

**NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL**

**CABINET – 14 JANUARY 2014**

Title of report	<b>REVIEW OF REVENUES AND BENEFITS POLICIES (NON DOMESTIC RATES (NDR) - DISCRETIONARY RATE RELIEF AND HARDSHIP RELIEF - ALIGNMENT OF PARTNERSHIP POLICIES AND GUIDELINES)</b>
Key Decision	a) Financial Yes b) Community Yes
Contacts	Councillor Nick Rushton 01530 412059 <a href="mailto:nicholas.rushton@nwleicesterhire.gov.uk">nicholas.rushton@nwleicesterhire.gov.uk</a>  Chief Executive 01530 454500 <a href="mailto:christine.fisher@nwleicestershire.gov.uk">christine.fisher@nwleicestershire.gov.uk</a>  Head of Finance 01530 454520 <a href="mailto:ray.bowmer@nwleicestershire.gov.uk">ray.bowmer@nwleicestershire.gov.uk</a>
Purpose of report	To seek approval to adopt the updated policies and/or guidelines for the Revenues and Benefits partnership. These are set out in appendices 1 and 2.
Reason for Decision	To meet audit recommendations to standardise policies and procedures across the Partnership and to comply with the Constitution. To enable staff to follow one application and approval process thereby ensuring that decision making is consistent and efficiencies are made in regard to staff training and the use of resources
Council Priorities	Value for Money Business and Jobs
Implications:  Financial/Staff	The policies have been aligned in terms of the application and approval procedure (See Appendix 1 and 2) for each relief for the three Councils within the Revenues and Benefits Partnership. This enables efficiencies to be made as all staff are working to one aligned, streamlined process.  The core criterion for each relief has not been amended. It remains the same as the existing policy/guidelines for each relief.  There are potential savings on staff training costs where one process is utilised.
Link to relevant CAT	Business CAT

Risk Management	<p>If the policy is not adopted there is a risk that there will continue to be inconsistencies in the approach taken by staff, leading to an inefficient use of staff resources and additional training costs.</p> <p>Inconsistencies in the policies/guidelines of the partnership will be reported by external audit, which could potentially have a negative impact on the Council's final audit reports.</p>
Equalities Impact Assessment	An EIA has been completed and no issues have been identified.
Human Rights	There are no Human Rights implications.
Transformational Government	Not applicable.
Comments of Head of Paid Service	The report is satisfactory.
Comments of Section 151 Officer	The report is satisfactory.
Comments of Monitoring Officer	The report is satisfactory.
Consultees	The Partnership Management Board Leader of the Council and Portfolio Holder Strategy Group
Background papers	<p>Local Government Finance Act 1988 <a href="http://www.legislation.gov.uk/ukpga/1988/41/contents">http://www.legislation.gov.uk/ukpga/1988/41/contents</a></p> <p>Localism Act 2011 <a href="http://www.legislation.gov.uk/ukpga/2011/20/section/69/enacted">http://www.legislation.gov.uk/ukpga/2011/20/section/69/enacted</a></p> <p>Minutes of the Joint Committee – 20 November 2013. <a href="https://www.nwleics.gov.uk/files/documents/revs_and_bens_minutes_november/">https://www.nwleics.gov.uk/files/documents/revs_and_bens_minutes_november/</a></p> <p>The Discretionary Rate Relief Policy Sept 2010 – Consolidated version. <a href="https://www.nwleics.gov.uk/files/documents/discretionary_rate_relief_policy_consolidated_version_sept_2010_updated/DISCRETIONARY%20RATE%20RELIEF%20POLICY%20-%20CONSOLIDATED%20VERSION%20Sept%202010%20%28update%29.pdf">https://www.nwleics.gov.uk/files/documents/discretionary_rate_relief_policy_consolidated_version_sept_2010_updated/DISCRETIONARY%20RATE%20RELIEF%20POLICY%20-%20CONSOLIDATED%20VERSION%20Sept%202010%20%28update%29.pdf</a></p> <p>Hardship Policy 1998 <a href="https://www.nwleics.gov.uk/files/documents/hardship_policy_apopted_in_19981/Hardship%20Policy%20Aopted%20in%201998.pdf">https://www.nwleics.gov.uk/files/documents/hardship_policy_apopted_in_19981/Hardship%20Policy%20Aopted%20in%201998.pdf</a></p>

Recommendations	<p><b>TO APPROVE THE REVISED POLICIES AND GUIDELINES, THOSE BEING:</b></p> <p><b>APPENDIX 1 – NON DOMESTIC RATES DISCRETIONARY RELIEF GUIDELINES</b></p> <p><b>APPENDIX 2 – NON DOMESTIC RATE HARDSHIP RELIEF POLICY</b></p>
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## **1.0 INTRODUCTION**

- 1.1 Each Council in the Revenues and Benefits Partnership have their own individual policies/guidelines covering the revenues and benefits service area. This creates problems for the partnership as staff are currently following three separate application and approval processes, which is an inconsistent and inefficient use of staff resources. Aligning all existing guidelines and policies will support the partnership in its aim to harmonise existing working practices and procedures. This will assist the customer services teams that support the partnership and enable one approach to be taken for the provision of staff training. It will also meet audit recommendations on the standardisation and documentation of key procedures and processes.
- 1.2 On November 20<sup>th</sup> 2013, the Joint Committee for the partnership approved a number of aligned policies. This included the Non Domestic Rates Discretionary Rate Relief Guidelines and the Hardship Relief Policy. The sections of the existing policies that have been aligned are the application and approval sections.

## **2.0 FINANCIAL IMPLICATIONS**

- 2.1 The financial implications for the Council in terms of awarding the relief remain the same as under the existing arrangements i.e. 40% of the cost of awarding Discretionary Rate Relief or Hardship Relief is borne by the general fund of the Local Authority. All applications are taken on their merit and the general interest of all council tax payers is taken into account when considering a grant of either Discretionary Rate Relief or Hardship Relief as the award of such a grant may impact on the general fund, therefore the financial impact is relatively low.

## **3.0 NNDR Discretionary Rate Relief (DR) Guidelines (Appendix 1)**

- 3.1 The main body of the new policy has been redrafted and aligned across the Partnership. It now contains guidance from the government on the legislative powers which provide for the award of discretionary rate reliefs (Appendix 1A) and includes information about the state aid rules which we now need to take into account (Appendix 1B). It also contains an aligned procedure in terms of the application process for the relief and the approval process.
- 3.2 Appendix 1C to each Council's DR policy contains the specific criteria for each Council to follow, which for Harborough District Council, (HDC) Hinckley and Bosworth Borough Council (HBBC) and North West Leicestershire District Council (NWLDC) remain the same as their existing policies. NWLDC considered introducing a cap as currently HBBC have a £6,000 cap and HDC has two levels of cap depending on whether the account is already in receipt of Mandatory Relief (£2000 and £5000). A cap was ruled out for NWLDC during the policy formulation stage as NWLDC strongly believe in supporting all businesses. As a result each set of criteria in Appendix 1C to each Council's policy is different, as it meets the local needs and priorities of each Council.

3.3 Appendix 1D has been inserted into each Council's DR policy, which is aligned across the three councils, to cover the extension to the DR provisions to allow 'any other type of business' to apply for DR. This change came in from 1<sup>st</sup> April 2012. None of the Councils had any reference to this in their existing policies. There is a requirement to have criteria for this in place as applications will be received and guidance is required to enable consistency in decision making.

#### **4.0 NNDR HARDSHIP RELIEF POLICY (APPENDIX 2)**

4.1 A new policy has been drafted to align the application and approval processes for Partnership staff to follow. The hardship criterion has not changed from the existing criteria. Each case must still be considered on its own merits, be in the interests of Council Tax payers and be affordable to the Local Authority. It also contains an aligned procedure in terms of the application process for the relief and the approval process.

The following appendices are attached to Appendix 2 for reference:

Appendix 2A – Government Guidance Note

Appendix 2B – State Aid

Appendix 2C – Hardship Criteria

#### **5.0 IMPACT ON THE COMMUNITY**

5.1 There is no impact on the Community by aligning the relief application and approval process.

5.2 For awards of DR made under the extended provisions as outlined in Appendix 1D of the DR guidelines, there will be a financial impact as every award of DR is borne by the general fund. Depending on the Council's priorities, this could mean that the level of Council Tax may have to increase to pay for the relief or, other services may have to be cut in order to fund an award. However, these risks could be minimised by utilising other funding streams, such as government grants. In addition, the long term economic benefits for the local area of assisting the business may outweigh the initial investment of the cost of the award, as it could help to maintain local employment levels and/or encourage new business into the area. It could also help in more general terms, by reducing the impact on local advice/welfare organisations and the viability of other businesses through reduced trade.

## 6.0 SUMMARY OF CHANGES (See tables below)

<b>Discretionary Rate Relief Guidelines</b>		
<b>Current</b>	<b>New</b>	<b>Impact</b>
Describes the cost of DR under the old pooling arrangements	Describes the cost of DR under the new rates retention rules	Under the new Rates Retention rules the cost of all reliefs is split 50/50 between central government and the local authority/major preceptors. The billing Authority now bears 40% of the cost of awarding relief, before this change, the cost to the Authority varied, depending on the type of relief. The cost was 0%, 25% or 75%.
There is no reference to the extended provisions which were introduced on 1 <sup>st</sup> April 2012	Introduction of Appendix 1D which outlines some new standardised criteria for the partnership in regard to the extended provisions.	The extended provisions allow for 'other' types of business to apply for DR and there is no RV threshold to apply. This allows the Council to be more flexible in the financial assistance it provides. This could be utilised to encourage businesses into the area, to build economic development and improve the vitality of the District. This will only be considered where it is financially viable for the Council to support the business and where it is in the best interests of Council Tax payers to do so.
Ward members were to be consulted on individual Rural Rate Relief (RRR) applications. Subject to their comments, the decision was then made by the Section 151 officer.	The consideration of all types of DR relief is now fully delegated to Officers. Appeals against the decision to refuse DR are by way of Judicial Review, however, an internal reconsideration will now be undertaken by a panel of two senior officers within the relevant Authority.	All three councils took a different approach on the approval process. In order to align the approach for the Partnership and reduce delays for the ratepayer in the decision making process, the decision making for all types of DR is now delegated to a Partnership Manager. Where the application falls outside of the core criteria outlined in Appendix 1C or 1D the application will be considered by the Head of Finance (or their Deputy). The new policy also introduces a reconsideration stage, should the application be refused and an appeal received.
No information included on Government guidance and State Aid.	Additional information is now contained within the guidelines	The additional information will assist officers in their decision making. In regard to the 'State Aid' rules, DR cannot be awarded if other grants or relief have already been received by the business and this exceeds the State Aid 200,000 Euro limit.

## Hardship Relief Policy

Current	New	Impact	
Describes the cost of Hardship Relief under the old pooling arrangements	Describes the cost of Hardship Relief under the new rates retention rules	Under the new rates retention rules the cost of all reliefs is split 50/50 between central government and the local authority/major preceptors. The billing Authority now bears 40% of the cost of awarding relief, before this change, the cost to the Authority varied, depending on the type of relief. The cost was 0%, 25% or 75%.	
Consideration and decision making was undertaken by the 'Treasurer' and Chief Executive in conjunction with 'Chairman of the Policy and Resources Committee'	The consideration of Hardship Relief is now delegated to the Section 151 officer or their deputy. Appeals against the decision to refuse Hardship Relief are by way of Judicial Review, however, an internal reconsideration will now be undertaken by a panel of two senior officers within the relevant Authority.	All three councils took a different approach on the approval process. In order to align the approach for the Partnership and reduce delays for the ratepayer in the decision making process, the decision making for Hardship Relief is now delegated the Section 151 Officer. Should the application be refused and an appeal received, the new policy introduces a reconsideration stage whereby the decision will be reviewed by a panel of two senior officers.	
No information included on Government guidance and state aid.	Additional information is now contained within the guidelines	The additional information will assist officers in their decision making. In regard to the 'State Aid' rules, DR cannot be awarded if other grants or relief have already been received by the business and this exceeds the State Aid 200,000 Euro limit.	

# APPENDIX 1

## NON-DOMESTIC RATE DISCRETIONARY RELIEF GUIDELINES (NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL)

### Introduction

This document sets out the provisions for the awarding of mandatory and discretionary rate relief by a local authority. Whilst the local authority is under a statutory duty to award mandatory relief, the award of discretionary rate relief is at the discretion of the local authority.

Each authority will have its own procedures for when to award discretionary relief and for how long it is to be awarded. These need to be regularly reviewed and updated to take account of new legislation and policy changes within each authority.

This document focuses on both mandatory and discretionary relief and looks at the circumstances when relief can be awarded under the following four headings:-

- Charities and Kindred Organisations.
- Community Amateur Sport Clubs.
- Rural Areas.
- Local Discounts (discretionary relief only).

It should be noted there are other reliefs available to a ratepayer. These can be summarised as follows:-

- Small Business Relief

A local authority is under a statutory duty to award small business relief (subject to certain conditions being satisfied) if a ratepayer occupies a hereditament that has a rateable value below a prescribed sum. As a consequence, the local authority has no discretion in the matter. However, if the ratepayer is entitled to mandatory relief, they would then not qualify for small business relief.

There are separate procedure notes for staff when administering small business rate relief.

- Part-Occupied Relief

A local authority is entitled to award part-occupied relief when a hereditament is part-occupied for a 'short-time' only. There is no definition of a 'short-time' and it is open to the local authority to interpret the period.

There are separate procedure notes for staff when administering part-occupied relief.

- Hardship Relief

A local authority is entitled to reduce or remit the non-domestic rate (NDR) on the grounds of hardship if it is satisfied:-

- The ratepayer would sustain hardship if the authority did not do so; and
- It is reasonable for the authority to do so, having regard to the interests of persons subject to its council tax (Ctax).

There is a separate set of guidelines for the partnership that covers hardship relief.

## **Mandatory Relief**

### **General**

The relevant provisions regarding the award of mandatory relief are set out in **Sections 43 to 46 Local Government Finance Act 1988**.

### **Charities & Kindred Organisations**

#### **General Provisions**

Where, on the day concerned, the ratepayer is a charity or trustees for a charity and the hereditament is wholly or mainly used for charitable purposes (whether of that charity or of that and other charities), the amount of relief to be awarded is 80%. Therefore, the ratepayer would be required to pay 20%. However, the charity or kindred organisation would be entitled to apply to the local authority for discretionary relief.

If the hereditament is unoccupied and the ratepayer is a charity or trustees for a charity, it will be exempt from having to pay any rate if it appears that when next in use, the hereditament will be wholly or mainly used for charitable purposes (whether of that charity or of that and other charities).

A charity is described as being '*an institution or other organisation established for charitable purposes only, or any persons administering a trust established for charitable purposes only*'. The question as to whether an organisation is a charity may be resolved in the majority of cases by reference to the register of charities maintained by the Charity Commissioners. Entry in the register is conclusive evidence that an organisation is a charity, and is proof for all purposes except challenge of that registration.

The absence of an entry in the register does not necessarily mean that the organisation concerned is not a charity, since it may be excluded from the requirement to register. These 'excepted charities' include:-

- The Church Commissioners and any institution administered by them.
- Any registered society.
- Units of the Boy Scouts Association or the Girl Guides Association (except for funds producing more than £15 per year).
- Voluntary schools having no permanent endowment other than the school premises.

Where there is no registration of an organisation, or it is not excepted from registration, the determination of charitable status may present some difficulty. The principles of charitable



status have been set out in case law where it has been established a charity, in its legal sense, comprises four principal divisions:-

- Trusts for the relief of poverty.
- Trusts for the advancement of religion.
- Trusts for the advancement of education.
- Trusts for other purposes beneficial to the community, but not falling under any of the preceding heads.

The provisions are extended for charity shops. The hereditament is to be treated as being wholly or mainly used for charitable purposes at any time if, at the time, it is wholly or mainly used for the sale of goods donated to a charity and the proceeds of the sale of the goods (after any deduction of expenses) are applied for the purposes of the charity.

#### Period of Relief

If relief is awarded by the local authority, the effective date will be backdated to when the charity or kindred organisation first met the prescribed criteria. The relief will continue until a charity no longer fulfils the prescribed criteria although it is prudent for a local authority to review relief at regular intervals.

#### Decision Making Process

All decisions on the award of mandatory relief to a charity or kindred organisation will be taken by officers. There is no involvement from members in the decision making process.

#### Appeals

Any appeal against a local authority's decision not to award mandatory relief can represent a challenge to its application for a liability order in the magistrate's court.

### **Community Amateur Sports Clubs**

#### General Provisions

A registered community amateur sports club (CASC) is entitled to mandatory relief at the same level as charities and kindred organisations. This includes being able to apply for discretionary relief. A CASC is defined in the **Finance Act 1988** and registration forms are available from the Inland Revenue website. A CASC is deemed to be registered from a time beginning with its effective registration (even if retrospective), and ending on the effective date of termination of a registration.

The relief will operate alongside discretionary relief which is available to a CASC that has not been registered with the Inland Revenue as a CASC. As with a charity or kindred organisation, where the hereditament is unoccupied and the ratepayer is a CASC, it will be exempt from having to pay any rate if it appears that when next in use, the hereditament will be wholly or mainly used as a CASC.

#### Period of Relief

If relief is awarded by the local authority, the effective date will be backdated to when the CASC first met the prescribed criteria. The relief will continue until a CASC no longer fulfils the prescribed criteria although it is prudent for a local authority to review relief at regular intervals.

## Decision Making Process

All decisions on the award of mandatory relief to a CASC will be taken by officers. There is no involvement from members in the decision making process.

## Appeals

Any appeal against a local authority's decision not to award mandatory relief can represent a challenge to its application for a liability order in the magistrate's court.

## **Rural Areas**

### General Provisions

A scheme to help certain kinds of hereditaments situated in rural settlements was introduced on the 1<sup>st</sup> April 1998. A local authority is required to compile and maintain a 'rural settlement list', which is to identify any settlements which:-

- Are wholly or partly within the authority's area.
- Appear to have a population of not more than 3,000 on 31st December immediately before the chargeable financial year in question.
- Are, in that financial year, wholly or partly within an area designated for the purpose (Note: with effect from 31st December 2001, the designated areas in England are all of those outside the specified urban areas).

An authority is not required to compile a rural settlement list in respect of any chargeable financial year if there is no such settlement complying with the above conditions in the area for that year.

Mandatory rate relief applies to a qualifying hereditament which is within a settlement identified in an authority's rural settlement list for the chargeable financial year where its rateable value is not, at the beginning of the year in question, more than a relevant prescribed amount. The current rateable value limits (1<sup>st</sup> April 2010 to 31<sup>st</sup> March 2015) are as follows:-

- £8,500: Qualifying general stores and post offices.
- £8,500: Qualifying food shops.
- £12,500: Qualifying public houses and petrol filling stations.

The key definitions for the above types of hereditament to qualify for relief are as follows:-

- Qualifying General Store

A hereditament, or part of a hereditament, is used as a 'qualifying general store' on any day in a chargeable financial year if:-

- A trade or business consisting wholly or mainly of the sale by retail of both food for human consumption (excluding confectionary) and general household goods is carried on there; and

- Such a trade or business is not carried on in any other hereditament, or part of a hereditament, in the settlement concerned.

- Qualifying Post Office

A hereditament, or part of a hereditament, is used as a 'qualifying post office' on any chargeable day in a financial year if:-

- It is used for the purposes of the post office; and
- No other hereditament or part of a hereditament, in the settlement concerned is so used.

- Qualifying Food Shop

A hereditament, or part of a hereditament, is used as a 'qualifying food shop' on any chargeable day in a financial year if a trade or business consisting wholly or mainly of the sale by retail of food for human consumption (excluding confectionary and excluding the supply of food in the course of catering) is carried on there.

- Qualifying Public House

A hereditament, or part of a hereditament, is used as a 'qualifying public house' if on any chargeable day in a financial year:-

- It is used as a public house which is defined as being premises for which a justices on-licence is in force; and
- No other hereditament or part of a hereditament, in the settlement concerned is so used.

- Qualifying Petrol Filling Station

A hereditament, or part of a hereditament, is used as a 'qualifying petrol filling station' if on any chargeable day in a financial year:-

- It is used as a petrol filling station which is defined as being premises from where petrol or other automotive fuels are sold retail to the general public for fuelling motor vehicles intended or adapted for use on roads; and
- No other hereditament or part of a hereditament, in the settlement concerned is so used.

Where, on the day concerned, the ratepayer would satisfy any of the above conditions, the amount of relief to be awarded is 50%. Therefore, the ratepayer would be required to pay 50%. However, the ratepayer would be entitled to apply to the local authority for discretionary relief. As the relief is only awarded if a hereditament is occupied, no relief is applicable if the hereditament is unoccupied.

#### Period of Relief

If relief is awarded by the local authority, the effective date will be backdated to when the ratepayer first met the prescribed criteria. The relief will continue until a ratepayer no longer fulfils the prescribed criteria although it is prudent for a local authority to review relief at

regular intervals.

### Decision Making Process

All decisions on the award of mandatory relief to a ratepayer will be taken by officers. There is no involvement from members in the decision making process.

### Appeals

Any appeal against a local authority's decision not to award mandatory relief can represent a challenge to its application for a liability order in the magistrate's court.

### Discretionary Relief

#### **General**

The relevant provisions regarding the award of discretionary relief are set out in **Sections 47 and 48 Local Government Finance Act 1988** and the **Non-Domestic Rate (Discretionary Rate Relief) Regulations 1989 (S.I. 1989/1059)**.

#### **Charities & Kindred Organisations**

##### General Provisions

The conditions to be satisfied before a local authority can consider an application with regard to an occupied hereditament are that:-

- The ratepayer is a charity or trustees for a charity and the hereditament is wholly or mainly used for charitable purposes; or
- The hereditament is not an excepted hereditament, and all or part of it is occupied for the purposes of one or more institutions or other organisations none of which is established or conducted for profit and each of whose main objects are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts; or
- The hereditament is not an excepted hereditament, it is wholly or mainly used for purposes of recreation, and all or part of it is occupied for the purpose of a club, society or other organisation not established or conducted for profit.

(Note: an 'excepted hereditament' (in respect of which discretionary relief cannot be given) is a hereditament, all or part of which is occupied (otherwise than as a trustee) by a billing authority or by a precepting authority other than charter trustees).

Where, on the day concerned, the ratepayer is awarded discretionary relief in respect of an occupied hereditament, the amount of relief can be any sum up to (and including) 100%. The local authority may therefore 'top up' any mandatory relief awarded (80%) whilst awarding relief up to (and including) 100% to any charity or kindred organisation not in receipt of mandatory relief.

If the hereditament is unoccupied and the ratepayer is a charity or trustees for a charity, it will be exempt from having to pay any rate if it appears that when next in use, the hereditament will be wholly or mainly used for charitable purposes (whether of that charity or of that and other charities). If mandatory relief is not applicable, discretionary relief up to (and including) 100% can be awarded if it appears that when next in use, the hereditament will be wholly or mainly used for any of the purposes set out above.

## Criteria for Awarding Relief

Members are advised to agree criteria for their authority which officers are expected to adhere to when awarding discretionary relief. **See Appendix C**. This should be regularly reviewed and updated. In agreeing criteria, members and officers will want to take note of the guidance note and state aid rules set out in **Appendices A & B** to the guidelines.

## Period of Relief

If relief is awarded by the local authority, the effective date of any entitlement can be backdated to the beginning of the financial year (i.e. 1<sup>st</sup> April) in which the determination is made (subject to the relevant conditions being satisfied) if that determination was made after the 30<sup>th</sup> September. Should the determination be made before the 1<sup>st</sup> October, the effective date can be backdated to the 1<sup>st</sup> April in the previous year (subject to the relevant conditions being satisfied).

The period in which relief is awarded is at the discretion of the local authority. In practice, many authorities award relief for a fixed period (say up to the end of the financial year in which the determination is made) and a new decision is taken in advance of the billing run each March on whether to extend relief for a period of 12 months. This is the procedure to be adopted within the Leicestershire Partnership.

By awarding relief for a fixed period, the local authority is not faced with the legal restraints should it subsequently look to reduce or withdraw relief it is granted indefinitely. If relief is awarded indefinitely, any decision to reduce or withdraw relief would only become effective having first given 12 months notice and then it would continue through to the end of that financial year.

## Decision Making Process

As the effective date of any relief is determined by when a local authority takes a decision to award relief, it is imperative there is no delay in the decision making process. Officers must take decisions on a 'case-by-case' basis in line with the criteria for each authority. Each application will be signed off by a Partnership Manager, except where the application falls outside of the criteria, whereupon, the application will be considered by the Section 151 Officer, or their deputy. An annual report will be taken to the cabinet/executive that sets out all relief awarded in a year (on a case-by-case basis). The report must also detail the relief to be awarded (again on a case-by-case basis) in the forthcoming year.

## Appeals

Any appeal against a local authority's decision to refuse the award of discretionary relief would be by way of an application of judicial review to the high court. In the first instance, any appeal against a decision to refuse an application for discretionary relief should be considered by a panel of two senior officers within the relevant authority. There would be no further right of appeal to members.

## **Community Amateur Sports Clubs**

### General Provisions

Discretionary relief can be awarded to a CASC that is already in receipt of mandatory relief. Where, on the day concerned, the CASC is awarded discretionary relief in respect of an occupied hereditament, the local authority may therefore 'top up' any mandatory relief

awarded (80%). If the CASC is not registered (and thereby not in receipt of mandatory relief), up to (and including) 100% relief can be awarded.

If the hereditament is unoccupied and the ratepayer is a registered CASC, it will be exempt from having to pay any rate if it appears that when next in use, the hereditament will be wholly or mainly used for the purposes of a registered CASC. If mandatory relief is not applicable, discretionary relief up to 100% can be awarded if it appears that when next in use, the hereditament will be wholly or mainly used for the prescribed purposes.

### Criteria for Awarding Relief

Members are advised to agree criteria for their authority which officers are expected to adhere to when awarding discretionary relief. **See Appendix C**. This should be regularly reviewed and updated. In agreeing criteria, members and officers will want to take note of the guidance note and state aid rules set out in **Appendices A & B** to the guidelines.

### Period of Relief

If relief is awarded by the local authority, the effective date of any entitlement can be backdated to the beginning of the financial year (i.e. 1<sup>st</sup> April) in which the determination is made (subject to the relevant conditions being satisfied) if that determination was made after the 30<sup>th</sup> September. Should the determination be made before the 1<sup>st</sup> October, the effective date can be backdated to the 1<sup>st</sup> April in the previous year (subject to the relevant conditions being satisfied).

The period in which relief is awarded is at the discretion of the local authority. In practice, many authorities award relief for a fixed period (say up to the end of the financial year in which the determination is made) and a new decision is taken in advance of the billing run each March on whether to extend relief for a period of 12 months. This is the procedure to be adopted within the Leicestershire Partnership.

By awarding relief for a fixed period, the local authority is not faced with the legal restraints should it subsequently look to reduce or withdraw relief it is granted indefinitely. If relief is awarded indefinitely, any decision to reduce or withdraw relief would only become effective having first given 12 months notice and then it would continue through to the end of that financial year.

### Decision Making Process

As the effective date of any relief is determined by when a local authority takes a decision to award relief, it is imperative there is no delay in the decision making process. Officers must take decisions on a 'case-by-case' basis in line with the criteria for each authority. Each application will be signed off by a Partnership Manager, except where the application falls outside of the criteria, whereupon, the application will be considered by the Section 151 Officer, or their deputy. An annual report will be taken to the cabinet/executive that sets out all relief awarded in a year (on a case-by-case basis). The report must also detail the relief to be awarded (again on a case-by-case basis) in the forthcoming year.

### Appeals

Any appeal against a local authority's decision to refuse the award of discretionary relief would be by way of an application of judicial review to the high court. In the first instance, any appeal against a decision to refuse an application for discretionary relief should be considered by a panel of two senior officers within the relevant authority. There would be no further right of appeal to members.

## Rural Areas

### General Provisions

Discretionary relief may be awarded in such circumstances where the rateable value of the hereditament at the beginning of the chargeable financial year concerned does not exceed a prescribed rateable value. The amount prescribed for England is £16,500 for the period 1<sup>st</sup> April 2010 to 31<sup>st</sup> March 2015

In the circumstances described above (i.e. where a hereditament is not a qualifying general store or a qualifying post office as described in the conditions for mandatory relief), the billing authority may not award discretionary relief unless it is satisfied that:-

- The hereditament is used for purposes which are of benefit to the local community; and
- It would be reasonable for the billing authority to award relief, having regard to the interests of persons liable to pay its Ctax.

It follows from the above that where the hereditament is a qualifying general store or qualifying post office, and there is, consequently, an entitlement to mandatory relief, discretionary relief may be applied to the chargeable amount, without reference to the conditions referred to above.

Where, on the day concerned, the ratepayer is awarded discretionary relief in respect of an occupied hereditament, the amount of relief can be any sum up to (and including) 100%. The local authority may therefore 'top up' any mandatory relief awarded (50%) whilst awarding relief up to (and including) 100% to any ratepayer not in receipt of mandatory relief.

### Criteria for Awarding Relief

Members are advised to agree criteria for their authority which officers are expected to adhere to when awarding discretionary relief. **See Appendix C**. This should be regularly reviewed and updated. In agreeing criteria, members and officers will want to take note of the guidance note and state aid rules set out in **Appendices A & B** to the guidelines.

### Period of Relief

If relief is awarded by the local authority, the effective date of any entitlement can be backdated to the beginning of the financial year (i.e. 1<sup>st</sup> April) in which the determination is made (subject to the relevant conditions being satisfied) if that determination was made after the 30<sup>th</sup> September. Should the determination be made before the 1<sup>st</sup> October, the effective date can be backdated to the 1<sup>st</sup> April in the previous year (subject to the relevant conditions being satisfied).

The period in which relief is awarded is at the discretion of the local authority. In practice, many authorities award relief for a fixed period (say up to the end of the financial year in which the determination is made) and a new decision is taken in advance of the billing run each March on whether to extend relief for a period of 12 months. This is the procedure to be adopted within the Leicestershire Partnership.

By awarding relief for a fixed period, the local authority is not faced with the legal restraints should it subsequently look to reduce or withdraw relief it is granted indefinitely. If relief is

awarded indefinitely, any decision to reduce or withdraw relief would only become effective having first given 12 months notice and then it would continue through to the end of that financial year.

### Decision Making Process

As the effective date of any relief is determined by when a local authority takes a decision to award relief, it is imperative there is no delay in the decision making process. Officers must take decisions on a 'case-by-case' basis in line with the criteria for each authority. Each application will be signed off by a Partnership Manager, except where the application falls outside of the criteria, whereupon, the application will be considered by the Section 151 Officer, or their deputy. An annual report will be taken to the cabinet/executive that sets out all relief awarded in a year (on a case-by-case basis). The report must also detail the relief to be awarded (again on a case-by-case basis) in the forthcoming year.

### Appeals

Any appeal against a local authority's decision to refuse the award of discretionary relief would be by way of an application of judicial review to the high court. In the first instance, any appeal against a decision to refuse an application for discretionary relief should be considered by a panel of two senior officers within the relevant authority. There would be no further right of appeal to members.

### **Local Discounts**

#### General Provisions

From the 1<sup>st</sup> April 2012, a local authority can reduce the NDR by up to (and including) 100% for any local ratepayer; not just those that previously were entitled to apply for discretionary relief. This relief would be awarded in the form of a discount.

If a ratepayer would not have been entitled to discretionary relief under the rules that existed prior to the 1<sup>st</sup> April 2012, a local authority may only make the decision if it is satisfied that it would be reasonable for it to do so, having regard to the interests of persons liable to pay Ctax set by it.

It is important to stress that the extension of the provisions from the 1<sup>st</sup> April 2012 does not have an impact on ratepayers that meet the criteria that existed prior to the 1<sup>st</sup> April 2012. They would still be entitled to apply for discretionary relief under those criteria and should be considered accordingly.

#### Criteria for Awarding Relief

Members are advised to agree criteria for their authority which officers are expected to adhere to when awarding discretionary relief. **See Appendix D.** This should be regularly reviewed and updated. In agreeing criteria, members and officers will want to take note of the guidance note and state aid rules set out in **Appendices A & B** to the guidelines.

#### Period of Relief

If relief is awarded by the local authority, the effective date of any entitlement can be backdated to the beginning of the financial year (i.e. 1<sup>st</sup> April) in which the determination is made (subject to the relevant conditions being satisfied) if that determination was made after the 30<sup>th</sup> September. Should the determination be made before the 1<sup>st</sup> October, the effective date can be backdated to the 1<sup>st</sup> April in the previous year (subject to the relevant conditions being satisfied).



The period in which relief is awarded is at the discretion of the local authority. In practice, many authorities award relief for a fixed period (say up to the end of the financial year in which the determination is made) and a new decision is taken in advance of the billing run each March on whether to extend relief for a period of 12 months. This is the procedure to be adopted within the Leicestershire Partnership.

By awarding relief for a fixed period, the local authority is not faced with the legal restraints should it subsequently look to reduce or withdraw relief it is granted indefinitely. If relief is awarded indefinitely, any decision to reduce or withdraw relief would only become effective having first given 12 months notice and then it would continue through to the end of that financial year.

### Decision Making Process

As the effective date of any relief is determined by when a local authority takes a decision to award relief, it is imperative there is no delay in the decision making process. Officers must take decisions on a 'case-by-case' basis in line with the criteria for each authority. Each application will be signed off by a Partnership Manager, except where the application falls outside of the criteria, whereupon, the application will be considered by the Section 151 Officer, or their deputy. An annual report will be taken to the cabinet/executive that sets out all relief awarded in a year (on a case-by-case basis). The report must also detail the relief to be awarded (again on a case-by-case basis) in the forthcoming year.

### Appeals

Any appeal against a local authority's decision to refuse the award of discretionary relief would be by way of an application of judicial review to the high court. In the first instance, any appeal against a decision to refuse an application for discretionary relief should be considered by a panel of two senior officers within the relevant authority. There would be no further right of appeal to members.

### Cost of Relief

From 1<sup>st</sup> April 2013, in accordance with the rules introduced by the Rates Retention Scheme, the cost of awarding rate reliefs has changed. The cost of awarding all forms of rate relief is now split between central government, billing authorities and major preceptors on a fixed percentage basis. Central government bears 50% of the cost, the county council 9%, the fire authority 1% and billing authorities the remaining 40%.

In regard to Discretionary Rate Relief, if the relevant conditions are satisfied, the local authority has the discretion to award or refuse the application. When making their decision the local authority must consider the guidelines and appendices in this document and take into account the impact such awards might have on council tax payers in the area, as 40% of the cost is borne by the general fund.

## GUIDANCE NOTE

### Introduction

The Department of the Environment and the Welsh Office issued a joint Practice Note in August 1990 to give guidance to authorities in England and Wales as to the criteria which they should take into consideration in the exercise of the discretion to grant rate relief. The note says that the criteria are not intended as a rigid set of rules and that it is for each authority to judge whether they are applicable in each case and what weight should be attached to them.

This Practice Note has now been supplemented by guidance issued by the Office of the Deputy Prime Minister ('Guidance on rate reliefs for charities and other non-profit making organisations) in December 2002, which particularly focuses on the situation of sports clubs. The section of the guidance note concerning sports clubs is, accordingly, reproduced below.

Practitioners should also take particular note of the advice contained in the guidance relating to circumstances where rate relief may count as 'state aid'. This is set out in **Appendix B** to the guidelines.

### Advice

The Practice Note recommends that:-

- a) Authorities will wish to have readily understood policies for deciding whether or not to grant relief, and for determining the amount of relief. They should not, however, adopt a guidelines or a rule which allows a case to be disposed of without any consideration as to its individual merits. Any criteria by which the individual case is judged should be made public to help interested individuals and bodies.
- b) Although there is no statutory requirement for organisations to submit applications for relief, thus not precluding authorities from taking an initiative to grant relief if it so wished, authorities should encourage organisations to give details of all the matters they wish to be taken into account, and to provide any other relevant information such as audited accounts, constitution, membership details etc.
- c) Authorities should consider notifying organisations of the reasons why relief has not been granted so that they can take steps to conform to the criteria which the authority has adopted.

### Criteria

The criteria contained in the Practice Note is described only as 'examples which might be adopted', and reads as follows:-

- a) Access

#### Is membership open to all sections of the community?

- There may be legitimate restrictions placed on membership which relate (i.e. to ability in a sport or to the achievement of a standard in the field covered by the organisation or where the capacity of the facility is limited). Clubs or organisations should not be considered if they have membership rates set at such a high level as to exclude the general community. In general, the club or

organisation must be prepared to show that the criteria by which it considers applications for membership are consistent with the principles of open access.

- Does the organisation actively encourage membership from particular groups in the community, for example young people, women, older age groups, persons with a disability, ethnic minorities etc.? An organisation which encouraged such membership might expect more sympathetic consideration than one which made no effort to attract members from groups which the authority considered to be particularly deserving of support.
- Are the facilities made available to people other than members (e.g. schools, casual public sessions etc.)? The wider use of facilities should be encouraged, and rate relief might be one form of recognition that an organisation was promoting its facilities more widely.

b) Provision of facilities

- Does the organisation provide training or education for its members? Are there schemes for particular groups to develop their skills (i.e. young people, the disabled, retired people)? An organisation providing such facilities might deserve more support than one which did not.
- Have the facilities available been provided by self-help or grant aid? The fact that a club uses or has used self-help for construction or maintenance or had facilities funded by grant aid might be an indicator that they were more deserving of relief.
- Does the organisation run a bar? The mere existence of a bar should not in itself be a reason for not granting relief. The authority should look at the main purpose of the organisation. In sports clubs, for example, the balance between playing and non-playing members might provide a useful guide as to whether the main purpose of the club is sporting or social activities. A social club whose main aim is to bring together people with similar interests should not be excluded from relief just because of the existence of a licensed bar.
- Does the organisation provide facilities which indirectly relieve the authority of the need to do so, or enhance and supplement those which it does provide? Authorities should not refuse relief on the grounds that an organisation is in competition with the authority itself, but should look at the broader context of the needs of the community as a whole. Provision of facilities to meet a new need, not being provided by the authority itself but identified as a priority for action, might be particularly deserving of support.

c) Other considerations

- Is the organisation affiliated to local or national organisations (i.e. local sports or arts councils, national representative bodies) and are they actively involved in local / national development of their interests?
- Is the membership drawn from people mainly resident in the charging authority's area? Although authorities will have in mind that 25% of the cost of any relief given will be borne by charge payers in their area, particular difficulties may arise with hereditaments which straddle local authorities' boundaries and which . . . fall to be shown in one list. In these cases and in those where hereditaments are situated close to an authority's boundary, a

proportion of the membership may come from another authority's area. Also, for geographical reasons, or because of the nature of the terrain, particular facilities may be the only ones available for a wide area. In such case, the joint use of facilities by one or more similar organisations is not uncommon. In most cases there will be a measure of reciprocity between the memberships of organisations from different areas.

- Authorities may wish to add further criteria or substitute relevant criteria which are appropriate to the furthering of their policies and the needs of the community, such as development programmes. They should also bear in mind the need to encourage new activities in the wide range of organisations for which relief from rates is available.

## STATE AID

The issue of some rating reliefs being considered as qualifying as 'state aid' is now of some significance and is briefly explained in the guidance note issued by the Office of the Deputy Prime Minister in December 2002. This document, which is prefaced by the comment that it "*should not be taken as exhaustive guide to the complex rules and case of EU state aid*", is reproduced below, for information.

European Union competition rules generally prohibit Government subsidies to businesses. Relief from taxes, including non-domestic rates, can constitute state aid. Billing authorities should bear this in mind when granting discretionary rate reliefs.

Empty property and transitional reliefs are regarded as part of the determination of liability, applied equally to all ratepayers, and so are not considered to be state aid.

Rate relief for charities and non-profit making bodies is not normally considered to be state aid because the recipients are usually not 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, rate relief could constitute state aid, and the rules set out below will apply.

Hardship relief can also constitute state aid, as can relief under the village shop and farm diversification schemes. In practice, however, aid to village shops, most local 'commercial' charities and other small-scale local service organisations (e.g. B&Bs, small retailers, child-care facilities etc.) will not be caught by the state aid rules as long as they are independent family-owned businesses, because they are deemed incapable of affecting intra-Community trade. Any manufacturing operation, on the other hand, however small-scale, is normally deemed to be capable of affecting intra-Community trade, so rate relief for butchers and farmers for example, producing cheese, sausages, cider and other foodstuffs, would be state aid.

There are also general exceptions from the state aid rules where the aid is below a 'de minimis' level. This is 200,000 Euros, or 100,000 Euros for the road transport sector, to any one business over three years (**Article 2 EC 1998/2006**). The de minimis level applies to all de minimis aid received, including other Government subsidies or grants, in addition to any rate relief. There are also specific exemptions to the de minimis threshold and regard should be had to the current EC regulation.

The guidance note goes on to say that where relief does constitute state aid, it may need legal clearance from the European Commission. Authorities that are considering granting any hardship relief, charity relief or farm diversification relief which would be caught by the state aid rules and would bring total aid to the business concerned above the de minimis level, or granting any amount to businesses in the excluded sectors are advised to contact the Office of the Deputy Prime Minister, which will, if necessary, seek clearance from the European Commission. If Commission clearance is needed, it goes on; the relief should not be paid until clearance has been granted.

The guidance note, further, offers advice to authorities on questions relating to state aid, this being available from the State Aid Branch of the Department of Trade and Industry.

It has also been found that a valuation methodology that favours one ratepayer against another in a similar class can be held to be State Aid.

## CRITERIA

**Discretionary Rate Relief**

The criteria where relief is granted is outlined below:-

Categories and percentages are shown below. However, the level of Discretionary Rate Relief award shown may be reduced, or a Discretionary Rate Relief award of NIL may be determined (including under delegated decision) in cases where, after investigation, it is determined that the level of financial resources of the applicant appear excessive for purpose and cannot otherwise be justified by the applicant.

<u>Organisation /Applicant Type</u>	<u>Statutory Mandatory Award (%)</u>	<u>Discretionary Award (%)</u>	<u>Total Award (%)</u>
Adult School (Coalville) - Trustees	Nil	100	100
Aided Schools	80	20	100
Aged Persons Clubs and Day Centres (with charitable status)	80	10	90
Aged Persons Clubs & Day Centres (other)	Nil	40	40
Air Training Corps	Nil	80	80
Army Cadets	80	Nil	80
Building & Social Housing Foundation	80	Nil	80
Boy Scouts (see Scouts & Guides)			
Business Link (Franchise)	Nil	100	100
Castle Donington Volunteer & Information Bureau	80	10	90
Charity Shops (mainly selling donated goods)	80	20	100
Community Centres and Village Halls (with charitable status)	80	10	90
Community Centres and Village Halls (other)	Nil	40	40
Drama Group / Society (with charitable status)	80	Nil	80
East Midlands Housing Association	80	Nil	80
Governors of Ashby School Fund	80	Nil	80
Guides (see Scouts & Guides)			
Heart of the National Forest Foundation	80	Nil	80
Ibstock Community Enterprises Ltd	Nil	100	100
Information Byway Ltd	Nil	100	100
Measham and District Community Enterprise Trust Ltd	Nil	100	100
Midlands Rural Housing	Nil	100	100
Moira Furnace Museum Trust– ancillary units	Nil	100	100
Museums (with charitable status)	80	20	100
Museums (other)	Nil	50	50
National Forest Company	Nil	80	80

Cont...

<u>Organisation /Applicant Type</u>	<u>Statutory Mandatory Award (%)</u>	<u>Discretionary Award (%)</u>	<u>Total Award (%)</u>
Network for Change Ltd	Nil	100	100
North West Leicestershire Council for Voluntary Services (N.W.L.C.V.S.)	80	20	100
Ratcliffe College Trustees – now known as “Grace Dieu Manor School”	80	Nil	80
Recreational / Sports / Social Club /Organisation (having charitable status) <b>or</b> Registered Community Amateur Sports Club with Bar	80	Nil	80
Recreational / Sports / Social Club /Organisation (having charitable status) <b>or</b> Registered Community Amateur Sports Club without Bar	80	10	90
Recreational / Sports * / Social Club /Organisation (without charitable status) with Bar	Nil	20	20
Recreational / Sports * / Social Club /Organisation (without charitable status) without Bar	Nil	40	40

Sports \* Club/Organisation: See below, after end of alphabetical list, for details of available enhancements.

Interpretation of ‘Bar’

For the purpose of this policy, organisations that have purely Non-Alcoholic Bar/Sales Service facilities (only) shall be determined under the category of ‘without Bar’.

St John Ambulance	80	20	100
Scouts & Guides	80	10	90
Snibston & Desford Colliery Band	80	Nil	80
Social Clubs (See Recreational Clubs etc)			
Sports Clubs (See Recreational Clubs etc)			
Springboard Centre (Coalville) Ltd	Nil	100	100
Stephenson College	80	Nil	80
Sue Ryder Foundation	80	20	100
University of Leicester	80	Nil	80
Village Halls (See Community Centres etc)			
Wyggeston & Queen Elizabeth I College	80	Nil	80
Women’s Royal Voluntary Service (W.R.V.S.)	80	20	100
<b>Other Charitable Organisations</b>	80	20	100

Cont.....

Discretionary Relief applications where the applicant is not a charity, not established or conducted for profit, and has main objects that are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts

## Available enhancements

### E-Government

Enhancement for applicants that demonstrate that they are making a real and valued contribution towards the electronic government initiative (Subject to the overall Rate Relief not exceeding 100%)

Discretionary  
Award (%)

+10

### Sports \* / Social Club Organisation (without charitable status)

Enhancements for certain qualifying Community Amateur Sports Clubs, and other organisations, that are **not Registered Charities** and **not Registered Community Amateur Sports Clubs #** and that fall within the definition given below \*\*.

<u>Organisation /Applicant Type</u>	<u>Statutory Mandatory Award (%)</u>	<u>Discretionary Award (%)</u>	<u>Total Award (%)</u>
a) Organisation with Bar	Nil	+60	80
b) Organisation without Bar	Nil	+50	90

\*\* Definition of a qualifying Community Amateur Sports Club, or other organisation, for the purpose of enhanced awards.

This shall be a club, other than a Registered Community Amateur Sports Club#, without charitable status, or other organisation without charitable status, that meets each of the following criteria:

1. Its facilities are open to the whole community without discrimination (except as a necessary consequence of the requirements of a particular sport) and the level of fees (if any) are set at a level that does not pose a significant obstacle to membership or use of those facilities by the general public
2. It is organised on an amateur basis and is non-profit making (i.e. any surplus income or gains are reinvested in the club/organisation, or donated to a charity or similar amateur sports club/organisation).
3. It has, as its main purpose, the provision of facilities for, and promotion of participation in, one or more sports that are capable of improving **physical health and fitness** (i.e. those sports which, if practised with reasonable frequency, will tend to make the participant healthier and fitter).

In determining whether or not a sport is “capable of improving physical health and fitness”, regard shall be had to any guidance issued by the Charity Commission.

# “Registered Community Amateur Sports Club” means a club that is registered with H.M.R.C. (Her Majesty’s Revues and Customs, previously called Inland Revenue) as a Community Amateur Sports Club.

Cont.....



**Rural Rate Relief cases – qualifying properties in a designated rural settlement  
(limited by rateable value)**

<u>Organisation /Applicant Type</u>	<u>Statutory Mandatory Award (%)</u>	<u>Discretionary Award (%)</u>	<u>Total Award (%)</u>
The <u>only</u> Post Office	50	50	100
The <u>only</u> General Store	50	50	100
The <u>only</u> Public House	50	50	100
The <u>only</u> Petrol Filling Station	50	50	100

Each application for Discretionary Relief is to be determined on its own merits having due regard to the following criteria:

- (a) The location of the organisation.
- (b) The catchment area for its members or the service provided.
- (c) The resources of the organisation.
- (d) The restrictions on public participation.
- (e) The contribution to the cultural, sporting or social well-being of the District.

**In the case of Rural Rate Relief applications, regard shall be had to:**

- (a) whether the granting of Discretionary Relief will improve the viability/sustainability of the business
- (b) whether the business provides an amenity which is valued by the local community
- (c) the comments of the Ward Member(s).

Where an application under the Rural Rate Relief provisions fails to qualify for a Mandatory Rural Rate Relief award, an award of purely Discretionary Rural Rate Relief can, by law, only be made if the Council is satisfied that:

- the hereditament (property) is used for purposes which are of benefit to the local community
- and
- it would be reasonable for the Council to make such an award having regard to the interests of its Council Tax payers.

## CRITERIA

### **Discretion to award rate relief to all types of businesses**

In exercise of the Council's general power to award discretionary rate relief (awards under Section 47 of the Local Government Finance Act 1988 as amended by Section 69 of the Localism Act 2011)

Section 69 of the Localism Act 2011 amends the 1988 Act to allow local authorities the discretion to award rate relief to all types of businesses. The Plain English Guide to the Act addresses this as follows:

*"The Localism Act gives councils more freedom to offer business rate discounts - to help attract firms, investment and jobs. Whilst councils would need to meet the cost of any discount from local resources, they may decide that the immediate cost of the discount is outweighed by the long-term benefit of attracting growth and jobs to their area."*

This section sets out the Council's agreed policy for dealing with applications from such cases.

#### **General Requirement**

Applications for rate relief under this section of the Policy will normally only be considered favourably where the Council is satisfied that an award will result in tangible benefits to local residents and in particular where the award will directly result in attracting businesses, investment or jobs to the local area.

#### **Maximum Amount of Awards**

The Localism Act allows scope for the Council to award up to 100% rate relief in any one year for qualifying businesses. The maximum amount awarded shall normally be limited to no more than 50% of the rate liability except where there are exceptional circumstances which justify a greater amount.

#### **Duration of Awards**

Each amount of rate relief awarded under this policy shall normally apply for no more than one financial year at a time but new applications may be made each financial year.

In exceptional circumstances and where each of the following conditions are met an award may be made for up to three financial years:

- i) The award relates to Non-Domestic Rates payable in respect of a new hereditament or an increase in rateable value of an existing hereditament;
- ii) New employment opportunities will be created as a result of the new hereditament or enhancements to an existing hereditament;
- iii) The award is considered to be essential to securing the development of the hereditament;
- iv) The award will not result in a lower amount of retained rates yield in respect of the hereditament than that retained prior to the development.

#### **Information to Support Applications**

All applicants are required to complete the Council's rate relief application form. Such information and evidence as the Council requires must be provided to support an application

and in the event that the requested information and evidence is not provided the application may be refused.

In submitting an application the ratepayer must demonstrate with verifiable supporting evidence the benefits to the District's Council Taxpayers that will accrue from making an award.

On receipt Council officers will prepare a report setting out the merits of the application. This report will detail, amongst other elements the economic, social and environmental benefits that may derive from granting the application.

### **Relationship to other forms of Rate Relief**

Applications under this section will only be considered after consideration of any other forms of rate relief to which the applicant may be eligible (excluding hardship rate relief).

### **Guidelines for Making Awards**

Each application will be considered on its individual merit but in making a decision on the award the following factors must be considered by the decision maker:

- i) That awards should only be made in exceptional circumstances;
- ii). The value of any previous awards and the benefits to local Council Taxpayers realised from previous awards;
- iii) The cost to the Council, including the loss of income or of retained rates yield, in making an award;
- iv) The impact of the cost or loss of income in relation to the Council's overall financial situation;
- v) The benefits to the District's Council Taxpayers in making an award, and in particular whether the award will directly result in attracting businesses, investment or jobs to the local area;
- vi) The impact on other Non-Domestic Ratepayers in the District;
- vii) The Council's statutory equality duties;
- viii) That awards should normally only be made where the ratepayer's activities in the District will contribute towards the aims and objectives of the Corporate Plan;
- ix) The extent to which an award will support the Council's aspiration to promote and encourage economic growth, and in particular growth in the Non-Domestic Rating tax base and in employment opportunities for residents of the District;
- x) The overall profitability of the business.

## APPENDIX 2

### NON DOMESTIC RATES HARDSHIP RELIEF POLICY (NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL)

#### Introduction

This document sets out the provisions for the awarding of hardship by a local authority. It is a discretion that rests with the local authority; there is no statutory duty to award mandatory relief.

Each authority will have its own procedures for when to award hardship relief and for how long it is to be awarded. These need to be regularly reviewed and updated to take account of changes in legislation and policy changes within each authority.

It should be noted there are other reliefs available to a ratepayer. These can be summarised as follows:-

- Small Business Relief

A local authority is under a statutory duty to award small business relief (subject to certain conditions being satisfied) if a ratepayer occupies a hereditament that has a rateable value below a prescribed sum. As a consequence, the local authority has no discretion in the matter. However, if the ratepayer is entitled to mandatory relief, they would then not qualify for small business relief. Should small business relief be awarded, there is no cost to the local authority as the full sum is offset to the non-domestic rate pool.

There are separate procedure notes for staff when administering small business rate relief.

- Part-Occupied Relief

A local authority is entitled to award part-occupied relief when a hereditament is part-occupied for a 'short-time' only. There is no statutory definition of a 'short-time' and it is open to the local authority to interpret the period. Should relief be awarded, there is no cost to the local authority as the full amount is offset to the non-domestic rate pool.

There are separate procedure notes for staff when administering small business rate relief.

- Mandatory / Discretionary Relief

A local authority is entitled to award mandatory and / or discretionary relief; the four circumstances where relief can be awarded are:-

- Charities and Kindred Organisations.
- Community Amateur Sports Clubs.

- Rural Areas.
- Local Discounts.

There is a separate policy for the partnership that covers mandatory and discretionary relief.

### **General Provisions**

The relevant provisions regarding the award of hardship relief are set out in **Section 49 Local Government Finance Act 1988**. This gives the local authority power to reduce or remit the amount a person is liable to pay (occupied and unoccupied properties) where it is satisfied that:-

- The ratepayer would sustain hardship if the authority did not do so; and
- It is reasonable for the authority to do so, having regard to the interests of persons subject to its council tax (Ctax).

### **Criteria for Awarding Relief**

Members are advised to agree criteria for their authority which officers are expected to adhere to when awarding hardship relief. **See Appendix C**. This should be regularly reviewed and updated. In agreeing criteria, members and officers will want to take note of the guidance and state aid rules set out in **Appendices A & B** to the policy.

### **Period of Relief**

The period in which relief is awarded (start and end date) is at the discretion of the local authority. In practice, many authorities award relief for a fixed period (say up to the end of the financial year) and any future decision would be taken, as and when a request is received. Each case must be considered on its merits; the procedure adopted within the Leicestershire partnership.

### **Cost of Relief**

From 1<sup>st</sup> April 2013, in accordance with the rules introduced by the Rates Retention Scheme, the cost of awarding rate reliefs has changed. The cost of awarding all forms of rate relief is now split between central government, billing authorities and major preceptors on a fixed percentage basis. Central government bears 50% of the cost, the county council 9%, the fire authority 1% and billing authorities the remaining 40%.

In regard to hardship relief, if the relevant conditions are satisfied, the local authority has the discretion to award or refuse the application. When making their decision the local authority must consider the guidelines and appendices in this document and take into account the impact such awards might have on council tax payers in the area, as 40% of the cost is borne by the general fund.

### **Decision Making Process**

Although the effective date of any relief is not determined by when a local authority takes a decision to award relief, it is imperative there is no delay in the decision making process. Officers must take decisions on a 'case-by-case' basis in line with the criteria for each authority. Each application will be signed off by the Section 151 Officer, or their deputy.

## Appeals

Any appeal against a local authority's decision to refuse the award of hardship relief would be by way of an application of judicial review to the high court. In the first instance, any appeal against a decision to refuse an application for hardship relief should be considered by a panel of two senior officers within the relevant authority. There would be no further right of appeal to members.

## GOVERNMENT GUIDANCE NOTE

### Introduction

There is no statutory definition of hardship and each authority must consequently arrive at its own view in relation to each application. Guidance has been provided by the Office of the Deputy Prime Minister ('Guidance on rate reliefs for charities and other non-profit making organisations', issued in December 2002) as to the considerations that might be applied in the exercise of the discretion to grant hardship relief.

The ODPM's guidance goes on to say that "*hardship relief should be reviewed regularly and should be given for short fixed periods, which could be renewed following a review, rather than for extended periods without review, but can straddle financial years*", and ends by suggesting that billing authorities should consider establishing clear rules for notifying ratepayers as to their decisions as soon as is practicable. It further advises that applications for relief on the grounds of hardship need not be in writing and that relief can commence when the applicant meets the requirements.

Practitioners should take particular note of the advice relating to circumstances where hardship rate relief may count as 'state aid'. This is set out in **Appendix B** to the policy.

The power to reduce or remit rates on the grounds of hardship existed before 1<sup>st</sup> April 1990 in relation to the then discretion to charge rates in respect of unoccupied property. The principle is now significantly different, since remission can also be applied in respect of occupied property.

### Advice

The guidance note recommends:-

- a) Although authorities may adopt rules for the consideration of hardship cases, they should not adopt a blanket policy either to give or not to give relief. Each case should be considered on its own merits and the application process kept as simple and streamlined as possible to enable decisions to be made quickly.
- b) Reduction or remission of rates on the grounds of hardship should be the exception rather than the rule.
- c) All relevant factors affecting the ability of a business / ratepayer to meet their liability for rates should be taken into account.
- d) 40% of the cost of any reduction or remittance of rates must be borne locally and met by the authority.
- e) The 'interests' of council taxpayers in an area may go wider than direct financial interests (i.e. where the employment prospects in the area would be worsened by a company going out of business, or the amenities of an area might be reduced by, for instance, the only provider of a service in the area.
- f) Where the granting of relief would have an adverse effect on the financial interests of council tax payers, the case for a reduction or remission of rates payable may still on balance outweigh the cost to taxpayers.

- g) Hardship rate relief may in some cases constitute state aid, and may need to be notified to the European Commission.
- h) The hardship caused to a ratepayer may be self-evident (i.e. where a business has been affected by severe loss of trade, due to external factors such as natural disasters). However, authorities may wish to consider how the business can demonstrate such loss of trade or business (i.e. do accounts, order books, till receipts or VAT returns show a marked decline in trade compared to corresponding periods in previous years?)
- i) Authorities should be clear in awarding relief that it will be granted only for the period for which there is clear evidence of hardship for the ratepayer concerned.
- j) To guard against fraudulent claims, authorities should satisfy themselves that the claim is from a ratepayer suffering genuine hardship.
- k) Applications for relief on the grounds of hardship need not be in writing and relief can commence when the applicant meets the requirements. It is also possible for an application for relief to be in respect of future years.



## STATE AID

The issue of some rating reliefs being considered as qualifying as 'state aid' is now of some significance and is briefly explained in the guidance note issued by the Office of the Deputy Prime Minister in December 2002. This document, which is prefaced by the comment that it "*should not be taken as exhaustive guide to the complex rules and case of EU state aid*", is reproduced below, for information.

European Union competition rules generally prohibit Government subsidies to businesses. Relief from taxes, including non-domestic rates, can constitute state aid. Billing authorities should bear this in mind when granting discretionary rate reliefs.

Empty property and transitional reliefs are regarded as part of the determination of liability, applied equally to all ratepayers, and so are not considered to be state aid.

Rate relief for charities and non-profit making bodies is not normally considered to be state aid because the recipients are usually not 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, rate relief could constitute state aid, and the rules set out below will apply.

Hardship relief can also constitute state aid, as can relief under the village shop and farm diversification schemes. In practice, however, aid to village shops, most local 'commercial' charities and other small-scale local service organisations (e.g. B&Bs, small retailers, child-care facilities etc.) will not be caught by the state aid rules as long as they are independent family-owned businesses, because they are deemed incapable of affecting intra-Community trade. Any manufacturing operation, on the other hand, however small-scale, is normally deemed to be capable of affecting intra-Community trade, so rate relief for butchers and farmers for example, producing cheese, sausages, cider and other foodstuffs, would be state aid.

There are also general exceptions from the state aid rules where the aid is below a 'de minimis' level. This is 200,000 Euros, or 100,000 Euros for the road transport sector, to any one business over three years (**Article 2 EC 1998/2006**). The de minimis level applies to all de minimis aid received, including other Government subsidies or grants, in addition to any rate relief. There are also specific exemptions to the de minimis threshold and regard should be had to the current EC regulation.

The guidance note goes on to say that where relief does constitute state aid, it may need legal clearance from the European Commission. Authorities that are considering granting any hardship relief, charity relief or farm diversification relief which would be caught by the state aid rules and would bring total aid to the business concerned above the de minimis level, or granting any amount to businesses in the excluded sectors are advised to contact the Office of the Deputy Prime Minister, which will, if necessary, seek clearance from the European Commission. If Commission clearance is needed, it goes on; the relief should not be paid until clearance has been granted.

The guidance note, further, offers advice to authorities on questions relating to state aid, this being available from the State Aid Branch of the Department of Trade and Industry.

It has also been found that a valuation methodology that favours one ratepayer against another in a similar class can be held to be State Aid.

## HARDSHIP CRITERIA

### **General Principles**

The principle purpose of awards of hardship relief shall be to provide short-term assistance to businesses that are suffering unexpected hardship, arising from circumstances beyond the business's control and outside of the normal risks associated with running a business of that type, to the extent that the viability of the business would be threatened if an award were not made.

1. Rate relief on the grounds of hardship shall only be awarded where it is considered that:

(i) The ratepayer would sustain hardship if the Council failed to grant Hardship Relief; and

(ii) It is reasonable to grant Hardship Relief having regard to the interest of person's subject to the Council Tax.

2 The test of "hardship" need not be confined strictly to financial hardship and applicants should disclose all relevant factors affecting the ability of the business to meet its rate liability.

3. The "interest" of local council tax payers may go wider than direct financial interests; for example, where employment prospects in an area would be worsened by a ratepayer going out of business, or the amenities of an area might be reduced by, for instance, the loss of a neighbourhood shop.

4. A business will not be considered to be suffering financial hardship in any annual accounting period during which it is profitable or has experienced a loss which is minor in comparison to the overall turnover of the business. In determining whether a business is profitable account shall be taken of reasonable drawings by the proprietor or reasonable remuneration of directors.

5. Where the circumstances giving rise to the hardship pertain for a only part of the business's normal annual accounting period the income and expenditure of the business for the period during which the circumstance pertain may be used to determine whether the business is profitable.

6. It is expected that businesses will take prompt action to mitigate any factors giving rise to hardship. Examples of mitigating actions may include seeking business advice, discounts and promotions, reviewing pricing, extending the range of stock or services, negotiating with creditors etc. Applications may be declined in circumstances where the business is unable to demonstrate that it is taking reasonable steps to alleviate the hardship.

7. Applicants must supply the last two years' accounts, a current cash flow forecast and a comprehensive business plan in order for an application to be considered. Where the business has traded for less than two years accounts must be provided where available, and draft accounts or budget forecasts must be provided for the period since the business commenced trading.

8. No award shall be made where it appears to the Council that the proprietor of the business has failed to exercise due diligence to anticipate circumstances that may give rise to hardship, financial or otherwise, and/or to put in place measures to prevent or mitigate the circumstances.

9. Applications will be viewed favourably where the criteria of the Policy are met and the business provides the only goods or services of that type in the local area or where the business is a niche business supplying specialist goods or services that are not widely available and vice versa.

### **New Businesses**

10. Award of hardship rate relief will not be made for the purposes of enabling a new business to become established except where the viability of the business is threatened by events that could not reasonable have been foreseen when establishing the business.

### **Unoccupied Properties**

11. Rate relief on the grounds of hardship in respect of rates payable for an unoccupied property will only be awarded in the most exceptional circumstances where there are clear and tangible benefits to local council taxpayers in making the award.

### **Relationship to other forms of Rate Relief**

12. Applications for hardship rate relief shall be regarded as a last resort and will only be considered after consideration of any other forms of rate relief to which the applicant may be eligible.

### **Duration of Awards**

13. All awards shall terminate at the end of the financial year if the award has not ended at an earlier date. Where the hardship continues a further application may be made in the new financial year, however in considering repeated applications consideration should be given to the number and value of previous awards. Where an application is repeated for a subsequent period the Council may require the applicant to provide evidence (preferably from an accountant or other professional adviser) regarding the long-term financial viability of the business.