

Report to the Cabinet

Report reference: ***C-019-2014/15***
Date of meeting: ***8 September 2014***



**Epping Forest
District Council**

Portfolio: **Finance**

Subject: **Update on consultation for Local Council Tax Support scheme 2015/16.**

Responsible Officer: **Janet Twinn (01992 564215).**

Democratic Services Officer: **Gary Woodhall (01992 564470).**

Recommendations/Decisions Required:

(1) To approve officer action taken in light of a recent judgement not to include questions about a residency condition in the consultation for the Local Council Tax Support scheme for 2015/16.

Executive Summary:

On 21 July 2014, Cabinet approved the elements of the Local Council Tax Support scheme that were to be consulted upon for possible change to the Epping Forest District Council scheme for 2015/16.

One of the issues that Members were keen to consult on was the possible introduction of a residency requirement. This would mean that if a person had not been resident in the Epping Forest District for a certain period of time, they would not be able to receive any Local Council Tax Support to help them pay their Council Tax liability. At that meeting, Members were advised that there was a judicial review that would be heard later that week that could affect any decision to include a residency requirement in the EFDC scheme. The purpose of this report is to advise Members of the outcome of that judicial review and the consequences of now consulting on a residency requirement.

Reasons for Proposed Decision:

Although Cabinet agreed to consult on a residency requirement for the Local Council Tax Support scheme for 2015/16, the findings of the recent judicial review make it clear that such a residency requirement would be unlawful. The Council would be acting unlawfully to still undertake consultation on something that is now known to be unlawful.

Consultation is therefore being undertaken on the other key elements agreed by Cabinet on 21 July 2014. These are:

- A reduction in the maximum percentage of Council Tax that a person of working age can receive in Local Council Tax Support and;
- The inclusion of Child Benefit as income in the calculation.

Other Options for Action:

Consultation could still be undertaken on all the elements, including the residency requirement, as agreed by Cabinet on 21 July 2014. However, the Council would be acting unlawfully.

Report:

1. Sandwell Metropolitan Borough Council (MBC) had included a two year residency requirement in their Local Council Tax Support scheme. This meant that if a person had not lived in the Sandwell MBC area for at least two years immediately prior to their application for Local Council Tax Support, they could not receive any help towards paying their Council Tax. The Child Poverty Action Group took Judicial Review proceedings against Sandwell MBC on behalf of three claimants who had been refused Local Council Tax Support on the basis that they had failed the residency requirement. The Equality and Human Rights Commission were Interveners for the Hearing. The case was heard in the High Court on 22 July 2014 and the judgement was issued on 30 July 2014.

2. There were six grounds for challenge which were:

- Ultra Vires;
- Failure to take into account material considerations;
- Lack of consultation on a residency requirement;
- Barrier to freedom of movement;
- Discrimination; and
- Public Sector Equality Duty.

3. Mr Justice Hickinbottom found against Sandwell MBC on all grounds.

4. Although some of these issues could be addressed, such as the lack of consultation, the key finding was that the residency condition is Ultra Vires and therefore unlawful. The Local Government Finance Act 2012 provided that a Local Authority should have their own reduction scheme for '*persons whom the authority considers to be in financial need*'. As a residency requirement is not relevant to defining persons in financial need, the residency requirement is Ultra Vires.

5. Mr Justice Hickinbottom went on to say that even if the residency requirement was Intra Vires, it is discriminatory and a barrier to the freedom of movement. In particular, it is a barrier to the freedom of movement for UK nationals contemplating leaving Sandwell for temporary work elsewhere, but it is also discriminatory because it is liable to affect a larger proportion of foreign nationals because they were less likely to have lived their lives in Sandwell. Further, it is discriminatory against women as they are substantially more likely than men to suffer from domestic violence.

6. Sandwell MBC had originally undertaken consultation and carried out an Equality Impact Assessment which did not include a residency requirement. This was later included by Members without further consultation or a revised Equality Impact Assessment.

7. The judgement is detailed but there are other issues that were addressed that are relevant to Cabinet's decision to consult on having a similar residency requirement in the Epping Forest. Cabinet had stated the desire to look after the local people in Epping Forest however, a similar issue was addressed in the judgement. Sandwell MBC submitted that they had imposed their residency requirement to prevent 'benefit tourism' and that collateral damage would be caused for the vulnerable and others in financial need if a residency requirement was not imposed. However, the judge found that there was no evidence to show

that benefit tourism was taking place nor that there was any collateral damage and, that at no time had Sandwell carried out any such assessment.

8. Cabinet had also wanted to introduce the residency requirement as there is a similar requirement in the Epping Forest Housing Allocation Policy. This again was an argument put forward by Sandwell MBC as they too have a residency requirement in their Housing Allocation Policy. However, this was also dismissed as the Housing Act 1996 requires residence in an authority's area before consideration is given to granting council housing to an individual. A residency requirement is therefore specified by legislation for council housing purposes whereas it is not specified for Local Council Tax Support purposes. In fact, this point went against Sandwell as the Housing Act shows that where Parliament wishes to enable a local authority to take into account local connections, it is able to give the express power to do so.

9. Tendring DC and Basildon Council are the only other local authorities that have a residency requirement in their Local Council Tax Support scheme. Both those authorities have suspended that element of their schemes following the judgement on 30 July 2014.

10. In view of the findings of the judicial review, and in particular that residency does not define a person in financial need and therefore a residency requirement is unlawful, consultation is not being undertaken on a residency requirement for the Council's 2015/16 Local Council Tax Support scheme.

Resource Implications:

There are no resource implications.

Legal and Governance Implications:

Following the finding of Mr Justice Hickinbottom on 30 July 2014 in which a residence requirement for Local Council Tax Support was found to be Ultra Vires and therefore unlawful, the Council would be acting unlawfully if it was decided to still go ahead with the consultation as agreed by Cabinet on 21 July 2014.

Safer, Cleaner and Greener Implications:

There are no specific implications.

Consultation Undertaken:

None.

Background Papers:

Report to Cabinet 21 July 2014.

Risk Management:

Consultation on the Local Council Tax Support scheme for 2015/16 needs to be undertaken if any changes to the scheme are to be made. However, now that it is known that a residency requirement is unlawful, this element should not be included in the consultation.

Due Regard Record

Name of policy or activity:

What this record is for: By law the Council must, in the course of its service delivery and decision making, think about and see if it can eliminate unlawful discrimination, advance equality of opportunity, and foster good relations. This active consideration is known as, 'paying due regard', and it must be recorded as evidence. We pay due regard by undertaking equality analysis and using what we learn through this analysis in our service delivery and decision making. The purpose of this form is as a log of evidence of due regard.

When do I use this record? Every time you complete equality analysis on a policy or activity this record must be updated. Due regard must be paid, and therefore equality analysis undertaken, at 'formative stages' of policies and activities including proposed changes to or withdrawal of services. This record must be included as an appendix to any report to decision making bodies. Agenda Planning Groups will not accept any report which does not include evidence of due regard being paid via completion of an Equality Analysis Report.

How do I use this record: When you next undertake equality analysis open a Due Regard Record. Use it to record a summary of your analysis, including the reason for the analysis, the evidence considered, what the evidence told you about the protected groups, and the key findings from the analysis. This will be key information from Steps 1-7 of the Equality Analysis process set out in the Toolkit, and your Equality Analysis Report. This Due Regard Record is Step 8 of that process.

Date / Name	Summary of equality analysis
18 August 2014 Janet Twinn	The introduction of a residency requirement for Local Council Tax Support would have required a detailed equality analysis. However, the explanation of the reasons why questions about a residency requirement cannot be included in the consultation for the 2015/16 Local Council Tax Support scheme does not impact on equality issues or promote good relations.