

Non-Domestic Rates - Discretionary Rate Relief Policy and Guidance

Summary of Document

The policy applies to Non-Domestic Rates discretionary relief awarded under the Local Government Finance Act 1988 and subsequent amending regulations.

The guidelines set out to achieve a fair and transparent approach to the award and review of discretionary relief.

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1.0 Introduction

- 1.1 Local Authorities have the power to grant discretionary rate relief to charitable organisations and other non-profit making organisations that meet certain criteria.
- 1.2 The power is discretionary and can therefore be limited by other factors such as budgets and funds available for the Council's strategic purposes.
- 1.3 The discretion to grant relief can be for part or the entire amount of the business rates payable.
- 1.4 The policy:
 - Sets out the guidelines that the Council will use when it determines the amount of discretionary relief that will be awarded to an organisation.
 - Summarises the delegated authority to award discretionary rate relief.
 - Establishes an appeals procedure for organisations that are unhappy with the Council's decision.
 - Protects the interests of local Council Tax payers by ensuring that the overall costs of discretionary relief do not increase beyond budgeted amounts.
 - Ensures that the funds available for the awards of relief are used in the most efficient manner and that organisations that receive relief are supporting the Council's strategic purposes.

2.0 Legislative Framework

- 2.1 Mandatory Rate Relief can be awarded under Section 43 of the Local Government Finance Act 1988 (LGFA '88) to charitable organisations or community amateur sports clubs where the property that they occupy is used wholly or mainly for charitable purposes. The relief is currently 80% of the rates payable.
- 2.2 The Council has a discretionary power under Section 47 of the LGFA '88 to top up this relief to 100% by awarding up to 20% discretionary relief.
- 2.3 Section 47 (5B) of the LGFA '88 also allows the Council to award up to 100% discretionary relief to any organisations which are not established or conducted for profit and whose objectives are philanthropic, religious, concerned with education, social welfare, science literature or the fine arts.
- 2.4 Section 47(5B) also allows the council to award up to 100% discretionary rate relief where a property is used for the purposes of recreation and it is occupied for the purposes of a club, society or other organisation not established or conducted for profit.

- 2.5 The Council is prohibited from awarding discretionary rate relief to a precepting authority or to itself as a billing authority.
- 2.6 When making a decision on discretionary rate relief the Council is required under Section 47 (5C) to have regard to any guidance issued by the Secretary of State.
- 2.7 Premises that are partly occupied can receive discretionary relief under Section 44A of the LGFA '88. This is a process whereby a request can be made to the Valuation Officer to apportion the rateable value of a hereditament so that the occupier may benefit from any exemption for the unoccupied area.
- 2.8 The Local Government Finance Act 1997 introduced amendments to the LGFA '88 to allow for mandatory and discretionary rate relief for certain rural businesses. The scope of the relief has been extended and relief is now available for the sole; post office, general store, public house, or petrol filling station within a rural settlement, or for any food store within a rural settlement.
- 2.9 Mandatory rate relief for qualifying rural properties is set at 100%. Discretionary relief of up to 100% may be granted to any rural business which does not meet the mandatory requirements.
- 2.10 Section 49 of the LGFA '88 permits relief to be awarded based on hardship, providing that the awarding of the relief will be in the interest of the local Council Taxpayers.
- 2.11 The Localism Act 2011 extended the scope of Section 47 and there is now a general power to award discretionary relief to any ratepayer providing that it would be reasonable to do so having regard to the interests of local Council Tax payers.
- 2.12 State Aid rules prohibit Government subsidies to businesses and for this reason relief from taxes, including relief from Non-Domestic Rates, can constitute State Aid. Consideration as to whether the award of a relief constitutes State Aid must be made when any discretionary relief is awarded.
- 2.13 Relief for charities and non-profit making bodies would not normally constitute state aid because the recipients are not normally in market competition with other businesses. However, if the charities or non-profit making bodies are engaged in commercial activities, or if they are displacing an economic operator, or if they have a commercial partner, then rate relief could constitute State Aid.

3.0 Discretionary Rate Relief for Charities and Community Amateur Sports Clubs

3.1 The Criteria for awarding rate relief and the factors taken into account are detailed below.

| Criteria | | Evidence |
|----------|---|---|
| 1 | <p>Use of the property:</p> <p>The property must be used wholly or mainly for the purpose of the charity - Community Amateur Sports Club (CASC).</p> | Application. |
| 2 | <p>Annual turnover:</p> <p>The annual turnover is less than £50,000 –</p> <p>If turnover is above threshold then we may award a reduced level of relief.</p> | Audited accounts. |
| 3 | Charitable status | |
| 4 | <p>Membership:</p> <p>Membership and access is open to all sections of the community.</p> | <p>Levels of membership.</p> <p>Details of membership fees charged.</p> <p>Evidence of concessionary rate memberships - and details of numbers of concessionary memberships available.</p> <p>Details as to how members are approved.</p> |
| 5 | <p>Access to facilities:</p> <p>Facilities are made available to other sectors of the local community e.g. schools, clubs, support groups.</p> | <p>Details of the use of the facilities over the past 12 months.</p> <p>Details of the charges made for the use of the facilities.</p> |

| Criteria | | Evidence |
|----------|--|---|
| 6 | <p>Profits:</p> <p>Determine whether the organisation holds reserves or makes a profit and whether it requires discretionary relief to continue to operate.</p> <p>Establish whether the organisations run commercial activities and profits, or has the capacity to profit from these (e.g. bar, function hire).</p> | Copies of income and expenditure for the last financial year. |
| 7 | <p>Community links:</p> <p>Establish if the charity is a local organisation and who uses the organisation and its facilities.</p> | Application form. |
| 8 | <p>Proportionate use of the property:</p> <p>Consider how the property is used and whether the use is proportionate to the size of the assessment; are the charity under occupying or part occupying a large assessment.</p> | Inspection. Application form. |
| 9 | <p>Other sources of support:</p> <p>Establish whether there are other sources of support available to the charity and whether other sources of funding are available.</p> | Details of other sources of funding or income. |

3.2 The level of relief will be determined by the evidence provided and whilst each case is assessed on its own merits the level of relief will ordinarily be that set out in section 13.0 below.

4.0 Discretionary Rate Relief for Charity Shops

4.1 The Criteria for awarding rate relief and the factors taken into account are detailed below.

| Criteria | | Evidence |
|----------|--|---|
| 1 | Use of the Property: The shop must be wholly or mainly used for the purposes of the charity. | Signed Application Form Inspection of the premises. |
| 2 | Sale of Goods: The shop must sell wholly or mainly donated goods and the sale of the goods must be applied to the purposes of the charity. | Signed application form. Information regarding the sale of items, accounts. |
| 3 | Local Benefits: The Charity must be able to demonstrate that the local community derives benefits from the services the charity provides. | Details of the type of services provided to the residents and the number of residents who benefit from the support. |
| 4 | The Market Principle: Where the Charity Shop is competing with businesses operating on an ordinary commercial basis - for example where the operations are wholly or mainly the sale of second hand furniture, or the sale of books - then discretionary relief will not normally be provided. | Signed application form. Inspection of premises. |

4.2 The level of relief will be determined by the evidence provided and whilst each case is assessed on its own merits the level of relief will ordinarily be that set out in section 13.0 below.

5.0 Discretionary Rate Relief for Non-Profit Making Organisations

5.1 The Criteria for awarding rate relief and the factors taken into account are detailed below.

| Criteria | | Evidence |
|----------|--|---|
| 1 | <p>Use of the property:</p> <p>Main use of the premises is for non-commercial activities for example a not for profit organisation that is primarily using the premises for activities that are provided by a commercial organisation such as health/gym facilities will not normally be eligible for relief; unless the organisation is also providing facilities that are of importance to the area and which would not otherwise be available within the borough</p> | Application form. |
| 2 | <p>Annual turnover:</p> <p>The annual turnover is less than £50,000.</p> <p>If turnover is above threshold then we may award a reduced level of relief.</p> | Audited accounts. |
| 3 | <p>Membership:</p> <p>Membership and access is open to all section of the community.</p> | <p>Levels of membership.</p> <p>Details of membership fees charged.</p> <p>Evidence of concessionary rate memberships - and details of numbers of concessionary memberships available.</p> <p>Details as to how members are approved.</p> |
| 4 | <p>Access to facilities:</p> <p>Facilities are made available to other sectors of the local community e.g. schools, clubs, support groups.</p> | <p>Details of the use of the facilities over the past 12 months.</p> <p>Details of the charges made for the use of the facilities.</p> |

| Criteria | | Evidence |
|-----------------|--|--|
| 5 | <p>Profits:</p> <p>Determine whether the organisation holds reserves or makes a profit and whether it requires discretionary relief to continue to operate.</p> <p>Establish whether the organisation runs commercial activities and profits, or has the capacity to profit from these (e.g. bar, function hire).</p> | Copies of income and expenditure for the last financial year. |
| 6 | <p>Community links:</p> <p>Establish if the charity is a local organisation and who uses the organisation and its facilities.</p> | Application form. |
| 7 | <p>Proportionate use of the property:</p> <p>Consider how the property is used and whether the use is proportionate to the size of the assessment, are the charity under occupying or part occupying a large assessment.</p> | Inspection. Application form. |
| 8 | <p>Other sources of support:</p> <p>Establish whether there are other sources of support available to the charity and whether other sources of funding are available.</p> | Details of other sources of funding or income. |
| 9 | <p>Trading Arms</p> <p>Where the organisation is operating a trading arm then the accounts of the trading arm will be considered; if the profits from the trading arm are not re-invested in the locality from which they are drawn then the principal organisation will not normally be eligible for relief.</p> | Copies of accounts and financial information for any trading arm or subsidiary company |

| Criteria | | Evidence |
|-----------------|--|--------------------------------------|
| 10 | <p>Financial Viability</p> <p>Organizations should not rely on the award of discretionary rate relief to ensure financial viability. The applicant should provide clear business plan setting out how they will move to a position where they are able to discharge their business rates liability.</p> | Business plans and income forecasts. |

5.2 The level of relief will be determined by the evidence provided and whilst each case is assessed on its own merits the level of relief will ordinarily be that set out in section 13.0 below.

6.0 Rural Rate Relief

6.1 The Criteria for awarding rural rate relief and the factors taken into account are detailed below.

| Criteria | | Evidence |
|----------|--|---|
| 1 | <p>Local Value:</p> <p>The business is of importance to the local community - and the service is not provided by others business in the rural settlement.</p> | <p>Statement of the business type and the impact if the business were to close.</p> <p>The use of and value of the business to the local community.</p> <p>Last 2 years audited accounts.</p> |
| 2 | <p>Sole premises:</p> <p>The applicant carries out their business from a single property within the rural settlement.</p> <p>The business is not part of a larger chain - for example it is not part of a number of shops operated by the applicant.</p> | <p>Application form - accounts.</p> |
| 3 | <p>Profits:</p> <p>Determine whether the organisation holds reserves or makes a profit and whether it requires discretionary relief to continue to operate.</p> | <p>Copies of income and expenditure for the last financial year.</p> |
| 4 | <p>Financial Viability</p> <p>Organizations should not rely on the award of discretionary rate relief to ensure financial viability. The applicant should provide clear business plan setting out how they will move to a position where they are able to discharge their business rates liability.</p> | <p>Business plans and income forecasts.</p> |

7.0 Hardship Relief

7.1 The Criteria for awarding hardship relief and the factors considered are detailed below.

| Criteria | Evidence |
|--|---|
| <p>1 Local Value:</p> <p>The business is of importance to the local community and is suffering genuine hardship.</p> | <p>Statement of the business type and the impact if the business were to close.</p> <p>The use of and value of the business to the local community.</p> <p>Last 2 years audited accounts.</p> <p>Copies of the businesses order book.</p> <p>Copies of the personal accounts of the owners of the business.</p> |
| <p>2 Local Jobs:</p> <p>The number of people employed by the business who reside in the council area.</p> | <p>Total number of employees who will be affected if the relief is refused.</p> |
| <p>3 Nature of hardship:</p> <p>Details of the hardship being experienced including: Cause; expected duration; measures already taken to remedy the situation; that the cause is not a result of poor business planning or activity; details of the help already requested from other sources; and amount of additional support already received or reasons why support was not provided.</p> | <p>Latest accounts. Bank Statements. Business Plan. Order Books.</p> <p>Any other documents to support the application.</p> |
| <p>4 State Aid Declaration:</p> <p>Awards of hardship relief would potentially be classed as State Aid - a declaration will be required to show that the level of all relief is compliant with state aid rules.</p> | <p>State Aid Declaration.</p> |

7.2 Due to the nature of hardship relief there can be no general guidelines on the level of relief; each determination for hardship relief will be considered on an individual basis - the following criteria will be taken into account

8.0 Relief for Part Occupied Premises

8.1 The criteria for awarding rate relief and the factors to be taken into account are detailed below:

| Criteria | | Evidence |
|----------|--|--|
| 1 | <p>Part Occupation:</p> <p>The property is partly occupied</p> | Detailed plans of the hereditament must be provided to outline the whole property and indicate the partly occupied section. |
| 2 | <p>Length of time:</p> <p>The intended part occupation must be for a short period of time.</p> | Details of the planned period of time of the part occupation; the nature of the business and the businesses future intentions. |
| 3 | <p>Reason:</p> <p>The part occupation is not a result of maintenance, refurbishment, renewal or repairs, seasonal shutdowns, holidays or reduction in capacity due to normal business risks, reduction in capacity due to loss of trade or normal business fluctuations.</p> <p>Part occupation for phased occupation will be considered as a qualifying reason.</p> <p>Part occupation for phased vacations will be considered where the business is relocating to new premises within the council area</p> <p>Part occupation resulting from some event, such as fire or flood, which renders part of the premises unusable, will be considered as a qualifying reason.</p> | <p>Statements of the cause of the part occupation.</p> <p>Photographic evidence of the part of the premises which is prevented from being occupied.</p> <p>Surveyors or other qualified professionals reports confirming that occupation of the part of the premises is prevented.</p> |

8.2 A short period of time is not defined in legislation; therefore the nature of the business activity will be taken into account along with the estimated planned period of time and future intentions.

8.3 Applications for retrospective periods will not be accepted.

9.0 Localism Act Discretionary Rate Relief

- 9.1 The Localism Act removed the restrictions on awards of discretionary rate relief and allowed local authorities to determine that awards of relief may be made where it is reasonable to do so having regard to the interests of the Local Council Taxpayers.
- 9.2 In the main decision to award relief under the extended powers of the localism act will be made by the Council's Executive and would be exercised in respect of all hereditaments within a defined area or of a defined type. There may be occasions where decisions are made on a case by case basis.
- 9.3 Decisions on a case-by-case basis would be made where there is the possibility of the loss of an amenity which is of importance to local Taxpayers or where a failure to award relief could lead to the loss of major employer within the council area.
- 9.4 Any award of discretionary relief under the Localism Act powers would be the exception rather than the rule.
- 9.5 The criteria for awarding relief and the factors that will be taken into account are detailed below:

| Criteria | | Evidence |
|----------|---|---|
| 1 | Local Value: The business is, or will be of importance and value to the local community. | Statement of the business type and the impact upon the local community if the business were to come into the area/move away from the area. The use of and value of the business to the local community. Evidence of local trade and support. |
| 2 | Local Jobs: The number of people who are/will be employed by the business and who reside in the council area. | Total number of employees. Number of employees who would be affected if relief were not awarded. |

| Criteria | | Evidence |
|----------|---|---|
| 3 | <p>Reason for the discount</p> <p>Details to include: the reason for the discount; the period for which relief is sought; measures already taken to obtain support from other sources; amount of additional support already received; and (if applicable) reasons why support was not forthcoming.</p> | |
| 4 | <p>The business is the only example of its kind.</p> <p>Details of the unique nature of the business/amenity demonstrating why the failure to grant relief could lead to the loss of a unique amenity for the residents of the council area.</p> | Statement provided by applicant /report from council officers detailing why the business/amenity is unique in its nature. |
| 5 | <p>State Aid Declaration</p> <p>Awards of Localism Act relief would potentially be classed as State Aid – a declaration will be required to show that the level of all relief is compliant with state aid thresholds.</p> | State Aid Declaration to be completed. |

10.0 Discretionary Rate Relief - Central Government Funded Reliefs

- 10.1 Central Government has directed local authorities to use the extended powers of the Localism Act to administer several national schemes of discretionary rate relief. These schemes include relief from empty property rates for new build properties, retail rate relief and reoccupation of empty premises relief. Funding for these reliefs is provided by central government in the form of a 'Section 31 grant'
- 10.2 For all centrally funded discretionary relief the council will award the Governments intended level of relief in full and in line with guidance issued by government.

11.0 Costs of Relief

- 11.1 The total amount of the relief granted is included in the annual statistical returns and the NNDR income taking account of losses in collection, amendments to rateable value etc. is then split into the following proportions:

50% paid to central government
40% retained by District Council
9% paid to the County Council
1% paid to the precepting Fire Authority

- 11.2 The costs of mandatory relief, discretionary relief for non-profit making bodies, Section 44a relief, and hardship relief are therefore borne jointly by central and local authorities as per their proportional share of the NNDR income.

12.0 Reduction in Relief - Transitional Arrangements

- 12.1 Where a decision of the council results in a reduction to the amount of relief that an organisation will receive then the council may take steps to phase in the reduction over a period of two years.
- 12.2 A decision to phase in the reduction may be taken where notice of the level of relief is not provided prior to the commencement of the rates year, or where the organisation is unable to take budgeting decisions to account for the reduced level of relief.

13.0 Level of Relief and Budget Restrictions

- 13.1 As a general guide, and providing the criteria for relief are met, then the levels of relief shown in the table below will be awarded; where the organisation or type of organisation is not shown then relief will be made in accordance with the general guidelines of the policy.

13.2 The percentage of relief shown in the table is a percentage of the full rates liability, for example charity shops would already be in receipt of 80% mandatory relief and would receive a further top-up relief of; 0, 10 or 20%. A relief of 20% relief would mean that the organisation would have no rates to pay.

| Organisation | Narrative | % of relief |
|--|---|---|
| Housing Associations - housing providers | | 0% |
| Educational Establishments | Schools and colleges with charitable status and in receipt of mandatory relief | 0% |
| Youth organisations | Scouts, guides, cadets | Up to 100% |
| Community Halls/Village Halls | | Up to 100% |
| Sports and Social Clubs | Not registered as a charity or CASC | Up to 20% |
| Homelessness organisations | | Up to 100% |
| Regional administrative or head offices of a charity | | 0% |
| Charity Shops | The charitable operations of the charity are on a national or international level | 0% |
| Charity Shops | Where the operations of the charity are on a regional level within Worcestershire and surrounding areas only. | 10% |
| Charity Shops | Where the operations of the charity are wholly within the district. | 20% |
| Central Government Funded Discretionary Reliefs | Awards of discretionary relief for which Section 31 grants are payable | Relief at the level determined by Central Government. |

13.3 If on annual review the overall costs of Mandatory and Discretionary relief – excluding Section 44a relief and Localism Act Reliefs - that will be granted in the new rates years would increase by more than the % increase in the Small Business Rates Relief Multiplier then the awards of relief to each organisation will be reduced proportionally to ensure that the costs of relief remain within budget.

13.4 Any reduction in relief to an organisation made as a result of the overall increase in Mandatory and Discretionary relief will be subject to the internal appeals process and the rules on variation or revocation of relief.

14.0 Period of Relief

14.1 Awards of discretionary rate relief will usually be made for one rate year only and will be reviewed annually.

15.0 Backdating Relief

15.1 Applications for relief will be backdated to the beginning of the rate year, or the start date of the ratepayer's liability whichever is the later. Backdating for periods before the current rate year will be considered where:

- a) The application for relief is made and determined within 6 months of the end of the relevant financial year.
- b) A hereditament is entered into the rating list for the first time and an application for relief is made within 3 months of the hereditament entering the rating list.

15.2 Government funded reliefs will be backdated where funding remains available from the relevant government scheme.

16.0 Appeals

16.1 Appeals against the decision to refuse relief or against the level of the relief may be made by the ratepayer.

16.2 The appeal should be made in writing and should state the reasons why the ratepayer is aggrieved with the decision of the council. New information may be submitted at this stage to support the ratepayer's appeal.

16.3 Appeals will in the first instance be considered by the Head of Customer Access and Financial Support. At this stage the decision may either be confirmed or revised so as to increase the level of the relief.

16.4 A decision to reduce or remove the relief cannot be made as the requirements to give one year's notice would make such a decision ineffective.

16.5 Where the decision is revised the ratepayer will be notified of the increased level of relief awarded, if applicable.

16.6 If the original decision is confirmed the ratepayer will be advised of the reasons why, of the further right of appeal to the Director of Finance and Corporate Resources who will consider the appeal in conjunction with the relevant Portfolio Holder.

16.7 Appeals to the Executive Director of Finance and Corporate Resources must be made in writing and must give the reasons why it is believed that the decision should be amended. New or additional information may be included.

- 16.8 The ratepayer will be advised of the date that their appeal will be considered.
- 16.9 The ratepayer does not have a right to appear in person but may make a request to present evidence in person.
- 16.10 The appeal will be considered individually on its own merit and the ratepayer will be advised of the decision in writing.
- 16.11 The Executive Director of Finance and Corporate Resources will be able to confirm the original decision of the council or increase the level of relief awarded. A decision to revoke relief or to reduce the level of relief cannot be made as the requirements to provide one year's notice such a decision would be ineffective.
- 16.12 The submission of an appeal by a ratepayer does not affect the individual's rights to challenge a decision made by the council by way of Judicial Review.

17.0 Delegated Powers to Determine Awards of Relief

- 17.1 The decision to determine the awards of relief will be delegated as to:

| Relief | Delegated Authority |
|---|--|
| Mandatory Rate Relief | Financial Support Manager Assistant Financial Support Manager |
| Discretionary Rate Relief for Charities, Community Amateur Sports Clubs and Charity Shops - "Top-Up Relief" | Financial Support Manager Assistant Financial Support Manager |
| Discretionary Rate Relief for Non-Profit Making Organisations | Financial Support Manager Assistant Financial Support Manager |
| Relief for Part Occupied Premises | Financial Support Manager Assistant Financial Support Manager |
| Hardship Relief | Financial Support Manager Head of Finance and Customer Services |
| Central Government Funded Reliefs | Financial Support Manager Assistant Financial Support Manager |
| Individual Awards of Relief under the Localism Act - Awards made on a case by case basis. | Head of Finance and Customer Services Executive Director of Finance and Corporate Resources in consultation with the relevant Portfolio Holder and Leader of the Council. |

18.0 Interest of Officers and Members

- 18.1 Officers and Members who have an interest in any organisation which has either applied for relief or may indirectly benefit from the award of the relief (for example the owners of premises occupied by organisations making an application) must not participate in the decision making process.
- 18.2 Officers with an interest in any organisation should register the interest in the Officer's Central Register.

18.3 Examples of interests include, but are not restricted to the following:

- a) Membership of the organisation making an application.
- b) A close relative who is a member of the organisation.
- c) Are employed by or working in a voluntary capacity for the organisation.
- d) Are trustees for the charity or organisation making the application.
- e) Membership of a similar/rival organisation.
- f) An interest in the property for which relief is being sought.