

# TONBRIDGE & MALLING BOROUGH COUNCIL

## CABINET

20 April 2016

### Report of the Director of Finance and Transformation

#### Part 1- Public

#### Executive Non Key Decisions

#### 1 COUNCIL TAX REDUCTION SCHEME

The report updates Cabinet on the progress that has been made on the review of the Council Tax Reduction Scheme in liaison with other Kent authorities.

Members are asked to agree the broad scheme framework in readiness for public consultation, and give delegated authority to the Director of Finance and Transformation to finalise the consultation material in liaison with the Leader and Cabinet Member for Finance, Innovation & Property.

#### 1.1 Introduction

1.1.1 As Cabinet may recall, Council Tax Reduction Scheme (CTRS) was introduced by the Department for Communities and Local Government (DCLG) in April 2013 as a replacement for the Council Tax Benefit (CTB) scheme administered on behalf of the Department for Work and Pensions (DWP).

1.1.2 As part of its introduction, Central Government set out a number of key elements:

- The duty to create a local scheme for **Working Age** applicants was placed with Billing Authorities;
- **Government funding was reduced** by the equivalent of 10% from the levels paid through benefit subsidy to authorities under the previous CTB scheme; and
- Persons of **Pension Age**, although allowed to apply for Council Tax Reduction (CTR), would be dealt with under regulations prescribed by Central Government and not the authorities' local scheme. In other words, pension age applicants are 'protected'.

1.1.3 Across Kent, a common 'platform' approach was adopted for the design of local schemes, with the new schemes broadly replicating the former CTB scheme but with a basic reduction in entitlement for working age claimants. In Tonbridge & Malling, working age claimants must pay at least 18.5% of the council tax liability. The figure of 18.5% represented the 10% funding loss applied to the working age

caseload across Kent. In other parts of Kent, the % varies. Therefore, although we do have a 'common platform' across Kent, local schemes at district level have been tailored to local needs.

- 1.1.4 Since its introduction in April 2013, our own local scheme has been 'refreshed' annually for data changes, but the core elements remain as were originally agreed.
- 1.1.5 As mentioned above, the scheme is underpinned by the Kent-wide agreement, which recognises that all the Kent districts (as the billing authorities) will seek to have a common 'platform'. In return, the major precepting authorities (Fire, Police and the County) agreed to collectively pay to each district council an 'administration fee' of £125,000 each year, for three years, to assist with the costs of delivering and managing the scheme.
- 1.1.6 The original three year period ceased on 31 March 2016, but as reported to the Finance, Innovation and Property Advisory Board in September 2015, it was agreed with Kent County Council, Kent Police and Kent and Medway Fire & Rescue that the scheme would effectively 'roll on' for one more year (i.e. into 2016/17).

## 1.2 Scope of Review

- 1.2.1 When the new scheme started in April 2013, for approximately 2,500 households within T&M it meant paying some council tax for the first time. Approximately 500 other households in T&M who received partial assistance saw increases in their bills.
- 1.2.2 Collection of the council tax balances has been challenging; however, as Members are aware through reports to the Finance, Innovation & Property Advisory Board, with focus on these accounts and some changes to recovery procedures, the scheme has been successful. The 'administrative fee' paid by the major precepting authorities has been essential in assisting with the costs of processing applications and in the recovery of debts.
- 1.2.3 The overall level of applicants, both working age and pension age, has fallen since the introduction of the local scheme with 7011 applicants as at March 2016. On 1 April 2013 there were 7551 working and pension age claimants. As a result, therefore, the total cost of the scheme has fallen since inception.
- 1.2.4 **However**, the '90%' funding (see second bullet point of paragraph 1.1.2) that the government passed on to billing authorities through Revenue Support Grant (RSG) to support the costs of local schemes **has effectively been cut with the reductions in local government finance settlements**. Therefore, although the costs have reduced due to a lower claimant base, **the outcome is that a greater share of the cost burden is falling on the billing authorities and the other major precepting bodies**. This outcome has been one of the main catalysts for the review.

- 1.2.5 A group of Finance Officers from the Kent districts and major precepting authorities have been working closely together in setting the objectives of the review, and maintaining a common approach to the design of the local schemes. A consultant has been appointed by Ashford Borough Council on behalf of the Kent districts and major precepting authorities, and the costs are being shared. Thus far, the consultant has been assisting in the evaluation of alternative scheme models and will, in due course, assist us with the public consultation process.
- 1.2.6 The objectives we have collectively agreed are:
- 1) Having regard to the reductions in government grant and the financial pressures we face, to make the scheme less costly (if possible) and more efficient in terms of its operation; and
  - 2) To have regard to the impact such changes may have on vulnerable residents and target support to those in most need.
- 1.2.7 It has been recognised by the Kent Finance Officers' group that the contributions that the major precepting authorities make towards the administration of the scheme are essential. Changes to the local scheme could potentially lead to a need to collect even more council tax from individuals who may find it difficult to pay; as well as those individuals finding the resultant changes difficult to comprehend.
- 1.2.8 Therefore, in parallel with the review of the local schemes, representatives from the Kent district councils are working with the major precepting authorities to formulate a new funding 'model' for assistance towards the administrative costs. At the time of writing the work is at an early stage, but it is likely that the model will include a smaller 'flat rate' grant topped up by a share of any additional proceeds as a result of our taxbase increasing (i.e. incentive based).
- 1.2.9 Clearly, the arrangements will need to be sufficient to incentivise the districts to undertake the additional work, and it will be essential that the arrangement is consistent across all districts and there are long term arrangements to ensure certainty of funding. Discussions are underway in this regard, but Members are assured that the major preceptors are committed to working with the district councils towards a mutually acceptable solution.

### **1.3 Options for Change to CTRS Scheme**

- 1.3.1 In liaison with the consultant, the Kent Finance Officers' group has considered a wide range of options for potential change having regard to the objectives set out at paragraph 1.2.6 and the 'suitability' for Kent. The full options appraisal is contained in tabular form at **[Annex 1]**.

- 1.3.2 Our conclusion is that the most practical option would be to **maintain a scheme similar to our current scheme** (see option 7 in Annex 1). This is because:
- it is known to our claimants and largely mirrors the housing benefit (HB) system;
  - our systems are adapted for this type of scheme and would, therefore, require little additional cost; and
  - our staff are familiar with the administration of this type of scheme and, as it is also aligned to HB, we can continue to take advantage of ‘economies of scale’.
- 1.3.3 In respect of the link to HB mentioned above, we cannot overlook the fact that, as we transition towards the full introduction of Universal Credit (UC), the future of HB for working age claimants is unclear. That said, it is difficult to assess the longevity of HB and, therefore, how long councils will need to maintain a ‘skill set’ for its administration. As Members are probably aware, the roll-out of UC has been further delayed and not likely to be completed until 2021 at the earliest. In addition, there is a strong likelihood that the pensioner caseload will remain on HB (and therefore not move over to UC) for the foreseeable future, which would mean that billing authorities would need to retain a workforce that has the skills to administer the HB scheme.
- 1.3.4 In order to meet the challenges of funding pressures, some adjustments to the ‘current’ scheme will inevitably need to be made. Initially, the major precepting authorities had suggested that we seek to reduce the cost of the scheme through the increase in the minimum contribution rate (currently 18.5% for working age claimants in TMBC area) and Members may be aware that Medway Council has recently increased its minimum contribution rate to 35%. However, evidence from around the country suggests that there is a “tipping point” (somewhere between 20% and 25%) after which collection rates are affected significantly. This ‘tipping point’ tends to affect claimants on low or fixed incomes; particularly single persons and couples with no dependants. Increasing the minimum % that a working age claimant needs to pay beyond a “tipping point” could be counter-productive and unrealistic.
- 1.3.5 Nevertheless, for the reasons set out in paragraph 1.2, it is important that we seek to reduce the overall costs further whilst maintaining fairness and a sense of ‘reality’ as to what is feasible. Therefore, it is felt that a combination of, or a selection from, Options 7 (a – h) in **[Annex 1]** built onto the current scheme may be more appropriate in meeting the objectives we have set.
- 1.3.6 Members will note from option 7e at **[Annex 1]** that, bearing in mind the recent decisions by central government about potential reductions in Personal Independence Payments (PIP), it is not recommended that we consult on the inclusion of Disability Living Allowance (DLA) and PIP in the assessment of total

income. The group, however, does recommend ‘testing the water’ through the consultation process on the inclusion of child benefit and child maintenance in the assessment of total income. Until as recently as 2009, these income sources were not disregarded within the former Council Tax Benefit Scheme, and some councils have reverted to including these income sources in their local CTR schemes. It is recognised that this is potentially controversial in the same way as PIP and DLA, but on balance it is felt that the concept should at least be tested with the public through a consultation.

- 1.3.7 Conscious of the potential impact of changes on vulnerable residents (objective 2 in paragraph 1.2.6), the group believes that it is important that an ‘Exceptional Hardship’ policy is integral to the new scheme. Whilst details of this policy still need to be drawn up, it is anticipated that applications would be accepted where claimants have qualified for CTRS but are in need of further support due to severe financial hardship.
- 1.3.8 Taking all these matters into account, the Kent Finance Officers’ group **recommends retaining a scheme similar to the current one but consulting the public on the potential integration into that scheme of Options 7(a - h) as set out in [Annex 1].**
- 1.3.9 A combination of some, or all, of these possible options may be required in order to achieve the objective of reducing overall costs. It is our intention that the resultant scheme will retain some longevity, certainly until there is more certainty about the full roll-out of UC. Members are also reminded that, as set out in paragraph 1.3.7 above, the group believes that an important feature of the new scheme should be the adoption of an Exceptional Hardship policy to protect vulnerable residents in severe financial hardship. This concept needs to be tested as part of the consultation.

## **1.4 Other Alternatives to Changing Current Scheme**

- 1.4.1 As Members are aware, the Council must find savings of circa £1.8m over the medium term due to cuts in government funding. The Council is restricted by how much it can raise council tax annually without having a local referendum, and our reserves are finite.
- 1.4.2 Through our Medium Term Financial Strategy (MTFS), we already have planned over the medium term to use reserves; and our Savings and Transformation Strategy (STS) sets out targets for releasing savings; recognising that some service areas may need to change, reduce or cease to accommodate this.
- 1.4.3 The MTFS already assumes, in the medium term, that the Council will increase council tax to the maximum it is permitted to do so without triggering a referendum. The Council could increase council tax further, but the costs of holding a referendum would need to be factored in, and the public would need to support the proposed increase.

- 1.4.4 The Council's general revenue reserve is already being used in the MTFs to assist in bridging the funding gap until the STS has delivered the required savings by 2020/21.
- 1.4.5 Members will appreciate, therefore, that realistic alternative options to changing the CTR Scheme are somewhat limited. However, in the light of challenges to local CTR scheme consultations elsewhere, the question about alternative funding arrangements does still need to be asked of the public.
- 1.4.6 Thus, whilst it is not the preferred solution, I recommend that the following questions are posed for completeness. Were any of these options to be supported and implemented, the impact would affect all residents in the Borough.
- Should Council Tax be increased for all Council *Taxpayers (beyond that already planned in the MTFs)* to fund the CTR scheme?
  - Should Council reserves be used up to fund the scheme?
  - Should there be further cuts to Council services (*over and above those already required through the STS*) to fund the scheme?

## 1.5 Consultation Process

- 1.5.1 During the next few weeks, all of the Kent district councils will report similarly to their Members to seek authority to proceed in the way outlined within this report.
- 1.5.2 Prior to the implementation of any change to CTRS, authorities are required to consult with the public. There have been a number of legal challenges to CTRS consultations and it should be noted that a recent judgement handed down by the Supreme Court has defined what is meant by 'good consultation'.
- 1.5.3 The guiding principles which have been established through case-law for fair consultation are as follows:
- The consultation must be carried out at a stage when proposals are still at a formative stage;
  - Sufficient information on the reasons for the decision must be provided to permit the consultees to carry out intelligent consideration of the issues and to respond;
  - Adequate time must be given for consideration and responses to be made; and
  - The results of the consultation must be properly taken into account in finalising any decision.
- 1.5.4 The Kent Finance Officers' group are currently working closely with the consultant in order to prepare robust and consistent consultation material that can be individually 'branded' by each district council within Kent. Each district council

must consult on its own scheme and ultimately make its own decisions about the 'final' scheme following the consultation.

- 1.5.5 Ideally it is hoped that all district councils will go out to consultation at around the same time. The project timetable agreed by all Kent district councils at the start of the review anticipates consultation commencing in early June and completing at the end of August, thus allowing 12 weeks for members of the public and other relevant stakeholders to comment.
- 1.5.6 At the time of writing, the draft consultation material is not complete and I have not, therefore, been able to bring it to Members for approval. Given the tight timescales we are all working towards, through this report I am seeking **delegated authority for me to finalise the consultation material in liaison with the Leader and Cabinet Member for Finance, Innovation & Property** taking on board any thoughts or observations Members may have.
- 1.5.7 It is anticipated that the consultation will be primarily web-site based, but it will be important to write to all claimants to draw their attention to the consultation and encourage them to participate by providing hard copy documents as appropriate. Additionally, it will be important to involve stakeholder groups such as the CAB, local debt advice agencies, registered social landlords and other organisations with a significant interest, to obtain their views.
- 1.5.8 There is also a duty to consult with the major preceding authorities (County Council, Fire and Police) who are statutory consultees. As mentioned at paragraph 1.2.5, work has already commenced with the major precepting authorities and will continue throughout the project. At the time of writing, all major precepting authorities have advised that they are content with the proposals so far.

## **1.6 Legal Implications**

- 1.6.1 The Council has a statutory duty to consult on a proposed scheme. As mentioned at paragraph 1.5.3, case-law has determined the guiding principles for fair consultation which we will follow.
- 1.6.2 Regard needs to be made to the rules around consultation laid out through the Supreme Court Ruling in the case of R (on the application of Moseley) v London Borough of Haringey (2014) and in particular, the need to set out alternative choices within the consultation. Members are referred to paragraph 1.4.

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

- 1.7.1 The cost of consultancy has been shared by all Kent authorities. TMBC's share of this cost is under £500.
- 1.7.2 It is anticipated that there will be some (limited) direct costs associated with the consultation process which will be funded from the Council Tax Support budget.

- 1.7.3 The cost of awards made under CTRS impact on the declared taxbase and thereby the council tax yield. If the cost of awards were to be reduced, this would mean that the Council's taxbase could increase and overall council tax income could increase. Any increase to council tax income is shared through the Collection Fund with major preceptors.

## 1.8 Risk Assessment

- 1.8.1 If consultation is not carried out appropriately, there is a risk of challenge once a decision is taken.
- 1.8.2 Whilst I am working with all Councils in Kent towards a common framework, ultimately individual schemes could be different (as they are currently).

## 1.9 Equality Impact Assessment (EQIA)

- 1.9.1 At this stage in the process, the decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. However, a 'first stage' EQIA has been drafted which will be available alongside the consultation. The draft is attached for information at **[Annex 2]**.
- 1.9.2 Prior to a final decision being taken by the Cabinet, a full EQIA will be prepared.

## 1.10 Policy Considerations

- 1.10.1 Equalities/Diversity; Communications

## 1.11 Summary and Recommendations

- 1.11.1 As outlined within the report, Kent district councils are working together in order to achieve a common framework in respect of the review of the local CTR schemes.
- 1.11.2 Each district council needs to individually agree the terms for consultation. If any significant issues arise through the 'group approach', I shall seek further guidance from Cabinet.
- 1.11.3 Cabinet is **RECOMMENDED** to :
- 1) **NOTE** the work undertaken thus far within Kent collectively, the resultant Options Appraisal set out in **[Annex 1]** and the Kent Finance Officers' group recommendation that any new CTR Scheme should be based on the current scheme but with a series of potential modifications upon which we should consult;
  - 2) **LAUNCH** a consultation on the potential introduction of a range of modifications to the current CTR scheme for working age claimants as follows:



- a. Increasing the minimum contribution rate for working age claimants to 20% or (up to) 25%;
  - b. Introducing a band cap at a band D;
  - c. Removing Second Adult Rebate;
  - d. Reducing the capital limit to £6,000;
  - e. Including Child Benefit and Child maintenance in the assessment of income;
  - f. Introducing a standard non-dependant deduction of £10 per week;
  - g. Introducing a Minimum Income Floor for self-employed claimants (based upon the living wage at 35 hours per week for full time or 16 hours a week for part-time workers);and
  - h. Aligning regulations of the current CTR scheme with HB and (prescribed) Pension Age CTR scheme.
- 3) Through the consultation, **SEEK** views as to whether an Exceptional Hardship Policy should be incorporated as part of the scheme;
  - 4) Through the consultation, **SEEK** views on other ways of meeting the demands highlighted through the report other than changing the existing Council Tax Reduction Scheme (as set out in paragraph 1.4.6);
  - 5) **NOTE** the 'first stage' EQIA, and **CONFIRM** that a full EQIA will be prepared and considered prior to any final decisions being taken; and
  - 6) **ENDORSE** the proposed arrangements in respect of consultation and, subject to there being no significant changes required to the above proposals following the outcome of approvals by other Kent district councils, give delegated authority to the Director of Finance and Transformation to finalise the consultation material in liaison with the Leader and Cabinet Member for Finance, Innovation & Property.

Background papers:

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Nil

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