

APPENDIX D

NON DOMESTIC RATES HARDSHIP RELIEF POLICY

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 1st 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.

APPENDIX A

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 1st 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.

APPENDIX B

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.

Appendix C

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.