

## **NON-DOMESTIC RATE DISCRETIONARY RELIEF GUIDELINES (HINCKLEY & BOSWORTH BOROUGH LOCAL AUTHORITY)**

### **Introduction**

This document sets out the provisions for the awarding of mandatory and discretionary rate relief by a local authority. Whilst the local authority is under a statutory duty to award mandatory relief, the award of discretionary rate relief is at the discretion of the local authority.

Each authority will have its own procedures for when to award discretionary relief and for how long it is to be awarded. These need to be regularly reviewed and updated to take account of new legislation and policy changes within each authority.

This document focuses on both mandatory and discretionary relief and looks at the circumstances when relief can be awarded under the following four headings:-

- Charities and Kindred Organisations.
- Community Amateur Sport Clubs.
- Rural Areas.
- Local Discounts (discretionary relief only).

It should be noted there are other reliefs available to a ratepayer. These can be summarised as follows:-

- Small Business Relief

A local 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. As a consequence, the local authority has no discretion in the matter. However, if the ratepayer is entitled to mandatory relief, they would then not qualify for small business relief.

There are separate procedure notes for staff when administering small business rate relief.

- Part-Occupied Relief

A local 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 local authority to interpret the period.

There are separate guidelines for staff when administering part-occupied relief.

- Hardship Relief

A local 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 is a separate set of guidelines for the partnership that covers hardship relief.

## **Mandatory Relief**

### **General**

The relevant provisions regarding the award of mandatory relief are set out in **Sections 43 to 46 Local Government Finance Act 1988**.

### **Charities & Kindred Organisations**

#### **General Provisions**

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 local 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.

### Charity Shops

The provisions are extended for 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');

### Period of Relief

If relief is awarded by the local authority, the effective date will be backdated to when the charity or kindred organisation first met the prescribed criteria. The relief will continue until a charity no longer fulfils the prescribed criteria although it is prudent for a local authority to review relief at regular intervals.

### Decision Making Process

All decisions on the award of mandatory relief to a charity or kindred organisation will be taken by officers. There is no involvement from members in the decision making process. If a registered charity's activities are deemed not to be in accordance with the charity's overall aims and objectives, mandatory relief may be refused.

### Appeals

Any appeal against a local authority's decision not to award mandatory relief can represent a challenge to its application for a liability order in the magistrate's court.

## **Community Amateur Sports Clubs**

### General Provisions

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.

### Period of Relief

If relief is awarded by the local authority, the effective date will be backdated to when the CASC first met the prescribed criteria. The relief will continue until a CASC no longer fulfils the prescribed criteria although it is prudent for a local authority to review relief at regular intervals.

### Decision Making Process

All decisions on the award of mandatory relief to a CASC will be taken by officers. There is no involvement from members in the decision making process.

### Appeals

Any appeal against a local authority's decision not to award mandatory relief can represent a challenge to its application for a liability order in the magistrate's court.

## **Rural Areas**

### General Provisions

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

An 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 rate 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 (1<sup>st</sup> April 2010 to 31<sup>st</sup> March 2017) 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 local 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 local 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 local 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 local authority's decision not to award mandatory relief can represent a challenge to its application for a liability order in the magistrate's court.

## **Discretionary Relief**

### **General**

The relevant provisions regarding the award of 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)**.

### **Charities & Kindred Organisations**

#### General Provisions

The conditions to be satisfied before a local authority can consider an application with regard to an occupied hereditament are that:-

- 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 is 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.

(Note: 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 or by a precepting authority other than charter trustees).

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 local 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.

#### Criteria for Awarding Relief

Members are advised to agree criteria for their authority which officers are expected to adhere to when awarding discretionary relief. **See Appendix C**. This should be regularly reviewed and updated. In agreeing criteria, members and officers will want to take note of the guidance note and state aid rules set out in **Appendices A & B** to the guidelines.

#### Period of Relief

If relief is awarded by the local authority, the effective date of any entitlement can be backdated to the beginning of the financial year (i.e. 1<sup>st</sup> April) in which the determination is made (subject to the relevant conditions being satisfied) if that determination was made after the 30<sup>th</sup> September. Should the determination be made before the 1<sup>st</sup> October, the effective date can be backdated to the 1<sup>st</sup> 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 local authority. In practice, many 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 the billing run each March on whether to extend relief for a period of 12 months. This is the procedure to be adopted within the Leicestershire Partnership.

By awarding relief for a fixed period, the local authority is not faced with the legal restraints should it subsequently look to reduce or withdraw relief it is granted indefinitely. If relief is awarded indefinitely, any decision to reduce or withdraw relief would only become effective having first given 12 months notice and then it would continue through to the end of that financial year.

#### Decision Making Process

As the effective date of any relief is determined by when a local 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 the criteria for each authority. Each application will be signed off by a Partnership Manager, except where the application falls outside of the criteria, whereupon, the application will be considered by the Section 151 Officer, or their deputy.

### Appeals

Any appeal against a local authority's decision to refuse the award of discretionary relief would be by way of an application of judicial review to the high court. In the first instance, any appeal against a decision to refuse an application for discretionary relief should be considered by a panel of two senior officers within the relevant authority. There would be no further right of appeal to members.

## **Community Amateur Sports Clubs**

### General Provisions

Discretionary relief can be awarded to a 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.

### Criteria for Awarding Relief

Members are advised to agree criteria for their authority which officers are expected to adhere to when awarding discretionary relief. **See Appendix C**. This should be regularly reviewed and updated. In agreeing criteria, members and officers will want to take note of the guidance note and state aid rules set out in **Appendices A & B** to the guidelines.

### Period of Relief

If relief is awarded by the local authority, the effective date of any entitlement can be backdated to the beginning of the financial year (i.e. 1<sup>st</sup> April) in which the determination is made (subject to the relevant conditions being satisfied) if that determination was made after the 30<sup>th</sup> September. Should the determination be made before the 1<sup>st</sup> October, the effective date can be backdated to the 1<sup>st</sup> 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 local authority. In practice, many 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 the billing run each March on whether to extend relief for a period of 12 months. This is the procedure to be adopted within the Leicestershire Partnership.

By awarding relief for a fixed period, the local authority is not faced with the legal restraints should it subsequently look to reduce or withdraw relief it is granted indefinitely. If relief is



awarded indefinitely, any decision to reduce or withdraw relief would only become effective having first given 12 months notice and then it would continue through to the end of that financial year.

### Decision Making Process

As the effective date of any relief is determined by when a local 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 the criteria for each authority. Each application will be signed off by a Partnership Manager, except where the application falls outside of the criteria, whereupon, the application will be considered by the Section 151 Officer, or their deputy.

### Appeals

Any appeal against a local authority's decision to refuse the award of discretionary relief would be by way of an application of judicial review to the high court. In the first instance, any appeal against a decision to refuse an application for discretionary relief should be considered by a panel of two senior officers within the relevant authority. There would be no further right of appeal to members.

## **Rural Areas**

### General Provisions

Discretionary relief may be awarded in such circumstances where the rateable value of the hereditament at the beginning of the chargeable financial year concerned does not exceed a prescribed rateable value. The amount prescribed for England is £16,500 for the period 1<sup>st</sup> April 2010 to 31<sup>st</sup> March 2017

In the circumstances described above (i.e. where a hereditament is not a qualifying general store or a qualifying post office as described in the conditions for mandatory relief), the billing authority may not award discretionary relief unless it is satisfied that:-

- The hereditament is used for purposes which are of benefit to the local community; and
- It would be reasonable for the billing authority to award relief, having regard to the interests of persons liable to pay its Ctax.

It follows from the above that where the hereditament is a qualifying general store or qualifying post office, and there is, consequently, an entitlement to mandatory relief, discretionary relief may be applied to the chargeable amount, without reference to the conditions referred to above.

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 local 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.

### Criteria for Awarding Relief

Members are advised to agree criteria for their authority which officers are expected to adhere to when awarding discretionary relief. **See Appendix C.** This should be regularly

reviewed and updated. In agreeing criteria, members and officers will want to take note of the guidance note and state aid rules set out in **Appendices A & B** to the guidelines.

### Period of Relief

If relief is awarded by the local authority, the effective date of any entitlement can be backdated to the beginning of the financial year (i.e. 1<sup>st</sup> April) in which the determination is made (subject to the relevant conditions being satisfied) if that determination was made after the 30<sup>th</sup> September. Should the determination be made before the 1<sup>st</sup> October, the effective date can be backdated to the 1<sup>st</sup> 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 local authority. In practice, many 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 the billing run each March on whether to extend relief for a period of 12 months. This is the procedure to be adopted within the Leicestershire Partnership.

By awarding relief for a fixed period, the local authority is not faced with the legal restraints should it subsequently look to reduce or withdraw relief it is granted indefinitely. If relief is awarded indefinitely, any decision to reduce or withdraw relief would only become effective having first given 12 months notice and then it would continue through to the end of that financial year.

### Decision Making Process

As the effective date of any relief is determined by when a local 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 the criteria for each authority. Each application will be signed off by a Partnership Manager, except where the application falls outside of the criteria, whereupon, the application will be considered by the Section 151 Officer, or their deputy.

### Appeals

Any appeal against a local authority's decision to refuse the award of discretionary relief would be by way of an application of judicial review to the high court. In the first instance, any appeal against a decision to refuse an application for discretionary relief should be considered by a panel of two senior officers within the relevant authority. There would be no further right of appeal to members.

### **Local Discounts**

#### General Provisions

From the 1<sup>st</sup> April 2012, a local authority can reduce the non domestic rates by up to (and including) 100% for any local ratepayer; not just those that previously were entitled to apply for discretionary relief. This relief would be awarded in the form of a discount.

If a ratepayer would not have been entitled to discretionary relief under the rules that existed prior to the 1<sup>st</sup> April 2012, a local authority may only make the decision if it is satisfied that it would be reasonable for it to do so, having regard to the interests of persons liable to pay local authority tax set by it.

It is important to stress that the extension of the provisions from the 1<sup>st</sup> April 2012 does not have an impact on ratepayers that meet the criteria that existed prior to the 1<sup>st</sup> April 2012. They would still be entitled to apply for discretionary relief under those criteria and should be considered accordingly.

### Criteria for Awarding Relief

Members are advised to agree criteria for their authority which officers are expected to adhere to when awarding discretionary relief. **See Appendix D.** This should be regularly reviewed and updated. In agreeing criteria, members and officers will want to take note of the guidance note and state aid rules set out in **Appendices A & B** to the guidelines.

### Period of Relief

If relief is awarded by the local authority, the effective date of any entitlement can be backdated to the beginning of the financial year (i.e. 1<sup>st</sup> April) in which the determination is made (subject to the relevant conditions being satisfied) if that determination was made after the 30<sup>th</sup> September. Should the determination be made before the 1<sup>st</sup> October, the effective date can be backdated to the 1<sup>st</sup> 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 local authority. In practice, many 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 the billing run each March on whether to extend relief for a period of 12 months. This is the procedure to be adopted within the Leicestershire Partnership.

By awarding relief for a fixed period, the local authority is not faced with the legal restraints should it subsequently look to reduce or withdraw relief it is granted indefinitely. If relief is awarded indefinitely, any decision to reduce or withdraw relief would only become effective having first given 12 months notice and then it would continue through to the end of that financial year.

### Decision Making Process

As the effective date of any relief is determined by when a local 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 the criteria for each authority. Each application will be signed off by a Partnership Manager, except where the application falls outside of the criteria, whereupon, the application will be considered by the Section 151 Officer, or their deputy.

### Appeals

Any appeal against a local authority's decision to refuse the award of discretionary relief would be by way of an application of judicial review to the high court. In the first instance, any appeal against a decision to refuse an application for discretionary relief should be considered by a panel of two senior officers within the relevant authority. There would be no further right of appeal to members.

### Cost of Relief

From 1<sup>st</sup> April 2013, in accordance with the rules introduced by the Rates Retention Scheme, the cost of awarding rate reliefs has changed. The cost of awarding all forms of rate relief is now split between central government, billing authorities and major preceptors

on a fixed percentage basis. Central government bears 50% of the cost, the county local authority 9%, the fire authority 1% and billing authorities the remaining 40%.

In regard to discretionary rate relief, if the relevant conditions are satisfied, the local authority has the discretion to award or refuse the application. When making their decision the local authority must consider the guidelines and appendices in this document and take into account the impact such awards might have on local authority tax payers in the area, as 40% of the cost is borne by the general fund.

## APPENDIX A

### 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 **Appendix B** to 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.

## APPENDIX B

### 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 C

### Criteria

#### Discretionary Relief Rates Relief

##### 1. Charitable Organisations.

Charitable organisations, which are receiving 80% mandatory rate relief (with the exception of educational or business training establishments and charity shops in Castle Street, Upper Castle Street, Regent Street, Market Square, Station Road and the Crescent, Hinckley), will be considered for further (discretionary) rate relief dependent upon the following requirements.

- (a) The organisation should bring a net social, environmental or economic benefit to the community, and in this way contribute to the sustainable development of the borough.
- (b) The organisation must demonstrate that its activities directly meet a local need, either by contributing to the implementation of the Hinckley and Bosworth Community Plan (or another local authority approved initiative), or through other evidence.

#### Entitlement to Relief

- (I). For the organisation to qualify for the maximum 20% discretionary relief (subject to a £6,000 limit) both of the above requirements must be met.
- (II). If only requirement (a) detailed above is met then 10% discretionary relief (subject to a £6,000 limit) will be granted.
- (III). If only requirement (b) detailed above is met then no discretionary relief will be granted.
- (IV). If neither of the above requirements are met then no discretionary relief will be granted.

In regard to charity shops, in order 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 20% discretionary rate relief (subject to a £6,000 limit), using the percentage of floor space utilised as the qualifying criteria for 'wholly or mainly' (i.e. 'more than half');

##### 2. Non Profit Making Organisations

All applications for discretionary rate relief will be considered from all types of organisations on their merits but having regard to these guidelines. The guidelines will be reviewed from time to time so that they are consistent with the local authority's prevailing policies. If the local authority considers the organisation applying for relief is charitable, then it will be advised to seek charitable registration prior to any request for discretionary relief being considered. In such circumstances the Local authority may provide advice and general assistance to the organisation.

Applications will be considered having regard to the organisation's constitution, and financial accounts. Copies of the organisation's constitution and latest set of financial

accounts should be sent with the completed application. Responses to the questionnaire will be considered as follows:

(a) Access

Membership should generally be open to all members of the community. There may be legitimate restrictions placed on membership, which relate for example 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 will 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 should show that the criteria by which it considers applications for membership are consistent with the principle of open access. Organisations that actively encourage membership from particular groups will receive more sympathetic consideration. The Local authority encourages the wider use of facilities to people other than members and will give more favourable consideration to organisations that promote their facilities more widely.

(b) Provision of Facilities

More sympathetic consideration will be given to organisations, which can demonstrate that they provide training or education for its members; provide schemes for particular groups to develop their skill; and have provided facilities by self-help or funded, by grant aid. The mere existence of a bar will not in itself be a reason for not granting relief. The local authority will take into account in the case of sports clubs the balance between playing and non-playing members and in the case of social clubs the purpose of the organisation which in both cases the bar may be considered incidental.

(c) Other considerations

If the organisation is involved in local/national development of their interests it will be advantageous in considering their application, as will organisations which mainly draw their membership from within the Local authority's area.

When considering applications the Local authority will generally take into account the contribution which the organisation makes to the amenities of the Borough. In particular, preference will be given to organisations that provide facilities, which indirectly relieve the Borough Local authority of the need to do so, or enhance and supplement those which it does provide. Organisations which provide and seek to encourage the use of such facilities to all sections of the community will receive more sympathetic consideration than those, which make no effort

To attract members from groups listed in Question 11 which the Local authority considers to be particularly deserving of support.

Those organisations providing sporting facilities such as pitches, courts etc. will be looked upon most favourably. Organisations, however, which only provide traditionally recognised bar games and/ or the following recreational activities will not be considered as sporting facilities for the purpose of applying these guidelines: darts, snooker, pool, billiards, other bar games, card games and the like.

(e) The organisation should demonstrate that its activities directly meet a local need, either by contributing to the implementation of the Hinckley and Bosworth Community Plan or other Local authority approved initiatives.

- (f) The organisation must bring a net social, environmental or economic benefit to the community, and in this way contribute to the sustainable development of the borough.

#### Entitlement to Relief

- (I). If an organisation meets all the requirements outlined in paragraphs (a) to (f) above, then 100% discretionary relief will be granted (subject to a £6,000 limit).
- (II). If any one of the requirements outlined in paragraphs (b) to (e) above are not satisfied, then discretionary relief will be restricted to 50% (subject to a £6,000 limit).
- (III). If either of the essential requirements outlined in paragraphs (a) and (f) above are not satisfied, then no discretionary relief will be granted.
- (IV) If more than one of the requirements outlined in paragraphs (a) to (f) above are not satisfied, then no discretionary relief will be granted.

Once granted, relief will be awarded for a fixed period providing there is no change in the organisation's activities.

## APPENDIX D

### CRITERIA

#### **Discretion to award rate relief to all types of businesses**

##### **Introduction**

In exercise of the local authority's general power to award discretionary rate relief (*awards under Section 47 of the Local Government Finance Act 1988 as amended by Section 69 of the Localism Act 2011*)

Section 69 of the Localism Act 2011 amends the 1988 Act to allow billing authorities the discretion to award rate relief to all types of businesses. The Plain English Guide to the Act addresses this as follows:

*"The Localism Act gives local authorities more freedom to offer business rate discounts - to help attract firms, investment and jobs. Whilst local authorities would need to meet 40% of the cost of any discount from local resources, they may decide that the immediate cost of the discount is outweighed by the long-term benefit of attracting growth and jobs to their area."*

This section sets out the local authority's agreed guidelines for dealing with applications from such cases.

##### **General Requirement**

Applications for rate relief under this section of the guidelines will normally only be considered favourably where the local authority is satisfied that an award will result in tangible benefits to local residents and in particular where the award will directly result in attracting businesses, investment or jobs to the local area.

In submitting an application, the ratepayer must demonstrate, with verifiable supporting evidence that it is in the interests of the local authority's council tax payers to make an award.

##### **Maximum Amount of Awards**

The Localism Act 2011 allows scope for the local authority to award up to 100% rate relief in any one year for qualifying businesses. The maximum amount awarded shall normally be limited to no more than 50% of the rate liability except where there are exceptional circumstances which justify a greater amount (subject to a £6,000 limit).

##### **Duration of Awards**

Each amount of rate relief awarded under these guidelines shall normally apply for no more than one financial year at a time but new applications may be made each financial year.

In exceptional circumstances and where each of the following conditions are met, an award may be made for up to three financial years:

- i) The award relates to non-domestic rates payable in respect of a new hereditament or an increase in rateable value of an existing hereditament;
- ii) New employment opportunities will be created as a result of the new hereditament or enhancements to an existing hereditament;

iii) The award is considered to be essential to securing the development of the hereditament;

iv) The award will not result in a lower amount of retained rates yield in respect of the hereditament than that retained prior to the development.

### **Information to Support Applications**

All applicants are required to complete the local authority's rate relief application form. Such information and evidence as the local authority requires must be provided to support an application and in the event that the requested information and evidence is not provided the application may be refused.

On receipt, local authority officers will prepare a report setting out the merits of the application. This report will detail, amongst other elements the economic, social and environmental benefits that may derive from granting the application.

### **Relationship to other forms of Rate Relief**

Applications under this section will only be considered after consideration of any other forms of rate relief to which the applicant may be eligible (excluding hardship rate relief).

### **Guidelines for Making Awards**

Each application will be considered on its individual merit but in making a decision on the award the following factors must be considered by the decision maker:

- i) That awards should only be made in exceptional circumstances;
- ii). The value of any previous awards and the benefits to the local authority's council tax payers realised from previous awards;
- iii) The cost to the local authority, including the loss of income or of retained rates yield, in making an award;
- iv) The impact of the cost or loss of income in relation to the local authority's overall financial situation;
- v) The benefits to the local authority's council taxpayers in making an award, and in particular whether the award will directly result in attracting businesses, investment or jobs to the local area;
- vi) The impact on other non-domestic ratepayers in the borough;
- vii) The local authority's statutory equality duties;
- viii) That awards should normally only be made where the ratepayer's activities in the area will contribute towards the aims and objectives of the Corporate Plan;
- ix) The extent to which an award will support the local authority's aspiration to promote and encourage economic growth, and in particular growth in the non-domestic rating taxbase and in employment opportunities for residents of the borough;
- x) The overall profitability of the business.