

Manchester City Council Report for Resolution

Report to: Resources and Governance Scrutiny Committee – 3 September 2019
Executive 11 September 2019

Subject: Council Tax Support Scheme - Treatment of Windrush Compensation Scheme payments

Report of: City Treasurer (Deputy Chief Executive)

Summary

The Council has the discretion to reduce Council Tax liability to people receiving payments from the Windrush Compensation Scheme. This report seeks approval to use the Council's discretion under section 13A (1) (c) of the Local Government Finance Act 1992 to reduce the Council Tax liabilities for these individuals.

Recommendations

The Resources and Governance Scrutiny Committee is recommended to endorse the recommendation to Executive as detailed below.

The Executive is recommended to approve the proposal:

To reduce the liability of a liable person for Council Tax under section 13 A (1) (c) of the Local Government Finance Act for the following class of people:

- People receiving payments from the Windrush Compensation Scheme.
-

Wards Affected – All Wards

Environmental Impact Assessment - the impact of the decisions proposed in this report on achieving the zero-carbon target for the city

No impact

Our Manchester Strategy outcomes	Contribution to the strategy
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	Supporting our residents at difficult times is a key part of the Our Manchester Strategy. Working across service areas with the citizen at the heart of this is key.

A highly skilled city: world class and home grown talent sustaining the city's economic success	
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	This initiative supports residents. It is appropriate that residents do not lose other benefits and support as a result of this compensation.
A liveable and low carbon city: a destination of choice to live, visit, work	
A connected city: world class infrastructure and connectivity to drive growth	

Full details are in the body of the report, along with any implications for:

- Equal Opportunities Policy
- Risk Management
- Legal Considerations

Financial Consequences – Revenue

The financial impact on the revenue budget is calculated based on maintaining the current level of Council Tax Support (CTS) in payment rather than reassessing the award and reducing the amount of CTS awarded. There is therefore not a direct additional spend as a result of this policy.

The financial impact on the revenue budget is therefore not expected to be significant. This is because there are a discrete number of residents based on specific circumstances and those in receipt would need to be liable for Council Tax and also in receipt of Council Tax Support.

The loss of income will be met from the collection fund from where the Council Tax Support Scheme is funded.

Financial Consequences – Capital

None

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Background documents (available for public inspection):

DWP Circular A8/2019 Windrush Compensation Scheme and Housing Benefit 21
May 2019

<https://www.gov.uk/government/publications/housing-benefit-adjudication-circulars-2019/a82019-windrush-compensation-scheme-and-housing-benefit>

Windrush Compensation Scheme

<https://www.gov.uk/guidance/windrush-compensation-scheme>

1. Introduction

On 3 April 2019 the Home Office announced a Windrush Compensation Scheme (WCS) to provide redress for those individuals who suffered financial loss, due to their inability to demonstrate their lawful right to live and work in the UK. There are various criteria within the WCS that set out what individuals who are eligible can claim.

It is not known how many people may get compensation but the Department for Work and Pensions (DWP) expects that numbers will be low.

DWP advice is that compensation payments made by the Home Office under the WCS and the Windrush Exceptional Payments Scheme should be disregarded for Housing Benefit (HB) purposes on an extra-statutory basis with the agreement of HM Treasury. They have not made any amendments to the HB regulations.

The extra statutory provision applies to anyone in receipt of HB or any of the other income related benefits. They have advised that any payments made to claimants in respect of the WCS should be disregarded for the purposes of income or capital calculations indefinitely.

The Council's current Council Tax Support (CTS) scheme does not include provision to disregard compensation payments from the WCS. This means that beneficiaries of the WCS could lose some or all entitlement to Council Tax Support because of the compensation they receive. This is the case in Manchester's scheme for both elderly and working age people.

It is therefore appropriate that in this situation, scheme changes are made to ensure that the CTS scheme aligns to the new approach determined for the assessment of Housing Benefit. This report details how the Council intends to deal with this and seeks approval from the Executive to provide a local discount. This will ensure that any Manchester resident receiving this compensation does not lose Council Tax Support.

2. Legislation and next steps

It is worth noting that Housing Benefit legislation is provided by the Department for Work and Pensions (DWP) and the legislation relating to the non-localised areas of the Council Tax Support scheme (for pensioners) is provided by the Ministry of Housing, Communities and Local Government (MHCLG)

As advised above, for the HB calculation, the DWP have advised that local authorities should take the required action on an extra-statutory basis. However, it is considered unlikely the Ministry of Housing, Communities and Local Government (MHCLG) will change the rules they set for Council Tax Support schemes. In any case, if MHCLG were to provide for the disregard of WCS payments, this would not take effect until April 2020 and they may apply it only to people of pension age.

It is therefore appropriate that in this situation scheme changes are made to ensure that the CTS scheme aligns to the new approach determined for the assessment of Housing Benefit. This report details how the Council intends to deal with this and seeks approval from the Executive to provide a local discount.

3. Entitlement

The scope of the government's Windrush Compensation Scheme is not limited to men and women who originally came to the UK from the Caribbean Commonwealth. Almost everyone originally from a Commonwealth country who arrived before 1 January 1973 is included.

Any resident who has a right of abode or settled status (or is now a British citizen) and arrived to live in the UK before 31 December 1988 is also eligible to apply regardless of nationality on arrival – even if not a Commonwealth citizen.

The scheme is also open to:

- children and grandchildren of Commonwealth citizens in certain circumstances
- the estates of those who are now deceased but who would have otherwise been eligible to claim compensation
- close family members of eligible claimants where there has been a significant impact on their life or where there is evidence of certain direct financial costs

4. Discretion under section 13A of the Local Government Finance Act 1992

Under section 13A of the Local Government Finance Act 1992, local billing authorities have the discretion to grant reductions and exemptions on an individual basis for a class of council tax payers. Section 13 A (1) (C) of the 1992 Act gives all councils a power to reduce liability in cases where they think fit. It is proposed that this discretionary power is used to implement a discount to a specific class of Council Tax payers namely those liable for Council Tax within the Manchester City Council area who are receiving an element of Council Tax Support and have received compensation from the WCS.

In practice this means that the Council would make a discretionary award to reduce the Council Tax liability, equivalent to what the claimant would have received under the Council's Council Tax Support Scheme (CTSS) had they not received the compensation from the WCS.

This will continue indefinitely unless the government lays regulations to make a disregard of these payments a prescribed requirement of Council Tax Support schemes or we go out to consultation and add it to the disregards defined in our Council Tax Support scheme.

This aligns the Council's approach for Council Tax Support with other means tested benefits whose rules are determined by the DWP on behalf of central government, for example Housing Benefit.

5. Contributing to a Zero-Carbon City

No impact

6. Contributing to the Our Manchester Strategy

(a) A thriving and sustainable city

Supporting our residents at difficult times is a key part of the Our Manchester Strategy. Working across service areas with the citizen at the heart of this is key.

(b) A highly skilled city

Support will be provided to those residents that require assistance with their self-service and digital access skills development.

(c) A progressive and equitable city

This initiative supports residents. It is appropriate that residents do not lose other benefits and support as a result of this compensation.

(d) A liveable and low carbon city

See above

(e) A connected city

Support will be provided to those residents that require assistance with their self-service and digital access skills development.

7. Key Policies and Considerations

(a) Equal Opportunities

The Windrush Compensation Scheme directly affects residents from BME communities. .

It is appropriate that any affected residents do not lose other benefits and support as a result of any compensation. The proposed change ensures that both working age and pensioner residents who may receive compensation do not lose other benefits as a result.

(b) Risk Management

No significant risks identified. The number of residents affected is expected to be low.

(c) Legal Considerations

No further legal considerations identified. The change proposed are within the Council's current discretions under section 13A of the Local Government Finance Act 1992

8. Recommendation

1. The Executive is recommended to consider approving:

That the Council exercise its discretionary powers to reduce the liability of a liable person for Council Tax under section 13A (1) (c) of the Local Government Finance Act for the following class of people:

- People receiving payments from the Windrush Compensation Scheme.
2. The recommendation of this report is that the Council uses this flexibility to grant a discount for a specific class of Council Tax payers, namely those liable for Council Tax in the city who claim Council Tax Support or have been receiving an amount of Council Tax Support but whose entitlement is reduced or extinguished as a result of a payment from the WCS.
 3. It is proposed that the use of this flexibility is not time limited. The reason is, that this will allow the Council to administer the discount for as long as is required, which will be until the Council goes out to consultation on any further changes to the Council Tax Support scheme and the scheme regulations are updated so that WCS payments are disregarded when working out entitlement to Council Tax Support.

Appendix 1 – DWP Circular A8/2019 Windrush Compensation Scheme and Housing Benefit

Updated 10 July 2019

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Who should read

All Housing Benefit (HB) staff

Action

For information

Guidance Manual

The information in this circular does not affect the content of the HB Guidance Manual.

Queries

For any general or technical content of this circular, contact:
hdd.strategyteam@dwp.gov.uk

For questions in relation to Local Council Tax Support Schemes, contact the Ministry of Housing, Communities and Local Government at:
council.tax@communities.gov.uk

For distribution of this circular, contact: housing.correspondenceandpqs@dwp.gov.uk

Introduction

1. On 3 April 2019 the Home Office announced a Windrush Compensation Scheme (WCS) to provide redress for those individuals who suffered financial loss, due to their inability to demonstrate their lawful right to live and work in the UK. There are various criteria within the WCS that individuals who are eligible can claim against.

WCS in relation to Housing Benefit

2. This circular gives details about the WCS and how any payments made under the scheme should be treated for the purpose of Housing Benefit (HB) administration and provides guidance to local authorities (LAs) in circumstances where an individual makes a claim for denial of access to benefits (including HB).

3. LAs should be aware that no changes have been made to HB regulations on this matter. But LAs need to be aware of the WCS, which has been developed in consultation with the Department for Work and Pensions (DWP) and other government departments, as there will be some impact.

4. It is not expected that all LAs will receive cases under WCS. Initial estimates suggest that volumes will be low as many individuals will have already made direct contact with the Home Office under the existing 'Home Office Task Force' process. If appropriate these individuals will have had their immigration status corrected and LAs will have reviewed their claims through the ongoing DWP/LA monthly Immigration data share; which has been in existence since December 2016.

LA process

5. The intention of the WCS is for LAs to review and reinstate or award an HB benefit claim (where they have not already done so – see paragraph 4) to eligible Windrush claimants; where current HB legislation allows.

6. Before any action can be taken to revise a benefit claim it is expected that the individual will have made contact with the Home Office Task Force Team, to have their immigration status reviewed and, if appropriate, they will have been provided with the necessary paperwork to prove their lawful right to live and work in the UK.

7. When considering a loss of HB under the WCS there must be a record of a claim to HB made in the prescribed manner. This will allow LAs to reconsider the decision

made at the time of the claim.

8. All pass-ported HB cases are being dealt with by DWP in the same way. Following DWP operations making a revised decision on the claim, Housing Delivery Division (HDD) will send LAs a clerical notification prior to receipt of the automated ATLAS (Automated Transfer to LA Systems) alert.

9. Where evidence confirms that an HB claim was made and the decision to refuse or terminate that claim was reached without knowledge of a material fact or based on incorrect information, in line with current legislation decisions should be revised and payments awarded.

LA action

10. DWP's Housing Delivery Division (HDD) will act as a main conduit with the Home Office and will only make contact with LAs by exception to:

- check if an individual had a historical HB claim that was refused or terminated due to the claimant's immigration status and provide dates to DWP
- alert LAs to a WCS claim to HB using an electronic form (using the existing Home Office data share single point of contact (SPOC)). LAs should then review their original decision on a refused/terminated claim and, where appropriate, arrange for HB payments, including backdated payments, to be made in accordance with current guidance/legislation.

11. The LA must then complete the form and return it via email to HDD at hdd.strategyteam@dwp.gov.uk

12. You should note, it is not expected that the Home Office will contact an LA directly regarding WCS and the loss of benefits.

How LA should treat payments made under the WCS

13. Compensation payments made by the Home Office under the WCS and the Windrush Exceptional Payments scheme should be disregarded for HB purposes on an extra-statutory basis with the agreement of HM Treasury. No amendments will be made to HB regulations.

14. The extra statutory provision applies to anyone in receipt of HB or any of the other income related benefits. Any payments made to claimants in respect of the WCS should be disregarded for the purposes of income or capital calculations indefinitely.

Additional funding

15. Consideration of the provision of funding for those LAs who may be disproportionately affected will be considered in the Autumn 2019 when impacts will be clearer. HDD is acting as a SPOC for liaison with LAs in regard to specific Windrush compensation cases and management information will be gathered to inform those impacts.

Signposting claimants

16. Should an LA receive an enquiry from a claimant or member of the public regarding their immigration status or making a Windrush Compensation Claim you should use the following Home Office contact details.

Immigration status enquiries

Phone: 0800 678 1925
Monday to Saturday 9am to 5pm
Email: commonwealthtaskforce@homeoffice.gov.uk

Making a Windrush Compensation claim

Phone: 0800 678 1925
Monday to Friday 9am to 5pm
Email: WindrushCompensationScheme@homeoffice.gov.uk

Further information about the WCS

17. Further guidance regarding the WCS can be found at:
<https://www.gov.uk/guidance/windrush-compensation-scheme>