

DECISION-MAKER:	CABINET		
SUBJECT:	PROPOSED COUNCIL TAX DISCOUNTS FOR SPECIAL CONSTABLES AND PERSONS OVER THE AGE OF 65		
DATE OF DECISION:	17 FEBRUARY 2010		
REPORT OF:	CABINET MEMBER FOR RESOURCES		
AUTHOR:	Name:	Alex Moore	Tel: 023 80834853
	E-mail:	Alex.moore@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY

N/A

SUMMARY

It is proposed to introduce a 100% council tax discount for people who live and work as Special Constables within the City to assist in meeting the Council's objective to improving community safety and reducing crime and disorder, and this report outlines the details of this.

It is also proposed to continue the 10% council tax discount for persons over the age of 65 introduced in 2009/10, subject to the agreed criteria as shown in Appendix 2, as previously agreed by Cabinet on the 18th February 2009, Decision No: CAB155 - 02/2009.

RECOMMENDATIONS:

- (i) That Cabinet considers the considerations and issues set out in this report and determines whether or not they wish to implement a Council Tax reduction scheme under S13A of the Local Government Finance Act 1992.
- (ii) If Cabinet chooses to implement such a Council Tax reduction scheme, the qualifying criteria in respect of the "Special Constable" element of the Scheme for 2010/11 and onward be that the reduction should be available to persons who are:-
 - (a) Special Constables on or after 1st April 2010; and
 - (b) Reside in a property within Southampton where there is a liability for Council Tax and serve as a Special Constable within Southampton.
- (iii) If Cabinet chooses to implement such a Council Tax reduction scheme, the level of reduction in respect of the "Special Constable" element should be 100%.
- (iv) If Cabinet chooses to implement such a Council Tax reduction scheme, to approve the qualification criteria for the discount as set out in Appendix 1.
- (v) To authorise the Executive Director of Neighbourhoods to take any further action necessary to implement the proposed scheme.

- (vi) To authorise the Executive Director of Resources to take any further action necessary to administer the scheme once approved by the Hampshire Police Authority (HPA) and Home Office.
- (vii) To continue the 10% council tax discount for persons over the age of 65, subject to the agreed criteria as shown in Appendix 2 for 2010/11 and onwards.

REASONS FOR REPORT RECOMMENDATIONS

- 1 To assist in meeting the Council's objective of improving community safety and reducing crime and disorder.

CONSULTATION

- 2 Legal Services and Finance have been consulted on this report and the report itself is based around Counsel's opinion which was sought last year in respect of the potential discounts that are being offered.
- 3 The Neighbourhoods Directorate are in the process of consulting with the Police and Hampshire Police Authority.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 4 Alternative funding options to reduce crime and disorder may not provide a direct incentive for potential recruits to the post of Special Constables, whereas the proposed council tax discount reduction scheme does.

DETAIL

- 5 Officers were requested by the Executive to look in to how a 100% council tax discount may be offered to Special Constables who live and serve within the City, meeting the criteria outlined in Appendix 1, and this report recommends the introduction of this.
- 6 The Executive's proposals were included within their major general fund revenue budget and council tax proposals. These were considered and approved by the Executive on 27th October 2008 (Item A17: 2009/10 General Fund Revenue Budget and Council Tax – Major Proposals for Consultation).
- 7 The Solicitor to the Council sought Leading Counsel's opinion on this proposal and this has informed the legal advice to the Council, which is set out within this report.
- 8 The Solicitor to the Council advises that this group of council tax payers would constitute a "class of case" within the meaning of Section 13A of the Local Government Finance Act 1992 (the relevant legislation for defining a council tax discount), and that the exercise of these powers is a function of the Cabinet.
- 9 However, as with all decisions, the decision must not only be lawful, but it must be taken for lawful reasons. Councillors do not act improperly or unlawfully if, exercising public powers for a public purpose for which such powers were conferred, they hope that such exercise would earn the gratitude and support of the electorate and thus strengthen their electoral position. The law would indeed part company with the realities of party politics if it were to hold otherwise. However, a public power is not exercised lawfully if it is not exercised for a public purpose for which the power was conferred, to promote

the electoral advantage of a political party. The power at issue in the present case is section 13A Local Government Finance Act 1992. Thus the local authority could determine to exercise this power so as to reduce Council Tax liability in respect of one or more classes of persons to promote any public purpose for which such power was conferred, but could not lawfully do so for the purpose of promoting the electoral advantage of any party represented on the council.

A very clear statement of this principle is to be found in Wade and Forsyth, Administrative Law (8th Edition, 2000) at pp 356-357.

“Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely – that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended.”

Therefore, the Council, and members making the decision, must apply their minds properly to the relevant law, the relevant considerations and issues, and dismiss from its mind, irrelevant considerations and issues.

- 10 To assist in this process, the Solicitor to the Council with the assistance of Leading Counsel, established the key questions that members should evaluate in reaching such a decision, and these are detailed below:
- 11 ***‘The Council needs to think about what the likely cost of the proposed discount will be, and the impact of granting that discount either upon the council tax generally, or upon the provision of services’***
- 12 Members need to bear in mind the effect of granting any reduction on those who will not benefit from it. Clearly that will be either a marginal loss of services or a marginal increase in council tax to pay for the reduction, though in practice it will be impossible to identify which. However, it may assist if the effect is put in monetary terms, in which case total costs of awarding a 100% discount for Special Constables would be a full rebate at Band D of £1,208.97 at an overall estimated cost of £0.1M.
- 13 The major budget proposals for consultation were developed in order to support the delivery of the Executive’s Policy Priorities which were included as an appendix to the Cabinet report in October 2008. The consultation process was designed to capture views regarding the policy priorities and council tax levels in order to inform the development of the Executive’s proposed budget for publication in January 2009.
- 14 Amendments have also been made as a result of the consultation process and taking into account the impact of the economic climate. The Executive’s draft budget now presented for consideration to Full Council fully takes account of the Executive’s policy priorities and proposes a 2.50% Council Tax increase for 2010/11.
- 15 Therefore, were the proposed discount for Special Constables to be removed from the budget the Executive would reduce the recommended council tax increase by the funding released of £0.1M, which equates to around 0.12%, bringing the proposed council tax increase down to 2.38%.

- 16 ***'The Council needs to think about precisely how the class to benefit from the discount should be defined'***
- 17 Appendix 1 outlines the proposed criteria for granting the discount. It should be noted that the Solicitor to the Council advises that *the definition should be such as will allow for the discount to be applied efficiently (which includes considerations of achieving take-up by those entitled to it) and without excessive administrative burdens*.
- 18 The proposal is to introduce a council tax discount of 100% for Special Constables who serve and live within the City.
- 19 Ministerial approval must be obtained before any such discount can be introduced and the Police Authority have submitted a Proposal, see Appendix 5, for Home Office consideration.
- 20 The Solicitor to the Council advises that there are four questions and issues which should be considered before deciding whether to introduce the discount and these are now considered in the same order:
- 21 ***'What is the evidence that there is a problem with the recruitment and retention of special constables to work in the city that needs attention?'***
- 22 The Police Authority stated in their submission to the Home Office last year that they would like to have in post in excess of 85 Special Constables in order to achieve their desired impact on increasing levels of public reassurance across the City in relation to Criminal Damage and Anti-Social Behaviour. At present they have 60 Constables in place and as this role is manned through volunteers only, with no form of financial remuneration, increasing and maintaining numbers is an issue.
- 23 ***'Why is it thought that a council tax reduction is a better means of addressing that problem than whatever the available alternatives may be?'***
- 24 The discount is likely to have a direct financial benefit to the individual concerned. As such it is hoped that recruitment would improve as this would be a 'real' incentive. This is certainly the experience in Hull where a similar scheme has been in operation since April 2005. Alternatives to address the issues identified in above could include additional Accredited Community Support Officers, but the costs would be considerably more than granting the discount, or by direct grants to the Police Authority which may not have the resulting impact of more Uniforms on the beat, which is often the fact that reassures residents.
- 25 ***'Is this an appropriate approach given that, by definition, the Council can only extend the benefit of a discount to special constables living in the city, whereas (it may be) significant numbers of actual or potential special constables may work in Southampton but live in other local authority areas?'***
- 26 The Police Authority indicated last year that there are very few instances of Special Constables who live in the City requesting that they work outside of the City. In most cases those who volunteer want to 'make a difference' to their City. Those who do make such a request to work elsewhere would not

be eligible for the discount anyway. Equally there are very few instances of those who serve in the City but live outside

27 ***'Is the Council satisfied that sound reasons exist for singling out special constables as opposed to other persons in relation to whom there is a public interest in a sufficient supply of workers which may coupled with a recruitment and retention problem (say, for example, speech therapists or science teachers)?'***

28 The Council recognises that there are many groups of volunteers who provide services to the community on an unpaid basis. However many of these would be difficult to define for the purposes of administration in terms of defining and awarding a council tax discount. Special Constables are already defined by the Police Authority and contribute directly to the Council's aim of 'improving community safety and reducing crime and disorder'.

29 Overall this is felt to be a relatively low cost option to assist in achieving a reduction in crime across the City.

30 The Neighbourhoods Directorate are currently liaising with the Police and HPA in order to ensure that the proposal can be considered by the HPA and Home Office. If it receives approval the Director of Resources can proceed to administer the scheme.

Older Persons Discount

31 On the 18th February 2009, the Executive approved the introduction of a 10% council tax discount for persons over the age of 65 introduced in 2009/10. It is now proposed that the scheme continues for 2010/2011, and onwards, always of course recognising that in future years, the Executive may choose to vary or withdraw the scheme. The proposed criteria for 2010/2011 and onwards are the same as agreed in 2009, and set out in Appendix 2. The issues raised and considered by the Executive when they made their decision remain valid, and can be viewed in the 2009 report at:

[Special Cabinet Meeting Papers 18 February 2009](#)

FINANCIAL/RESOURCE IMPLICATIONS

Capital

32 N/A

Revenue

33 The cost of introducing a discount for Special Constables is estimated to be £100,000 based on the target of recruiting 85 Constables for the City. The actual cost will of course vary depending on the number of Constables in post during the year and the band of house in which they live.

34 The cost of continuing the 10% discount for persons over the age of 65 is estimated to be £900,000.

Property

35 N/A

Other

36 N/a

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

37 The powers are contained in Section 13A of the Local Government Finance Act 1992. This section, inserted by s 76 of the Local Government Act 2003, provides that where a person is liable to pay Council Tax in respect of any chargeable dwelling and any day, the billing authority:

“ . . . may reduce the amount which he is liable to pay . . . to such extent as it thinks fit.”

By s 13A(3) it is provided that the power:

“... may be exercised in relation to particular cases or by determining a class of case in which liability is to be reduced to an extent provided by the determination.”

What the Council is now contemplating is that the s 13A power should be exercised so as reduce the Council Tax liability of a class of person. The class would consist of those working as special constables within the city, and it is contemplated that they would enjoy a 100% discount.

This group of beneficiaries would constitute a “class of case” within the meaning of s 13A, and so the power to reduce the Council Tax in principle exists.

Other Legal Implications:

- 38 1 As with any discretionary power, the power to make reductions is one which must be exercised consistently with *Wednesbury* principles. That is to say, it must be exercised in a manner which is rational, for a proper purpose, and having regard to all legally relevant and no legally irrelevant considerations. Were the decision to grant a reduction ever to be challenged by way of judicial review, it is likely that a considerable amount of judicial restraint would be exercised when considering that challenge, for two reasons. One is that s 13A itself is so very open-textured – it is a discretion expressed in the broadest possible terms, with nothing in either the language or the surrounding statutory context to suggest any particular limits upon the way in which the power is to be exercised. The other is that this is very much the field of policy decisions not apt for close judicial scrutiny, involving choices about how to allocate Tax burdens and how to strike the balance between Tax and services. Therefore, in principle the right way to challenge such a decision will normally be through the ballot box rather than the courts.
- 2 If a decision to make the proposed reduction under s 13A were rational in a *Wednesbury* sense, it is unlikely that it could be successfully challenged on any other basis. There are cases which indicate that a failure to treat like cases alike may be a ground of challenge. However, when regard is had to other cases, it is clear that in deciding whether cases are indeed alike, the decision-maker enjoys a margin of judgment which amounts to something not very (if at all) different from a conventional *Wednesbury* test. The cases cannot be taken as outlawing any policy which operates by way of broad classes for genuine reasons of practicality, even though that means that some

cases will be treated alike, or differently, when that would not be justified if the decision had been based upon an examination of their individual facts.

- 3 There is also the question of the Human Rights Act 1998. It probably is the case that Article 1 of the 1st Protocol is engaged here, so that the article 14 anti-discrimination provision is in principle in play. However, it is undoubtedly also the case, on the authorities, that when it comes to the question of justification, a wide margin of discretion will be allowed to the Council in a matter such as this – essentially for the same reasons set out above. In practice, the application of the Human Rights Act in this will not mean anything more than that the decision may be scrutinised with slightly greater intensity than traditional *Wednesbury* reasonableness, but still falling a very long way short of the court substituting its own view of the matter.
- 4 Having said all that, there must of course be some proper justification for conferring a financial benefit on a substantial class of local Taxpayers, but not on others, and for doing so in circumstances where the ultimate consequence must necessarily be either that others pay more, or that services are reduced from what they might otherwise be, or both. That is bound to be so. Even if the benefit is initially funded from reserves and the reserves are never replenished, the fact is that those reserves could otherwise have been used to fund better services or a reduced Council Tax for all. The number of special constables is too small for their discount to have a significant impact on others. But even in relation to them a rational and proper justification is required.
- 5 In relation to the proposed discount for special constables, the questions to be asked are what is the Council trying to achieve, is this the appropriate way to achieve it compared with alternatives that may exist, and what is the likely impact of the proposal? The thinking here is less to do with special constables being less able to pay Council Tax than other people, and more to do with the perceived desirability of creating an incentive for people to become and remain special constables. In principle, this is not an improper purpose for exercising the s 13A power. However, the Council would need to ask itself, in particular:
 - (i) What is the evidence that there is a problem with the recruitment and retention of special constables to work in the city that needs attention?
 - (ii) Why is it thought that a Council Tax reduction is a better means of addressing that problem than whatever the available alternatives may be?
 - (iii) Is this an appropriate approach given that, by definition, the Council can only extend the benefit of a discount to special constables living in the city, whereas (it may be) significant numbers of actual or potential special constables may work in Southampton but live in other local authority areas?

- (iv) Is the Council satisfied that sound reasons exist for singling out special constables as opposed to other persons in relation to whom there is a public interest in a sufficient supply of workers which may coupled with a recruitment and retention problem (say, for example, speech therapists or science teachers)? Such sound reasons might of course be found in factors such as difficulty in identifying members of another group, or the fact that the numbers within another group would make the cost of a discount for its members unacceptable.

The Position of the Precepting Authorities

- 6 The Council as billing authority funds the cost of any local discount granted pursuant to s 13A, and the reduction in Council Tax income resulting from the discount will not fall to be passed on to the Council's two precepting authorities, the Hampshire Fire and Rescue Authority and the Hampshire Police Authority. This is achieved by the directions made by the Secretary of State pursuant to ss 98(4) and 98(5) of the Local Government Finance Act 1988 and set out in Annex B to ODPM Council Tax information letter 7/2003 of 27 November 2003. The effect of the directions is that during the financial year the amount "lost" by the discount is transferred to the collection fund from the general fund, so that there is in this respect no shortfall in the collection fund which would go to reduce the amounts paid by the billing authority to the precepting authority. Then, at the end of the financial year, Directions CT98(4)/31 and CT98(4)/32 require an adjusting payment to be transferred from the collection fund to the general fund.

The Decision-Making Process

- 7 The decision whether or not to grant a reduction under s 13A is an executive function. There is nothing in the Local Government Act 2000 or in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (SI 2000 No 2853 as amended – "the Regulations") which would suggest otherwise. It is of course the case that the setting of the Council Tax and the Council's budget is a function of the full Council: this follows from s 67 of the Local Government Finance Act 1992 and r.2(11) of the Regulations, and is made explicit by rr. 4(9) and (10) of the Regulations.
- 8 Whilst the budget-setting decision and the s 13A reduction decision are legally quite distinct decisions, the former for the Full Council and the latter for the Executive, the reality is that they are intrinsically linked and inter-dependent.
- 9 If Full Council in setting the budget is in agreement with the Executive's proposal for a s 13A discount for special Constables, then the budget and Council Tax would be set in a way which reflected that proposal. In other words, the total budgeted expenditure under various heads would be set at a level nominally less than would normally be possible at the level of Council Tax being set, reflecting the shared understanding that by virtue of the s 13A discount, the amount of Council Tax collected will be less than would otherwise be the case (or,

of course, the Council Tax itself might be set higher than it would otherwise have been, if there was no intention that the s 13A discount should result in reduced expenditure). The Executive would then proceed during the year to spend at the levels contemplated in the budget.

- 10 But if Full Council did not agree with the Executive's s 13A proposal, then it would presumably set the Council Tax and the budgeted expenditure under various heads at the level that it would otherwise have done. The Executive would then be unable to implement the discount.
- 11 Therefore, whilst Full Council cannot as a matter of law preclude a decision by the Executive to grant a s 13A discount to Special Constables, by setting the budget in a certain way, the impact of that means that the Executive would not have the resources available (without reverting to Full Council, given virement limits and the like) to adopt a discount.
- 12 Conversely, and for completeness, the Executive cannot compel Full Council to set a higher level of Council Tax than would otherwise be the case by virtue of making clear that it intends to grant a s 13A discount. Only the Full Council can decide what the level of Council Tax should be. Full Council must as a matter of *Wednesbury* reasonableness take account of the Executive's desire and intention to grant a reduction under s 13A, but it does not have to agree with or accept that intention.

POLICY FRAMEWORK IMPLICATIONS

- 39 This report sets out the Executive's proposed budget to Council which is being developed in line with the constitution and forms and integral part of budget and policy framework.

SUPPORTING DOCUMENTATION

Appendices

1.	Qualifying Criteria for Special Constables Council Tax Discount Scheme
2.	Qualifying Criteria for Older Persons Discount Scheme

Documents In Members' Rooms

1.	None
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Background Documents

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	Counsel's Opinion	
2.	Various Research information	
3.	Cabinet Report and Appendices 18 th February 2009 – Item A01: Proposed Council Tax Discounts for Persons over the Age of 65 and Special Constables	

Background documents available for inspection at:

FORWARD PLAN No:

KEY DECISION?

WARDS/COMMUNITIES AFFECTED:	All
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