

WELWYN HATFIELD BOROUGH COUNCIL  
COUNCIL – 5<sup>TH</sup> FEBRUARY 2024  
REPORT OF THE DEPUTY MONITORING OFFICER

**REPORT PURSUANT TO SECTION 5 LOCAL GOVERNMENT AND HOUSING ACT  
1989**

**1 Executive Summary**

- 1.1 This report is submitted in accordance with the requirements of Section 5 of the Local Government and Housing Act 1989. Section 5 imposes a duty upon the Monitoring Officer to make a report to Full Council in any of the circumstances specified within the section. This report is being made because circumstances which are specified within the section have arisen.
- 1.2 The report is made by the Deputy Monitoring Officer in the absence of the Monitoring Officer.

**2 Recommendation(s)**

- 2.1 That Council notes the report.

**3 Explanation**

- 3.1 Section 106 of the Local Government and Finance Act 1992 imposes certain voting restrictions on councillors who are in arrears with payment of their council tax, by at least two (2) months. The section provides that where any such councillor is present at a meeting of the authority or committee, at which calculation of council tax or any recommendation, resolution or other decision which might affect the making of any such calculation is the subject of consideration, the councillor(s) concerned must:
  - 3.1.1 at the meeting and as soon as practicable after its commencement disclose the fact that the section applies to them; and
  - 3.1.2 shall not vote on any question with respect to the matter.
- 3.2 Between November 2023 and January 2024 arrears accrued on the council tax account of the Member who is the Chairperson for the Overview and Scrutiny Committee.
- 3.3 On 15<sup>th</sup> January 2024 the Member was notified that they were 2 x months in arrears with their council tax payments. The Member was asked to make immediate payment to bring their account up to date. The request for payment also advised the Member that in accordance with section 106 of the Local Government Finance Act 1992 the Member would be required to declare the fact that they were in council tax arrears and not vote at any Council meeting, where decisions were being taken which might affect the calculation of the council tax. The Member would be required to make a positive declaration at any such meeting and would be unable to stay silent at the meeting or leave the room. Further, that there was a Council meeting on 5 February 2024.

- 3.4 The Member responded to say that they would make a payment that day.
- 3.5 The Member attended and chaired the Overview and Scrutiny Committee on 16<sup>th</sup> January, at which the report on the 2024/25 budget proposal was discussed and took part in the Resolution which was made by the Committee.
- 3.6 A subsequent check of the position, with regard to the Member's council tax account, identified that the Member remained in arrears with their council tax and that they would have been in arrears for at least 2 x months, as at the time of the Overview and Scrutiny Committee meeting on 16<sup>th</sup> January 2024. The Member did not make a positive declaration at the Overview and Scrutiny Committee meeting on 16<sup>th</sup> January and supported the Resolution.
- 3.7 Officers have fully considered the matter including the questions of:
- 3.7.1 whether the Resolution of the Overview and Scrutiny Committee is open to risk of challenge; and
- 3.7.2 whether, if the budget and council tax-setting process is continued as planned - and they are approved by Council at the meeting on 5<sup>th</sup> February - that decision will be open to risk of challenge.
- 3.8 On the first question, it is considered that a court, dealing with a challenge, would be likely (a) to take the approach that the decision of the Overview and Scrutiny Committee was not rendered unlawful by the fact that the Member failed to make the declaration and voted, and (b) to decide that it is anyway highly likely that the outcome of the meeting would have been the same if there had been compliance with section 106. Consequently, the risk of a challenge to the Resolution of the Overview and Scrutiny Committee being successful, if a challenge were to be made, is considered to be low.
- 3.9 On the second question, the same reasoning is likely to apply and, moreover, the risk is likely to be lower still since there would be no failure to comply with s 106 at the Council meeting itself.

### **Implications**

#### **4 Legal Implication(s)**

- 4.1 Section 106 of the Local Government and Finance Act 1992 imposes certain voting restrictions on Members who are in arrears with payment of their council tax by at least two (2) months.
- 4.2 The section provides that where any such Member is present at a meeting of the authority or committee, at which calculation of council tax or any recommendation, resolution or other decision which might affect the making of any such calculation is the subject of consideration, the Member(s) concerned must:
- 4.2.1 at the meeting and as soon as practicable after its commencement disclose the fact that the section applies to them; and
- 4.2.2 shall not vote on any question with respect to the matter.
- 4.3 Section 5 of the Local Government and Housing Act 1989 imposes a duty upon the council's monitoring officer, if at any time it appears to him that any proposal, decision or omission by the authority, by any committee, or sub-committee of the authority, by any person holding

any office or employment under the authority or by any joint committee on which the authority are represented constitutes, has given rise to or is likely to or would give rise to:

4.3.1 a contravention by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any such joint committee of any enactment or rule of law

to prepare a report to the authority with respect to that proposal, decision or omission.

4.4 The section further requires that a copy of the report be sent to each member of the authority as soon as possible after it has been prepared.

4.5 The authority then has a duty to consider the report at a meeting held not more than twenty-one days after copies of the report are first sent to members of the authority and to ensure that no step is taken for giving effect to any proposal or decision to which such a report relates at any time while the implementation of the proposal or decision is suspended in consequence of the report.

4.6 Section 106 (6) provides that the implementation of a proposal or decision to which a report under section 5 relates shall be suspended in consequence of the report until the end of the first business day after the day on which consideration of that report, as set out in paragraph 4.5 above, is concluded. It is considered that this is satisfied if this report is considered prior to the agenda item for the meeting on 5<sup>th</sup> February on setting the Council's budget and council tax for 2024/25.

## **5 Financial Implication(s)**

5.1 No financial implications arise directly as a result of this report.

## **6 Risk Management Implication(s)**

6.1 There is a risk of challenge to the Resolution made by the Overview and Scrutiny Committee at its meeting on 16<sup>th</sup> January 2024 and, in the event that the budget and council tax setting are agreed by Council on 5<sup>th</sup> February, a risk of challenge to that decision. However, it is considered that if a challenge were to be made, the risk of it being successful would be low.

## **7 Security & Terrorism Implication(s)**

7.1 There are none arising directly from this report.

## **8 Procurement Implication(s)**

8.1 There are none arising directly from this report.

## **9 Climate Change Implication(s)**

9.1 There are none arising directly from this report.

## **10 Health and Wellbeing Implications(s)**

10.1 There are none arising directly from this report.

## **11 Link to Corporate Priorities**

11.1 The subject of this report is linked to the delivery of all of the Council's Corporate Priorities.

## **12 Communications Plan**

12.1 There are none arising directly from this report.

## **13 Equality and Diversity**

13.1 An Equality Impact Assessment (EIA) has not been carried out in connection with the proposals that are set out in this report as there is no impact on services directly as a result of the recommendations.

## **14 Human Resources Implications**

14.1 There are none arising directly from this report.

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