

# TONBRIDGE & MALLING BOROUGH COUNCIL

## CABINET

20 June 2012

### Report of the Director of Finance

#### Part 1- Public

#### Executive Key Decisions

#### 1. LOCALISATION OF COUNCIL TAX BENEFIT

**A report advising Members of the latest developments in the establishment of a local scheme for council tax support for the Tonbridge and Malling Borough Council area and outlining proposals for a Kent-wide scheme to be adopted at a local level. The report also asks Members to authorise me to further discussions with other Kent billing and precepting authorities with regard to such a scheme and to consider a response to a recent consultation paper on the funding of local schemes.**

#### 1.1 Introduction

1.1.1 As Members will be aware from my report to Cabinet on 28 March last, a copy of which is attached at **[ANNEX 1]**, the present, national scheme of council tax benefit will cease to apply as from 1 April 2013. In its place, each billing authority will be required to establish a local scheme of council tax support. Support under the local schemes will be in the form of a discount on the council tax bills for those council tax payers who qualify for support. If a billing authority fails to establish a local scheme, then the 'default' scheme will operate. The default scheme will, basically, have the same characteristics as the existing council tax benefit scheme.

1.1.2 Although the default scheme appears attractive, as it would retain the status quo, it would, in fact, be insidious and have a severe, negative impact on the Council's finances. This is because, although the current council tax benefit scheme is funded virtually 100% by central government, funding, as from 1 April 2013, will reduce to 90%. The reduction of 10% could theoretically, of course, be funded by the Council from savings elsewhere within its budget. However, this would be highly problematical unless Members wished to reduce expenditure on other services. The alternative, of increasing the basic level of council tax, is not a realistic option, in the light of the Government's restrictions in respect of allowable council tax increases that do not trigger referenda, and the nationally-prevailing economic conditions. Thus, the only realistic, long-term choice for the Council appears to be to reduce entitlements under a local scheme, in order to balance

the funding for the local scheme with the entitlements of claimants under such a scheme. This issue is explored in greater detail below.

- 1.1.3 Whatever decisions Members might arrive at in respect of a local scheme for Tonbridge and Malling, I have to stress that we are working to a tight timetable. By law, the Council must formally adopt its local scheme by no later than 31 January 2013. That suggests its adoption by Cabinet, at the latest, at its meeting in January 2013. However, any potential entitlements under the local scheme will be in the form of discounts that will have to be reflected in the council tax base for the 2013/14 year. Therefore, until I am aware of the design of the local scheme, and the potential entitlements under that scheme, I will be unable to accurately calculate the council tax base. As the council tax base for 2013/14 must be calculated at the end of November 2012, the local scheme should be finalised, apart from minor adjustments, by that date. That suggests approval, by Members, of the principles of the scheme at Cabinet on 10 October.
- 1.1.4 Importantly, however, we are required to consult on our proposed local scheme. Such consultation should last for a minimum of eight weeks. Therefore we will need to have the broad outline of our local scheme decided upon by mid-August at the absolute latest. It is unlikely that all matters will have been fully 'ironed out' by 20 June so, unless Members wish to convene a special meeting of the Cabinet, delegated authority will need to be given to me, in conjunction with the Leader and the Cabinet Member for Finance, to progress the outline scheme to consultation stage.

## **1.2 The present position**

### **1.2.1 Introduction**

I mentioned, in my report to Cabinet in March, that 'Regrettably, however, bearing in mind the currently proposed implementation date of 1 April 2013, very little firm information has been received from central Government. No draft regulations have been issued and I am still unaware of how grant will be distributed, i.e. whether the ten per cent reduction in overall grant will impact equally on all billing authorities or will be adjusted to reflect the make-up of each billing authority's benefit caseload.'

### **1.2.2 Regulations for the new schemes**

I am pleased to report that some progress has been made since my report in March but not as much as I would have hoped. We still have no regulations but the Government has recently issued a 'statement of intent', which outlines their intentions as to how the regulations will be written. The statement covers such matters as transitional arrangements; the design of application forms; and treatment of persons from abroad.

Additionally, in its document entitled 'Localising Support for Council Tax: Vulnerable people – key local authority duties', the Government has reiterated its

intention not to prescribe the protection that local authorities should provide for 'vulnerable' groups. However, the document does provide guidance as to the factors that authorities should take into account in order to comply with their duties in relation to vulnerable groups. Thus the document refers authorities to the public sector equality duty; the duty to mitigate the effects of child poverty; the Armed Forces Covenant; and the duty to prevent homelessness. I shall naturally bear in mind all these duties in formulating a draft scheme.

### 1.2.3 Funding

Importantly, we are still unaware of exactly how grant will be distributed. Having said that, the Government issued, on 17 May, a consultation paper entitled 'Localising Support for Council Tax – Funding arrangements consultation'. The consultation paper is attached at **[ANNEX 2]**. Members will see that the consultation closes on 12 July and only one question is posed, i.e. 'Do you agree that floors and ceilings should be created to ensure that no local authority faces a greater than specified revenue budget pressure?' It therefore appears that, apart from the issue of floors and ceilings, the Government's intentions, as outlined in the consultation paper, will be put into force. My understanding, thus far, of the consultation paper is set out at **[ANNEX 3]**. My Revenue & Benefits Manager shall be seeking to clarify certain points that are currently unclear to us when he attends a seminar in the next few days.

## 1.3 Progress to-date

1.3.1 As I mentioned in my report to March Cabinet, I have been working with a small group of Kent Financial Officers to investigate whether there is a way of finding a common set of criteria for local schemes across Kent (excluding Medway). Such common criteria would avoid, as I mentioned at the consultation stage, a 'post-code lottery' for claimants of council tax support.

1.3.2 Following the April meeting of the Kent Financial Officers, a paper was formulated that proposed a possible way forward for all the Kent authorities. This was considered by Kent Leaders at the Kent Forum on 25 May. The principles on which the proposed way forward was based were that:

- The 10% reduction in funding could not be met from authorities' other budgets.
- An increase in council tax to cover the 10% reduction in funding was not a realistic option.
- It was inevitable that the 10% reduction in funding would result in a decrease, of approximately 18.5%, in the council tax support payable to non-pensioner claimants, as compared to the support they receive under the present council tax benefit scheme.
- Subject to anticipated Regulations being made, a reduction in the period, from six months to three months, for which those liable to council tax are exempted

from payment whilst their properties are vacant and unfurnished (Class C exemptions) could be used to offset some of the costs.

The paper went on to say that if each billing authority were willing to sign up to the foregoing principles, the major precepting authorities would agree to:

- Reimburse billing authorities for the cost of support under local schemes, if the cost exceeded the grant receivable from the Government;
- Jointly pay to each district, each year, the sum of £125,000 as a contribution towards administrative, collection and recovery costs;
- Jointly reimburse each district reasonable, increased, administrative costs necessarily incurred if the caseload on the local scheme (during the period of the agreement) exceeded the caseload of the council tax benefit scheme (as at 31 March 2013) by more than 15%.

1.3.3 Kent County Council and, to a lesser extent, the other major precepting authorities, have a significant financial interest in how the local schemes are formulated. For that reason, we have a legal obligation to consult with them, albeit that they are unable to veto the design of an authority's scheme. Their financial interest arises from the fact that the support under a local scheme will be applied to a council tax payer's council tax account in the form of a discount. Such discounts will have to be reflected in each billing authority's council tax base. Discounts, of course, have the effect of reducing the tax base. As Members will be aware, the council tax base is used to determine the number of Band D equivalent properties in a billing authority's area. A precepting authority's precept is divided by the number of Band D equivalent properties to give a charge per Band D property for the precepting authority.

1.3.4 It follows that if the council tax base reduces, either the basic amount of council tax must increase (if permitted) or significant cuts must be made elsewhere in the authority's budget. By way of example, if the districts, collectively, decided to offer council tax support to the same value as the support available under the current council tax benefit scheme, then the County would face extreme financial pressure in excess of £8m. That would force the County Council into having to increase its precept or reduce its services. An increase in its precept would rebound on council tax payers through increased bills and on the billing authorities, as they would then have to pay out more in council tax support because of the higher bills – a vicious circle. The agreement that is proposed will have the effect of reducing non-pensioner entitlements by 18.5% (see above) and insuring the Council, for three years, against future growth not covered by additional grant.

1.3.5 If the principles above were accepted, the agreement between the billing authorities and the major precepting authorities would last for three years, with a review of the agreement in the first quarter of 2015/16. (This allows the billing

authorities to get used to the new system of council tax support and allows valuable time for refinements to the system to be considered.)

1.3.6 Details of the outline agreement were presented to the Kent Forum and that those Members present expressed support for its aims.

1.3.7 Since the meeting of the Kent Forum on 25 May, further potential refinements have been formulated, which aim to reduce the burden on the non-pensioner claimants. Members will note that the proposal above, which has been supported in principle by the Forum, would mean that this group of claimants would see a reduction in their benefit of approximately 18.5% (paragraph 1.3.2 refers). Further, potential refinements suggest that:

- the reduction in the level of support to non-pensioner claimants could be mitigated by:
  1. the reduction or removal of the discount on second homes (in our case currently 10%); and
  2. the reduction or removal of the discount in respect of long-term empty properties (again 10%).
- The resultant reduction in the level of council tax support to non-pensioners could then be reduced to the order of 15.0%, as opposed to 18.5% as set out above.

1.3.8 This 'addendum' to the proposal is currently being circulated amongst Kent Finance Officers in order to assess whether it might be capable of future 'agreement' on a Kent-wide basis. My understanding is that Kent County Council and the other major precepting authorities are generally supportive of the addendum. I shall update Members at the meeting as to the latest position, and will be interested to hear Cabinet's views on the matter.

#### **1.4 Interaction with council tax billing and collection**

1.4.1 Members will appreciate that the 'agreement' outlined above was predicated, inter alia, on the Government changing the legislation governing the billing for council tax, in order to allow authorities to restrict the Class C exemption to a period of three months instead of the current six. However, although the Government had indicated that it was considering such a change to the council tax legislation, we were aware that the primary legislation that would allow the Secretary of State to implement such a change had not yet been through all its parliamentary stages. Unfortunately, it has still not completed its passage through Parliament; the second reading in the House of Lords scheduled for 12 June.

1.4.2 Furthermore, I have just received, from the Department for Communities and Local Government, a document entitled 'Technical Reform to Council Tax – Summary of Responses Report'. This document indicates that the Secretary of

State, once he is enabled to do so, does not intend to change the council tax regulations in the way that we originally thought he would. It now appears that we will not be able to restrict the period for which Class C applies. Instead, Class C will be changed to a discount, from an exemption, and we will have the option of setting the amount of discount at any figure from 0% to 100%. Members are reminded that the current exemption for six months is effectively the same as a discount of 100% for six months. For information, the value of the revenue forgone, on account of the current exemption, for the Tonbridge and Malling area, in the 2011/12 financial year, was £786,217.

- 1.4.3 I should, however, emphasise that the wording of the Technical Reform to Council Tax – Summary of Responses Report is open to different interpretations. My Revenue & Benefits Manager contacted the Department for Communities and Local Government and, at the time of writing, has received verbal clarification to the effect that authorities will not be able to restrict the period for which Class C applies. We are awaiting written confirmation of the verbal clarification.
- 1.4.4 Mathematically, it might be possible to achieve the same ‘financial result’ that the draft agreement, as detailed at Paragraph 1.3.2. above, aimed at, by a different method. For example, we could, with the other Kent authorities, opt to implement a discount of, say, 50% or 75% for the first six month period. It is important to recognise that, if this were to occur, council tax would be charged from ‘day one’ for an empty property, albeit at a reduced rate.
- 1.4.5 Further to the meeting of the Kent Forum on 25 May, I have attended a further meeting of Kent Financial Officers, at which we discussed whether this alternative ‘principle’ can be accommodated in the overall ‘package’ outlined at paragraph 1.3.2. If not, this would put into doubt one of the principles underpinning the draft agreement between the billing authorities and the precepting authorities (see above). I am pleased to report that the meeting was generally supportive, from a financial viewpoint, of the alternative way forward. It was recognised that the draft agreement that had been presented to the Kent Forum was framed in such a way that billing authorities would have some discretion over how the 10% cut in Government funding could be accommodated, within the general principles of the agreement.
- 1.4.6 If we are able to formulate a Kent-wide agreement, then Kent County Council will be willing to complete the equality impact assessment for the Kent-wide scheme and also organise the ‘paperwork’ for the necessary, statutory consultation. Those two tasks are, by no means, insignificant duties and, if not done on a Kent-wide basis, would impose a considerable burden on the resources of the individual Kent billing authorities.
- 1.4.7 Members should also note that the Government intends to bring forward some other changes to council tax. These are detailed at **[ANNEX 4]** for information given the ‘crosswalks’ with this scheme.

## 1.5 The way forward

1.5.1 I do not believe it is an exaggeration to say that we find ourselves, as others do, in an invidious position. We still have no absolute certainty over funding and the extent to which, if we so wish, we may use changes to the council tax legislation to fund the council tax support scheme. Until these matters are resolved we cannot finalise, if we were so inclined, an agreement across all Kent authorities. However, we must go out to consultation on our draft scheme during August (at the latest).

1.5.2 In respect of the consultation exercise, if this is coordinated by Kent County Council, my officers will ensure that they have input into the exercise. Irrespective of whether the consultation is undertaken by the County Council or in-house or jointly, I consider that we should engage with as many as possible of the Borough's residents. Members will no doubt appreciate that it is not only current recipients of council tax benefit who might have an interest in the design of our local scheme: any resident who might, in the future, find it necessary to seek support, could also be interested. We should also bear in mind that all Borough residents who have a liability to pay council tax have a financial interest in the design of the scheme because the cost of the scheme will have an impact on the size of their council tax bills. It is therefore my intention that we should consult, **amongst others**, with:

- The Citizens Advice Bureau and local debt advice agencies;
- Other interested bodies, such as registered social landlords;
- Current benefit claimants;
- Council tax payers;

There will, of course, be other organisations which might have an interest in our local scheme.

It is my intention to consult using a combination of methods, e.g. flyers with benefit correspondence and council tax bills; use of 'Here & Now'; and promotion of the draft scheme via our website.

1.5.3 As I stated at Paragraph 1.1.4.(above), in order to resolve a draft local scheme, which can then be put out to consultation, the alternatives are to:

- Agree the outline 'principles' of the scheme and then grant delegated authority to myself, in consultation with the Leader and Cabinet Member, to progress this; or
- Convene a special meeting of Cabinet.

1.5.4 In either scenario, it would be extremely helpful if I were to have Members' guidance as to the principles that should underpin any draft scheme. My suggestions as to those principles are that any such scheme should:

- 1) Be cost-neutral to the Council, i.e. that the cost of potential reductions under the scheme should be funded by a combination of:
  - Government grant; and
  - A decrease in the council tax allowance available to the owners of vacant domestic properties during the first six months of vacancy (as already discussed at the Kent Forum); and
  - A decrease in the rate of discount in respect of long-term empty properties and second homes (as a potential 'addendum' to the discussions at Kent Forum).
- 2) Reflect an overall reduction in entitlement to non-pensioner claimants;
- 3) Focus the support to non-pensioner claimants on those claimants who are in remunerative work, in order to support incentives to work ;
- 4) Protect, as far as possible, the current entitlement of those households where there are issues of vulnerability, e.g. households where a member of the household is disabled.

1.5.5 In addition, it would be helpful if Members were to give some indication as to whether they wish to seek to come to an agreement, as outlined at Paragraph 1.3.2. (above), with the major precepting authorities. If Members so wish, I will continue to hold discussions with the other districts and the precepting authorities.

## **1.6 Legal Implications**

1.6.1 As explained in this report, it is imperative, not least for financial reasons, that the Council adopts a local scheme of council tax support by the end of January 2013 at the very latest. We will be in breach of our statutory duty if we do not consult on our proposed scheme. To enable sufficient time for consultation, we must formulate a draft scheme by the middle of August this year.

## **1.7 Financial and Value for Money Considerations**

1.7.1 Failure to adopt a local scheme, thereby obliging the Council to operate council tax support under the terms of the default scheme, will force the Council to underwrite the additional costs incurred from its other budgets, thereby necessitating reductions in other Council services or an increase in its council tax.



## 1.8 Risk Assessment

- 1.8.1 There is a considerable risk that deadlines will not be met and that legislation will not be in place early enough to ensure that sufficient funding of any local scheme is assured.
- 1.8.2 If all billing authorities in Kent agree to adopt broadly similar schemes, then, as I have mentioned in the body of this report, the major precepting authorities will be willing to contribute to administration costs and, additionally, underwrite any costs in excess of the grant we will receive. Furthermore, if we all adopt broadly similar schemes, Kent County Council has offered to complete an equality impact assessment covering the schemes of all the Kent billing authorities. If these guarantees and offer of assistance do not transpire, because there is no agreement across Kent, then the Council will be open to financial risk and its staff will be placed under further pressure. As Members are aware, my Service is already endeavouring to cope with a myriad of changes to the benefits system (local housing allowance etc.) and it will soon be dealing with the introduction of universal credit.

## 1.9 Equality Impact Assessment

- 1.9.1 See comment at Paragraph 1.8.2. (above). It is my intention that Members will be presented with the full EqIA, together with the results of the consultation, at its meeting on 10 October, at which point final recommendations will need to be made to Council about the scheme to be adopted

## 1.10 Recommendations

- 1.10.1 Cabinet is **REQUESTED** to **ACKNOWLEDGE** that the 10% reduction in Government grant should not be met by either cuts elsewhere in the Council's budget or by an increase in the basic amount of council tax.
- 1.10.2 Cabinet is **REQUESTED** to **AGREE**, that:
- 1) In principle, the anticipated 10% reduction in Government grant towards the cost of council tax support should be reflected in an overall 18.5% reduction in the support available to non-protected claimants of localised council tax support; and
  - 2) In principle, subject to clarification from the Government, there should be a reduction in the discount available to owners of vacant and unoccupied properties (Class C); and
  - 3) In principle, the Council should enter into a Kent-wide agreement, as outlined above, as to the principles underlying the local scheme that we intend to adopt and that I am authorised to progress the drawing up of such an agreement.

- 1.10.3 Cabinet is **REQUESTED** to **CONSIDER**, taking into account the further refinements being considered, on a Kent-wide basis, as a means of reducing the 18.5% reduction for non-pensioner claimants to 15%, whether it too wishes to take that route.
- 1.10.4 If Cabinet wishes to explore the route referred to in Paragraph 1.10.3., Cabinet is **REQUESTED** to **AGREE** that, in principle, the 10% discount granted to owners of long-term empty properties and properties classed as second homes should be reviewed.
- 1.10.5 Although not immediately relevant to the funding of a local scheme for the Tonbridge and Malling area, Cabinet are **REQUESTED** to **AGREE**, taking into account the contents of **[ANNEX 4]**, that:
- 1) In principle, the discount available to owners of properties falling within exemption Class A should be reviewed; and
  - 2) In principle, consideration should be given to the adoption of a premium in respect of properties that have been empty for longer than two years.
- 1.10.6 Cabinet is further **REQUESTED** to **DETERMINE** whether delegated authority should be given to me, in consultation with the Leader and Cabinet Member for Finance, to progress the local scheme to public consultation, or whether a special Cabinet meeting should be arranged.
- 1.10.7 Finally, Cabinet is **RECOMMENDED** to **CONSIDER** a response to the sole question in the DCLG's consultation paper.

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**Background papers:**

1. 'Localising Support for Council Tax: A Statement of Intent'. Issued by the Department for Communities and Local Government in May 2012. ISBN: 978-1-4098-3484-7. Available online at:  
<http://www.communities.gov.uk/publications/localgovernment/localisingsupportcounciltax>
2. 'Localising Support for Council Tax: Vulnerable people – key local authority duties'. Issued by the Department for Communities and Local Government in May 2012. ISBN: 978-1-4098-3501-1. Available online at:  
<http://www.communities.gov.uk/publications/localgovernment/lscvtvulnerablepeople>
3. 'Technical Reform to Council Tax: Summary of Responses Report'. Issued by the Department for Communities and Local Government in May 2012. ISBN: 978-1-4098-3470-0. Available online at:  
<http://www.communities.gov.uk/publications/localgovernment/technicalreformcounciltax>

Sharon Shelton  
Director of Finance

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	Paper merely seeks Member guidance at this stage. A full equality impact assessment will be completed when firm proposals as to the design of a local scheme have been formulated.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	Not applicable at this stage.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		Not applicable at this stage.

*In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.*