

 <p><b>COTSWOLD</b> DISTRICT COUNCIL</p>	<p><b>COTSWOLD DISTRICT COUNCIL</b></p>
<p>Name and date of Committee</p>	<p><b>CABINET- 6 SEPTEMBER 2021</b></p>
<p>Report Number</p>	<p><b>AGENDA ITEM 6</b></p>
<p>Subject</p>	<p><b>Ombudsman Decision – Reference 20 008 553 &amp; Council Tax Section 13A Policy</b></p>
<p>Wards affected</p>	<p>ALL</p>
<p>Accountable member(s)</p>	<p>Cllr Joe Harris - Leader of the Council  Email: <a href="mailto:joe.harris@cotswold.gov.uk">joe.harris@cotswold.gov.uk</a>  Cllr Mike Evemy – Deputy Leader and Cabinet Member for Finance  Email: <a href="mailto:mike.evemy@cotswold.gov.uk">mike.evemy@cotswold.gov.uk</a></p>
<p>Accountable officer(s)</p>	<p>Angela Claridge – Monitoring Officer (interim)  Tel: 01285 623219 Email: <a href="mailto:angela.claridge@cotswold.gov.uk">angela.claridge@cotswold.gov.uk</a>  Jon Dearing – Group Manager for Resident Services  Tel: 01993 861221 Email: <a href="mailto:jon.dearing@publicagroup.uk">jon.dearing@publicagroup.uk</a>  Mandy Fathers – Business Manager for Operational Support and Enabling  Tel: 01993 861232 Email: <a href="mailto:mandy.fathers@pubicagroup.uk">mandy.fathers@pubicagroup.uk</a></p>
<p>Summary/Purpose</p>	<p>To:</p> <p>i) update Cabinet of the Local Government &amp; Social Care Ombudsman (LGO) report in compliance with the Council’s statutory duties under Section 31(2) of the Local Government Act 1974; and,</p> <p>ii) outline proposals to introduce a Council Tax Section 13A Policy to support the Council in making decisions when considering such applications from Council Tax payers in the District.</p>
<p>Annexes</p>	<p>Annex A – Report of the Local Government &amp; Social Care Ombudsman: Decision – Reference 20 008 553 Report  Annex B – Section 13A Policy</p>
<p>Recommendation/s</p>	<p>The Council:</p> <p>I. Notes and acknowledges the important role of the Ombudsman in scrutinising and reviewing the actions of local authorities, together with the legally binding nature of the findings made against the Council;</p>

	<p>2. Endorses the actions already taken, namely:</p> <p>a) a written apology to the complainant sent on 23 August 2021 with payment on 26 August 2021 as recompense of £300 for “distress and uncertainty”;</p> <p>b) reconsideration of the complainant’s request to write-off his arrears in line with the Council’s Revenues and Housing Support Services Recovery Policy (2019);</p> <p>c) training and guidance provided to the relevant Revenues &amp; Benefits staff ensuring they provide residents of any opportunities to apply for benefits, discounts or relief in line with the relevant policies; and;</p> <p>d) guidance to staff reiterating the need to provide clear information to Council Tax payers regarding payment plans from the outset, including how or when they will end, details of any review and warning of any further recovery action.</p> <p>3. Approve the Draft Council Tax Section 13A Policy</p> <p>4. Endorses a written invitation to the complainant to apply for discretionary relief, subject to approval of the Section 13A Policy at annex B.</p> <p>5. The recommendations in paragraphs 2 a) to d), 3 and 4 form the Council’s formal response to the Ombudsman’s recommendations under section 31 of the Local Government Act 1974, and that the ombudsman be notified of the actions that the Council has taken.</p>
Corporate priorities	<p>Deliver Services to the highest standards</p> <p>Helping residents and communities access the support they need for good health and wellbeing</p>
Key Decision	No
Exempt	No
Consultees/ Consultation	The Leader of the Council, The Deputy Leader of the Council, The Chief Executive Officer, The Deputy Chief Executive Officer, The Monitoring Officer, Legal Services Manager.

## BACKGROUND

1. This report evaluates and sets before Cabinet the position following the issue of a report on 5 August 2021 by the Local Government and Social Care Ombudsman (LGO) – the report is included at Annex A. This report was issued after an investigation into the handling of a Council Tax arrears case which was initiated during the first phase of the Covid-19 pandemic in 2020.
2. The Council’s Audit Committee, as part of its responsibilities, reviews the Council’s arrangements for handling complaints and the LGO’s annual letter issued to each authority. However, as background for Cabinet members in considering this report, the 2020/21 annual letter details eight complaints Cotswold District Council received

in 2020/21, an increase from six the previous year. This ranks Cotswold District Council as number five of all local authority district Councils in the south west for the least number of complaints. This case will be included in the 2021/22 annual letter as it relates to the timeframe when the decision is made as opposed to when the complaint is submitted. During 2020/21, none of the eight complaints against Cotswold District Council were upheld by the LGO.

3. In 2018 the LGO set out the standards they expect from public bodies in their guidance document “Principles of Good Administrative Practice”. In May 2020, an addendum was issued in response to the Covid-19 pandemic, stating that Councils are expected to meet similar standards whilst working in this unprecedented environment.
4. In discussion with the LGO, the LGO does not think we’ve met our normal standards in relation to this complaint during the pandemic which has contributed to the finding against us. This is regrettable, however Cabinet can be reassured that this is the only complaint of this nature reported through the Council’s Complaint’s Procedure or the LGO.

#### **MAIN POINTS**

5. In carrying out its duty to collect Council Tax payments, the Council, through its partner, Publica, adopted a course of action. Following a complaint by a Council Tax payer “Mr X”, the LGO has reviewed those actions and concluded, that injustice has occurred to Mr X.
6. In summary Mr X’s complaint was the Council:
  - was wrong to send him reminders to pay his council tax bills, as he was making payments as agreed;
  - did not properly consider his request to write off arrears; and
  - did not promptly action his request to apply for council tax support.
7. As a result, Mr X says the Council’s actions have caused financial hardship, distress and poor health.

#### **COUNCIL AND PUBLICA’S RESPONSE TO THE COMPLAINT.**

8. Mr X’s complaints coincided with the commencement of the first lockdown and the start of the Covid-19 pandemic in March 2020. In light of this, the Council had decided to halt recovery action and work with Council Tax payers sympathetically. As recovery action recommenced it was gentle, sending “soft” reminders to Council Tax payers who had fallen into arrears, acknowledging individual financial circumstances may have changed and stating that “we were there to help”. Largely these reminders were well received, and the team embraced talking to Council Tax payers regarding their own situations, and tailoring instalment plans appropriately.
9. There are some of the points raised in the LGO’s report that don’t acknowledge that the Council were trying to assist a Council Tax payer during these unprecedented

times, whilst managing a priority debt. In addition, the Council refutes that the Council didn't "engage" as stated by the LGO.

10. The most significant issue identified by the LGO is (Paragraph 52 of the report):

*"The Council does not publish any information about a discretionary relief policy and it does not appear to have any set criteria for considering a request for discretionary relief. This is significant fault"*. To remedy this finding, this report proposes implementing such a report referred to as a Section 13A Policy and recommends a draft policy at Appendix B

11. The LGO has a wide amount of discretionary power when making decisions and reporting their findings. The only basis on which the LGO findings can be challenged would be by way of a Judicial Review.

12. Irrespective of the fact that the Council holds a different view on the handling of some aspects of Mr X's case to that of the LGO, the matter has now been concluded. It is important that the Council recognises the prerogative of the LGO to undertake an investigation and reach their own conclusions on this matter. In addition, it is consistent with the Council's approach to good governance.

13. The LGO's report makes a number of recommendations – the recommendation and corresponding action to date is in the table below. Cabinet will note that the only outstanding action relates to the Council Tax 13A Policy and associated staff training.

<b>Recommendation</b>	<b>Action to date.</b>
Provide Mr X with a written apology	Written apology sent 23 August 2021
Pay Mr X £300 for distress and uncertainty	Payment made 26 August 2021
Reconsider Mr X's request to write off his arrears and write to him with reasons for its decision with reference to its Recovery Policy;	Application to write-off arrears has been considered in accordance with the Council's policy.
Invite Mr X to apply for discretionary relief, making clear any evidence he should provide to support an application and informing him of the criteria against which it will consider his application;	Invitation included in written apology of 23 August 2021.
Publish a council tax discretionary relief policy on the Council's website. This should include the process for considering a request, criteria for assessing a request and notice of the right to appeal the Council's decision to the Valuation Tribunal;	Council Tax Discretionary Policy (Section 13A) being considered as part of this report. Subject to Cabinet approval will be included on the website.

<p>Provide training or guidance to relevant staff to ensure they inform customers of any opportunities to apply for benefits, discounts or relief and they consider such requests in line with relevant policies; and</p>	<p>Training completed, however refresher training will be undertaken once, and if, the Section 13A Policy is approved.</p> <p>Training will also be undertaken with Customer Service Officers.</p>
<p>Remind staff of the need to provide clear information to customers about any payment plans at the outset, including how or when they will end, details of any review and warning of any further recovery action.</p>	<p>Reminders and guidance updated.</p>

### **COUNCIL TAX SECTION 13A POLICY**

14. Section 76 of the Local Government Act 2003 introduced Section 13A (Billing Authority's Power to Reduce Amount of Tax Payable) into the local Government Finance Act 1992. This provides the Council with discretionary powers to reduce the amount of Council Tax payable to such an extent as it thinks fit; including reducing the amount to zero, where other discounts, exemptions and reliefs cannot be applied.
15. The Local Government Finance Act 2012 (LGA 2012) inserted a new Section 13A(1)(a), (b) and (c); in the Local Government Finance Act 1992 (LGFA 1992), creating two discounts:-
- a. Local Council Tax Support schemes under Section 13A(1) (a) and (b); and
  - b. Section 13A(1)(c) effectively the original Section 13A discount, now including the provision to further reduce the amount of any relief provided by S13A (1)(a) and (b).
16. In accordance with Section 13(A)(1)(a) of the LGFA 1992, as amended, the Council has a Local Council Tax Support Scheme which provides assistance to those deemed to be within financial need. The scheme has been designed to take into account the financial and specific circumstances of individuals with maximum relief of 100% of Council Tax liability, available to working age applicants.
17. Council Tax legislation also provides for a wide range of discounts, exemptions and reliefs that have the effect of reducing the level of council tax due. The Policy under Section 13A (1) (c), as shown within Annex B, will require the applicant to have exhausted all other options before making an application under the Policy.
18. When applying this Policy, the Council will consider whether alternative actions could be undertaken before applying this Policy. As such, this Policy will only consider exceptional circumstances, due to financial need or crisis, where it is appropriate and fair to provide a discretionary discount.
19. Any relief awarded under Section 13A (1) (c) would be intended only as short term assistance and not a means to reduce Council Tax liability indefinitely. Having a Policy

in place ensures that the Council has a fair approach to dealing with applications for discretionary discount in Council Tax, and the criteria which will be applied. The Council will treat all application on their individual merits and the criteria which should be met is listed at 2.1 in Annex B.

## **FINANCIAL IMPLICATIONS**

20. In terms of the LGO's findings, the cost of £300 has been met from existing budgets.
21. In relation to a Section 13A Policy, the full cost resulting from the granting of a local discretionary discount is met by this Council as the billing authority for the District and there is no statutory right to pass on the cost to other precepting authorities.
22. Based on the average band D property for 2021/2022 the full cost associated with a discount would be £1,902.36 for the full financial year. The Policy specifies a maximum award period of six months. The maximum cost of applying this Policy, for a Band D property, would be £951.18. Discounts will be awarded after the application of discounts, exemptions and reliefs. It is highly likely that any award given would be less than the example given.
23. All costs associated with Council Tax discounts, exemptions and reliefs are examined as part of the Council's annual budget setting process. Any costs in the current financial year, which cannot be funded within the Council's revenue budget, will be funded from the Council Priorities Fund revenue reserve. Ongoing revenue provision for costs associated with this Policy will be considered as part of the budget setting process for the 2022/23 budget.

## **LEGAL IMPLICATIONS**

24. In relation to this complaint, the Local Government Ombudsman (LGO) has found that there has been injustice on the part of the Council to Mr X. This is a finding of the LGO and findings of the LGO are legally binding.
25. Following on from the LGO's findings, the LGO has made a number of recommendations to the Council. The status of these recommendations is different to the status of findings of the LGO. Unlike a finding, which is binding, the Council is not bound to accept a recommendations of the LGO.
26. Section 31(2) of the Local Government Act 1974 requires the Ombudsman's report to be laid before Cabinet for consideration of the report and notify the LGO of the action taken or proposed to be taken.
27. The timescale for complying with the requirements in Section 31(2) of the Local Government Act 1974 are within three months of receipt of the report from the LGO (5 August 2021). This Council is well within that timescale.

28. Section 5A of the Local Government & Housing Act 1989 requires the Council's Monitoring Officer to prepare a report to the Cabinet of the authority following the issues of a report by the LGO which makes a finding following an Ombudsman's investigation – this is that report.
29. Section 76 of the Local Government Act 2003 introduced Section 13A (Billing Authority's Power to Reduce Amount of Tax Payable) into the local Government Finance Act 1992. This provides the Council with discretionary powers to reduce the amount of Council Tax payable to such an extent as it thinks fit; including reducing the amount to zero, where other discounts, exemptions and reliefs cannot be applied.
30. The authority to determine individual applications under Section 13A may be delegated to an officer of the authority under section 101 of the Local Government Act 1972; however, for this purpose it is proposed that the decision making process for individual applications be determined by the Cabinet Member with responsibility for Finance in consultation with the Deputy Chief Executive in her role as Chief Finance Officer.

### **31. RISK ASSESSMENT**

The adoption of this Policy would provide clarity on the Council's approach to the award of discretionary relief to Council Tax Payers and reduce the risk of any future challenge to the Council over the determination of applications for discretionary Council Tax relief.

### **EQUALITIES IMPACT**

32. This policy is accessible to all Council Taxpayers in the event of financial crisis or event causing exceptional hardship and where other statutory reductions cannot be claimed.

### **ECOLOGICAL AND CLIMATE EMERGENCY IMPLICATIONS**

33. This policy is accessible to all Council Taxpayers in the event of financial crisis or event causing exceptional hardship and where other statutory reductions cannot be claimed.

### **CONSULTATION & COMMUNICATION**

34. In line with the Local Government & Social Care Ombudsman's requirements, public notices have been placed in the local media informing people of the outcome and where the report can be viewed.
35. A press release was issued to the local media following the distribution of a press release by the Local Government & Social Care Ombudsman on 26 August 2021.

**BACKGROUND PAPERS - None.**