

## ITEM NO: A03 APPENDIX 7

## ITEM NO:4B APPENDIX 7

<b>DECISION-MAKER:</b>	CABINET		
<b>SUBJECT:</b>	PROPOSED COUNCIL TAX DISCOUNTS FOR PERSONS OVER THE AGE OF 65 AND SPECIAL CONSTABLES		
<b>DATE OF DECISION:</b>	18 FEBRUARY 2009		
<b>REPORT OF:</b>	CABINET MEMBER FOR RESOURCES AND WORKFORCE PLANNING		
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### STATEMENT OF CONFIDENTIALITY

None

### SUMMARY

Liability to pay Council Tax is intended to be progressive, with the liability increasing in line with property values, and the poorest households receiving Council Tax Benefit (CTB) to offset part or all of the liability. This means that the poorest households are sheltered from Council Tax increases

However, there has been concern expressed about those households, usually households including pensioners, with incomes or savings just above the thresholds for benefit entitlement. In particular there are concerns about households on fixed income or incomes (such as pensions) which rise only in line with inflation indices, for whom annual Council Tax increases which have been on average around 5.0% mean real reductions in disposable income and increasing difficulty in meeting household budgets

With this background, the Executive instructed officers to prepare proposals to reduce the burden of Council Tax on this latter group of households, i.e., council tax payers over 65 years of age, with certain criteria. It is acknowledged that awarding the reduction to households in receipt of CTB would have no effect therefore they are excluded from the proposed scheme

In the light of Council Tax increases in recent years, it is proposed that the overall objective of this scheme is to limit the effect of future Council Tax increases on identifiable households, whose incomes are fixed or only inflation linked. The proposal outlined in this report is designed to meet this objective as effectively and economically as possible.

It is also 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 again this report outlines the details of this.

## **RECOMMENDATIONS:**

- (i) That Cabinet considers the 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 “pensioners” element of the Scheme for 2009/10 be that the reduction should be available to persons who are:-
  - (a) liable on 1<sup>st</sup> April 2009 to pay Council Tax either jointly or in their own right, by being an owner occupier or a tenant of a dwelling within Southampton, which is their sole or main residence;
  - (b) aged 65 or over on 1<sup>st</sup> April 2009; and
  - (c) not in receipt of Council Tax Benefit on 1<sup>st</sup> April 2009.
- (iii) 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 2009/10 be that the reduction should be available to persons who are:-
  - (a) Special Constables on or after 1<sup>st</sup> April 2009; and
  - (b) Reside in a property within Southampton where there is a liability for Council Tax and serve as a Special Constable within Southampton.
- (iv) If Cabinet chooses to implement such a Council Tax reduction scheme, the level of reduction in respect of the “pensioners” element should be 10%.
- (v) 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%.
- (vi) 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.
- (vii) To authorise the Executive Director of Resources to take any further action necessary to give effect to the decisions of the Executive in relation to this matter

## **REASONS FOR REPORT RECOMMENDATIONS**

1. To limit the effect of future Council Tax increases on identifiable households, whose incomes are fixed or only inflation linked.
2. To assist in meeting the Council’s objective of improving community safety and reducing crime and disorder.

## **CONSULTATION**

3. 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. The District Auditor has been given a copy of the report and will come back with a response prior to Cabinet

## **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

4. Members also need to consider whether there are any alternative ways of meeting the proposed objective for over 65's. In fact this seems unlikely. Clearly, there will be people who will qualify for the reduction, who would, if they applied, also qualify for council tax benefit but currently do not apply. However identifying those individuals is not an alternative to the reduction, but is already the subject of work which is underway within the Council. In any event, the intention is that checks will be made to try to establish whether anyone who applies for the reduction would be better off applying for CTB.
5. 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**

6. On a National basis there has been some concern for a while now on the impact annual increases in Council Tax levels has had on pensioners, whose own increased annual income levels are limited to inflation factors.
7. Officers were requested by the Executive to look in to how this may be achieved, and this report outlines this background and recommends the introduction of a 10% discount where the criteria outlined in Appendix 1 is met.
8. Officers were also 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.
9. 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 27<sup>th</sup> October 2008 (ITEM A17: 2009/10 GENERAL FUND REVENUE BUDGET AND COUNCIL TAX – MAJOR PROPOSALS FOR CONSULTATION).
10. The Solicitor to the Council sought Leading Counsel's opinion on both of these proposals and this has informed the legal advice to the Council, which is set out within this report.
11. The Solicitor to the Council advises that both of these groups 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.

12. 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 its mind properly to relevant law, the relevant considerations and issues, and dismiss from its mind, irrelevant considerations and issues.

13. 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:
14. ***‘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’.***
15. It is well known that the link between increases in the state pension and the average earnings index has been severed and this link would cost a great deal of money to restore. Many occupational pension schemes currently face severe deficits which may result in future pension payments being lower than anticipated and this supports the proposal to target the reduction in council tax to pensioners. Members will be au fait with the situation in the City as a result of their Council work and dealings with constituents in their Wards.
16. Appendix 2(a) and 2(b) reveals that since 2002, council tax in Southampton has increased by 35.57% while the retail price index has increased by 36.50%, the basic state retirement pension (SRP) by 18.63%, and occupational pensions on average by 20.00%. Average earnings have increased by 29.66%, indicating that pensioners, therefore, are likely to have been harder hit by the council tax increases.
17. However, there will inevitably be people under pensionable age, who are on fixed or inflation-linked incomes, while not qualifying for council tax benefit (CTB) and so similarly affected by recent council tax increases. No figures

are available to identify this group of people (at least some of whom are more likely than pensioners to move out of the target group as their circumstances change). Members may consider that it is fair to say that the proportion of pensioners with sufficient savings to disqualify them from CTB (despite otherwise qualifying on the basis of low income), is likely to be substantially higher than those of working age people. These savings arise typically from pension lump sums, insurance policies maturing, post mortgage savings, etc. This means that there is likely to be a larger proportion of pensioners on very low incomes, but with savings and so not on CTB, who would benefit from the proposed reduction.

18. However, Appendix 2(a) and 2(b) also shows that the income cut-off point for entitlement to CTB for pensioner couples and single people has increased respectively by 43.88% and 46.50% while that for working age couples and single people has gone up by around 12.14%. This means that a larger proportion of pensioners considered by the Government to be in need, will have been added to those entitled to CTB than applies for those of working age.
19. With the increase in property prices over recent years Equity Release Schemes have become more 'attractive' and more publicised, providing a new option for all homeowners to access funds when or if necessary. However in a recent report by the Joseph Rowntree Foundation they found that 'respondents often saw this as a last resort.....others saw these assets as inheritances for family and disliked the idea'. A National Consumer Council report stated that 'Equity release products are ...an area of considerable interest. But on closer inspection, people feel the schemes offer poor value and the providers do not have consumers' best interests at heart'. With such varying views on these Schemes it is not possible to say that this is in reality a realistic option that this group of taxpayers should be expected to use to meet increasing council tax bills
20. ***'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'.***
21. The only issue which it is thought should be considered under this head is more a question of possibly more accurate targeting. That is, the question of whether the reduction should be made available only for those in the lower council tax bands, on the basis of its being anticipated that a much larger proportion of those people may fall within the targeted group.
22. Unfortunately, it is not possible to find specific figures for this. Research by The Joseph Rowntree Foundation does conclude that although there are people in higher band properties on lower incomes those households are exceptional - though the figures supporting this are set out as percentages of all households in Great Britain, without taking account of the very significantly smaller numbers of total households in the higher bands compared to those in the lower. The proportion of low income households compared to total households in each band would have been more helpful
23. That point is illustrated by Appendix 3 which does show the significantly lower numbers of households, including pensioner households, in the higher bands.

It also shows that people in higher valuation bands are in receipt of council tax benefit and it is reasonable to conclude that those bands would also contain numbers of people within the targeted population. Members will see from the document that the estimated total numbers of qualifying households in band E and above (around 7.35%) are comparatively small compared to those in the lower bands. As indicated above, some of them will be within the target group anyway and, because of the higher level of council tax for which they are liable, will have been more affected by recent rises. Members may consider that this is an issue which can be accepted in order to meet the overall objective.

24. ***'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'***
25. Unfortunately, there is no source of information which can determine precisely who all of these potentially intended beneficiaries are. To attempt to do this with any precision would require an administrative structure (to collect the information) out of proportion with the intended level of benefit. The only group of people who fall within that category and can be satisfactorily identified are those aged 65 and over, the large majority of whom will be on pensions as their principle source of income and will therefore be most likely to meet the proposed objective. There is, of course, the issue that without some sort of assessment to exclude them, some pensioners with high levels of income will receive help. Although exact figures cannot be established, Members will need to consider on the basis of the available information whether the probable numbers concerned represent an acceptable minority.
26. Appendix 4 shows in more detail estimated current levels of entitlement to CTB for a number of classes of individuals of both working and pension age. It should be noted that the indication of CTB entitlement in the appendix is based on income levels only and therefore does not exclude those on low incomes but with savings. That document also shows estimated numbers of pensioners and working age people within nationally defined deciles of income, together with the percentage of pensioners in each of those income groups. From that it will be seen that, unsurprisingly, pensioners form a higher proportion of people in the lower income groups than in the higher. These figures are relevant in Members' consideration of whether the possible numbers of more "wealthy" pensioners who might apply for the reduction are low enough, compared with numbers in the target group and not on CTB, to make the proposed scheme acceptable.
27. It is also relevant that pensioners are much more likely to be on fixed or only inflation linked incomes particularly in the sense that they have a very substantially reduced opportunity to find jobs, change jobs or find other sources of income. It is of interest to note that in 2005-06 the Welsh Assembly Government funded a s.13A reduction for pensioners who had (as a result of the Welsh re-assessment of council tax valuation bands) been moved up by two valuation bands, this being considered to "fall more heavily on persons aged 65 and above, who are more likely to be on fixed incomes". Nevertheless, Members still need to be satisfied that the information available to them justifies the current proposal.

28. Other information based on national figures includes evidence to the Lyons inquiry into local government funding, a recent report by Key Retirement Solutions and research by the Joseph Rowntree Foundation. However these have largely not been of any great assistance in adding to the information which is relevant for the current purpose, partly because they have a tendency to cancel each other out depending on the point of view of the organisation producing the paper and partly because of the limited or targeted nature of the research – for instance the Joseph Rowntree document is based solely on evidence around people who receive summonses for non-payment of council tax and although it does show that there are people with low wages who also struggle to pay council tax, it provides little or no evidence relating specifically to pensioners.
29. ***‘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’***
30. 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 10% reduction are estimated at £1.1M and would have the effect of reducing council tax bills by over £121 per year for each household before CTB (band D equivalent) based on the proposed increase for 2009/10 of 3.29%. The figure for Special Constables would be a full rebate at Band D of £1,213.16 at an overall estimated cost of £0.1M.
31. 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.
32. 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 3.29% Council Tax increase.
33. Therefore, were the proposed 10% council tax reduction for over 65’s and the 100% discount for Special Constables to be removed from the budget the Executive would reduce the recommended council tax increase by the funding released of £1.3M, which equates to 1.68 %, bringing the proposed council tax increase down to 1.61%.
34. ***‘Fifthly, the Council needs to think about precisely how the class to benefit from the discount should be defined’***
35. 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’.*

36. The proposed criteria is based on the intentions of the scheme, taking in to account the scheme’s adopted by other Council’s, namely Kirklees, Hillingdon, Bury, Wirral and City of Lincoln, all of which have tried to keep the administration requirements to a minimum.
37. The criteria around age has already been referred to in as much as this is a definable group for this purpose, and other groups are difficult to identify easily without significant additional administrative resource. Whilst it is more common these days for persons over 65 to continue working, this is often more about necessity than choice to supplement income levels, and as such this proposal will help to support that aim and why there is no intention to filter those from the scheme or any form of means testing.
38. The criteria requires that all of those resident within the property must be over 65 and resident as at the 1<sup>st</sup> April, and this is proposed in the interests of simplicity and reducing administration costs. It is also felt that those whose households include occupants under the age of 65 may well have other sources of income coming in to the household, and as such have additional means at their disposal to meet their liability.
39. Applicants will be required to sign a single declaration confirming that the criteria is met, and whilst this will not be verified, sample checks will be carried out as part of the Council’s anti-fraud arrangements.
40. Other issues which the Solicitor to the Council feel should be addressed are dealt with below:
41. ***‘I believe it would be legitimate in principle for the Council to define the class by age rather than by seeking to define those who were “pensioners” in some other way. Of course it can be said that the rationale for the discount applies only to those on incomes that are fixed as pensions are, and so would not apply (in particular) to those who have continued in employment past the age of 65. Conversely, it might be said that the rationale for the discount would apply to those who have retired before the age of 65, although that is more likely to have been a decision made by choice than is retirement at 65’.***
42. As already indicated the criteria around age has already been referred to in as much as this is a definable group for this purpose, and other groups are difficult to identify easily without significant additional administrative resource.
43. ***‘I have no difficulty with an approach which would require all those liable for the council tax in respect of the dwelling in question to be over 65 before the discount would apply. I am less immediately certain why it would be justifiable (if this is what is intended) to require that all residents in the household should be over 65, whether they are liable for the council tax or not’***
44. As already indicated the criteria requires that all of those resident within the property must be over 65 and resident as at the 1<sup>st</sup> April, and this is proposed in the interests of simplicity and reducing administration costs. Where there are other residents within a property this could well provide other sources of income to the household and assist in meeting the council tax liability.



45. ***'As I understand it, although I have not researched the point in detail for the purposes of this Opinion, persons living in care and residential homes (as opposed to the owners of the homes) are not normally liable for council tax, but may be in certain circumstances. I am not sure whether the reference in my Instructions is saying no more than that there will (obviously) be no discount where there is no liability, or whether there will be no discount even where there is a liability to council tax. If the latter, I am not sure what the rationale for that would be;'***
46. Residential Homes, whilst liable for Council tax because of their residential status, are clearly run as a business and whilst all of the occupants may well be over the age of 65, it is felt inappropriate that they should qualify for the discount.
47. ***'Why will those who move into the area in the course of the financial year not benefit from the discount?'***
48. As already indicated the qualifying criteria have been aimed at keeping administration requirements to a minimum, and with this in mind it is proposed that only households who meet the criteria on the 1<sup>st</sup> April will receive the reduction. Households which qualify after this date would receive the discount in the following year, assuming the scheme continues.

### **Special Constables**

49. The proposal is to introduce a council tax discount of 100% for Special Constables who serve and live within the City.
50. 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.
51. 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:
52. ***'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?'***
53. The Police Authority would ideally like to have in post 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.
54. ***'Why is it thought that a council tax reduction is a better means of addressing that problem than whatever the available alternatives may be?'***
55. The discount is likely to have a direct financial benefit to the individual concerned. As such it is hoped, and is certainly the view of the Police Authority, 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.

56. ***'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?'***
57. The Police Authority have indicated 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
58. ***'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)?'***
59. 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'.
60. Overall this is felt to be a relatively low cost option to assist in achieving a reduction in crime across the City.

#### **Implementation and Work to Date on Persons over the Age of 65**

61. The Executive Director of Resources advised that if the Full Council approved the Budgetary Proposals from the Executive the most appropriate and cost effective way forward was to have the necessary information to award the discount in time for the main billing run which takes place immediately after the Council meeting is due to set the budget on 18<sup>th</sup> February 2009.
62. The criteria proposed for awarding the discount required all of those living in a property to be over 65 and not receiving council tax benefits. Currently the council tax system does not hold dates of birth. There is no requirement to do so. Therefore, other means of obtaining this information were looked at.
63. Discussions with the Pensions Service and Social Services resulted in data protection requirements preventing them from sharing information they held within their databases for this purpose. This meant that there was no other option but to canvas all properties within the city where the council tax benefit was not awarded or the property was not exempt from Council tax due to student status. These were the only criteria identified for properties that need not be canvassed. An exercise to capture this data was carried out in

November 2007, and this has been updated since then as and when information becomes available or is submitted by taxpayers. Capita, who will be administering the Scheme, have submitted a proposal to undertake some checks that the data is still accurate, at a cost of just over £9,000.

64. It is felt that undertaking some checks on the data currently held is the most practical way forward, as the alternative would be to carry out another complete exercise of capturing the data which would be extremely time intensive as well as being quite costly.
65. If data is incorrect amended bills can be sent and backdated accordingly.
66. Currently the data sources available indicate that 7,700 council tax payers will qualify for the discount, and the likely costs to the Council were based on this.
67. Appendix 6 gives a breakdown of those who currently qualify by Area's of the City (as held by the Council Tax system) by property Band.
68. However, it is likely that new application will be received once the 2009/10 bills are sent out.
69. Following a number of recent enquiries, Appendix 7 gives an indication of the maximum level of weekly income required to receive Council Tax benefit equivalent to the proposed 10% council tax discount.

## **FINANCIAL/RESOURCE IMPLICATIONS**

### **Capital**

70. N/A

### **Revenue**

71. 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.
72. The estimated cost of introducing a 10% discount for households where all the occupants are over 65 years of age is £1.1M, which is based on an estimate of the total number of pensioner households in the City less those that are in receipt of benefit.
73. The estimate makes many assumptions about the total number of households that may qualify and the distribution of these across council tax bands. The data collection exercise has so far identified just over 7,500 households that would qualify for the discount which is less than originally anticipated, however, should the scheme be approved, it is likely that more applications will continue to be received before and during the 2009/10 financial year and therefore the estimated cost of £1.1M is being retained for budgeting purposes at this stage.
74. In addition, a prudent allowance of £0.1M has been included to cover any increase in the actual number qualifying households compared to that used for estimation purposes and also to meet the costs of administering the discount scheme.

## **Property**

75. N/A

## **Other**

76. N/A

## **LEGAL IMPLICATIONS**

### **Statutory power to undertake proposals in the report:**

77. 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 two classes of person. The first class may be loosely referred to as “pensioners”, but more precisely the reduction under Section 13A (referred to hereafter as a “discount”) would be aimed at those aged 65 or over on 1<sup>st</sup> April 2009. The discount being contemplated for pensioners is one of 10% for the 2009/10 financial year. The second class would consist of those working as special constables within the city, and it is contemplated that they would enjoy a 100% discount. Both contemplated groups of beneficiaries would constitute a “class of case” within the meaning of s 13A, and so the power to reduce the Council Tax for their members in principle exists.

### **Other Legal Implications:**

78. 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.

79. 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.
80. 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.
81. 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. These considerations apply with particular force in the case of the pensioners' discount, since 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.
82. Turning first to the proposed discount for pensioners, the Executive's proposals are made with reference both to persons being in need of such a discount, and to households whose incomes are fixed or linked only to inflation. The thinking which prompted it was, in broad terms, that Council Tax rises over several years had been substantially above inflation, and that because pensioners were more likely than others to be on fixed or inflation-linked incomes, they had suffered more than others from those rises. It is considered impractical and/or disproportionately expensive to engage in means testing which might serve either to exclude better off pensioners from the reduction, or to extend the benefit of the reduction to less well off persons more generally. Thus pensioners are the only group on fixed or inflation-linked incomes which "can be satisfactorily identified."
83. It is a key principle of the law that any decision maker must have before them all the relevant material before making a decision. Such material must include information comparing percentage increases in Council Tax and in income,

information about households by household type and income, and information about qualifying households, as well as any additional relevant statistical or other information.

84. There are five main questions to which members would need to turn their minds in reaching such a decision. These are not issues which belong in separate watertight compartments, but rather ones which overlap and have an impact on each other. But for the purposes of analysis it is convenient to consider them in turn:
85. (i) first, the Council needs to think about whether it is in fact the case that the Council Tax is placing a particular burden on pensioners in its area as compared with the generality of the Council Tax-paying population. In doing so, the Council has to bear in mind that the relevant group for this purpose is not pensioners generally, but rather those pensioners who are not already eligible for Council Tax benefit. Some consideration is required of information about the historic level of Council Tax increases in recent years as opposed to increases in pensions in payment of various kinds (state pension, public sector and other final salary schemes, money purchase schemes), as well as what is anticipated for the 2009/10 financial year. How do increases in pensions compare with increases in earnings for those in work? How far or in what proportion of cases do pensioners have savings or other investments (or accessible equity in their properties) which allow them to absorb Council Tax increases without hardship? Do cost of living increases generally bear more or less hardly upon pensioners than on other groups? Whilst the Council should take reasonable steps to obtain such evidence to the extent that it exists, councillors are also perfectly entitled, in a matter of this kind, to rely upon their own knowledge and understanding of conditions and circumstances in the world in general and Southampton in particular;
86. (ii) 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. This might in principle be achieved by way of some system of means testing, or it might be achieved by (for example) limiting the discount to those whose dwellings are in the lower Council Tax bands, were it thought that there was a correlation between personal financial position and the value of the property occupied. It is not suggested that such limitations would need to be adopted, merely that they are amongst the issues which need to be properly considered, against the background of the Council's views as to what proportion of pensioners the Council thinks are indeed facing undue hardship in terms of their ability to pay Council Tax. See also the point discussed in paragraph 8 (i). below;
87. (iii) 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 – which is a function not only of how far such people exist, but also of how far they belong to groups which are capable of being identified with reasonable practicality;

88. (iv) 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. It may not be possible, or not possible within acceptable constraints of time and expense, to establish exactly how many beneficiaries there would be is not a fatal obstacle. As with all administrative decision-making, the Council's obligation is to take reasonable steps to arm itself with relevant information before taking a decision, and the judgment as to whether the available information is adequate for the purpose is (within *Wednesbury* limits) one for the Council itself to make. The Council would be granting the discount, in the first instance, simply for the 2009/10 financial year. Nonetheless, if the reduction is granted for one year, there will be at least some weighing of the odds in favour of a reduction in future years also, because pensioners would otherwise be subject to a particularly steep year-on-year increase. Therefore, whilst the most immediate question for members will be how the discount will affect things in the year for which it is proposed to be granted, it is also appropriate to pay at least some attention to what the implications would be if such a discount was maintained over (say) a 5 year period; and
89. (v) fifthly, the Council needs to think about precisely how the class to benefit from the discount should be defined. First and foremost, such a definition should be tailored towards achieving the objective of the discount, i.e. relieving those for whom the payment of Council Tax or increases in Council Tax is a particular burden. The definition should also seek to avoid arbitrary or unfair differences in treatment. Finally, 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. This last point may not always point in the same direction as the two previous points – that is then a matter of balancing two competing objectives, which is classically a matter for elected members.
90. The currently suggested definition of the class to be benefited is set out in the report. The most important feature is that eligibility would depend on all residents in the property being 65 or over as at 1 April 2009. Other features are that the discount would not apply to care or residential homes, and that those moving out of Southampton during the year would immediately cease to benefit from the discount (as one would expect, since their liability to pay Council Tax will cease), whilst incoming persons could only claim the discount from the start of the next financial year (assuming that it was still granted in respect of that year). Specific comments are as follows:
91. (i) it would be legitimate in principle for the Council to define the class by age rather than by seeking to define those who were "pensioners" in some other way. Of course it can be said that the rationale for the discount applies only to those on incomes that are fixed as pensions are, and so would not apply (in particular) to those who have continued in employment past the age of 65. Conversely, it might be said that the rationale for the discount would apply to those who have retired before the age of 65, although that is more likely to have been a decision made

by choice than is retirement at 65. These are points which the Council should in my view consider, partly by asking itself how good an approximation the class of persons over 65 in fact provides to the class of persons on fixed or inflation-linked incomes in retirement, and partly by thinking about how far there is a practicable alternative to taking age as a simple and easily verifiable identifier. An age-based class would be legitimate if there were sensible reasons for proceeding in that way;

92. (ii) there is no difficulty with an approach which would require all those liable for the Council Tax in respect of the dwelling in question to be over 65 before the discount would apply. The thinking behind why it would be justifiable (if this is what is intended) to require that all residents in the household should be over 65, whether they are liable for the Council Tax or not – subject to the provision in s 9 of the Local Government Finance Act 1992 on the joint and several liability of spouses, a resident will not be liable to Tax under s 6 of that Act if there is another resident with what might be described as a superior interest in the property - needs to be clear;
93. (iii) persons living in care and residential homes (as opposed to the owners of the homes) are not normally liable for Council Tax, but may be in certain circumstances. There will (obviously) be no discount where there is no liability; and
94. (iv) those who move into the area in the course of the financial year not benefit from the discount. The rationale for this is legitimate reasons of practical administration.
95. Turning to the proposed discount for special constables, this must by its nature be a proposal of much less far-reaching impact, and it would not be inappropriate for the amount of information before members to be sensibly proportionate to that limited impact. Nonetheless, there must be enough material for a *Wednesbury* reasonable decision to be taken.
96. The basic questions to be asked in relation to special constables are not different in kind from those to be asked in relation to pensioners. 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:
97. (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?
98. (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?



99. (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?
100. (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.
101. The Position of the Precepting Authorities
102. 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.
103. The Decision-Making Process
104. 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.
105. 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.
106. If Full Council in setting the budget is in agreement with the Executive's proposal for a s 13A discount for pensioners, 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.

107. 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.
108. Therefore, whilst Full Council cannot as a matter of law preclude a decision by the Executive to grant a s 13A discount to pensioners, 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.
109. 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 s13A 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**

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

**SUPPORTING DOCUMENTATION**

**Appendices**

1.	Qualifying Criteria for Older Persons Discount Scheme
2(a).	Comparison of Council Tax & Income Percentage Increases - Tables
2(b)	Comparison of Council Tax & Income Percentage Increases - Graphs
3.	Qualifying Households
4.	Distribution of Households by Household Type & Income Deciles
5.	Special Constables – Police Authority Proposal to the Home Office
6.	Qualifying Households by Property Band in Area
7.	Indicative Maximum Pensioner Weekly Income Figures for Entitlement to Council Tax Benefit equal to or more than 10% Council Tax Discount.

**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	

**Background documents available for inspection at:** Democratic Support and Legal Services

**FORWARD PLAN No:** RW03319      **KEY DECISION?** Yes

<b>WARDS/COMMUNITIES AFFECTED:</b>	
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