

# **Policy for the granting of Discretionary Relief**

**Version Control**

<i>Version</i>	<i>Version date</i>	<i>Revised by</i>	<i>Description</i>
1	June 2017	LM	Policy
2	June 2017	DA	Sign off
3	July 2017	LM	Amendments per LJ
4	August 2017	DA	Sign off
5	September 2017	LM	Amendments LJ
6	October 2017	LF	Amendments LF

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## 1.0 Purpose of the Policy

- 1.1 The purpose of this policy is to determine the level of Discretionary Business Rates Relief to be granted to certain defined ratepayers within the Council's area.
- 1.2 The Local Government Finance Act 1988 and subsequent legislation allows the Council to grant discretionary relief for premises occupied by Charities and similar organisations that own or occupy them wholly or mainly for charitable purposes. Likewise, certain premises situated within a rural settlement area will be eligible for relief. Powers have also been granted under the Localism Act 2011, which allow for the granting of discretionary rate relief to any premises where the Council feels the granting of such relief would be of benefit to the local community.
- 1.3 In addition to the above, Central Government is keen that, in certain cases, assistance should be provided to businesses who have had increases in their rate liability due to the revaluation of premises in April 2017. In these cases, and where the Council meets Central Government guidelines, grants are available under section 31 of the Local Government Act 2003.
- 1.4 Whilst the Council is obliged to grant relief to premises, which fall within the mandatory category, the Council also has powers to grant discretionary relief and reductions to ratepayers, subject to certain criteria being met.
- 1.5 This document outlines the following areas:
  - Details of the criteria for receiving an award under the Local Discretionary Relief Scheme;
  - The Council's general policy for granting of all types of Discretionary Reliefs;
  - Guidance on granting and administering the reliefs;
  - European Union requirements including provisions for State Aid; and
  - The Council's Scheme of Delegation.
- 1.6 This document covers all aspects of the new Discretionary Relief Scheme which is available from 1<sup>st</sup> April 2017. Where businesses apply for relief they will be granted (or not granted) relief in line with the following policy.

## 2.0 Discretionary Relief – Legislative Background

### Introduction

- 2.1 The original purpose of discretionary relief was to provide assistance where the property does not qualify for mandatory relief, or to ‘top’ up cases where ratepayers already receive mandatory relief.
- 2.2 Over recent years, and particularly since 2011, the discretionary relief provisions have been amended to allow authorities the flexibility to provide more assistance to businesses and organisations.
- 2.3 The range of bodies, which are eligible for discretionary rate relief, is wide and has been developed by both the Council and Central Government to address certain issues with business rates.
- 2.4 Unlike mandatory relief, ratepayers are obliged to make a written application to the Council. The Council will expect all businesses to make applications in such a format as is required (which may vary from time to time) and for the business to provide such information, evidence, certificates etc. as required in order to determine whether relief should be awarded.
- 2.5 The Council is obliged to consider carefully every application on its merits, taking into account the contribution that the organisation makes to the amenities within the authority’s area. There is no statutory appeal process or Tribunal against any decision made by the Council, although as with any decision of a public authority, decisions can be reviewed by Judicial Review. The authority will however, upon request, review decisions made. Details of the internal review process are given within this policy.
- 2.6 The granting of discretionary relief falls broadly into the following categories:
  - a. Discretionary Relief – Charities who already receive mandatory relief;
  - b. Discretionary Relief – Premises occupied by organisations not established or conducted for profit whose main objects are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts **or** premises occupied by organisations not established or conducted for profit and wholly or mainly used for purposes recreation;
  - c. Discretionary Relief – Granted under the Localism Act 2011 provisions;
  - d. Local Newspaper Relief (from 1<sup>st</sup> April 2017 for a period of two years);
  - e. Local Public House Relief (from April 2017 for a one year period);
  - f. Supporting Small Businesses Relief (from 1<sup>st</sup> April 2017 for a period of five years or until businesses pay their full rate charge or their transitional rate charge (calculated in accordance with the Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2016); and
  - g. Local Discretionary Relief Scheme (from 1<sup>st</sup> April 2017 for a period of up to four years).
- 2.7 This policy document purely covers the granting of awards under the Local Discretionary Relief Scheme (2.6g. above) which covers a period from 1<sup>st</sup> April 2017 for up to four years. The decision to grant or not to grant discretionary relief

is a matter purely for the Council. The Council's policy for granting other reliefs can be found on the Council's website [www.exeter.gov.uk](http://www.exeter.gov.uk).

## **The Council's general approach to granting Discretionary Relief**

- 2.8 In deciding which organisations should receive discretionary rate relief, the Council has considered the following factors and priorities:
- a. That any award should support business, organisations and groups that help to retain services in the Council's area and not compete directly with existing businesses in an unfair manner;
  - b. It should help and encourage business, organisations, groups and communities to become self-reliant;
  - c. Awarding discretionary relief should not distort competition or significantly change the provision of services within the Council's area;
  - d. Local (Devon based) organisations will be looked at more favourably than national organisations. Where requested, the organisation will need to supply the Council with clear evidence of **all** financial affairs including, and most importantly, the amounts of monies raised, used and invested locally. This will be essential where the organisation is national in nature;
  - e. To enable appropriate organisations to start, develop or continue their activities, which deliver outcomes to the community and that also relate to the priorities of the Council, which, without granting discretionary relief they would be unable to do;
  - f. To assist the Council in delivering services which could not be provided otherwise;
  - g. To assist the Council to meet its priorities;
  - h. To ensure that the financial impact of awarding discretionary relief is justified in terms of the local outcomes achieved by the organisation receiving it.
- 2.9 Where any reduction or remission is granted to a ratepayer under S49 Local Government Finance Act 1988 where hardship is proven to the Council, then there will be no requirement to grant Discretionary Rate Relief for that amount.
- 2.10 In certain cases, the order in which relief is granted is specified. Mandatory relief shall be granted in all cases where the criteria is met irrespective of whether discretionary relief can be granted or not.

## **The Council's approach to granting Government led Discretionary Relief schemes**

- 2.11 Over the past few years, a number of schemes have been led by Central Government but without specific legislative changes. These are administered under S47 of the Local Government Finance Act 1988 and guidance is often provided. The Council is keen to support such initiatives especially where they are designed to help local businesses and will look to maximise both the reliefs given as well as maximising any grants receivable. However, the Council reserves the right to vary its approach where thought appropriate.

- 2.12 In the case of the Local Discretionary Relief scheme, Central Government is keen that individual Councils develop their own scheme to meet local needs. Government has allocated funds to the Council using a particular methodology, but it has been keen to point out that this should have no bearing on the actual scheme adopted by the Council.

### **3.0 Effect on the Council's Finances**

- 3.1 The granting of discretionary relief will, in the main, potentially involve a cost to the Council. Since the change to the funding for Non-Domestic Rating in April 2013, the effect of the relief is complex.
- 3.2 Any amounts granted prior to 1<sup>st</sup> April 2013 and continuing since that date will be included in the Council's baseline within the Business Rates Retention Scheme. Any amounts granted for similar cases after 1<sup>st</sup> April 2013, the costs of the relief will be borne in accordance with the Business Rates Retention Scheme share.
- 3.3 In March 2017, Central Government announced that it would make available a discretionary fund of £300 million over four years from 2017-18 to support those businesses that face the steepest increases in their business rates bills as a result of the revaluation. Government determined that Councils would be best placed to determine how this fund should be targeted and administered to support those businesses and locations within their area that are in the greatest need.
- 3.4 Where Central Government leads an initiative such as the Discretionary Relief Scheme, grants are often made available. This is not automatic and Central Government will look to the Council to adopt any recommended criteria when granting in these areas to ensure that any grant is paid
- 3.5 Every authority within England is to be provided with a share of the fund to support their local businesses. This is to be administered through billing authorities' discretionary relief powers under section 47 of the Local Government Act 1988. The full effects of the financial allocation are shown below.
- 3.6 The allocation of monies to authorities and the methodology of the funding award is completely separate to the scheme itself, and Government believes that local authorities are best placed to judge the particular circumstances of local ratepayers and direct the funding where it is most needed to support local economies.
- 3.7 The funding is not provided equally over the four-year period but in the following approximate proportions:
- Year 1 (2017/18) 58%
- Year 2 (2018/19) 28%
- Year 3 (2019/20) 12%
- Year 4 (2020/21) 2%

- 3.8 Councils will be compensated for any relief granted under section 31 of the Local Government Act 2003. The Government has decided that any underspend cannot be 'vired' from one year to the next.
- 3.9 A key criteria of reimbursement will be that all Billing Authorities will consult with major precepting authorities when formulating their schemes.
- 3.10 The financial effects to the Council of the Discretionary Relief Scheme are shown in the following table

<b>Amount of discretionary fund awarded (£000s) – Exeter City Council</b>			
2017-18	2018-19	2019-20	2020-21
357	174	71	10

- 3.11 The above is to be awarded up to the maximum level set by Central Government. It is possible for the Council to grant more relief than that allocated by grant. However, once the maximum grant level has been reached, any additional amount granted would be partly financed by the Council.



## 4.0 Discretionary Relief – EU State Aid requirements

- 4.1 European Union competition rules generally prohibit Government subsidies to businesses. Relief from taxes, including non-domestic rates, can constitute state aid. The Council must bear this in mind when granting discretionary rate relief.
- 4.2 Rate relief for charities and non-profit making bodies is not generally considered to be state aid, because the recipients are not in market competition with other businesses. However, where other bodies receive relief and 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.
- 4.3 Relief will be State Aid compliant where it is provided in accordance with the De Minimis Regulations (1407/2013)<sup>1</sup>. The De Minimis Regulations allow an undertaking to receive up to €200,000 of De Minimis aid in a three-year period (consisting of the current financial year and the two previous financial years).
- 4.4 Where the relief to any one business is greater than the De Minimis level, then permission will need to be obtained from the European Commission. In such cases the matter will be referred to the Department for Communities and Local Government (DCLG) for advice and then referred back to the Council for consideration. It will be for the ratepayer to provide confirmation as to whether the State Aid provisions apply to them.
- 4.5 In all cases, where discretionary relief is to be granted or where liability is to be reduced, when making an application, ratepayers will be required to provide the Council with sufficient information to determine whether these provisions are applicable in their case.

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:352:0001:0008:EN:PDF>

## 5.0 Administration of Discretionary Relief – General approach

- 5.1 The following section outlines the procedures followed by officers in granting, amending or cancelling discretionary relief and reduction. This is essentially laid down by legislation<sup>2</sup>

### Applications and Evidence

- 5.2 All reliefs must be applied for. Application forms are produced by the Council in hard copy and/or electronic format. The Council will specify how applications are to be received and this may vary from time to time.
- 5.3 Organisations are required to provide a completed application form plus any such evidence, documents, accounts, financial statements etc. necessary to allow the Council to make a decision. Where insufficient information is provided, then no relief will be granted. In some cases, it may be necessary for officers to visit premises and we would expect organisations claiming relief to facilitate this where necessary.
- 5.4 Applications should initially be made to the Business Rates Manager and will be determined in accordance with this policy.
- 5.5 **The Council will provide this service and guidance free of charge. Ratepayers are encouraged to approach the Council direct and NOT pay for such services through third parties. Applications will be accepted from Ratepayers only.**

### Granting of relief

- 5.6 In all cases, the Council will notify the ratepayer of decisions made.
- 5.7 Where an application is successful, then the following will be notified to them in writing:
- The amount of relief granted and the date from which it has been granted;
  - If relief has been granted for a specified period, the date on which it will end;
  - The new chargeable amount;
  - The details of any planned review dates and the notice that will be given in advance of a change to the level of relief granted; and
  - A requirement that the applicant should notify the Council of any change in circumstances that may affect entitlement to relief.
- 5.8 Where relief is not granted then the following information is provided, again in writing:
- An explanation of the decision within the context of the Council's statutory duty; and
  - An explanation of the appeal rights (see below).

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<sup>2</sup> The Non-Domestic Rating (Discretionary Relief) Regulations 1989

- 5.9 Discretionary relief is to be granted from the beginning of the financial year in which the decision is made. Since 1997 decisions can be made up to 6 months after the end of the financial year for which the application was made. In such cases, the Council *may* backdate its decision.
- 5.10 A decision to award discretionary relief and how much relief is given is normally only applicable to the financial year for which the application is made. However, the Council reserves the right to grant relief for any other period as appropriate. In relation to the Local Discretionary Relief scheme, awards will, in the main be granted from 1<sup>st</sup> April 2017.
- 5.11 A fresh application for discretionary relief will be necessary for each financial year **or** at such time-period as the Council determines.

### **Variation of a decision**

- 5.12 Variations in any decision will be notified to ratepayers as soon as practicable and will take effect as follows:
- Where the amount is to be increased due to a change in rate charge (excluding rateable value increases) or a change in the Council's decision which increases the award – this will apply from the date of the increase in rate charge or the date determined by the Council as appropriate;
  - Where the amount is to increase for any other reason it will take effect at the expiry of a financial year, and so that at least one year's notice is given;
  - Where the amount is to be reduced due to a reduction in the rate charge or liability including any reduction in rateable value, awarding of another relief or exemption this will apply from the date of the decrease in rate charge; and
  - Where the amount is to be reduced for any other reason, it will take effect at the expiry of a financial year, and so that at least one year's notice is given.
- 5.13 A decision may be revoked at any time, however, a one year period of notice will be given and the change will take effect at the expiry of a financial year unless relief has been awarded for a fixed period.

## **6.0 Scheme of Delegation**

### **Granting, Varying, Reviewing and Revocation of Relief**

- 6.1 All powers in relation to reliefs are given under the Local Government Finance Act 1988, the Local Government and Rating Act 1997, the Local Government Act 2003 and the Localism Act 2011. However section 223 of the Local Government Act 1992 allows for delegation of decisions by the Council to Cabinet, Committees, Sub-Committees or Officers.
- 6.2 The Council's scheme of delegation allows for the System Lead Finance to award, revise or revoke any discretionary relief applications. However, any application which is considered to be of a significant nature will be subject to consultation with the S151 Officer of the Council, and / or the relevant Executive member prior to final determination.
- 6.3 Applications that are refused will, on request, be reconsidered if additional supporting information is provided or the refusal is subsequently considered to be based on a misinterpretation of the application.

### **Reviews**

- 6.4 The policy for granting relief will be reviewed annually or sooner where there is a substantial change to the legislation or funding rules. At such time, a revised policy will be brought before the relevant committee of the Council.

### **Appeals**

- 6.5 Where the Council receives an appeal from the ratepayer regarding the granting, non-granting or the amount of any discretionary relief, the case will be reviewed by the System Lead Finance. Where a decision is revised then the ratepayer shall be informed, likewise if the original decision is upheld.
- 6.6 Where the ratepayer continues to be aggrieved by the decision, the case will be referred to the section 151 Officer for review. Where appropriate, cases of this nature may also be referred to the Executive member as appropriate.
- 6.7 Ultimately the formal appeal process for the ratepayer is Judicial Review although the Council will endeavour to explain any decision fully and openly with the ratepayer.

## 7.0 Consultation

- 7.1 The Council has consulted with the major preceptors in relation to this scheme and has taken their comments into account when determining the eligibility criteria. This is an essential part of the Discretionary Relief Scheme and is in line with the grant determination issued by the Department of Communities and Local Government (DCLG) No.31/3071.
- 7.2 The grant determination states that a condition of the fund is that consultation is undertaken with 'relevant authorities'. Relevant authorities for the purposes of this scheme means:
- a. Any major precepting authority; and
  - b. Any combined authority.
- 7.3 In the case of the Council only the major precepting authorities have been consulted namely:
- a. Devon County Council; and
  - b. Devon and Somerset Fire and Rescue Service.

## 8.0 Decisions by the Council under this scheme

- 8.1 Decisions by the Council are made directly in line with the Scheme of Delegation as outlined within section 6 of this policy. Any decision to award relief under this scheme will follow the core principles of the Council's discretionary relief policy as defined by section 2.8.
- 8.2 It should be noted that, whilst the funding from Central Government for the Discretionary Relief Scheme is limited, the decision of the Council whether to award any relief under this scheme **cannot take account** of the level of any funding.

### **Discretionary Relief Scheme– the Council's policy for granting discretionary relief.**

- 8.3 The scheme is designed to assist ratepayers who have suffered increases in their rate liability as a result of the 2017 revaluation.
- 8.3.1 In assessing any potential entitlement to an award under this scheme, the Council will compare the following:
- i. The rate liability of the ratepayer as at 31 March 2017 after any reliefs and reductions; and
  - ii. The rate liability of the ratepayer at 1 April 2017 taking into account any transitional relief, relief or reductions.
- 8.3.2 There are two parts to the scheme in which ratepayers will be considered:
- Part A – Formula based for financial years 2017/18 & 2018/19 only
  - Part B – Case by case for four years from 2017/18 until 2020/2021

#### **Part A – Formula based criteria**

- A Relief will be awarded where the calculation in 8.3.1 above would result in an increase of more than 2%.
- B Relief will be paid up to a maximum of £5,000 (or a higher amount as approved by the S151 officer in conjunction with the Leader).
- C Relief will only be granted to premises that are liable for occupied rates. No relief will be awarded to unoccupied premises
- D Relief will only be granted where the rateable value is less than £200,000
- E Relief will only be granted to ratepayers who were in occupation at 31 March 2017 and in occupation on 1 April 2017 and for each day subsequent.
- F Ratepayers taking up occupation after 1 April 2017 will not be eligible for relief on the basis that new ratepayers would not have suffered from increases as a result of revaluation
- G Relief will be targeted to local businesses and not those businesses that are national or multinational in nature. Local businesses are, for the purpose of this scheme, those which have premises wholly or predominately in the Devon area.
- H Relief may be awarded for more than one premises as long as all other criteria are met.
- I Relief under Part A will not be awarded where:
  - mandatory relief has been granted

- the ratepayer is a public body
- the ratepayer has been granted a reduction under S44a of the Local Government Finance Act 1988;

J Additional discretionary relief will not be awarded for rateable value increases after 1 April 2017

K Relief will not be awarded for premises which are wholly or mainly used for:

- Betting and gambling premises
- Banks and Building Societies
- Cash Machines/ATMs
- Accountants, Insurance Agents and Financial Advisors
- Pawnbrokers and pay day lenders and similar
- Solicitors and law agencies
- Telecommunications network facilities
- Doctors and GP surgeries
- Supermarkets and discount stores

### **Part B – Case by case basis**

Where any ratepayer can demonstrate that they have experienced financial difficulties as a result of revaluation, the council will consider these on a case by case basis. The Council will take into account:

- the amount of the increase in rate liability due to the revaluation;
- the amount of rates in relation to other business expenses and income of the business;
- the amount of reserves held by the business; and
- the ability of the business to pay the increase

## **Applications for relief under this scheme**

8.4 The Council is keen to identify ratepayers who may qualify for the relief and as such will look to encourage certain ratepayers to apply. The Council will look to simplify the application process wherever possible, but it will expect any ratepayers to provide such information as is required by the Council to support their application

## **Amount of Relief**

8.5 The amount of relief under Part A is tapered and will be calculated as follows:

### **2017/18**

Award = Increase in rate liability calculated in 8.3c LESS 2%. For the avoidance of doubt, relief will only be awarded where the ratepayer has an increase of at least 2%. The award will reduce the increase down to 2% with the proviso that the maximum award will be £5,000.

### **2018/19**

Award = 2017/18 award x 50% (for clarity this will be half of the relief awarded in 2017/18)

- 8.6 For 2017/18 and 2018/19 most of the funding will be given under part A but part of the funding will be retained to be used under part B (on a case by case basis). For 2019/20 & 2020/21 all of the funding will be granted under part B.

## **Variation and amendment of relief under the scheme**

- 8.7 As with all reliefs, the amount of relief awarded under the Local Discretionary Relief Scheme will be recalculated in the event of a change of circumstances. In effect, relief is calculated on a daily basis in line with the ratepayer's liability on that day. This will include, for example, a backdated change to the rateable value of the hereditament. This change of circumstances could arise during the year in question or during a later year.
- 8.8 The Non-Domestic Rating (Discretionary Relief) Regulations 1989 (S.I. 1989/1059) requires the Council to provide ratepayers with at least one year's notice in writing before any decision to revoke or vary a decision so as to increase the amount the ratepayer has to pay takes effect. Such a revocation or variation of a decision can only take effect at the end of a financial year. But within these regulations, the Council may still make decisions which are conditional upon eligibility criteria or rules for calculating relief which allow the amount of relief to be amended within the year to reflect changing circumstances.



## 9.0 Reporting changes in circumstances

- 9.1 Where any award is granted to a ratepayer, the Council will require **any** changes in circumstances which may affect the relief to be reported as soon as possible and in any event not more than 21 days from the happening of the event. This will be important where the change would result in the amount of the award being reduced or cancelled e.g. where the premises becomes unoccupied or is used for a purpose other than that determined by the Council as eligible for relief.
- 9.2 Where a change of circumstances is reported, the relief will, if appropriate be revised or cancelled. Where any award is to be reduced, the Council will look to recover the amount from the date the change of circumstances occurred.
- 9.3 Where a change in circumstances is not reported and it is subsequently identified that it would have reduced the relief awarded, the Council reserve the right to remove any award completely.

## 10.0 Fraud

- 10.1 Where a ratepayer falsely applies for any relief, or where the ratepayer provides false information, makes false representation, or deliberately withholds information in order to gain relief, prosecutions will be considered under the Fraud Act 2006.