

SUBJECT: COUNCIL TAX SECTION 13A POLICY

DIRECTORATE: DIRECTOR OF RESOURCES

REPORT AUTHOR: CLAIRE MOSES, REVENUES AND BENEFITS MANAGER

1. Purpose of Report

- 1.1 For Executive to consider a Council Tax policy for Section 13A Relief, and refer to Full Council for approval.

2. Executive Summary

- 2.1 Section 13A of the Local Government Finance Act, provides the Council with additional discretionary powers to enable it to reduce the council tax liability where statutory discounts, exemptions and reductions do not apply.
- 2.2 The policy sets out how the Council will administer applications under these discretionary powers.
- 2.3 These discretionary awards can be given to:
- Individual Council Tax payers;
 - Groups of Council Tax payers defined by a common set of circumstances;
 - Council Tax payers within a defined area; or
 - To all Council Tax payers within the Council's area.

3. Background

- 3.1 On 27 May 2014 the payment of discretionary Council Tax support under regulation 13a(1)(c) of the Local Government Finance Act was the subject of legal examination.

A judgement from the President of the Valuation Tribunal confirms that valuation tribunals dealing with appeals on discretionary relief under regulation 13A(1)(c) are not entitled to refuse discretionary reductions on the grounds that either the circumstances are outside of the local authorities scheme or that the local authority has no budgetary provision for such additional reductions in liability.

That ruling has come from tribunal president Professor Graham Zellick in a case brought by two residents of East Riding of Yorkshire Council. Their appeals were the first relating to Council Tax discretionary relief heard by the tribunal since the Local Government Finance Act 2012 came into force

- 3.2 In SC v East Riding of Yorkshire Council [2014] the President of the Valuation Tribunal ruled that the Tribunal has unlimited powers to overturn decisions on discretionary council tax payments. Despite the fact that the courts or tribunals do

not normally interfere with local authority discretionary powers to grant relief, in this case the President confirmed that there is a right of appeal against decisions on discretionary relief and, as a result, has amended his advice on discretionary relief appeals contained in paragraph 28 of the President's Practice Statement Council Tax Reduction Appeals.

Despite the fact that rulings of the valuation tribunals do not normally set a precedent, this is a ruling of the president, who has also amended the official advice to tribunals. The effect of this is to create a rule which other tribunals will be expected to follow

- 3.3 The president said in this case that "... it is for the appellant to raise doubt as to the correctness of the authority's decision and to argue what the correct decision should have been. The authority may then defend its decision and the panel will decide the appeal on the balance of probabilities. There is no inhibition on the Tribunal's substituting its view for that of the authority".
- 3.4 Under Section 13A of the Local Government Finance Act 1992 (as inserted by Section 76 of the Local Government Act 2003), the Council has the power to reduce liability for council tax in relation to individual cases or classes of cases that it may determine and where national exemptions and discounts cannot be applied, for example, properties affected by flooding or fire, or a reduction due to an individual application, for example, on the grounds of exceptional financial hardship.
- 3.5 The Local Government Finance Act 2012 introduced a new section 13A into the 1992 Act covering both the new council tax reduction schemes and the former discretionary power to grant relief – this was introduced as Section 10 of the Act.
- 3.6 Liability may be reduced "to such an extent as the billing authority thinks fit". Billing authorities can apply a reduction in particular cases or by determining a class of case. Liability for Council Tax can be reduced to nil.
- 3.7 The financial burden of awarding a Section 13A discount has to be met through an increase in the general level of Council Tax for other payers. The granting of Section 13A discounts has previously only been made in exceptional circumstances.
- 3.8 The Act is intended to enable authorities to respond to local and individual circumstances, and allows the Billing Authority the power to reduce the amount of Council Tax payable.

4. Main Body of Report

4.1 Current Decision Making

- 4.2 Guidelines are set out in the proposed policy under which an individual application for a reduction under Section 13A can be considered. Each case would be looked at on its individual merits but the guidelines are intended to ensure that a consistent approach is taken and that applicants understand the criteria that will be considered in assessing their application

- 4.3 For many years, the law has given local councils the power to reduce any resident's council tax liability to "nil". However, this power has been brought into sharper focus since the abolition of the national Council Tax Benefit scheme from April 2013. Instead of receiving a full Council Tax rebate many people in receipt of means tested benefits now have a shortfall to pay – although the City of Lincoln Council Localised Council Tax Support scheme from 2013/14 to 2015/16 (inclusive) has effectively 'protected' the scheme for working age taxpayers.
- 4.4 Each new Council Tax Support scheme must include a procedure for the individual to apply for a 13A reduction. Application for Section 13A is referred to in Part 3 of the Council Tax Support Regulations, but does not give details with regards to the policy.
- 4.5 The power in Section 13A clearly allows for a reduction scheme to be available but any proposal has to be exercised in a rational manner for a proper purpose and have regard to all legally relevant and non-legally relevant consideration (*Wednesbury* principles)
- 4.6 **The Tribunal Decision**

The President of the Valuation Tribunal (England) has issued a landmark judgment confirming that the Tribunal has unlimited power to overturn decisions by councils which refuse to award discretionary hardship payments.

The President concluded that if a council refuses to exercise their power for a particular resident, those affected could appeal to his tribunals, which have full power to order the council to make a further – or total – reduction in Council Tax owed.

- 4.7 The original practice statement (council tax reduction Appeals CTE/PS/A11 gave a limited role for the valuation tribunal. Following the successful appeal, the practice statement has been changed and now falls into a subject covered by the Valuation panel and not a billing authority decision.
- 4.8 The tribunal president outlined sixteen points designed to assist billing authorities when making an initial decision, reviewing decisions and dealing with appeals: -
1. Focus reaches further;
 2. Tribunal can substitute its own view;
 3. A decision does not have to be unreasonable to be set aside;
 4. Decisions set aside should be done so with care;
 5. Process is not as important as the merit of the case;
 6. Local authorities really need a discretionary scheme;
 7. It should be looked at by lawyers;
 8. Just because the decisions follow the council policy does not mean it is immune from appeal;
 9. No discretionary scheme is above tribunal scrutiny;
 10. Do not deviate from the policy;

- 11.If you do deviate, it will weaken the case;
- 12.Tribunal will be wary of decisions that are made under Section 13A;
- 13.Every application is on its merits
- 14.Circumstances can change when talking about outgoings and income;
- 15.Local authority budget is not a factor;
- 16.The final decision might not be made before additional information is available.

- 4.9 The Valuation Tribunal powers to act would be made possible through the procedure Regulations (the Valuation Tribunal for England) (Procedure) Regulations 2009 SI 2009 2269

Regulation 38(d) After dealing with a section 16 appeal the VTE may by order require a calculation (other than an estimate) of an amount to be quashed and the amount to be recalculated

Therefore, the tribunal can require the local authority to recalculate its' Council Tax in accordance with the decision from the tribunal and that includes the payment of relief under Section 13A.

4.10 **Impact for Billing Authorities**

- 4.11 All 16 points raised in paragraph 4.8 could have significant impacts on the billing authority – both financial and policy.

4.12 **Financial Implications**

- 4.13 The president's ruling specifically said a factor which cannot have any relevance for the Tribunal is whether or not an overall budget had been created by the authority for such discretionary applications. He said that "I do not see how in law this can be a cash-limited exercise. The merits of an appeal cannot be affected by the existence of any such budget. A 'budget' is in any event a somewhat artificial concept in view of the fact that the authority is forgoing income and not spending existing funds".
- 4.14 The most significant point made by the Valuation Tribunal in paragraph 25 of Appendix A and point 15 of paragraph 4.8 above - 'Local Authority budget is not a factor'. A Section 13A reduction is not an award, it is a reduction in liability after all other discounts and exemptions have been considered.
- 4.15 The loss in Council Tax revenue resulting from the granting of a Section 13A reduction must be met by the billing authority and not passed on to other major precepting authorities.
- 4.16 There is no requirement, therefore, to take into account the cost of reduction granted under Section 13A when calculating the tax base. The billing authority will be required to transfer from its General Fund to its Collection Fund the amount by

which the Council Tax has been reduced by any local reductions.

- 4.17 Prior to the Valuation Tribunals recent decision, it would have been anticipated that only a small number of reductions are likely to be granted and those that were would have been for short periods of time. However, the decision made could potentially result in more applications being made, or at least, those applications that are made and turned down, appeals are received and taken through to Valuation Tribunal for reconsideration.
- 4.18 City of Lincoln currently has an exceptional hardship budget of £10,000 for 2015/16, as at 30 November 2015 £8,364 has been spent. Officers have reviewed this budget, as Exceptional Hardship payments can be made instead of Section 13A. The Council Tax Support scheme report being presented to this same Committee on 17 December 2015 recommends the continuance of the £10,000 Exceptional Hardship fund for 2016/17.

This budget is also used in conjunction with Discretionary Housing Payment applications, and therefore, is used for other circumstances which are not included within Section 13A.

4.19 Consultation on the proposed policy

- 4.20 In order to ensure the proposed policy is fit for purpose and meets the needs to various stakeholders and customers, effective consultation has been undertaken for the period 4 November to 11 December 2015. No consultation responses have been received.

Below is a timeline in respect of consultation and approval.

- Policy Scrutiny Committee – 17 December 2015
- Executive – 11 January 2016
- Council – 19 January 2016

5. Strategic Priorities

5.1 Protecting the poorest people in Lincoln

Council Tax reductions have a key role in Reducing Poverty and Disadvantage by ensuring residents in those households who cannot afford to pay their Council Tax receive financial support. The changes to Council Tax Support and hardship policies form part of the national welfare reform agenda, with the risks of changes to numbers of claimants due to economic change and funding gap costs being passed from central government to local authorities. Central government now has a fixed cost funding arrangement whereas local government must set a scheme in advance of the financial year it applies to but cannot change it should circumstances change unexpectedly or if the assumptions used to decide the

scheme are not realised. Central government states that this places responsibility for the local economy such as creating businesses and jobs on local government as part of the localism agenda.

6. Organisational Impacts

6.1 Finance

The exceptional hardship fund of £10,000 made available during 2015/16, is recommended via the Council Tax Support scheme report to this same Executive meeting continue to be available into 2016/17 – as set out in paragraph 4.17.

6.2 Legal Implications including Procurement Rules

This policy is required in order to comply with Section 13A of the Local Government Finance Act 1992.

6.3 Equality, Diversity & Human Rights

The Authority will be obliged to comply with its general equality duty under the Equality Act 2010. An Equality Assessment has been prepared and is shown in Appendix 5 to this report.

7. Risk Implications

7.1 The Council bears the risk of the cost of the reduction to the bill.

8. Recommendation

8.1 Executive to consider a Council Tax policy for Section 13A Relief, and refer to Full Council for approval.

Is this a key decision?

Yes

Do the exempt information categories apply?

No

Does Rule 15 of the Scrutiny Procedure Rules (call-in and urgency) apply?

No

How many appendices does the report contain?

Appendix 1 – Valuation Tribunal for England Judgment

Appendix 2 – Letter to Local Authorities from DWP

Appendix 3 – Presidents Explanatory Note on Practice Statement A11

Appendix 4 – Draft Section 13A policy

Appendix 5 – Equality Assessment

Appendix 6 – Policy Scrutiny Committee minute

List of Background Papers:

None

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