



# **NON-DOMESTIC RATES**

## **HARDSHIP POLICY**

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## **Introduction**

This policy sets out to identify the legislation and outline the procedures to be followed for the review and subsequent decision and notification of claims for hardship relief from rates in accordance with the regulations and recognised best practice and to ensure that the decision making process is equitable and consistent. This will ensure: -

- full compliance with the regulations and recognised best practice in the decision and notification
- full respect for customer rights
- that proper written rules and procedures operate
- that sound quality control check mechanisms operate
- that procedures and controls meet audit requirements

Additionally, the service: -

- will ensure that proper internal checks and quality control mechanisms are in place to ensure the correct application of this policy
- will regularly review this policy

## **Background**

Non Domestic Rates are a national tax on non- domestic property levied by local councils. The basis of the amount of rates payable in any financial year in respect of a property is the multiplication of a business rate multiplier by the rateable value of that property.

Within the legislation there are a number of reliefs from rate payment available, which are based on either the status of the business (charity) or the nature of the business (small businesses) that is being conducted. Generally, however, rates are to be paid for both occupied and unoccupied properties.

Relief from rates is available on the grounds of hardship. The legislation seems to provide a far-reaching power for councils to remit or reduce business rates in cases where hardship occurs but the authority has to be satisfied that the ratepayer would suffer real hardship if the relief was not given and that it is in the wider interests of the council tax payers of the authority for relief to be made available. However, the decision to write off rates on the grounds of hardship is at the discretion of the council.

## **Statutory Responsibilities**

Statutory regulations specify how the Council must deal with hardship relief applications. In each case, decisions must be made with reference to:

- Section 49 Local Government Finance Act 1988
- Schedule 1(2 &3) Non Domestic Rating Contributions Regulations 1992

The key cases and advice for dealing with hardship relief are: -

- R v Liverpool CC ex parte Windsor Securities Ltd 1978
- R v Liverpool CC ex parte Caplin 1984
- Wakefield MDC v Huzminor Investments Development Ltd 1989
- Department of Environment (DoE) Circular No. 34/78
- Department of Environment (DoE) Practice note (1990)

In summary, under these regulations, all local authorities administering hardship relief claims are under a duty to: -

- Relate the application to this policy
- Consider each case on its merit and not apply a blanket decision to all applications
- Notify each taxpayer about their entitlement to hardship relief

### **Financial Implications**

When allowing hardship relief the decision must be made in the interests of the council taxpayers of the borough because while 75% of the relief given will be offset against the council's contribution to the Non Domestic Rating Pool, the remaining 25% is funded by the General Fund and passed onto the local council taxpayers. Up to 100% relief from rates can be allowed.

### **Making a Claim**

Section 49(1) LGFA 1988 says that applications for relief on the grounds of hardship need not be made in writing. However, the council has a standard application form, which it uses to capture all the relevant information in relation to a claim. This is the council's preferred method of applying but applications can be made, if necessary, by:

- E-Mail and sending the application to [revenues@rctcbc.gov.uk](mailto:revenues@rctcbc.gov.uk)
- Over the telephone by ringing the Non Domestic Rating team
- By visiting any council One4All Centre and asking an advisor to complete an application form on your behalf
- By completing an electronic claim form on the councils website and sending this to [revenues@rctcbc.gov.uk](mailto:revenues@rctcbc.gov.uk)

### **Claiming Guidelines**

1. It will be for the applicant to clearly demonstrate that hardship will occur if the Authority does not exercise its discretion to remit the rates, either in whole or in part
2. To support any claim of hardship, the applicant must provide the Financial Services Director with copies of financial accounts for the preceding 3 years, together with a cash flow projection for the next 12 months. A person qualified to do so must certify these statements. This is to establish:
  - a. That the business is normally a viable and successful business and that some particular occurrence outside the norm has created a temporary difficulty, which can be overcome with assistance (It is not acceptable to risk council tax payers' contribution on an unproven venture)
  - b. If there are other creditors of size and note who, if in recovery, might close the business anyway.

- c. If grants have been received from public bodies over the last 3 years, which constitute state aid and take company over state aid de minimus threshold
3. If the Organisation concerned has not been trading for 3 years, then the latest accounts must be supplied. In circumstances where the business has not been trading for 12 months, then the applicant must supply a profit and loss account and a cash projection prepared and certified by a person qualified to do so
4. The applicant will supply the Financial Services Director with any further relevant information felt necessary to substantiate a request for assistance
5. Rates will only be remitted where to do so would clearly be in the best interests of the Council Tax Payers
6. Any relief granted would be effective from the date(s) stated in the application, provided the period falls within the financial year in which the Billing Authority receives the application. Any relief granted will be reviewed annually and be withdrawn altogether should circumstances alter. However:
  - a. The business must demonstrate that it has followed all the normal routes of mitigating its liability to rates e.g. appealed against the rateable value, explored partial occupation (Section 44A), alternative payment arrangement to accommodate cash flow difficulties or even whether sufficient equity to agree a charging order for rates plus interest be placed on property before considering that hardship may be appropriate
  - b. The business should specify the period of time for which relief is required and provide a forecast specifying when it is anticipated that the difficulty will be overcome. It should not be ongoing but should be finite and for a relatively short period of time
7. The ratepayer must show that normal business practice has been explored to meet liability e.g. taken steps to obtain/increase an overdraft or loan from his/her Bankers or Shareholders in order to resolve any cash flow difficulties
8. The Council will need to be satisfied that hardship is not merely due to normal market forces or general economic conditions affecting a number of local businesses. It will also need to consider whether the hardship is wholly or partially due to trading competition, over optimism of turnover/profitability or the failure to anticipate liabilities normally payable by an owner or occupier.
9. S49 Hardship Relief constitutes State Aid and as such the Council will adhere to State Aid rules and not award any relief where these could be breached.
10. The Council will consider any anti-competitive effect, which an award of relief could engender, by favouring one business over another in a competitive market.
11. The applicant will provide details of any outstanding debts, which the business has and the stage of recovery which that debt is at.

## **Advice from the Department of Environment**

The advice given by the DoE is:-

- All the circumstances relevant to the particular case must be considered when deciding whether a payment would cause hardship
- To write off rates in the manner suggested must be the exception rather than the rule
- The test of hardship need not be confined only to financial hardship. Other criteria relevant to the ability of the business to meet its rate obligation may also be taken into account
- Hardship applies as much to Companies and Corporate Bodies as to sole traders
- The interests of the council taxpayers in an area may go wider than just financial interests. For example, where employment prospects in an area would be worsened by a Company going out of business or the amenities of a locality would be reduced by the loss of the only village shop, for example
- Even though granting relief may have an adverse effect on the financial interests of taxpayers, the case for remission (or reduction) could well still be sustained if, on balance, the disadvantages of the business closing outweigh the financial costs involved. This may result in a very subjective judgement being made

## **Definition Of Hardship**

Whilst there is no statutory definition of hardship, there has been much case law on this issue, which provides a measure of guidance of the relevant factors. Some of the more important judgements are:

- It was decided that a council acted reasonably in refusing remission when an applicant would not provide copies of accounts
- A decision to refuse to remit rates was upheld where it was felt the ratepayers' own improvidence caused the hardship
- Where a company held substantial reserves it was decided that the council had acted reasonably in refusing relief notwithstanding the financial difficulties the company was facing
- In cases where applications for hardship in respect of a liability for unoccupied rates, the outcome of the decisions have been different according to the circumstances of the case. For example:
  - A commercial undertaking in financial difficulties was compelled to leave its property unoccupied for a lengthy period of time. In these circumstances, the unoccupied rate liability contributed to a loss of profits
  - A company decided on a speculative purchase, which involved leaving a property vacant in anticipation of a later resale. The unoccupied rates contributed to a reduction in anticipated profits.
- It was held reasonable for the council to exercise its discretion in the first case but to refuse it in the second.

## **Interests of the council taxpayers**

What is in the interests of the taxpayer is difficult to determine. There will be instances where a proprietor of a small shop finds difficulty paying his rates. Only in the case of say a typical village store which sells groceries and general goods, could the retention of that outlet be regarded as being in the wider interests of the council taxpayer. In this example, the distance that villagers would have to travel to another shop is a relevant consideration. There may be many shops in financial difficulties but only where that shop is an important amenity will the requirement be met.

As far as other types of commercial activities are concerned it is even more difficult to determine what is in the best interests of the council taxpayer. The DoE guidance says that where employment prospects in an area could be worsened if a particular company goes out of business then consideration should be given to awarding relief. However, the rates bill of some businesses is substantial and remission may well amount to a considerable burden to the taxpayers. Whether to grant relief or not in such a case must be the subject of careful scrutiny and should be awarded only in the most exceptional circumstances, such as where a loss of employment to a local community would be particularly damaging.

## **Appeals**

Refusal to grant relief cannot be challenged at a liability order hearing at the Magistrates Court. In practice, decisions could be challenged by way of an application for judicial review at the High Court.

## **Amount of the reduction**

The amount of relief that can be awarded is entirely at the discretion of the council. It should be noted that the rates can be remitted in full or in part but the decision must be based on the contents of this policy document and on the individual circumstances of each case.

## **Quality Control Systems**

The Council will ensure that sound and comprehensive mechanisms are in place to check the quality of relief claims, to respond to customer complaints and to provide effective feedback of issues raised and that all issues raised are resolved.

Regular quality control and monitoring mechanisms would be undertaken within the section.

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