BCP Council

7 February 2024

Section 25 Report of the Director of Finance
(Prepared in consultation with the Chief Executive)

Background

1. The Local Government Act 2003 (Section 25) requires the Director of Finance to report on the following matters to council members when agreeing its annual budget and council tax levels.
   - the robustness of the estimates made for the purposes of the budget calculations, and
   - the adequacy of the proposed financial reserves.

2. Council must have regard to this report when making its decisions around the annual budget and the level of council tax.

3. For members of the Council the Section 25 statement provides critical context for budgetary discussions. The provision of this information is a legal requirement and ensures that all members have regard to the professional advice provided by the authority's chief financial officer when final budget decisions are made being made. To give a level of additional assurance to this report it is also prepared in consultation with the Chief Executive.

4. It should be emphasised that councils can and do experience significant financial difficulties as recent high-profile cases such as those at Northamptonshire County Council, Slough Borough Council, Croydon Council, Thurrock Council, Woking Council, Birmingham Council, and Nottingham City Council all demonstrate.

Introduction

5. It is a demanding time for local authorities as they grapple with immense resourcing challenges ranging from inflationary pressures to rising demand and recruitment constraints. The financial resilience of all local authorities is under severe strain. Since 2010/11, local authority spending nationally has fallen from 7.4% to 5% of Gross Domestic Product (GDP) with forecasts that it will fall further to 4.6% in 2028/29. Nationally the global pandemic and cost-of-living crisis mean the economy is only likely to grow slowly over the next few years. Although it has fallen, inflation it is likely to be above the government's 2% target until the first half of 2025 with the markets expecting interest rates to be higher for longer to bring inflation under control. Given local authorities' statutory duty to provide a vast range of services where demand is likely to continue to grow, for example adult and child social care, pressure on local authority finances and services will continue.

6. In each of the four years of completed financial performance since 2019 the actual outturn has delivered improvement from the position outlined from the original budget set. That said, the Council's External Auditor, Grant Thornton in his annual report on the 2021/22 and 2022/23 accounts concluded that the Council did not have arrangements in place for securing Value for Money with serious concerns about the continued financial viability of the Council. In his report he identified the following weaknesses.

Financial sustainability
Risks identified relate in the main due to uncertainty in relation to the Councils Medium Term Financial Plan and associated transformation programme and delivery of savings.

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Governance
Significant risks identified in Governance in relation to leadership, partnerships, and the transformation programme.

Improving economy, efficiency, and effectiveness
Risk identified because of the inadequate rating issued by Ofsted in respect of children in care.

He went on to be critical of the high-risk alternative funding strategy adopted to deliver transformational efficiencies, to minimise council tax increases, to avoid significant cuts to services, and one which was also reliant on the use of reserves. The report presented to Audit & Governance Committee in September 2023 also highlighted that the External Auditor formally wrote to the Council on 10 February 2023 to raise concerns around potential last-minute proposals from the previous Administration regarding an "innovative but high risk" proposal for the 2023/24 budget.

He did though make a contextual comment that the May 2023 local election had resulted in a change in political administration and a change in financial strategy which will set a new tone from the top and will be an opportunity to address some of the issues raised in their report.

7. Although the finally approved budget for 2023/24 was more traditional and conventional it was not without considerable risk. It was balanced on the assumption of a £30m drawdown in reserves and the delivery of £34m in savings, efficiencies, and additional resources including £9m in respect of transformation which was un-itemised and was not supported by a specific, detailed delivery plan.

8. To manage the delivery of the 2023/24 budget within the original parameters and to enable a legal and robust budget for 2024/25 to be set, which seeks to improve the financial sustainability of the council, Cabinet agreed a new financial strategy at its July meeting. In support of this approach, Cabinet subsequently agreed to implement an in-year expenditure freeze and vacancy management process for the remainder of the 2023/24 financial year and to establish a voluntary redundancy process. In essence the new financial strategy has been designed to improve the overall financial resilience of the council, to provide more overall financial stability, and to avoid a s114 report. [To date this has been achieved]

9. That said BCP is only able to avoid issuing a s114 based on statutory guidance that allows it to ignore the deficit of the Dedicated Schools Grant (DSG) until 31 March 2026. Normally a council must issue a s114 when expenditure is likely to exceed all available resources and therefore it would lead to a negative General Fund revenue reserve position. BCP Council will have a negative General Fund reserve position on 31 March 2024 due its £63m accumulated DSG deficit. This deficit is currently growing by more than £29m per year which is the amount the expenditure on the Special Educational Needs and Disability service exceeds the annual funding provided by the Government. Officers of the council are having what is referred to as "safety valve conversations" with the Department for Education as to how they believe this position is best managed moving forward.

Robustness of Financial Estimates

10. A summary of key assumptions being used to underpin the 2024/25 budget can be summarised as set out in figure 1 below.

11. **Figure 1:** Key Budget & MTFP Assumptions

	2024/25	2025/26	2026/27	2027/28
Council Tax: Core	2.99%	2.99%	2.99%	2.99%
Council Tax: Social Care Precept	2.00%	2.00%	2.00%	2.00%
Pay Award	4.5%	2%	2%	2%
Increase in Fees and Charges	5%	2%	2%	2%
National Living Wage (NLW) *% Increase in the National Living Wage*	9.8%	2%	2%	2%
	Dec-23	Dec-24	Dec-25	Dec-26
Bank of England - Base Rate	5.25%	4.25%	3.00%	3.00%

Please note:
The increase in fees and charges should be regarded as a minimum increase to those not set by statute. The principle of full cost recovery may mean increases above these levels for example were costs are likely to rise by the National Minimum Wage which has been confirmed at £11.44 per hour in 2024/25 which is an increase of 9.8%.

12. The key budget and medium-term issues faced by the council are summarised in the following sections. In considering these members are reminded that Local Authorities should not put public money or services at risk.

Uncertainty

13. The only certainty at this moment in time is uncertainty. There are currently high levels of financial planning unpredictability caused by the cost-of-living crisis and constant changes and variations to the costs of goods, materials and services required to deliver council operations.

Accumulating Deficit on the Dedicated Schools Grant (DSG)

14. Any private sector organisation which has negative reserves on its balance sheet, is likely to fail the "going concern" accounting concept. In local government a material uncertainty related to "going concern" is unlikely to exist as the financial reporting framework assumes the council's services, at least its statutory services, will continue to be delivered in all scenarios. Therefore, in local government, the most likely scenario is the councils Director of Finance (known as the Section 151 Officer) would have to contact DLUHC to advise them of their financial concerns and the possibility of issuing what is referred to as a s114 report. A section 114 report would result in an immediate and severe curtailing of activity to the provision of non-statutory services. Even statutory services may be subject to a reduction in frequency or quality.

15. Due to the accumulating deficit on our Dedicated Schools Grant, BCP Council is projected to have negative reserves by the 31 March 2024. This means that all things being equal the s151 Officer would have been required to issue a s114 report for the 2023/24 financial year.

16. The deficit predominately relates to the expenditure on the High Needs block being greater than the funding available ever since the introduction of Education, Health, and Care Plans (EHCPs) under the Children's and Families Act 2014.

17. However, to mitigate this position, which is a problem nationally, the government issued a DSG statutory override by way of a statutory instrument (SI) which became law at the end of November 2020. This SI means the council cannot contribute to the deficit, cannot hold a reserve to act as a counterweight and has been required to move the deficit to an unusable reserve where it will sit as though it did not exist within the council's accounts or balance sheet.

18. The statutory instrument reads as follows.

Where a local authority has a deficit in respect of its school's budget for a financial year beginning on 1st April 2020, 1st April 2021 or 1st April 2022, the authority—

(a) must not charge to a revenue account an amount in respect of that deficit; and

(b) must charge the amount of the deficit to an account established, charged, and used solely for the purpose of recognising deficits in respect of its school's budget.

19. On 12 December 2022 as part of a local government finance policy statement government announced the extension of the DSG statutory override for a one-off period of three years up to 31 March 2026.

20. This presents a clear, and dangerous position for the council and its future sustainability. At the end of 2023/24, the deficit on the DSG is predicted to be **£63m**. At the end of the extension period BCP Council is currently forecast to have an accumulated deficit of around **£116m.**

21. The Council was part of the Delivering Better Value in SEND programme which is designed to help the council gain access to resources to support any necessary reforms of its SEND service. This transformation programme does not however provide any resources to address the accumulating deficits.

22. Recognising the severity of the councils position the Department of Education invited the council in July 2023 to engage in a conversation as part of their Safety Valve programme to determine if agreement can be reached on.

- bringing the service back into balance by aligning expenditure with income at least over a defined period.
- how the current accumulated deficit and any further deficit at the point in-year balance is achieved will be dealt with.

Fundamental transformation is clearly needed with the SEND system to deliver the scale of change required.

23. Ultimately either the government, the council, schools, or a combination thereof will need to finance this deficit. Therefore, as a sector, local government needs to continue to work with government to find a long-term solution. Deferring a solution until 2026/27, with none of the stakeholders making a provision to offset it could be catastrophic. A deficit of £116m would be approximately 40% of the entire current net annual budget of the council.

24. In considering the budget it should be emphasised that the council is responsible for making the cash payments for services as part of the High Needs Budget arrangements. Therefore, it must ultimately borrow more money to ensure it has enough cash available to make the actual payments. An average deficit of £77m in 2024/25 at an average interest rate of 5% means it will be costing the council up to £3.9m to finance the accumulating DSG deficit in 2024/25.

Best Value Notice

25. On 3 August 2023 the Council was issued with a non-statutory Best Value Notice from the Department for Levelling Up, Housing & Communities (DLUHC) in response to concerns highlighted in an external assurance review they had commissioned. This external assurance review, which is an independent review into the Council's governance arrangements, was undertaken by Leslie Seary the former Chief Executive of the London Borough of Islington.

26. A 'Best Value Notice' is issued to "*facilitate engagement with that authority and to obtain assurance of the steps it is taking to secure compliance with the Best Value Duty, as required by the Local Government Act 1999*".

27. As an exercise in continuous improvement, the council welcomed both the external assurance review and Best Value Notice. In response an action plan was developed and is regularly being reviewed by DLUHC and Cabinet. Good progress is being made in completing the actions required, but any lack of progress in implementing the action plan could potentially lead to further government intervention.

Intervention

28. In addition to the Best Value Notice the Council is also the subject of government and independent oversight arrangements that could lead to intervention in the delivery of our services.

29. Most significantly, following an "Inadequate" Ofsted judgement in February 2022, of Children's Services the Department for Education (DfE) appointed an Improvement Adviser as a form of intervention. Whereas this intervention does not technically involve a commissioner role the DfE steer is clear throughout that if progress is not effective in the short term the question of a structural intervention, such as a mandatory move to a children's trust, may be brought forward. The perceived wisdom is that an outcome of a children's trust would be an expensive one for the council.

30. Additionally, councillors should also have due regard to the judgements and assessments of the External Auditor. As already set out he has previously concluded that BCP did not currently have adequate arrangements for securing Valve for Money and had serious concerns about the financial viability of the Council. Councillors are also reminded that he had to write to the Council in the past, strongly recommending it against using an innovative financial model as part of its 2023/24 budget setting that the Director of Finance was also advising against.

31. Councillors should be aware that the External Auditor has expressed some reservations about the extent of the proposed revised approach to the Minimum Revenue Provision (MRP) as part of the annual updated Treasury Management policy. However, this new approach has been assessed as wholly in accordance with the legislative framework and has been supported by the councils Treasury Management advisers LINK, the largest such organisation in England, who have also demonstrated the revised approach is used in up to 60% of local authorities in full or part.

32. There are also some potentially new inspection and oversight arrangements that the Council will need to have due regard to in 2024/25.

1) Designed to support improvement the Office for Local Government (Oflog), published, in late 2023, a performance metrics which allows residents to assess the council's performance across various services. The purpose of this data is to create an "early warning system" to prevent government intervention. Councils facing concerns will undergo a review by another local authority leader.

2) Following the Health and Care Act 2022, the Care Quality Commission will undertake a baseline inspection of Adult Social Care to ensure its services are safe, effective, caring, responsive and well-led.

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Financial Outturn 2023/24

33. The Quarter 3 Budget Monitoring report which appears as a separate item on the 7 February 2024 Cabinet report sets out due to the proactive management arrangements in place it is proposed to reduce the £30m budgeted drawdown of earmarked reserves in 2023/24 to £27.2m. As set out below in the reserves section of this report this has enabled unearmarked reserves to be increased by £2.8m as planned by the previous administration. However instead of this change being delivered over a 4-year period the positive position enables the increased to be implemented for the 1 April 2024.

34. The risk will be that although the Quarter 3 forecast is based on trend analysis and professional judgement centred on activity from 75% of the financial year. Predications and estimates can and will change over the remaining 25% of the financial year. Assurance can be taken from previous year's performance, from 2023/24 in year monthly reporting and the fact that it is hoped that the current expenditure freeze and vacancy management controls will continue to bear down on service expenditure.

Children's Services Directorate

35. A key risk to the sustainability of the councils' finances is the cost and demand for Children's Services as the directorate continues to face a perfect storm of managing these demands while on a journey from inadequate. Particular issues relate to the cost of both placement and agency staff.

    - In a market described as dysfunctional, the cost of placements continues to increase with concerns being raised nationally regarding the level of profit being made by providers. Weekly profit per placement for the top 15 providers has reportedly increased from £702 in 2016/17 to £910 in 2020/21.
    - The government's response to a consultation on agency social work is keenly awaited in the belief and that the suite of actions contained in the consultation, if implemented as a package of reform, will help to stem the rising costs associated with this pressure.

36. The net cost of Children's services was 17% of the council's net budget in 2019. In 2024/25 this has increased to 24%.

37. Although Government is aware of these pressures and are setting up a rapid task and finish group to consider it is unlikely that there will be any imminent support, financial or otherwise to help the Council address these issues. It continues to be a concern that children's social care does not receive the same level of attention or reference as adult social care by government.

38. The Council is committed to continue to support and prioritise investment in Children's Services as part of its improvement journey from inadequate. Alternative delivery models after often cited as much more expensive, for example, Bradford Children and Families Trust (BCFT) which took up the running of the city's children's social services in April of 2023 is reported as forecasting a £45m in-year funding gap.

39. From an assessment of the robustness of the budget perspective provision has been made for a further growth in the number and cost of children in care, an increase if the allowance paid to foster carers, school transport costs particularly those connected the SEND service and the supporting accommodation reforms including the requirement for them to be Ofsted registered.

40. Risks however will remain be that associated with the costs the service are exposed to, or the growth in the number of children in care (20% between September 2021 and September 2023). As an example, the 2024/25 budget allows for a £4m increase in the overall cost of care next year, which when considered in the context of an underlying £6m pressure in 2023/24 means a significant reliance is being placed on the effectiveness of the Children's commissioning team in driving down costs. It should also be emphasised that Children's service has not delivered a financial outturn within the parameters of the original budget during the entire existence of BCP Council.

Wellbeing Directorate (Including Adult Social Care & Homelessness)

41. Risk is associated with the possibility that demand for care and support exceeds budget, the cost of care home placements continues to increase beyond the inflationary increases allowed for in the budget. In addition, should the current capacity in the domiciliary care market, at the council's framework rates, fail to keep pace with demand this could result in higher home care costs above framework rates.

42. A separate risk is the significant financial challenge due to the high proportion of self-funding care home residents locally whose depleting capital resources require local authority funding support, plus increased demand, and complexity of needs as a result of the post COVID-19 hospital discharge to assess changes.

43. Assurance around the delivery of the Adult Social Care budget can be provided by the analysis which demonstrates the service has been delivered within the parameters of the approved budget in every completed financial year since April 2019.

44. In addition, there has been a sharp rise in homelessness which commentators relate to the real-life impact of record house prices, high mortgage rates, huge waiting lists for social-rent housing, and the boom in second homes and short-term lets. These factors mean the council has had to factor into the 2024/25 budget an extra £1.5m per annum to reflect the cost of housing families and individuals in Bed and Breakfast. Demand is driven by the affordability and accessibility of the private rented housing sector within BCP and although significant work on prevention alongside the delivery of more affordable housing units, such as through the Council Housing Newbuild & Acquisition Strategy (CHNAS) programme, there is a risk that such activity will not be able to keep pace especially if private sector housing rents are pushed even higher.

Operations Directorate

45. The Operations Directorate is diverse covering a wide range of service areas including Environment, Planning & Destination, Investment & Development, Commercial Operations, Infrastructure and Customer, Arts & Property. This is a broad portfolio containing various activities which are uncertain by nature and therefore capable of variation from the budget assumptions. For example, several of the Commercial Operation services generate significant income levels which will be weather dependent as would be anticipated for a coastal tourism destination.

46. One area of particular risk at this moment in time is the income forecast for the bereavement service reflecting the ongoing challenging market conditions from the growth in the direct cremation market and other local facilities.

47. Additionally, the volume of waste disposal and recycling materials will fluctuate with consumer habits and environmental conditions as well as the government legislative framework. For example, on 28 December 2023 the government set out plans to make it easier for households to recycle electrical cords, devices, and white goods.

48. One matter of specific risk in respect of the Operations Directorate is the fact that the focal point of the leadership of the services' 2024/25 budget proposals was through the Chief Operations Officer who has been successful in obtaining the Chief Executive role at Brighton and Hove Council. We wish her every success with her new role however this poses a risk in ensuring continuity in the delivery of the services budget proposals and driving the assumed savings, efficiencies, and additional income generation.

Operational risk of a reduction in fees, charges, and rents Income.

49. Although the 2024/25 budget includes estimates for fees, charges, and rents the actual amount collected can be heavily influenced by factors outside of the council's control such as the weather and individuals' personal wealth. The inflationary uplifts applied to these income streams can also be impacted by the elasticity of demand. Associated risks include not putting in place appropriate arrangements for their collection.

Reliance on the delivery of £41m in savings, efficiencies, and additional resources.

50. There is significant risk associated with delivering £41m in savings, efficiencies and additional resources which is over 20% more that the record breaking £34m used to underpin the current 2023/24 financial year's budget. This includes assumptions of significant income generation and reduced service-based expenditure which have required some very difficult and painful choices. Historical evidence is that some savings assumed as part of the yearly budget process have not subsequently been delivered. This includes the £5m assumed in Children's services in 2022/23 and £9m of unidentified transformation savings assumed as part of the 2023/24 budget.

51. Analysis of the £41m saving proposals for 2024/25 indicates.

- 39% by value (£15.9m) where the service is 100% certain the saving is deliverable (risk score 1)
- 38% by value (£15.7m) where the service is reasonably confident the saving can be delivered (risk score 2 to 6)
- 23% by valve (£9.6m) which the service is less confident of delivery (risk score 7 to 10)

52. In recognition of the high value of savings proposals, the degree of uncertainty attached to a few of them, and the overall likelihood of optimism bias associated with several of the proposals, the budget proposes to set aside £5.7m as an additional one-off contingency.

53. In addition, the recommendations of the main report requests approval be given to the implementation of a freeze on non-essential expenditure from 1 April 2024 and until such time as the delivery of the £41m of 2024/25 budget savings has been assured. This assurance will be the objective of a regular and specific meeting of the officer Corporate Management Board to monitor progress with each individual saving proposal.

Provision for pay award.

54. The budget as presented makes provision for a 4.5% pay award in 2024/25 based on benchmarking with near neighbour Unitary Authorities. From 2025/26 onwards a 2% uplift more in line with the actual awards between 2018 and 2021 has been allowed for. The clear risk is that these budgetary provisions are insufficient as has been the case in both 2022/23 and 2023/24. In both these years the National Employers organisation took a different approach in agreeing a £1,925 fixed value increase on each spinal column point with in 2023/24 a 3.88% uplift replacing the absolute value from SCP43 and above. The change towards a fixed amount led approach reflected factors such as high inflation, and the impact of the national living wage. The actual average uplift in 2023/24 has been calculated by the People & Culture Service at 6.75%.

55. Any variance from the 4.5% provided for in 2024/25 is estimated to be £1.9m per 1% variation. The trade union Unison is currently seeking a view from its members in respect of a 2024 pay claim the main element of which is for an increase of 10% or £3,000 whichever is greater.

New Pay and Grading Structure

56. The council has been working towards delivering a single pay and grading structure since its inception in April 2019. A ballot on the proposed new arrangements to be implemented from 1 December 2024 onwards commenced on the 15 January 2024 and closes on the 8 March

2024. If the ballot is successful, then the implementation of the new arrangements has the potential to disrupt the workforce. If the ballot is unsuccessful then the council would have to consider other options such as further negotiation with the Trade Unions or as a last resort the potential dismissal and reengagement of the workforce.

57. An amount of £269k in one-off resources have been set aside to provide additional capacity to the People and Culture Team in implementing the new arrangements in 2024/25,

<u>Realisation of Capital Receipts to fund the Transformation Investment Programme</u>

58. In the context of the council's overall financial position and its financial sustainability, a critical issue is the assumption that the council will generate capital receipts to finance its transformation programme over the 2-year period to 31 March 2025. The budget as proposed has been drawn up on the basis that capital receipts of £31m will be made available to cover the estimated transformation expenditure over that two-year period. This expenditure includes £26.7m on the main transformation investment programme, £1.7m on the approved Childrens Services specific transformation programme and £3m on the Adult Social Care Services specific transformation programme (£700k approved and £2.3m to be subsequently approved).

59. The key risk to the council is in respect of any expenditure which it intends to incur before the necessary cash from actual capital receipts has been realised. Bear in mind that conveyancing is often described as a challenging, time-consuming process, with many potential pitfalls. Any transformation expenditure which cannot be financed because insufficient capital receipts have been generated has to be charged to the revenue budget.

60. In 2023/24 the council budgeted to spend £14.4m on transformation which it planned to finance from capital receipts. At the time of writing this report (Jan 24) an amount of £12.5m has been realised by sales either in the current or previous financial year. Therefore, this means that a further £1.9m in sales must be delivered in the remaining 3-months before 31 March 2024. Subject to the risks around each individual sale, assets planned to be sold in this period include Southbourne Crossroads Car Park, the former Depot in Cambridge Road, and the Christchurch by-pass car park.

61. For 2024/25 the council intends to spend £17.0m on transformation which will need to be financed from capital receipts. There will however be a £3.8m shortfall once the planned residual sales in 2023/24 are considered alongside sales planned for next year including Beach Road South Car Park, Christchurch Civic Centre, the remining 2 units on the Airfield Industrial Park, and Upper Terrace Road former Car Park.

62. Ideally in a completely perfect budget position, either via the recommendations of the budget report or as separate standalone reports to budget Council, approval would be sought for the asset disposals now required to deliver the forecast shortfall in capital receipts required to fund the transformation programme in 2024/25.

63. Council has previously committed to discussing any additional sales with an established cross - party member working group before it is brought forward for Cabinet and Council consideration. A proposal on the disposal of Wessex Fields is planned to be presented to Council in April and proposals in respect of Poole Civic Centre are expected to be brought forward in the first quarter of 2024/25. Should councillors agree not to dispose of these assets then urgent decisions will be required to bring forward alternatives which can be realised by the 31 March 2025 deadline.

<u>Carters Quay Private Sector Housing Development</u>

64. The Carters Quay Housing and Regeneration Scheme is a Build to Rent Scheme designed to provide 161 new homes with an ancillary ground floor amenity and commercial

space. Council in late 2021 agreed to purchase the completed scheme from Inland Partnership Limited for £44.3m.

65. In late 2023 Inland Partnership entered administration with the Council having made £15.3m in payments as part of the contract arrangements for work completed to date. Contract arrangements, including a legal mortgage over the property provide a degree of mitigation of the risk the Council is exposed to in this arrangement.

66. Officers continue to work with the Administrator on the way forward and to try to ensure the councils investment in the scheme is protected.

67. Until the current position is resolved with the administrator and the scheme fully developed there is a clear risk the arrangement will cost more than has been allowed for as part of the approved business case.

Capitalisation of costs.

68. Provided in line with the parameters of approved capital schemes, and the Accounting Code of Practice, the council will continue to adopt the approach of charging expenditure incurred developing an Outline Business Case (OBC) to capital. Under normal circumstances subsequent expenditure preparing the Full Business Case (FBC) and delivering the scheme shall also be capitalised.

69. However, it should be noted that by continuing this approach the council is continuing to accept the risk that it will have to write off to revenue any payments on schemes which it subsequently decides not to progress with be that at either OBC or FBC stage.

New Enterprise Resource Planning (ERP) System

70. Following the engagement of KPMG as part of the Transformation Investment Programme the Council has implement a new Microsoft ERP system. This is a relatively new system in the local authority marketplace and with any new system there is always numerous glitches and a period of associated learning. Although we are seeing clear improvement to and engagement with the financial management arrangements there will be risks around the financial accounting requirements until at least one full cycle has been completed including the outturn and statutory accounts and their review by the External Auditor.

Legal claims against the Council.

71. The Council has several outstanding legal claims against it. Examples include claims brought against the council due to contractual terms and arrangements and claims because of the impact of the Councils actions on third parties. Detailing them is likely to prejudice the council's position. They cover a range of matters such as planning, highway, car parking, social care, and staffing. Each has the potential to have an adverse impact on the council's financial position. An example would be the land south of Gillett Road, Talbot Village, Poole planning application.

Loss or disruption to IT Systems and Networks from cyber attack

72. A loss or disruption to IT systems, specifically those caused by cyber-attacks, can incapacitate essential networks, for example, by encrypting or destroying data on which vital services depend. Such attacks could cause a variety of real-world harm if services like social care, housing, or place (highways etc) are impacted.

73. Financial loss is the most common impact through both direct loss of funds as well as recovery costs and reputational impacts. In 2020, both Redcar and Cleveland Council and Hackney Council faced ransomware attacks that had significant financial impacts on their services, resulting in £10m and £12m worth of damages, respectively. In January 2024 three councils in Kent, Canterbury City Council, Thanet District Council and Dover District Council were referencing disruption to their services as a result of an attack.

74. Public confidence may be affected if the council is not able to adequately protect its IT systems and networks against loss or disruption, whether caused accidentally or intentionally.

<u>Bournemouth Development Company (BDC)</u>

75. The Council has resources at risk in respect of advance fees incurred on schemes being worked-up by BDC (a joint venture between the Council and Morgan Sindall) which should eventually be covered by the individual schemes business case. For example, in respect of the Winter Gardens Scheme the Council has outstanding loans totalling £3.74m (plus accruing interest) supporting the expenditure undertaken. The council has previously made a £4.2m provision to cover its 50% share of these costs should the scheme not progress.

<u>Section 117 (6) Mental Health Act 1983 Accommodation Plus</u>

76. Guidance issued by the Local Government and Social Care Ombudsman and recent legal advice clarified that people should not be paying for services which meet their mental health needs under Section 117, including specialist accommodation/supported living. Where accommodation costs form an intrinsic part of the aftercare arrangement, the Council and/or Integrated Care Board (ICB) should pay for this, and the person should not be expected to claim housing benefit. This legal position may affect as many as 94 people currently in specialist accommodation in BCP Council who may be entitled up to 6 years back pay. There will be an expectation that NHS Dorset will pay part of the cost identified in line with their agreed contribution to the after-care provision for each individual. BCP potential risk after NHS Dorset contribution could be as high as £2m in backpay and over £300,000 as ongoing pressure. However, estimating the financial risk to the social care budget accurately is not easy because each service user assessment of need, care plans, tenancy agreements etc, is required to determine if the accommodation arrangements are indeed an intrinsic part of the aftercare needs assessment under section 117(6). Not all service users will have been in an after-care arrangements for 6 years some, may have covered their accommodation costs with housing benefit, some from their personal funds.

<u>Social Care Reforms</u>

77. These reforms will place significant new responsibilities on local authorities as well as introducing a cap on care costs. There is a significant risk that the Government grant will be insufficient to cover the full cost associated with these reforms and the staffing needed to enable their delivery. As part of the 2022 Autumn Statement the Chancellor announced these reforms have been delayed from October 2023 to October 2025. The latest MTFP position assumes that there will be at least a further year delay to this implementation due to concern that the necessary underpinning work is not taking place.

Adequacy of reserves

Figure 2: Latest Reserve Forecast

`	Balance 31-Mar-19 £m	Balance 31-Mar-20 £m	Balance 31-Mar-21 £m	Balance 31-Mar-22 £m	Balance 31-Mar-23 £m	Estimate 31-Mar-24 £m	Estimate 31-Mar-25 £m
Unearmarked Reserves	15.3	15.3	15.3	15.3	17.9	21.9	21.9
Earmarked Reserves	69.7	90.4	175.3	114.3	68.5	20.2	25.6
Total Reserves	**85.0**	**105.7**	**190.6**	**129.6**	**86.4**	**42.1**	**47.5**
Dedicated Schools Grant	**-3.6**	**-4.6**	**-7.9**	**-20.3**	**-35.8**	**-63.0**	**-92.0**
Net Position	**81.4**	**101.1**	**182.7**	**109.3**	**50.6**	**-20.9**	**-44.5**

Please Note: Earmarked Reserves as at 31 March in both 2021 and 2022 are distorted by numerous Covid-19 government grants.

78. The council must ensure reserves are retained at an appropriate level to provide adequate contingent resources for any unforeseen pressures or to provide sufficient time to identify on-going mitigations in a systematic way.

79. The Chartered Institute of Public Finance and Accountancy (CIPFA) previously advised that general or unearmarked reserves should be 5% of net revenue expenditure (NRE) as an absolute minimum. Benchmarking with other Unitary Authorities places us on the lower side of the median and therefore in the higher risk category. The 2023/24 budget allowed for a one-off investment of £1.9m into unearmarked reserves and an annual contribution of £0.7m from 2024/25 to reflect the increasing level of annual expenditure. On the 31 March 2023 unearmarked reserves totalled £17.9m which represented 5.8% of the net budget.

80. The 2024/25 budget looks to further improve this position. Firstly, a fundamental review of all earmarked reserves has been undertaken during 2023 to determine any resources that are no longer needed for their original purpose and therefore can be redirected. Net of a £1.7m investment to support improvement in Children's Services this has led to a forecast 31 March 2024 balance of £19.1m. Secondly instead of a £0.7m annual contribution in each of the next four years as assumed in the 2023 budget (£2.8m total) the proposal is to use the £2.8m forecast reduction in the earmarked reserves underpinning the 2023/24 budget, as set out in the Quarter 3 budget monitoring report for 2023/24, as a one-off contribution. This strategy aims to ensure that by the 31 March 2025 unearmarked have been increased to £21.9m which will amount to a 43% increase from their 31 March 2022 position.

81. As part of the strategy to assist in the mitigation of unforeseen events the council will continue to hold an in-year base revenue budget contingency of £2.2m.

82. Earmarked reserves are set aside to meet identified spending commitments and can only be used for the purpose for which they have been created. These reserves will continually be reviewed, and any resources not needed as intended transferred into unearmarked reserves. They include reserves in support of various partnerships where the council is the accountable body, reserves which represent government grants received in advance of the associated expenditure, reserves held on behalf of third parties and several reserves the council is required to hold in line with statute or its own governance requirements.

83. The council had earmarked reserves of £68.5m as of 31 March 2023. Of this, £30m relates to resources specifically set aside to support the balancing of the 2023/24 budget, and to avoid the severe cuts to services that would otherwise have had to be made. As these resources were one-off then the proposed 2024/25 needs to make the necessary adjustments to service levels.

84. Whilst the current level of reserves may be adequate to support the core budget for 2024/25 it does not require any professional judgement from the Chief Financial Officer (CFO) to assess that the council's reserves **cannot** be considered adequate based on the accumulating DSG deficit. However, as legislation prevents the council from making provision to offset the deficit in 2024/25 it appears there is no other option than to accept the position. Members do need to recognise that this legislation will not, as it stands, be applicable for the financial year 2026/27 and in the absence of government support the council will be insolvent from the 1 April 2026 onwards.

Conclusion

85. In the context of this report, the Director of Finance considers the proposed budget for 2024/25 is robust and the level of reserve is adequate, given a clear understanding by members and senior management of the following.

- The council is technically insolvent as it has negative general fund reserves due to the deficit on its DSG as pertaining to expenditure on the Special Educational Needs and

Disability service. This DSG deficit is growing by more than £29m per annum which is the amount the expenditure on the High Needs Block continues to be more than the government funding being made available. A solution needs to be identified with government by this time next year on the basis that as it stands, the Director of Finance is likely to have to determine whether or not a legally balanced budget can be set for the whole of the 2025/26 the financial year, which will be almost impossible as the current statutory override ends on 31 March 2026, the last day of that financial year.

- That unearmarked reserves are only just sufficient to cover an unexpected single event such as a cyber-attack, the requirement to provide for/or write-off the expenditure on Carter's Quay, or significant in-year overspending. Any such single event would then require drastic action to restore such reserves to the minimum recommended level. They would be insufficient for the realisation of multiple risks.
- That the advice of the Director of Finance is to continually look to all opportunities to increase unearmarked reserves and improve the councils overall financial sustainability.
- Effective governance arrangements will be maintained at Executive, Senior Management, Directorate, and budget holder level to monitor the overall delivery of the 2024/25 budget.
- Directors and budget holders accept their responsibilities and accountability to deliver their services within the parameters of the agreed budget including the realisation of approved savings.
- That a freeze on all non-essential expenditure will be applied from 1 April 2024 onwards until such time as the delivery of the £41m of 2024/25 budget savings have been assured.
- Directors will diligently identify and rigorously apply mitigation strategies for any in-year budget pressures that do materialise.
- Earmarked reserves will be supported by a clear plan held by the service and will be drawn down in line with the profile. Any not needed for their original purpose will be redirected into unearmarked reserves.
- The levels of reserves and contingencies is adequate, but all opportunity should be taken for them to be enhanced by any further improvement in the in-year position.
- Effective governance arrangements will be maintained at Executive, Senior Management, Directorate, and budget holder level to monitor the overall delivery of the 2024/25 budget.

86. It should be highlighted in mitigation of the risk associated with the appropriate financial management processes and practices it is intended to ensure that all budget holders are issued with a "Budget Assurance Statement" in support of their 2024/25 budget. This is a new document that formalises that they accept their budget and agree to deliver services within its financial parameters. The document is also intended to provide evidence in support of any major elements such as the staffing establishment and high value contracts.