

Town Clerk's Report 2 July 2020

Risk Management

Overview

Councils must have efficient arrangements in place to safeguard public money. This is essential to the successful delivery of services.

Effective risk management identifies and assesses risks and determines appropriate responses.

Section 151 of the Local Government Act 1972 requires every local authority to make arrangements for the proper administration of its financial affairs and requires one officer to be nominated to take responsibility for their administration.

Controls for the ministration of money are established within a council's financial regulations and standing orders.

"Financial regulations govern the conduct of financial management by the council and may only be amended or varied by resolution of the council. They are one of the council's three governing policy documents providing procedural guidance for members and officers. Financial regulations must be observed in conjunction with the council's standing orders and any individual financial regulations relating to contracts."¹

The following extracts from the Town Council's Financial Regulations demonstrate how they help the council manage risks to public money: -

1. GENERAL

1.3 The Council's accounting control systems must include measures:

- for the timely production of accounts;
- that provide for the safe and efficient safeguarding of public money;
- to prevent and detect inaccuracy and fraud; and
- identifying the duties of officers.

4. BUDGETARY CONTROL AND AUTHORITY TO SPEND

4.8 The RFO shall provide the Council with a statement of receipts and payments to date under each head of the budgets, comparing actual expenditure to the appropriate date against that planned as shown in the Budget. These statements are to be prepared monthly and shall show explanations of material variances.

Comment [S1]: Members must make "informed and transparent decisions that are subject to scrutiny and the management of risk".
Delivering Good Governance in Local Government

Comment [S2]: Local councils with a budget up to the equivalent of 500,000 Euros are now "eligible depositors" under the Financial Services Compensation Scheme (FSCS), which provides protection for deposits up to £85,000 if an authorised bank or building society fails.

Comment [S3]: Fidelity Guarantee indemnifies the insured against the loss of money or property sustained as a direct result of fraud, theft or dishonesty by an employee in the course of employment. However, fidelity guarantee insurance alone is not sufficient protection against risks to public money.

Comment [S4]: Effective monitoring of the budget will ensure the efficient use of public money.

¹ NALC

5. BANKING ARRANGEMENTS AND AUTHORISATION OF PAYMENTS

5.1 All financial internet banking transactions will be made in accordance with the Town Council's Internet Banking Policy. The Council's banking arrangements, including the bank mandate, shall be made by the Town Clerk and the RFO and approved by the Council; banking arrangements may not be delegated to a Committee. They shall be regularly reviewed for safety and efficiency.

Comment [S5]: A dlr. should be removed from the bank mandate as soon as they cease to be an elected member.

5.2 The RFO shall prepare a schedule of payments requiring authorisation, forming part of the Agenda for the Meeting and, together with the relevant invoices, present the schedule to the Council. The Council shall review the schedule for compliance and, having satisfied itself shall authorise payment by a resolution of the Council. The approved schedule shall be ruled off and initialled by the Chairman of the Meeting... (continues)

Comment [S6]: The RFO prepares a monthly bank reconciliation which provides council with verification of its available funds. "Cheques and other payments should only be released once confirmation has been obtained that adequate funds are available." (JPAG Practitioners' Guide). The RFO arranges for prompt payment after council approval. Late payments may incur charges.

6. INSTRUCTIONS FOR THE MAKING OF PAYMENTS

6.4 Cheques or orders for payment drawn on the bank account in accordance with the schedule as presented to Council shall be signed by two Members of Council (authorised bank signatories), in accordance with a Resolution instructing that payment... (continues)

Comment [S7]: The minutes of the meeting must record the approval of payments.

Comment [S8]: The two Member signature is an internal control to prevent concealment of fraud and identify inaccuracies. Signatories should be rotated.

6.5 To indicate agreement of the details shown on the cheque or order for payment with the counterfoil and the invoice or similar documentation, the signatories shall each also initial the cheque counterfoil.

Comment [S9]: Members should **never** sign cheques without supporting documentation. Blank cheques present a high risk of fraud.

6.6 Cheques or orders for payment shall not normally be presented for signature other than at a Council Meeting. Any signatures obtained away from such Meetings shall be reported to the Council at the next convenient Meeting.

Comment [S10]: The Public Bodies (Admission to Meetings) Act 1960 requires that meetings must be open to the public. This ensures that a council is transparent in its actions and decisions, including in its approval of payments, and engenders public confidence in a council's ability to safeguard public money.

6.13 The Council, and any Members using computers for the Council's financial business, shall ensure that anti-virus, anti-spyware and firewall software with automatic updates, together with a high level of security, is used.

Comment [S11]: "This security requirement is a necessity for both external and internal data threats, both levying the possibility of fines by regulatory authorities such as the ICO as well as the loss of money to cyber ransom. Potential fines that could be imposed as a result of the GDPR which took effect from May 2018 could be extensive." **EALC legal update** Feb. 2019

6.19 The RFO shall maintain a petty cash float of £200 for the purpose of defraying operational and other expenses. Vouchers for payments made from petty cash shall be kept to substantiate the payment.

Comment [S12]: Adequate records should be maintained, which include the proper recording of VAT. Petty cash should be reconciled regularly.

9. INCOME

9.1 The collection of all sums due to the Council shall be the responsibility of and under the supervision of the RFO.

9.4 Any sums found to be irrecoverable and any bad debts shall be reported to the Council and shall be written off in the year.

9.5 All sums received on behalf of the Council shall be banked intact as directed by the RFO. In all cases, all receipts shall be deposited with the Council's bankers with such frequency as the RFO considers necessary.

9.9 Where any significant sums of cash are regularly received by the Council, the RFO shall take such steps as are agreed by the Council to ensure that more than one person is present when the cash is counted in the first instance, that there is a reconciliation to some form of control such as ticket issues, and that appropriate care is taken in the security and safety of individuals banking such cash.

15. RISK MANAGEMENT

15.1 The Council is responsible for putting in place arrangements for the management of risk. The RFO, shall prepare, for approval by the Council, risk management policy statements in respect of all activities of the Council. Risk policy statements and consequential risk management arrangements shall be reviewed by the Council at least annually.

Comment [S13]: The RFO should undertake training relevant to their role and responsibilities to ensure the administration of the council's financial affairs is in accordance with statutory regulations and proper practices.

Comment [S14]: "Fidelity Guarantee insurance may specify the amount, location and minimum security arrangements required regarding the handling of cash or bank balances."
JPAG Practitioners' Guide

Comment [S15]: "Effective debt collection is an essential part of proper financial management. Authorities should ensure that invoices raised are paid promptly or that appropriate recovery action has been taken. Irrecoverable debts should be written off, after full consideration of the possibilities for, and the likely costs of, pursuing the debt. Uncollectible amounts, including bad debts, should only be written off with the approval of members, or under delegated authority, by the RFO. The approval should be shown in the accounting records." **Practitioners' Guide**

Comment [S16]: The council's bank accounts should not be used to pass cheques for other groups/organisations.

Comment [S17]: Income should be recorded in the cash book on the date of receipt and banked promptly. Cash should always be banked intact without money being held back for use as petty cash.

Comment [S18]: Risk assessed insurance should cover 'maximum exposure to loss of money'.

The following extracts from Standing Orders demonstrate how they help the council manage risks to public money: -

17. Accounts and accounting statements.

b. All payments by the Council shall be authorised, approved and paid in accordance with the law, proper practices and the Council's financial regulations.

Comment [S19]: The Freedom of Information Act 2000 requires a public authority to have a publication scheme, approved by the Information Commissioner's Office. This must set out the authority's commitment to make certain classes of information available to the public, including what the council spends and how it spends it.

18. Financial controls and procurement

a. The Council shall consider and approve Financial Regulations drawn up by the Responsible Financial Officer, which shall include detailed arrangements in respect of the following:

- i. the keeping of accounting records and systems of internal controls;
- ii. the assessment and management of financial risks faced by the Council;
- iii. the work of the independent internal auditor in accordance with proper practices and the receipt of regular reports from the internal auditor, which shall be required at least annually;
- iv. the inspection and copying by Councillors and local electors of the Council's accounts and/or orders of payments;

Comment [S20]: A council must not use its s.33 VAT (VATA 1994) status to benefit others. This is unlawful and may lead to a VAT investigation and penalties/fines.

b. Financial regulations shall be reviewed annually for fitness of purpose.

Comment [S21]: Recommendations of the internal auditor should be implemented in order to minimise exposure to risk.

Comment [S22]: Section 228 (2) of the Local Government Act 1972 provides that a local government elector for the area of a local authority may inspect and make a copy of or extract from an order for the payment of money made by the local authority.

"It is essential that the council is seen to provide value for money. This means ensuring that public money is spent efficiently to provide an effective service. The aim is to get more council activity for the least possible expense without compromising quality." **The Good Councillors Guide**

Comment [S23]: If a smaller authority had financial transactions in the year, it must make arrangements for the exercise of public rights, during which an authority must make the accounts and supporting records available for inspection.

Sections 25 to 27 of the Local Audit and Accountability Act 2014 contain provisions giving interested persons and local government electors certain rights of inspection of the accounts and accounting records. Accounts and Audit Regulations 2015 (S.I. 2015/234) give details of when and how those rights may be exercised.

The following Financial Regulation relates to contracts: -

11. CONTRACTS

11.1 Procedures as to contracts are laid down as follows:

- a) Every contract shall comply with these Financial Regulations, and no exceptions shall be made otherwise than in an emergency provided that this Regulation need not apply to contracts which relate to items (i) to (v) below:
 - i) for the supply of gas, electricity, water, sewerage and telephone services;
 - ii) for specialist services such as are provided by solicitors, accountants, surveyors and planning consultants;
 - iii) for work to be executed or goods or materials to be supplied which consist of repairs to or parts for existing machinery or equipment or plant;
 - iv) for work to be executed or goods or materials to be supplied which constitute an extension of an existing contract by the Council;
 - v) for goods or materials proposed to be purchased which are proprietary articles and/or are only sold at a fixed price.

(b) Where the Council intends to **procure** or award a public supply contract, public service contract or public works contract as defined by The Public Contracts Regulations 2015 ("the Regulations") which is valued at £25,000 or more, the Council shall comply with the relevant requirements of the Regulations.

(c) The full requirements of The Regulations, as applicable, shall be followed in respect of the tendering and award of a public supply contract, public service contract or public works contract which exceed thresholds in The Regulations set by the Public Contracts Directive 2014/24/EU (which may change).

(d) When applications are made to waive Financial Regulations relating to contracts to enable a price to be negotiated without competition the reason shall be embodied in a recommendation to the Council.

(e) Such invitation to tender shall state the general nature of the intended contract and the Clerk shall obtain the necessary technical assistance to prepare a specification in appropriate cases. The invitation shall in addition state that tenders must be addressed to the Clerk in the ordinary course of post. Each tendering firm shall be supplied with a specifically marked envelope in which the tender is to be sealed and remain sealed until the prescribed date for opening tenders for that contract.

(f) All sealed **tenders** shall be opened at the same time on the prescribed date by the Clerk in the presence of the Chairman or at least one member of Council.

(g) Any invitation to tender issued under this Regulation shall be subject to Standing Order 18 (Financial Controls and Procurement) and shall refer to the terms of the Bribery Act 2010.

(h) When it is to enter into a contract of less than £25,000 in value for the supply of goods or materials or for the execution of works or specialist services other than such goods, materials, works or specialist services as are excepted as set out in paragraph (a), the Town Clerk or RFO shall obtain 3 quotations, wherever possible,

Comment [S24]: A council may make all contracts necessary for the discharge of its functions. A contract made in pursuance of action which is beyond the council's powers, is itself beyond those powers. LGA 1972, s.111 (source Arnold-Baker 11th edition)

Comment [S25]: "In the context of local councils, 'procurement' is the process by which they award contracts to third parties to provide goods, services or to undertake work. The procurement process is designed to source the most suitable contractors based on factors such as cost, knowledge, experience, quality, capability and financial standing. A procurement exercise by a local council is subject to the requirements in section 135 of LGA 1972 and the Public contracts regulations 2015." (NALC LTN 87 June 2018).

Comment [S26]: Meetings shall be open to the public unless their presence is prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons. The public's exclusion from part or all of a meeting shall be by a resolution which shall give reasons for the public's exclusion - Public Bodies (Admission to Meetings) Act 1960 s.1 (2) The following business may be discussed in private: - a) engagement, terms of service, conduct and dismissal of employees; **b) terms of tenders, and proposals and counter-proposals in negotiations for contracts;** c) preparation of cases in legal proceedings; and d) early stages of any dispute.

(priced descriptions of the proposed supply); where the value is below £3,000 and above £1,000, the Town Clerk or RFO shall strive to obtain 3 estimates. Otherwise, Regulation 10.2 above shall apply.

(i) The Council shall not be obliged to accept the lowest or any tender, quote or estimate.

(j) Should it occur that the Council does not accept any tender, quote or estimate, the work is not allocated and the Council requires further pricing, provided that the specification does not change, no person shall be permitted to submit a later tender, estimate or quote who was present when the original decision making process was being undertaken.

Standing Order 18 relates to contracts: -

18 c) A public contract regulated by the Public Contracts Regulations 2015 with an estimated value in excess of £25,000 but less than the relevant thresholds in standing order 18(f) is subject to Regulations 109-114 of the Public Contracts Regulations 2015 which include a requirement on the Council to advertise the contract opportunity on the Contracts Finder website regardless of what other means it uses to advertise the opportunity unless it proposes to use an existing list of approved suppliers (framework agreement).

d) Subject to additional requirements in the financial regulations of the Council, the tender process for contracts for the supply of goods, materials, services or the execution of works shall include, as a minimum, the following steps:

- i. a specification for the goods, materials, services or the execution of works shall be drawn up;
- ii. an invitation to tender shall be drawn up to confirm (i) the Council's specification (ii) the time, date and address for the submission of tenders (iii) the date of the Council's written response to the tender and (iv) the prohibition on prospective contractors contacting councillors or staff to encourage or support their tender outside the prescribed process;
- iii. the invitation to tender may be advertised in a local newspaper and in any other manner that is appropriate;
- iv. tenders are to be submitted in writing in a sealed marked envelope addressed to the Proper Officer;
- v. tenders shall be opened by the Proper Officer in the presence of at least one councillor after the deadline for submission of tenders has passed;
- vi. tenders are to be reported to and considered by the appropriate meeting of the Council or a committee or sub-committee with delegated responsibility.

e) Neither the Council, nor a committee or a sub-committee with delegated responsibility for considering tenders, is bound to accept the lowest value tender.

Comment [S27]: It is an offence to offer or give bribes to public officers and for such officers to accept or solicit them.

Comment [S28]: An officer must, under pain of a level 4 fine, disclose his interest, direct or indirect, in any contract into which the council or any of its committees intends to enter or has entered, and must give notice of his interest in writing. LGA 1972, s.117.

f) A public contract regulated by the Public Contracts Regulations 2015 with an estimated value in excess of £181,302 for a public service or supply contract or in excess of £4,551,413 for a public works contract (or other thresholds determined by the European Commission every two years and published in the Official Journal of the European Union (OJEU)) shall comply with the relevant procurement procedures and other requirements in the Public Contracts Regulations 2015 which include advertising the contract opportunity on the Contracts Finder website and in OJEU.

g) A public contract in connection with the supply of gas, heat, electricity, drinking water, transport services, or postal services to the public; or the provision of a port or airport; or the exploration for or extraction of gas, oil or solid fuel with an estimated value in excess of £363,424 for a supply, services or design contract; or in excess of £4,551,413 for a works contract; or £820,370 for a social and other specific services contract (or other thresholds determined by the European Commission every two years and published in OJEU) shall comply with the relevant procurement procedures and other requirements in the Utilities Contracts Regulations 2016.

Internal Control

Councils must use their resources as effectively and efficiently as possible, in accordance with the law, regulations and proper practices, and provide accurate financial information in a timely manner.

Electors are, arguably, better informed than ever before and expect the highest levels of accountability from local authorities in their stewardship of public money.

Internal controls are the framework that a local authority establishes to ensure that it meets the following responsibilities: -

1. Effectiveness;
2. Efficiency;
3. Compliance; and
4. Financial reporting.

The Accounts and Audit Regulations 2015 (SI 2015/234) require a smaller authority to carry out a review of the effectiveness of its system of internal control, each financial year, and to prepare an annual governance statement.

The following Financial Regulation relates to internal control: -

1. GENERAL

- 1.2 The Council is responsible in law for ensuring that its financial management is adequate and effective and that the Council has a sound system of internal control which facilitates the effective exercise of the Council's functions, including arrangements for the management of risk.
- 1.5 At least once a year, prior to approving the Annual Governance Statement, the Council must review the effectiveness of its system of internal control which shall be in accordance with proper practices.

Comment [S29]: "The purpose of the Annual Governance Statement is for a local authority to report publicly on its arrangements for ensuring that its business is conducted in accordance with the law, regulations and proper practices and that public money is safeguarded and properly accounted for." **JPAG Practitioners' Guide**

Sarah Grimes – Town Clerk
July 2020