

East Devon District Council

Local Discretionary Rate Relief and Hardship Policy

1 Why has the Council introduced this policy?

- 1.1 This Policy updates the Local Discretionary Rate Relief (LDRR) Policy which was adopted in April 2013 and reviewed in 2016 and 2019. This policy now takes account of our discretion to remit all or part of a rate liability on the grounds of hardship.
- 1.2 Applications under this policy will be considered under both:
 - Section 47 of the Local Government Finance Act (LGFA) 1988, as amended, which allows the Council to grant Discretionary Rate Relief in any circumstances provided it is in the interests of the local council taxpayers to do so, and/or
 - Section 49 LGFA 1988 which allows the Council to remit all or part of a rates liability if it is satisfied that the applicant would sustain hardship if the Council did not do so, and if it is in the interests of the local council taxpayers to do so.
- 1.4 A decision to award under the above provisions must be made during or within six months after the end of the financial year to which it relates. This is inline with legislation where you cannot backdate S47 discretionary rate relief beyond this period. Although there are no backdate restrictions applicable for S49, however, in order to prove hardship it is reasonable to expect an application to be made within the same timeframe.
- 1.5 There is no provision within the rating regulations to withhold payment whilst an application for relief is pending, therefore recovery action may continue if due instalments are not paid.
- 1.6 Councils have the power to grant rate relief to ratepayers that meet certain criteria. The relief granted is used to reduce the amount the ratepayer has to pay in Non-Domestic Rates (hereafter Business Rates).
- 1.7 Where the government introduce a temporary rate relief scheme using the provision under S47 LGFA 1988 which are fully funded by government then this will be delegated to the Assistant Director for Revenues, Benefits and Corporate Customer Access to implement the scheme in line with the Council's constitution. These schemes will therefore fall outside this policy.

2 What is the Council's Policy?

- 2.1 This policy sets out the criteria and conditions that need to be met as well as the type of information to be provided when a ratepayer applies for a reduction in their Business Rates bill.
- 2.2 This policy:
 - Makes clear the specific and limited criteria under which Discretionary Rate Relief will be awarded by the Council.
 - Anticipates that relief will only be granted in exceptional circumstances and for a limited period.
 - Will ensure that all ratepayers making an application for Discretionary Rate Relief are treated in a fair, consistent and equal manner.

- Sets a framework for how businesses/organisations can apply for Discretionary Rate Relief.
- Sets out the delegated authority for dealing with applications.
- Seeks to safeguard the interest of local council taxpayers by ensuring that funds allocated for Discretionary Rate Relief are used in the most efficient, effective and economical way in accordance with the Council's priorities.

2.3.1 The Council recognises the importance of having a thriving, competitive local economy and seeks, where it can, to help retain existing employment and encourage new higher value employment. It is anticipated that relief will only be granted in exceptional circumstances and is subject to the following mandatory criteria:

- Where there has been a material change to the property or there is concern that the rateable value is too high, that businesses have first applied to the Valuation Office Agency to have the rateable value reassessed.
- All other statutory rate reliefs have been awarded first including any government funded schemes.
- Consideration has first been given to rate deferral, re-profiling of instalments and payment arrangements as an alternative method of support.
- That the proposed relief is for a temporary period.
- The proposed cost of funding relief is affordable for the Council given constraints on Council finances.
- It is in the interests of council taxpayers as a whole to grant rate relief.

When considering an application under this policy the following factors will be taken into account:

Economic & Employment Impact

- The significance of potential loss of employment in the district.
- The measurable impact on other businesses (including local supply chains) and the local community.
- Opportunities for inward investment, new business growth and new high value employment within the district.
- The capacity of Council intervention to secure further investment and retain new employment opportunities.
- Reassurance of duration and value of retained employment and continued production/operation in the district.
- Uniqueness of service/commodity being provided within the community/district.
- Alignment with relevant objectives of the Council Plan

Financial Sustainability

- The positive effects on business cash flow and evidence of positive impact on future viability so that business rates payment can resume within a reasonable period.
- Sufficient evidence of likelihood of recovery of the applicant's business.
- Whether relief is for occupied or unoccupied rates.
- What proactive measures the business/organisation is taking to reduce other significant overheads.
- Measures being taken to reduce their rate liability, for example occupying smaller premises, letting out parts of the building, etc.

- 2.3.2 Giving rate relief to a business/organisation must be balanced against whether this creates unfair market conditions to the detriment of others.
- 2.3.3 It should be recognised that one of the main overheads of any business occupying non-domestic premises is Business Rates and therefore it is reasonable to expect that businesses have made provision to ensure this can be paid. In *R v Liverpool City Council ex parte Caplin* [1984] the High Court confirmed the Council had not acted unreasonably in refusing to remit rates since the applicants own improvidence had been the cause of its hardship.
- 2.3.4 An applicant's payment record history will also be taken into account.
- 2.3.5 Relief will be withdrawn or cancelled if:
- the conditions or circumstances on the basis of which the relief was granted change, fail to materialise, or the information submitted as part of the application proves to be misleading.
 - the applicant ceases to be the ratepayer.
 - the business/organisation ceases to trade (in case of occupied rates) or downscales operations or workforce in contravention of any agreement.
 - the use of the property changes.

Where relief is cancelled this will normally take effect from the actual date of change. However, in certain circumstances relief may be withdrawn in full. A revised rates bill will be issued for payment.

- 2.3.7 Ratepayers are required to notify the Council of any change in circumstances that may affect entitlement to Discretionary Rate Relief.

2.4 Funding

- 2.4.1 The cost of funding Discretionary Rate Relief is based on the Business Rates Retention Scheme and East Devon's share is currently 40%.

2.5 Subsidy Control

- 2.5.1 The Council must ensure that it is complying with the Subsidy Control Act 2022 when awarding Discretionary Rate Relief.
- 2.5.2 The vast majority of subsidies awarded in the UK are unlikely to raise concerns under our international commitments. The risk of challenge is likely to be small apart from subsidies to sensitive sectors operating at scale on international markets. The level of analysis required to satisfy the Council that there are no, or minimal appreciable risks, will need to be decided on a case-by-case basis.
- 2.5.3 The Subsidy Control Act fully incorporates the definition of a subsidy in the UK-EU Trade & Co-operation Agreement allowing up to £315,000 of financial assistance in any 3 year period.

2.6 Administering the Scheme

- 2.6.1 Discretionary Rate Relief must be applied for in writing by the ratepayer (email is OK).

2.6.2 It is expected that the ratepayer will need to provide:

- details of what relief percentage and time period relief is being sought
- reasons why relief should be given and how this meets our policy
- details of all other support/recovery measures the business /organisation is undertaking or receiving
- audited accounts and/or current trading figures.
- Business Plan including growth forecasts (to evidence that the Council would be helping an organisation/business that is demonstrating potential to become sustainable)
- an explanation as to how it meets the interests of the local community and local council taxpayers.
- Its declaration as to the amount of financial assistance it, or any other organisation in its group, has received in the current & previous two years.

2.6.3 The Council will reserve the right to request any other information it feels appropriate in order to consider an application.

2.6.4 Delegated authority is given to the Assistant Director – Revenues, Benefits, Corporate Customer Access, Fraud & Compliance in consultation with the Assistant Director for Growth, Development and Prosperity, the Portfolio Holder for Finance and for Economic Development for determining applications for rate relief. In the absence of the Assistant Director for Revenues, Benefits, Corporate Customer Access, Fraud & Compliance it will pass to the Director for Finance.

2.6.5 Successful applicants will be notified in writing of the amount and period Discretionary Rate Relief has been awarded for. Any entitlement will be applied to the rate account and a revised bill will be sent.

2.6.6 Unsuccessful applicants will be notified in writing/by email together with the reason for the decision.

2.6.7 The Council will aim to make a decision within 14 days of receiving all the information required.

2.6.8 Officers reserve the right to refer a decision to Cabinet where the level of relief being sought is material, where there is a possible conflict of interest or for other risk considerations.

2.7 Right of Appeal

2.7.1 There is no statutory right of appeal against a decision made by the Council regarding Discretionary Rate Relief. However, the Council recognises that ratepayers should be entitled to have a decision reviewed if they are dissatisfied with the outcome.

2.7.2 A review of a decision will be dealt with by the Director of Finance in consultation with the Leader or Deputy Leader of the Council. If the Director of Finance was involved in the initial decision a review will be dealt with by the Council's Monitoring Officer or Chief Executive in consultation with the Leader or Deputy Leader of the Council. There is no further right of appeal.

2.7.3 A request for review must be made within one calendar month of the date of the decision notice.

2.7.4 This review process does not affect a ratepayer's legal right to seek leave to challenge a decision by way of Judicial Review.

2.8 Outcomes

2.8.1 The Policy is intended to ensure that Discretionary Rate Relief contributes to the Council's priorities: to promote prosperity and reduce hardship within the district, to increase the number and quality of jobs, as well as ensure higher wages. The overall aim is to ensure a resilient, thriving, competitive local economy and to encourage investment.

2.8.2 Granting Discretionary Rate Relief is in the interests of the local council taxpayers.

3 **Policy Administration**

3.1 The Assistant Director for Revenues, Benefits, Corporate Customer Access, Fraud & Compliance is delegated to update the policy to take account of technical or administrative changes.

Links related Policies/Strategies, Procedures and Legislation

Related Policies

- Corporate Strategy
- Corporate Debt Policy 2021-2026

Legislation

- Local Government Finance Act 1988
- Localism Act 2011
- Subsidy Control Act 2022
- Data Protection Act 1998
- R v Liverpool City Council ex parte Caplin [1984]

Data Protection

Trading and business information like company accounts, profit and loss and cash flows along with documentation on personal circumstances for sole traders and partnerships will be requested. This data will be stored and used in line with the [Council's Data Protection Policy](#).

Policy consultation

Consultation on these updated changes has been undertaken with the Growth, Development & Prosperity Team.

Policy review

No later than April 2027.