

Committee General Purposes Committee	Date 27 March 2013	Classification Unrestricted	Report No.	Agenda Item No. 4.2
Report of: Acting Corporate Director (Resources)		Title: Review of Virement Rules		
Originating Officer(s): Chris Holme		Ward(s) affected: All		

1. SUMMARY

- 1.1 An amendment was proposed at the Budget Council Meeting which included a proposal “to place a general restriction on the council that all virements outside of the agreed budget framework above £200,000 must be agreed by full council”.
- 1.2 Officers advised that this matter could not be considered at Budget Council as the Council’s procedures make it clear that Budget Council is for financial matters not constitutional matters. The Constitution requires that constitutional changes are referred to the General Purposes Committee with full officer comments in order that all parties can be consulted and then referred back to Full Council at a later date.
- 1.4 Statutory guidance applies to the arrangements for agreeing the Council’s budget framework and financial procedures and it is necessary to assess any proposed change in the context of that guidance and the advice of the statutory officers.
- 1.5 The Council has previously considered another proposal in relation to virement rules. In January 2012 the Council agreed to “instruct the Interim Chief Executive to make arrangements for a working group comprising a representative of the Executive, the majority and the other political groupings, senior officers and an independent adviser to consider the budget making and virement arrangements of the Council and make recommendations to a meeting of the next non-budget Full Council through the appropriate channel.” Subsequently the Council determined not to appoint an Interim Chief Executive.
- 1.6 This resolution represents a suitable model for consideration of proposed changes to the rules. The Acting Corporate Director, Resources has taken steps to initiate the review and has asked The Chartered Institute of Public Finance and Accountancy to help identify and appoint a suitable qualified and experienced practitioner to act as the independent advisor to the working

group. This report sets out the proposed timetable and terms of reference for the review.

2. RECOMMENDATIONS

2.1 That the committee note the report.

3. BACKGROUND AND STATUTORY GUIDANCE

3.1 Virement rules are a key part of a Council's budget arrangements and are essential for the effective and efficient management of the authority.

3.2 Statutory Guidance issued by the Secretary of State in connection with the Local Government Act 2000 states that:-

"MOVING MONIES BETWEEN BUDGETARY ALLOCATIONS

2.40 Once the budget has been adopted by the full council, the executive will need to be able to respond quickly to changing circumstances which might require reallocation of funds from one service to another. A local authority's standing orders or financial rules/regulations will need, therefore, to include reasonable provision to allow the executive to reallocate monies within the budget. These provisions will also need to allow for situations where the executive needs to make an urgent decision which would otherwise be contrary to the budget without reference to the full council (see below).

2.41 The Secretary of State recommends that provisions in a local authority's standing orders or financial rules/regulations should enable the executive to take any decision which is contrary to or not wholly in accordance with the budget or the capital plan providing that any additional costs incurred can be offset by additional (unforeseen) income, contingency funds ('reserves' and 'balances') or savings from elsewhere within the budgetary allocations to functions which are the responsibility of the executive. The Secretary of State advises that provisions in a local authority's standing orders or financial rules/regulations should not enable the executive to incur additional expenditure which cannot be offset in these ways without reference to the full council.

2.42 Local authorities will need to consider whether an upper limit to such virement should be set (either as an absolute amount or as a percentage of the budgetary allocations involved). Local authorities may also wish to consider different upper limits for different service allocations particularly where funds are ring-fenced, e.g. by central Government. The upper limit(s) for urgent decisions will usually need to be set higher than for non-urgent decisions.

- 2.43 In setting such limits local authorities should take account of the provisions in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 which require that if the executive is minded to determine a matter contrary to or not wholly in accordance with the budget/capital plan and any provisions made in standing orders or financial rules/regulations that decision must be taken by the full council (see below). Therefore, if in its standing orders or financial rules/regulations the local authority sets the executive's freedoms too narrowly this will require very many full council meetings.
- 2.44 In addition, a local authority's standing orders or financial rules/regulations should include mechanisms for moving monies between budgetary allocations for functions which are the responsibility of the executive and budgetary allocations for functions which are not the responsibility of the executive."

4. TOWER HAMLETS' EXISTING VIREMENT RULES

- 4.1 The Council's existing virement rules are set out in the Financial Procedure Rules at part 4.6 of the Constitution as follows:-

"3. VIREMENT RULES

- 3.1 These rules aim to allow the Executive to manage the budget once it has been approved by Council, whilst also providing for good governance of financial matters.
- 3.2 A virement is the transfer of resources from one budget head to another, during a financial year. It is thus the financial consequence of a change in priority of service delivery or in the means by which services are delivered. It can also be the use of resources provided within the budget framework but which are not allocated for any specific purpose e.g. unallocated contingency. A virement will naturally flow from, and be part of, a decision.
- 3.3 The Executive shall have the power to vire resources within each of the above components of the Budget Framework agreed by Council, subject to the following limitations:
- 3.3.1 All individual virement proposals that exceed £1 million require the approval of full Council.
- 3.3.2 Individual virements between £250,000 and £1 million must be reported to the Cabinet for decision.
- 3.3.3 Individual virements below £250,000 can be authorised by the relevant Corporate Director/Chief Officer provided that any virement so authorised which exceeds £100,000 must be subsequently reported to the Cabinet for noting.

3.3.4 No virement to or from the following budgets (irrespective of the amount proposed) shall be made without the specific agreement of the Corporate Director, Resources:

- (i) Capital Financing (not normally available for virement)
- (ii) Support service and other forms of internal charges (to avoid unintended impact upon other departments' budget).
- (iii) Rates (to ensure compliance with rating legislation).
- (iv) Insurance (to ensure compliance with insurance policies).
- (v) Pensions (to ensure compliance with Pensions regulations).

3.4 Virements between Departments

The use of resources from one department to finance activities in another must be authorised by the Council or the Cabinet (depending on the level of resources involved) but the decision should only be made after advice from the relevant Corporate Directors and the Corporate Director Resources. However, where the responsibility for a service(s) is merely transferred from one department to another, the consequent transfer of budget resources is not deemed to be a virement for the purposes of these Rules.

3.5 Virements – Non-Financial Consequences

The virement Rules refer only to the financial consequences of proposals and decisions by the Executive. However, such proposals and decisions can also impact upon services and upon the community. This needs to be acknowledged when determining the procedural arrangements for those proposals and decisions, for example they may represent a “key decision”.

5. THE PROPOSED REVIEW

5.1 Any change to the virement rules represents an amendment to the Council's Constitution. Article 15.02 of the Constitution states that “Changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Monitoring Officer.” In addition the Chief Finance Officer has a statutory role to advise the Council on financial management matters.

5.2 The Council has previously decided that a working group shall be established comprising a representative of the Executive, the majority and the other political groupings, senior officers and an independent adviser to undertake a

review of the Council's budget making and virement arrangements and make recommendations.

- 5.3 The Acting Corporate Director, Resources has taken steps to initiate this review. CIPFA have been asked to suggest suitable practitioners, with experience at the highest executive level of running a large public organisation, to act as the independent adviser. Nominations are sought from the Mayor and Political Groups of Councillors to join the working group along with the statutory officers to undertake the review.
- 5.4 As agreed by the Council, the terms of reference for the review will be to consider the budget making and virement arrangements of the Council and make recommendations to the Council through the appropriate channel.
- 5.5 The proposed timescale and process for the review would be as follows:-
- 27 March 2013: Officer report to General Purposes Committee
 - April 2013: Officers to consult with independent adviser to scope the review, research best practice, benchmarking, legal advice etc.
 - April/May – Working Group to formulate recommendations
 - Final proposals to General Purposes Committee 16th June and Council 26th June 2013.

6. OFFICER COMMENTS FROM COUNCIL REPORT OF 25TH JANUARY 2012

- 6.1 As set out above, The Council has previously decided that a working group shall be established comprising a representative of the Executive, the majority and the other political groupings, senior officers and an independent adviser to undertake a review of the Council's budget making and virement arrangements and make recommendations.

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 7.1 The report sets out arrangements and a timetable for progressing the decision of Full Council in January 2012. The estimated cost of the review is £15,000, primarily costs associated with providing independent support, to be financed from compensatory savings identified from the Corporate Management budget (C80) within Chief Executive's.

8. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

- 8.1 In considering a review of the virement limits, there are a number of legal issues members need to consider.

8.2 The Council is under a statutory duty under section 151 of the Local Government Act 1972 to make arrangements for the proper administration of financial affairs

8.3 In all its decision making the Council must act reasonably (usually called the Wednesbury reasonableness test arising from a 1947 case which remains good law)
That test is

- in making that decision, has the decision making body taken into account factors that ought not to have been taken into account, or
- did it fail to take into account factors that ought to have been taken into account, or
- the decision was so unreasonable that no reasonable authority would ever consider imposing it.

Failure to act reasonably can result in a judicial review action being brought against the authority.

8.4 The Guidance referred to in paragraph 3.2 requires the Council to make reasonable provision to allow the executive to reallocate moneys within the budget or to allow the executive to make necessary urgent decisions without reference to full Council. This is guidance and does not have the force of law but the Council is obliged to have due regard to it and to comply with it unless there is good reason (which must be stated) for any significant departure from it.

8.5 The Council previously decided to set up a working group to review the limits and this would provide an opportunity to

- compare the limits with other boroughs who have a similar sized budget and
- consider the guidance in paragraph 3.2
- take into account best practice in setting virement limits.

This would enable the working group to devise reasoned proposals for consideration by full Council. It would also ensure that all necessary factors are taken into account so the Wednesbury reasonableness test can be satisfied

9. IMPLICATIONS FOR ONE TOWER HAMLETS

9.1 There are no direct One Tower Hamlets implications arising from the matters covered in this report.

10. RISK MANAGEMENT IMPLICATIONS

10.1 Appropriate virement arrangements and financial procedures play a key part in the avoidance of risk by enabling flexibility for the council to respond quickly to service and other needs.

11. STRATEGIC ACTION FOR A GREENER ENVIRONMENT (SAGE)

11.1 There are no direct SAGE implications arising from the matters covered in this report.

12. IMPLICATIONS FOR THE REDUCTION OF CRIME AND DISORDER

12.1 There are no direct implications for the reduction of crime and disorder arising from the matters covered in this report.

LIST OF "BACKGROUND PAPERS" USED IN THE PREPARATION OF THIS REPORT

Brief description of "background paper"

Name and telephone number of holder and address where open to inspection