

**CITY OF LINCOLN COUNCIL**  
**DISCRETIONARY RATE RELIEF POLICY**

**1. Introduction**

- 1.1 The City of Lincoln Council recognises the importance of supporting local businesses and organisations to promote the provision of local facilities, economic growth, employment and investment to improve prosperity across the District and in particular, support the most disadvantaged communities.
- 1.2 Billing authorities have the power to exercise its discretion to grant relief to ratepayers that meet certain criteria. However, public funds are not unlimited, with a proportion of the costs for awarding relief invariably having to be borne by council taxpayers. In making decisions, the Council must be confident that money invested in this way will be repaid in economic and / or community benefit.
- 1.3 This document sets out the provisions for the award of mandatory and discretionary relief. Whilst a billing authority is under a statutory duty to award mandatory relief, the award of discretionary relief is at the discretion of the billing authority. The billing authority must adhere at all times to the legislation and any guidance issued by Government.

The Policy:-

- Provides the criteria for when making a decision.
  - Establishes a framework for considering applications in a timely and efficient manner.
  - Sets out the delegated authority for considering discretionary relief in certain circumstances.
  - Includes an appeals procedure for ratepayers who are aggrieved at a decision taken by officers.
  - Seeks to safeguard the interests of council taxpayers by ensuring that funds are used in the most effective and economic way.
- 1.4 In addition to mandatory and discretionary relief, there are a number of other reliefs available to a ratepayer. These can be summarised as follows:-
- Transitional Relief.
  - Small Business Relief.
  - Part-Occupied Relief.
  - Hardship Relief.

Further details of these reliefs can be found in **Appendix 1** to the Policy.

## **2. Mandatory relief**

2.1 The provisions for awarding mandatory relief are set out in **Sections 43 to 46 Local Government Finance Act 1988**. Mandatory relief can be awarded under the following headings:-

- Charities and Kindred Organisations.
- Community Amateur Sport Clubs (CASC's).
- Rural Areas.

2.2 Further details of mandatory relief can be found in **Appendix 2** to the Policy.

## **3. Discretionary relief**

### **3.1 Introduction**

The provisions for awarding 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)**. Discretionary relief can be awarded under the following headings:-

- Charities and Kindred Organisations.
- Community Amateur Sport Clubs (CASC's).
- Rural Areas.
- General.

A billing authority should have its own procedures on when to award discretionary relief and for how long it is to be awarded. These should be regularly reviewed and updated to take account of new legislation and policy changes within an authority.

When awarding discretionary relief, a billing authority is under a statutory duty to consider any guidance issued by the Secretary of State. The latest guidance can be found in **Appendix 3** to the Policy.

### 3.2 Scope

- Charities and Kindred Organisations

The conditions to be satisfied before a billing authority can consider awarding discretionary relief on an occupied hereditament are:-

- 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 are 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.

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;
- A precepting authority other than charter trustees; or
- A functional body, within the meaning of the **Greater London Authority Act 1999**.

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 billing 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.

- Community Amateur Sports Clubs (CASC's)

Discretionary relief can be awarded to a Community Amateur Sports Clubs (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.

- Rural Areas

Discretionary relief may be awarded in such circumstances where the rateable value of the hereditament does not exceed a prescribed rateable value. The amount currently prescribed for England is £16,500.

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 billing 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.

- General Discretion

Since 1 April 2012, a billing authority can reduce the non-domestic rate by up to (and including) 100% for any ratepayer. The extension of the provisions from the 1 April 2012 had no impact on ratepayers who met the criteria that existed prior to the 1 April 2012. They are still entitled to apply for discretionary relief under the previous criteria and should be considered accordingly.

One significant difference to the extension of discretionary relief from 1 April 2012 is that for those ratepayers who were previously not entitled to discretionary relief, relief can only be granted if the billing authority is satisfied that it would be reasonable to do so, having regard to the interests of its council tax payers.

Since entitlement to relief was extended on the 1 April 2012, the Government has made increasing use of the provisions by encouraging billing authorities to award discretionary relief in the knowledge it will be fully funded, if they did so. Such measures have included relief for:-

- Flooding.
- Re-occupation of long-term empty properties.
- New build properties.
- Rural areas.
- Local newspapers.

In the Spring Budget on 8 March 2017, the Chancellor announced three specific measures to assist ratepayers that experienced increases in their rate liability following the revaluation. All three measures were again fully funded. They were:-

- Supporting Small Businesses Relief Scheme.
- Support for Pubs Scheme.
- Discretionary Relief Scheme

### 3.3 Period of Relief

If discretionary relief is awarded by the billing authority, the effective date of any entitlement can be backdated to the beginning of the financial year (i.e. 1 April) in which the determination is made (subject to the relevant conditions being satisfied) if that determination was made after the 30 September. Should the determination be made before the 1 October, the effective date can be backdated to the 1 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 billing authority. In practice, many billing 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 annual billing on whether to extend relief for a period of 12 months.

### 3.4 Decision Making Process

As the effective date of any relief is determined by when a billing 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 agreed criteria.

### 3.5 State Aid

The award of discretionary relief amounts to state aid. Legislation provides that an undertaking is entitled to receive up to €200,000 of de minimis state aid in a three year period (consisting of the current financial year and the two previous financial years). As a result, a billing authority must establish if the award of discretionary relief would exceed the €200,000 of de minimis aid for any undertaking. This is achieved by requesting potential recipients of any relief to sign a declaration, stating the award of any relief would not exceed the state aid limit.

### 3.6 Financial Implications

The cost of awarding discretionary rate relief changed on the 1 April 2013, with the introduction of 50% business rate retention. Other than where Government has agreed to fund the award of discretionary relief, the cost is currently split between the Government, billing authorities and major preceptors on a fixed percentage basis. For the City of Lincoln Council, 50% is borne by the Government, 40% by the billing authority and 10% by the County Council.

## 4. Guidelines for Awarding Relief

### 4.1 Types of Relief

- Charities and Kindred Organisations, Community Amateur Sports Clubs (CASC's) and Rural Areas

The criteria for awarding relief at the City of Lincoln Council is set out in **Appendix 4** to the report. This places an emphasis on the following:-

- Contribution the organisation makes to the area.
- Extent the facilities provided are open to all members of the community and what charges (if any) are made to use the facilities.
- How an organisation actively encourages membership from groups of people such as the young, elderly, etc. who are in particular need or support.
- Are the facilities available to people other than members (i.e. schools, casual public sessions etc.)?
- Types of facilities provided and means by which they have been provided (i.e. voluntary contribution, grant aid, lottery support etc.).
- Whether the organisation is affiliated to local or national bodies.
- Do the facilities include commercial activities (i.e. a licensed bar) and to what extent are these being used compared to other facilities available.

The criteria is intended to ensure relief would not normally be given to organisations providing facilities in direct competition with the Council and / or where there is not a demonstrable under-provision of the facilities in the district.

As there is no restriction on the amount of discretionary relief that can be awarded, a ratepayer can receive the maximum amount of relief in line with the current criteria. This Policy provides for no cap on the amount of relief awarded to any one organisation or on any one hereditament.

- Rural Areas

There are currently no designated rural areas in the District. Should the situation change, officers would draft a criteria for awarding discretionary relief that can then be taken to the Executive function of the Council for approval.

- General

There is the power to award discretionary relief to any ratepayer if the billing authority is satisfied that it would be reasonable to do so, having regard to the interests of its council tax payers. Where an application is received or officers take the view that discretionary relief should be awarded, the advice of the Chief Financial Officer should be taken in the first instance.

Should the Government announce a measure that is to be funded (in all or in part), a briefing note will initially be prepared for the Chief Financial Officer. This will set out details of the measure, the criteria for awarding relief and the action required of the billing authority (i.e. a requirement to consult). The action taken to award relief will then be reported to the next meeting of both the Operational Board and Joint Committee and if applicable, the Executive function of the Council.

## 4.2 Administration

Officers have delegated authority to award relief in accordance with this Policy. Relief is awarded for a fixed period (i.e. for a period ending on 31 March in any one year) which ensures the Council is not faced with having to give notice, should it look to reduce or withdraw relief in a subsequent year.

The award of discretionary relief (as with the award of all reliefs that are at the discretion of the billing authority) will be subject to receipt of an application form. This includes a declaration from the applicant that any relief awarded will not exceed the state aid limit and that the Council will be informed of any subsequent changes that may impact on the amount of relief awarded.

All applications will be acknowledged within 7 days of receipt and a decision taken on whether to award relief within 28 days of receiving all the required information. Where necessary, further information will be sought by the Council. Once an organisation is in receipt of relief, a review will be conducted at least once every 2 years to ensure ongoing entitlement to relief can be established.



A stand-alone report on Non-Domestic Rate is taken to meetings of the Revenues and Benefits Operational Board and Joint Committee when requested. This report will include details of the discretionary relief awarded in any one year. It will also include details of any new measures introduced by Government to fund the award of discretionary relief.

#### **4.3 Appeals**

A ratepayer will be advised that if they are aggrieved at a decision taken by officers, they have 14 days in which to lodge an appeal. An appeal against a decision of officers to refuse an application for discretionary relief will be considered by a panel of two senior officers; one of whom should be the chief financial officer. The Appeal Panel will consider any written submissions put forward by the ratepayer. It will be at the discretion of the Appeal Panel on whether the ratepayer is invited to attend.

There is no further right of appeal to members against a decision of the Appeal Panel. An appeal against a billing authority's decision to refuse the award of discretionary relief would then be by way of an application for judicial review in the High Court. At all times, the non-domestic rate remains due and payable.

### **5. Enquiries**

All enquiries on the Discretionary Rate Relief Policy should be made to the Revenues Team by e-mail at [revenues@lincoln.gov.uk](mailto:revenues@lincoln.gov.uk) or by telephone to 01522 873342.

## **MISCELLANEOUS RELIEFS**

### **Transitional Relief**

The provisions for awarding transitional relief are set out in **Schedule 7A Local Government Finance Act 1988** and associated Statutory Instruments.

A billing authority is under a statutory duty to award transitional relief (subject to certain conditions being satisfied) if a ratepayer experiences an increase in the rate payable on their assessment following a revaluation. The amount and duration of relief is prescribed in legislation. Those who experience a reduction in the rate payable following a revaluation may have this reduction phased in; the principle being that the transitional relief scheme is to be self-funding.

There are procedure notes in place for staff when administering transitional relief.

### **Small Business Relief**

The provisions for awarding small business relief are set out in **Sections 43 and 44 Local Government Finance Act 1988** and associated Statutory Instruments.

A billing 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. The amount and duration of relief is prescribed in legislation. It should be noted that if the ratepayer is entitled to mandatory relief (i.e. they are a charity, Community Amateur Sports Club (CASC) or located in a rural area), they would then not qualify for small business relief.

There are procedure notes in place for staff when administering small business relief.

### **Part-Occupied Relief**

The provisions for awarding part-occupied relief are set out in **Section 44A Local Government Finance Act 1988** and associated Statutory Instruments.

A billing 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 billing authority as to whether relief should be awarded. There would be a full charge on both the occupied and unoccupied areas although a 3 month (or 6 month if industrial) exemption would initially apply to the unoccupied area.

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

### **Hardship Relief**

The provisions for awarding hardship relief are set out in **Section 49 Local Government Finance Act 1988** and associated Statutory Instruments.

A billing authority is entitled to reduce or remit the non-domestic rate 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 local authority tax.

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

**MANDATORY RELIEF**

**Scope**

**Charities & Kindred Organisations**

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 billing 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 in terms of 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.

To determine whether the charity shop is 'wholly or mainly' selling donated goods, appropriate officers will undertake regular formal / recorded inspections to identify if they meet and continue to meet the criteria for 80% mandatory rate relief, using the percentage of floor space utilised as the qualifying criteria for 'wholly or mainly' (i.e. 'more than half').

### **Community Amateur Sports Clubs**

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.

## Rural Areas

A scheme to help certain kinds of hereditaments situated in rural settlements was introduced on the 1 April 1998. A billing 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 31 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 31 December 2001, the designated areas in England are all of those outside the specified urban areas).

A billing 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 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 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 billing 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 billing 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 billing 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 billing authority's decision not to award mandatory relief can represent a challenge to its application for a liability order in the Magistrate's Court.



**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 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 organisations, local authorities and 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 40% 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.

## APPENDIX 4

### CRITERIA FOR AWARDING DISCRETIONARY RELIEF

Questions		Scoring	
1.	Are the premises used solely for administrative purposes (e.g. office accommodation)?	Yes	Refused
2.	Is the property a shop?	Yes	Refused
3.	Is the membership open to everyone?	Yes No	2 points 1 point
4.	Is there a waiting list for membership?	Yes No	0 points 2 point
5.	How much is the membership fee per annum?	Under £30.00 pa Over £30.00 pa	1 point 0 points
6.	Are the facilities made available for non-members such as Schools or public sessions?	Yes No	1 point 0 points
7.	Are the facilities made available for non-members such as Schools or public sessions?	No fee With a fee	1 point 0 points
8.	Are the facilities aimed at a particular group?	Yes No	1 point 0 points
9.	Are the facilities well-advertised?	Yes No	1 point 0 points
10.	Are the facilities educational / training / sporting?	Yes No	2 points 0 points

11.	Is the organisation the only one in the area?	Yes No	1 point 0 points
12.	Are there licensed facilities on site?	Yes No	0 points 4 points
13.	Is the membership predominantly from the City boundary?	Yes No	0 points 1 point
14	Does the organisation receive additional, grants, funding from private companies, commercial suppliers, local authority etc.? (Note: If yes, details required).	Yes No	0 points 1 point

Score	Relief Awarded	
	Top-up on charities receiving of 80% mandatory relief (%)	Not-for-profit organisations not receiving 80% mandatory relief (%)
10 (or under)	0	0
11	10	50
12	12	60
13	14	70
14	16	80
15	17	85
16	18	90
17	19	95
18 (or over)	20	100