

ISSUES FOR CONSIDERATION

As with all decisions, the decision must not only be lawful, but it must be taken for lawful reasons. Councilors 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 if 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 its mind properly to relevant law, the relevant considerations and issues, and dismiss from its mind, irrelevant considerations and issues.

To assist the Council, and members making the decision to apply its mind properly to relevant law, the relevant considerations and issues, and dismiss from its mind, irrelevant considerations and issues, 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:

“PENSIONERS ELEMENT” OF THE DISCOUNT

‘Firstly, the Council needs to analyse whether it is factual that the council tax is placing a particular burden on pensioners in its area as compared with the rest of the council tax-paying population’.

‘Secondly, the Council needs to think about how far it is or is not practicable or desirable to limit any discount to those pensioners who are really or most in need of it’.

'Thirdly, the Council needs to think about whether it is indeed the case that there are not other classes of council tax-payers who are as much as or more in need of assistance of this kind'

'Fourthly, 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'

'Fifthly, the Council needs to think about precisely how the class to benefit from the discount should be defined'

"SPECIAL CONSTABLE ELEMENT OF THE DISCOUNT

'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'

'The Council needs to think about precisely how the class to benefit from the discount should be defined'

'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?'

'Why is it thought that a council tax reduction is a better means of addressing that problem than whatever the available alternatives may be?'

'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?'

'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)?'