

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

REPORT FOR CABINET

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REPORT OF THE GROUP DIRECTOR CORPORATE SERVICES

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COUNCIL TAX DISCRETIONARY RELIEF POLICY

1. Purpose Of The Report

- 1.1. The Local Government Finance Act 1992, Section 13A allows a Council to reduce a person's Council Tax liability to nil (if it sees fit to do so).
- 1.2. In order that any decisions to reduce a person's council tax liability are fair and consistent, a policy has been drafted setting out the circumstances and detail that will be taken into consideration when making a decision.
- 1.3. This report provides Members with this policy on council tax discretionary relief for authorisation.

2. Recommendations

- 2.1. It is recommended that Members:
 - a) Adopt the "Council Tax Discretionary Relief Policy" attached at Appendix 1.

3. Background

- 3.1. The Local Government Finance Act 1992, Section 13A (1) (c) (introduced in 2003) gave discretion to local authorities to reduce a person's council tax 'to such an extent as it sees fit', even to nil, whether on an individual basis or in relation to prescribed categories. This is in addition to various statutory reductions, discounts and disregards etc. that are already within existing legislation.
- 3.2. This discretion was only ever envisaged to be used in extreme cases, affecting a limited number of council taxpayers, for example a crisis or event that has made the property uninhabitable e.g. fire, flood etc., but recent changes to the way council tax support is provided to residents on low income i.e. the Council Tax Reduction Scheme, across the UK, has resulted in many more applications of this type being made, particularly to councils in England.
- 3.3. Following the abolition of Council Tax Benefit in March 2013, Members will be aware that in Wales, the Welsh Government contributed a further £22m of funding on top of the £222m provided by the UK Government in order to maintain council tax reduction scheme entitlement at 100%; but in England, no such provision existed and many councils were forced to cut the maximum allowance resulting in many working age taxpayers having to contribute to their council tax liability.

- 3.4. Some council tax payers in England, who were unable to meet this liability, approached their council for help and many were refused any further financial support to meet the shortfall in entitlement. However, two individuals took their case to the Valuation Tribunal for England (VTE) on the basis that they were unable to pay the remaining council tax liability (25%) after CTRS had been awarded, but the Council (East Riding of Yorkshire) had refused to provide any further financial assistance.
- 3.5. At the VTE appeal hearing, the Tribunal made a 'landmark' decision that the Council should have provided support under Section 13A¹. Furthermore, East Riding Council was heavily criticised by the Tribunal for not having a policy to deal with any discretionary council tax relief applications.

4. Recommended Action

- 4.1. In view of this criticism, the professional body representing Council Tax & Rating specialists working in local authorities² have strongly encouraged every council in the UK to have a Council Tax Discretionary Relief policy in place to cover all eventualities ranging from natural disasters affecting a large number of taxpayers to the possibility of providing support to an individual council tax payer who is unable to pay their council tax liability.
- 4.2. It is not envisaged that many applications will be made for discretionary council tax relief, as the Council Tax Reduction Scheme should support those on low incomes who have a liability, but there may be exceptional cases where an application is made.
- 4.3. A draft policy for dealing with such applications from residents in Rhondda Cynon Taf is attached at Appendix 1 for Members consideration.
- 4.4. Any applications will be considered under this discretionary policy within the Council's Scheme of Delegation i.e. applications will be considered by senior officers within the Finance Division and authorisation to award (or not) agreed by the Director of Financial Services. This follows the same procedure as applications for Discretionary Non-Domestic Rate Relief

¹ SC & CW v East Riding of Yorkshire Council [VTE 2014]

² Institute of Revenues, Rating & Valuation



**Financial Service Division
Operational Finance Unit**

Council Tax Discretionary Relief Policy

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1) Introduction

This discretionary relief policy has been created by the Council to assist all persons liable for Council Tax who may be experiencing financial hardship or distress. This policy is also intended to provide further financial assistance where an applicant is in receipt of a Council Tax Reduction award, where it does not meet their full Council Tax liability.

The discretionary relief policy will be administered by Rhondda Cynon Taf CBC and will be made available to any council tax payer specified in Section 4 of this policy. The purpose of this discretionary relief policy is to provide temporary assistance to Council Tax payers to help reduce their Council Tax liability. The operation of the policy is at the discretion of the Council.

2) Legislative Powers

Section 13A(1)(c) of the Local Government Finance Act 1992 (as inserted by Section 76 of the Local Government Act 2003), provides the Council with the discretion to reduce liability for council tax in relation to individual cases or class(es) of cases that it may determine and where national discounts and exemptions cannot be applied.

A summary of Section 13A(1)(c) is set out below :

- Where a person is liable to pay council tax in respect of any chargeable dwelling, the Council for the area in which the dwelling is situated may reduce the amount to such extent as it thinks appropriate.
- The power under subsection 1) includes the power to reduce an amount to nil.
- The power under subsection 1) may be exercised in relation to particular cases or by determining a class of case in which liability is to be reduced to an extent provided by the determination.

There are financial implications to awarding any discretionary reliefs other than those currently available under the statutory legislation and the financial burden of Section 13A discretionary relief is borne directly by the Council as a loss of council tax revenue.

3) Statement of Objectives

The purpose of this policy is to specify how the Council will operate this discretionary power and to set out the factors that will be considered when making a decision on whether to award council tax discretionary relief (or not).

Principally, the objective of council tax discretionary relief is to offer short term financial assistance to council tax payers who are experiencing exceptional circumstances. Each application for discretionary relief will be treated strictly on its own merits and all council tax payers will be treated fairly and equally. The Council will seek through the operation of this policy to:

- Alleviate social injustice
- Prevent homelessness
- Keep families together
- Support the vulnerable in their homes in the community

- Support those applicants who are unable to work due to a disability, who have been assessed as such by the Department for Work and Pensions
- Help customers through personal crises and difficult events
- Provide advice on long term possible solutions to meet their housing costs
- Improve financial capability by referral to an independent advisor e.g. Money Advice Service.

The list is not exhaustive and we will consider all factors or exceptional circumstances that may apply.

Council Tax discretionary relief through this policy is intended as a short term emergency measure and is not intended to cover the shortfall between Council Tax and entitlement to Council Tax Reduction Scheme support or any other reduction on a long term basis.

4) **Claiming Discretionary Relief**

The Council will only consider using its powers to reduce council tax liability for a council tax payer or class of payer in exceptional circumstances, because the full cost of awarding relief has to be borne by the Council.

Examples of circumstances where a council tax payer may experience financial hardship can include, but is not limited to the following:

- A sudden change in circumstances, such as loss of employment
- A reduction in income due to illness suffered by the liable person
- Loss of income incurred by the liable person to enable them to care for a dependant
- Sudden increase in other expenses, for example, due to a family member's illness or incapacity.

General hardship can also be incurred from living on a very low income. It is difficult to determine when a person on a low income will qualify for additional support through this policy. However, the following are factors that the Council may take into account:

- Inability to make payments for basic utilities such as water, electricity and heating
- Court proceedings for outstanding debts
- Consistently exceeding overdraft limits without evidence of spending on anything other than necessities such as utilities, food and accommodation
- The threat of homelessness
- Inability to pay for food.

Who can apply?

Those persons liable to pay Council Tax to Rhondda Cynon Taf Council who can apply are:-

- Owner occupiers
- Tenants
- Liable residents (but not formally a 'tenant')
- Persons acting on behalf of a liable person i.e. an appointee, solicitor or someone with power of attorney

Who cannot apply?

Any person *not liable* to pay Council to Rhondda Cynon Taf Council, but also specifically:-

- Landlords of properties where the tenant is liable
- Landlords, if liable
- Estate agents/managing agents on behalf of a landlord
- Friends/relatives of the liable person (unless acting as an appointee or under a power of attorney)
- Lodgers or other residents who are not liable to pay Council Tax
- Support agencies (unless acting as an appointee or under a power of attorney)
- Banks or other holders of a mortgage or other legal charge on a property
- Owners of empty properties

The Council will treat all applications on their individual merits, however some or all of the following criteria must be met for each case:

- There must be evidence of financial hardship or personal circumstances that justifies a reduction in council tax liability
- The applicant must satisfy the Council that all reasonable steps have been taken to resolve the situation prior to application
- The applicant has applied for council tax support (the Welsh Government's national Council Tax Reduction Scheme exists to ensure that those on low incomes receive financial assistance with their council tax)
- All other appropriate council tax discounts/reliefs have already been awarded
- The applicant does not have access to other assets that could be used to pay council tax
- All other legitimate means of resolving the situation have been investigated and exhausted by the applicant.
- The situation and reason for the application must be outside of the applicant's control
- The amount outstanding must not be the result of deliberate non-payment or failure to make payments as required through neglect.

Requests for reductions in council tax liability will be required in writing from the council tax payer or a recognised third party appointed to act on their behalf.

The application should relate to the current council tax year, unless the applicant has received a bill following a delayed council tax valuation for a previous year(s) or a late determination as to liability to the council tax (provided the late determination is not the fault of the applicant).

The Council reserves the right to request any additional evidence in support of the discretionary relief application, and will act consistently and reasonably in doing so. Where the applicant is unable to, or does not supply the required evidence, the Council will still consider the application and will take into account any other evidence

available, including documentation held on the housing benefit/council tax reduction case file.

The Council will consider the household's overall financial capability when determining an award for discretionary relief.

5) Decision Making

Whilst the discretionary relief policy is by definition 'discretionary', the Council has a duty to make decisions in accordance with recognised principles about good decision-making, i.e. administrative law, and in particular, to act fairly, reasonably and consistently.

The Revenues Manager will determine all Section 13A applications in consultation with the Service Director and the decision will then be referred to the Director of Financial Services for authorisation.

In deciding whether to award discretionary relief, the Council will take into account the following:

- The shortfall between income and expenditure
- Any steps taken by the applicant to reduce their rental or council tax liability
- The household, financial and medical circumstances of the applicant, their partner and any other persons in the household
- Any savings or capital held by the applicant's household
- The applicant's level of debt
- Any special reasons which make it necessary or particularly desirable for the applicant(s) to occupy the dwelling in respect of which the liability arises
- The possible consequences of council tax arrears for the applicant or family members, especially if any of them are vulnerable by reason of age, sickness or disability
- Whether the applicant can change their spending pattern on non-essential items
- The possible impact of not making a payment i.e. the pressure on priority homeless accommodation
- The actions being taken by the applicant to improve or change their domestic, financial or personal situation to reduce or limit the amount of support that they will require in the future i.e. helping those that are trying to help themselves
- Any other special circumstances brought to the attention of the Council.

Any successful application will be granted for the remainder of the financial year in which the application is made, but will cease at the end of that financial year and a re-application will be required for consideration of any ongoing assistance.

Awards will generally be made from the date that the Council received the application form, but the Council may backdate awards under this policy, if it is considered reasonable.

6) Notification of Decision

The Council will notify an applicant in writing within 14 days of receiving sufficient information to make a decision or within a reasonable period afterwards.

Where an application for discretionary relief is successful the applicant (and any other affected party) will receive notification of:

- The amount of the award
- The circumstances of the award, any steps that the applicant should take and any conditionality attached to the award
- The start and end date of the award
- Their duty to report any change of circumstances that may affect the award
- The recoverability of any award
- The procedure to follow should the applicant disagree with the decision.

7) Review of Decision

Under the Local Government Finance Act 1992, there is no right of appeal against the Council's use of discretionary powers. However, the Council will accept an applicant's written request for a further review of its decision, if it is made within one month of the date of notification of the decision.

The request for review will be considered by a person other than the person who made the original decision. He/she will consider whether the applicant has provided any additional information against the required criteria that will justify a change to the original decision.

If the review concludes not to revise the original decision, this decision is final and may only be challenged by way of an appeal to the Valuation Tribunal for Wales, judicial review or by a complaint to the Local Government Ombudsman, (where there is an allegation of maladministration).

8) Fraudulent Claims and Overpayments

The Council reserves the right to recover any overpayment of discretionary relief where the award was made as a result of misrepresentation or failure to disclose a material fact, fraudulently (or otherwise), or due to an administrative error by the Council (where it is reasonable to assume that the taxpayer would have been aware).

The Council is committed to tackling fraud and abuse of public funds in all forms. Where there is suspicion that a fraud may have occurred, the matter will be investigated and this may lead to criminal proceedings being initiated. The Council will consider prosecuting any applicant who makes a false statement or provides fraudulent evidence in support of an application.

An application for a discretionary relief will not be considered to offset any council taxes that have become payable as a result of the taxpayer being prosecuted and convicted for Housing & Council Tax Benefit/Council Tax Reduction Scheme fraud, or in cases where an Administrative Penalty or a Sanction has been given in the last 6 years.

9) Equalities Statement

The Council is committed to equality and fairness. Equality is about ensuring people are treated fairly and given fair chances. It is also about ensuring that people receive fair outcomes in the standard of service they receive from the Council. This incorporates everyone, regardless of their race, gender, age, religion or belief, sexual orientation and/or disability.

10) Data Access and Data Sharing

The Council is allowed to collect data to support, evidence and to determine discretionary payments. The scheme will operate to support principles for fair, reasonable and confidential data access and sharing at all times. This is to ensure that customers receive the correct payments at all times and that public funds and the wider interest of local council tax papers are protected.

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