cost provision;
- Generating additional income from fees and charges;
- Stopping, closing or reducing non-statutory services.

However, the council provides a very wide range of services and therefore some consideration of how savings opportunities align with the council's overall priorities and statutory responsibilities is important. The criteria set out in Appendix 2 have therefore been developed and can help to inform the development of options by using the rating scale as a guide to assessing the contribution that services and/or proposals make to identified priorities. This is not a precise exercise and there is inevitably a level of subjectivity but it provides a useful framework for members and officers to review and compare options. In summary, the criteria enable consideration of how much a service, investment or saving supports or detracts from the following Corporate Plan objectives:

- Long-term Financial Sustainability
- Community Wealth Building Potential
- Contribution to 2030 zero net carbon target
- Addresses Housing & Homelessness Pressures
- Supports a diverse, welcoming & tolerant city
- Supports Health and Wellbeing
- Supports those facing the impacts of austerity

5.3 Similarly, officers have undertaken a Budget Categorisation exercise to define the different types of services and budgets across the council and the role that they play. For example, many services are required to meet statutory duties and responsibilities such as Adult Social Care, while others are not statutory but provide essential services such as Street Lighting, while other services can generate income that help the authority to mitigate costs and overheads. Six broad categories have been identified as follows:

Budget / Service Category	Meaning / Example
Statutory	Unavoidable statutory duty or service requirement / e.g. Adult and Children's Social Care
Business Critical	Non-statutory but without these services the council could not function / e.g. Operational Buildings, IT infrastructure and networking
Income Generating	Services that generate significant incomes which, if withdrawn, would create a budget pressure or loss / e.g. Commercial Property Rents
Business Important	Non-statutory but without these services many legal, financial and service risks would increase, the council would be unlikely to function as efficiently or effectively, and/or overall costs are likely to increase /

	e.g. Support Service functions such as Procurement Team
Policy Priority	These are non-statutory, discretionary services that meet current Corporate Plan policy priorities / e.g. Welfare Support or Sustainability Services
Discretionary	Non-statutory, discretionary services that the council has elected to or has historically provided or commissioned / e.g. Early Years Nurseries

5.4 The overall analysis of the council's General Fund service budgets (excluding Schools and Housing Revenue Account) is as follows:

Budget / Service Category	Directorate £m					Total £m
	EEC	FCL	GPR	HASC	HNC	
Statutory	48.305	96.994	10.686	98.834	13.671	268.490
Business Critical	18.197	2.775	11.333	4.366	0.484	37.155
Income Generating	-37.515	-0.093	-1.184	-0.273	-0.398	-39.463
Business Important	0.328	0.704	6.941	0.591	0.320	8.884
Policy Priority	6.422	1.516	1.735	5.098	2.967	17.738
Discretionary	0.123	0.754	0.000	0.000	0.354	1.231
Total	35.860	102.650	29.511	108.616	17.398	294.035

5.5 The table shows that the great majority of services provided by the council are provided, commissioned or procured to meet statutory duties. As expected, however, this does not mean that statutory services cannot be considered for potential savings, efficiencies or economies. In fact, as many statutory services regularly experience significant increases in demand, through either growing need or demographic changes in the population, for example social care, it is increasingly important to explore different ways to meet need and demand in the most cost effective way. For social care services, this means working with partners, such as the NHS, to find ways to support people that achieve the same or better outcomes for them but at lower overall cost.

5.6 The council also has a duty of 'Best Value' requiring it to demonstrate that it continually seeks best value, i.e. good value for money, in the provision, commissioning or procurement of services. It therefore compares provision with other similar councils or providers so that it can understand how costs contrast. This is also considered by the External Auditor who provides an Annual Report commenting on the council's arrangements for securing economy, efficiency and effectiveness in the use of the resources available to it, including commenting on its governance (decision-making) arrangements.

5.7 The Budget Categorisation above provides another way to look at the council's budgets and services which can aid the development of options and indicate where to explore options in the first instance, but all savings options still need to be considered in terms of their deliverability, contribution to Corporate Priorities, and wider impact on services and residents.

Managing Risk

- 5.8 Managing risk is another key factor in developing robust budget options and savings. There are many potential savings possibilities, as identified in the draft budget proposals, however they do not all carry equal delivery risk. Some proposals can be complex to implement, may require co-ordination or agreement with partners, may require up-front spend-to-save investment to enable delivery, or may be uncertain due to demographic or market factors. The latter can apply particularly to savings relating to income generation where the price-elasticity of demand is important to understand and can vary widely for different fees & charges.
- 5.9 The council uses a Red, Amber, Green (RAG) rating approach to assess the deliverability of savings proposals. RAG ratings have been used for many years to aid budget planning but also to inform the level of overall risk inherent in the delivery of savings. Green rated proposals are those that are relatively straightforward to deliver (or have already been achieved in the current year), Amber rated proposals will usually be more complex but potentially achievable, while Red rated proposals will be very complex, may contain a number of uncertainties or working assumptions, or may require extensive consultation. The RAG rating takes into account delivery risk by considering the potential for the following factors to impact on achievement of savings:
- The outcome of consultation with partners, businesses, stakeholders or affected service users or customers or their representatives;
 - The outcome of consultation with staff and trades unions;
 - Complexity of service redesign, recommissioning, re-procurement or other processes required to achieve a saving;
 - Complexity of managing changes to, withdrawal, decommissioning or reduction of services including putting in place any alternative provision and/or managing equality impacts;
 - Complexity of changing the method of delivery of services;
 - Complexity of implementing proposed changes to fees & charges including the impact of the price-elasticity of demand.
- 5.10 For the last two years, the achievement of savings was impacted significantly by the pandemic which had a wide range of negative impacts, particularly in terms of diverting organisational capacity toward responding to the pandemic. However, the government provided significant additional resources to local authorities to buffer the impact of the pandemic and this enabled the council to manage within its budget despite the challenges.
- 5.11 The current year's economic situation is making matters much more challenging. Pandemic funding support has ended but the new and financially more serious challenge that has emerged in the form of high inflation, a suppressed economy and rising demands and costs related to the cost-of-living crisis is having a very substantial impact on the achievement of savings this financial year for which approximately 49% were at risk of non-achievement as at the end of October.
- 5.12 In previous years, the council maintained sufficient reserves and balances to cover significant under-achievement of its savings programmes. This

enabled the Section 151 Chief Financial Officer (CFO) to place reliance on reserves and balances to manage the assessed (RAG rated) delivery risks in the savings programmes each year. However, the position is now potentially different, particularly if a large overspend is sustained this financial year as a result of inflation and economic conditions, including impacting on the achievement of planned savings. An overspend would result in a call on the council's reserves and balances, meaning that they could be significantly reduced and may not be sufficient to cover the assessed risks in the savings programme next year, particularly given the much greater scale of savings potentially required.

- 5.13 The overall risk within the budget proposals will be assessed by the council's CFO who is required, under Section 25 of the Local Government Act 2003, to report on the robustness of the estimates included in the budget and the adequacy of the reserves for which the budget provides. This report has to be considered by the Policy & Resources Committee and the full Council as part of the budget approval and Council Tax setting process. If, in the opinion of the CFO, the council's reserves and balances are inadequate to meet the assessed risks within the budget proposals, including savings, the CFO will be required to advise the Council of the position and this will normally mean that further cost reductions and savings options will need to be identified within an appropriate time frame to secure the council's financial sustainability and resilience.

6 General Fund Budget Setting Process and Protocol 2023/24

- 6.1 The council has a well-established process for developing its General Fund budget proposals and putting these before councillors for decision at Budget Council in February of each year. This process has become increasingly challenged in recent years due to a range of factors including:
- (i) Successive financial settlements since 2009/10 where the resources provided by central government or allowed to be raised through local taxation have fallen well short of the growth in costs and demands faced by councils, particularly in relation to social care, resulting in the identification of large £multi-million annual savings programmes;
 - (ii) The provision of short term settlements for local government with considerable uncertainty and movement from year to year. The 2023/24 financial settlement will be the fifth single-year settlement in a row;
 - (iii) Successive governments' failure to review the system of local government finance including resolving the long-term funding of social care. Further delays to the Fair Funding Review, Business Rates review, and social care funding reform have now been confirmed.
 - (iv) Other factors including managing through the pandemic and more recently responding to economic conditions and the cost-of-living crisis.
- 6.2 However, the normal process is that in advance of Budget Council the Administration's budget proposals will have been worked up including service, legal and financial implications and incorporated in full into the General Fund Revenue and Capital Budget Report despatched for Budget Council.

- 6.3 The council's budget process allows all parties to engage in the examination of budget proposals and to put forward viable alternative budget and council tax proposals to Budget Council on 23 February 2023. Budget Council therefore has the opportunity to debate the proposals put forward by the Policy & Resources Committee at the same time as any viable alternative proposals.
- 6.4 Any proposed amendment from a Group (or Independents) will require evaluation by finance officers to determine the service, financial and legal implications of implementing those proposals. The proposals will be held confidentially from the other political Groups by the finance officers involved and all proposals will be required to be received and assessed in accordance with the protocol below.
- 6.5 A proposed change to the Budget Protocol below is to disallow Budget Amendments coming to the February Policy & Resources Committee. This had not previously been common practice with Budget Amendments normally being reserved for Budget Council. However, in recent years a few Budget Amendments from various Groups have come to February Policy & Resources but these cause a number of issues.
- 6.6 First, they are not covered by the Budget Protocol and therefore the timeline for evaluating and assessing them is not clear. Second, such amendments are effectively amending next year's budget before it has even been considered by Budget Council which is the committee responsible for agreeing the Budget and Policy Framework. Third, the final package of budget proposals are not usually available until they are published for February Policy & Resources Committee, meaning that there is insufficient time for the development or clearing of amendments. Finally, there is a potential for unsafe decisions to be made, for example, if there is insufficient time to properly update Equality Impact Assessments or fully evaluate the service, legal and financial implications or risks.

7 Budget Protocol 2023/24

The budget protocol for setting the 2023/24 Council Tax, General Fund and Housing Revenue Account Revenue and Capital Budget will be as follows:

- (i) Budget Amendments shall not be allowable at the February Policy & Resources Committee. For the avoidance of doubt this does not apply to reports referred to Policy & Resources Committee by Service Committees including any referred Fees & Charges reports, the HRA budget (recommended by Housing Committee), or any other decision referred or recommended to Policy & Resources Committee by another committee.
- (ii) Each recognised political Group shall be allowed a maximum of 6 Budget Amendments. Collectively, Independent Members shall be allowed a maximum of 2 Budget Amendments in total.
- (iii) All proposed amendments must have been received by finance officers no later than 10 working days before Budget Council (i.e. by 12 noon on Thursday 9 February).
- (iv) All amendments will have had to have been assessed and evaluated by finance officers and the relevant Executive Director no later than 12

noon 5 working days before Budget Council. (i.e. by 12 noon Thursday 16 February 2023).

- (v) The Chief Executive, Chief Finance Officer and Monitoring Officer will have final sign-off and will not normally allow an amendment where a proposal is not considered to be robust or viable for one of the following reasons:
 - a. The proposal is legally unsafe and/or carries an exceptionally high risk of non-delivery;
 - b. There is insufficient evidence or information to assess the potential net saving;
 - c. The proposal is adding to, or bringing forward, an existing saving without further information as to how this can be achieved;
 - d. The alternative proposal requires one-off investment, additional organisation capacity, and/or loan financing that cannot be supported;
 - e. The alternative proposal is beyond the powers and duties of the local authority.
- (vi) The Mayor will refuse to accept any amendment that has not been “signed off” by the Chief Executive, Chief Finance Officer and Monitoring Officer.
- (vii) All amendments will be treated in strictest confidence by finance officers and other such officers that the Chief Executive, Chief Finance Officer or Monitoring Officer need to consult in order to assess and evaluate an amendment. They will not be shared until the designated time detailed in (viii) below.
- (viii) All amendments will be shared **at 12noon on Monday 20 February 2023** between the Group Leaders by the Monitoring Officer or their nominated officer (usually the Head of Democratic Services).
- (ix) The Chief Executive shall have a “brokering” role if this would appear to facilitate agreement on particular amendments or proposals.
- (x) A Whips meeting will be arranged following the sharing of amendments for the afternoon of **Monday 20 February 2023** with the Monitoring Officer and Head of Democratic Services so that any matters relating to the Budget Council meeting on the 23 February and the recently circulated amendments can be discussed.
- (xi) There will be a meeting of Group Leaders (attended by the Chief Executive, the Chief Finance Officer and other relevant officers) **at 3:00pm on Wednesday 22 February 2023** with a view to exploring agreement on proposed amendments (i.e. potential composite or All-Party amendments).
- (xii) There will be a second meeting of Group Leaders, with relevant Officers in attendance, on **Thursday 23 February at 10:00 am**, unless the Chief Executive considers that, given any progress made on 22 February, it is not needed.
- (xiii) Any variations to the amendments or any new amendments arising from the Group meetings shall be limited to grouping and repackaging of amendments or other changes providing that they do not, in the opinion of the Chief Finance Officer, involve significant costing or

evaluation that cannot reasonably be done within the available timescale.

- (xiv) Should Council fail to set the Council Tax on the 23 February 2023, a further meeting will need to be held prior to 10 March and a reserve date of **Tuesday 28 February 2023** is being held for this purpose. Further meetings with Group Leaders will be arranged as appropriate.

8 Legal Advice to all members on setting the Budget and Council Tax

- 8.1 Under section 30 (6) of the Local Government Act 1992 the Council has a duty to set the Council tax by the 10 March 2023. A failure to set the tax by then does not in itself invalidate the tax demands but it has other adverse consequences including the potential loss of income to the Council.
- 8.2 The legal obligations for setting the budget mean in practical terms that:
- The local authority has a legal duty to set a lawful budget in time.
 - Members should not put forward proposals that would mean setting an unlawful budget and need to take officer advice in particular from legal and finance to ensure that their proposals are in order as per the Budget Protocol in Section 7 above;
 - Members jointly and severally (collectively and individually) have a fiduciary duty to Council Tax-payers. This means they have a duty to facilitate, rather than obstruct, the setting of a lawful budget, a process that requires flexibility and compromise.
 - Failure to set a lawful budget in time can lead to a loss of revenue, significant additional administrative costs and reputational damage.
 - Failure to set a lawful budget may lead to intervention from the Secretary of State under section 15 of the Local Government Act 1999 (as previously seen in authorities in relation to a failure of governance.)
 - It may give rise to personal liability for individual Members for misfeasance in public office, negligence or breach of statutory duty.
- 8.3 The full legal advice regarding the setting of the Budget and Council Tax is set out in Appendix 1 for members' consideration and guidance. In previous years, this advice has been provided to Group Leaders for dissemination but it is considered that this advice should be in the public domain and should be noted by Policy & Resources Committee as the lead committee responsible for the development of the annual budget.
- 8.4 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014 impose an obligation on the Council to amend standing orders to require the vote of Members on the budget to be recorded. The votes on any amendments and the substantive budget will normally be conducted by electronic voting and the individual votes will be reflected in the minutes.
- 8.5 The Council will be asked to agree that Council Procedural Rules be suspended in accordance with council procedural rule 1.7 to the extent that it is necessary to enable the business to be conducted.

9 Practical Implications of failing to agree a Balanced Budget

- 9.1 Notwithstanding the legal advice and guidance to members above and in Appendix 1, based on the experience of a small number of authorities across the country, the practical implications of failing to agree a balanced budget, as legally required, are likely to be as discussed below.
- 9.2 If, after appropriate debate and any necessary adjournments, a lawful and balanced budget cannot be agreed by Budget Council on 23 February 2023, a further meeting of the Council will be required and a reserve date of Tuesday 28 February is being held in this respect. In the event that a lawful budget cannot be agreed at the reserve meeting the next steps are likely to depend on the extent of any impasse. If it appears that agreement is not completely out of reach, a further meeting or meetings of the council will need to be held as quickly as practicable to ensure the council does not lose revenues and can lawfully enter into new commitments and contracts.
- 9.3 In the event that a lawful budget still cannot be agreed, the Chief Executive, Chief Finance Officer and Monitoring Officer will need to consider whether or not a statutory intervention is appropriate. This may be by way of a Section 114 report (LG Act 1988) or Section 5 report (LG & Housing Act 1989) as detailed in Appendix 1. Issuing a Section 114 report would require notification and consultation with the Department of Levelling-Up, Housing & Communications before being issued.
- 9.4 In cases where this has occurred, the level of external scrutiny, challenge and government intervention has increased and a level of local control and democracy is lost in almost all scenarios. This can range from independent financial/best value reviews being instructed by the Secretary of State (in all cases) to the installation of government appointed commissioners (e.g. Liverpool) under Section 15 (LG Act 1999).
- 9.5 The Secretary of State will consider the options available taking into account the council's financial resources and make-up and could agree that a Section 114 report needs to be issued, which would give the Council 21 days to respond with an action plan to achieve a balanced budget, or may instead entertain an application for assistance through a 'capitalisation direction'. It is also possible that both may apply.
- 9.6 A capitalisation direction enables a council to use capital resources such as capital receipts or borrowing to fund revenue expenditure which is not normally legally possible. However, application is known to be a lengthy process with a lead-in time of many months and, even if support is ultimately granted, will come with a significant set of actions to which the council would need to agree in order to satisfy the government's conditions for support. Even then, the council would still need to fund the situation itself, usually by either being allowed to borrow, but at a premium rate, or being allowed to sell assets such as land and properties to fund annual revenue spending (neither are allowable without a capitalisation direction).
- 9.7 However, borrowing involves repayment over a long period of time and both are only a one-off short-term solution and are best avoided if at all possible. Although challenging, the council should explore all options available to it to balance its budget without resorting to government.

- 9.8 A Section 114 notice also places a stop on all non-critical spending and new contracts cannot be entered into without the authorisation of the Section 151 Chief Finance Officer.
- 9.9 To date, S114 notices have only been issued by four authorities where a common factor has been untenably high loan debt. This does not apply to Brighton & Hove City Council but its financial position is nevertheless becoming increasingly challenged. It is clearly preferable for an authority to attempt to resolve issues before reaching this position.

10 Analysis and consideration of alternative options

- 10.1 The council must approve a lawful and balanced budget and set a Council Tax by 10 March 2023. Advice is provided as to the potential consequences and sequence of events should this not be achievable. All political groups have the ability to put forward alternative budget options (Amendments) for consideration at Budget Council within the terms of the proposed Budget Protocol in this report.

11 Community engagement and consultation

- 11.1 No specific consultation has been undertaken in relation to this report.

12 Conclusion

- 12.1 The report updates the committee on the latest in-year and forward budget and resource positions. Both are very challenging and will require appropriate responses and decisions to ensure that the council remains financially sustainable and resilient in the medium term. The report provides guidance and advice as an aid to all councillors regarding their role in approving the General Fund budget and setting the Council Tax.

13 Financial implications

- 13.1 The implications of an outturn overspend for 2022/23 are covered in the report and would result in a call on reserves and balances. The extent of any overspend is critical, with a large overspend having the potential to significantly reduce one-off resources and leave the council with little protection against any future financial shocks or risks, for example, any under-estimate of cost pressures or pay awards next year.
- 13.2 Similarly, the risks around delivery of a balanced budget next year are discussed in the report and will need to be assessed and reported to February Policy & Resources Committee and Budget Council by the Section 151 Chief Financial Officer with consideration of the adequacy of reserves and balances to manage risks.
- 13.3 Detailed legal advice is provided regarding the role of councillors in approval of the budget and the setting of the Council Tax. The report also discusses what may happen in the event of a failure to set or agree a lawful budget. However, this can only provide a broad guide to consequences as the process and steps involved will usually be unique in each case where this has happened.
- 13.4 The Guideline Criteria and Budget Categorisation information discussed in the report can only provide a guide to help officers to develop budget

proposals and savings options for members' consideration. They are not definitive and carry significant levels of subjectivity. The council's budget is also very complex and there are many interdependencies between services and across partnerships. Taken at face value, the Guideline Criteria and/or Budget Categorisation would provide an over-simplified assessment of the services and budgets provided by the council. All options therefore need to consider wider aspects including delivery risks as well as legal, financial, equality, information governance, public health, sustainability and other risks.

- 13.5 The proposed Budget Protocol provides a clear timeline for managing Budget Amendments and ensures that there is sufficient time for most proposals to be properly evaluated and assessed by relevant officers, including the CFO. However, even then, a very complex amendment involving, for example, substantial change to a service or introduction of complex new processes or fees & charges may need to be disallowed if there is insufficient time to fully assess the financial and wider implications.

Finance officer consulted: James Hengeveld Date consulted: 09/01/22

14 Legal implications

- 14.1 Legal Implications are included at Section 8 of the report and at Appendix 1.

Lawyer consulted: Elizabeth Culbert Date consulted: 09/01/23

15 Equalities implications

- 15.1 None directly. The equality implications of budget proposals are assessed in associated Equality Impact Assessments (EIAs) which are provided alongside the General Fund budget proposals and must be considered by Budget Council when approving the budget.

16 Sustainability implications

- 16.1 None directly but the council's budget process does enable the full Council to consider the budgets and funding applied to services and functions that may support sustainability. Financial sustainability is also considered as the General Fund budget proposals will include an updated Medium Term Financial Strategy setting out the council's projected resource position over a multi-year period.

Supporting Documentation

Appendices

1. Legal Note to all councillors on the setting of the Council Tax
2. Guideline criteria for developing budget options