

DISCRETIONARY RATE RELIEF POLICY 2019/20

Background

The Council is empowered to award Discretionary Rate Relief (DRR) under S.47 of the Local Government Finance Act 1988. This may be awarded as a 'top-up' to those organisations qualifying for Mandatory rate relief (mandatory relief amounts to 80% of the rates due) or up to 100% DRR to other organisations who do not qualify for mandatory relief.

The Council wishes to promote equality between organisations when granting discretionary rate relief. In deciding whether to award rate relief it will take into account previous awards that have been made to similar organisations/bodies.

Awards of rate relief will be reviewed on an annual basis by Members of the Finance, Innovation & Property Advisory Board unless a longer award date has been previously agreed.

The Council may also award relief to any local ratepayer to encourage new business and investment as well as to support local shops or community services.

Any relief granted is used to reduce the amount that the organisation is required to pay in Non-Domestic Rates, commonly known as Business Rates.

Charity Relief – Mandatory Relief (80%)

Section 43 of the Local Government Finance Act 1988 allows mandatory relief (80%) to be granted on premises if the ratepayer is a charity or trustees for a charity and the premises are wholly or mainly used for charitable purposes. From 1st April 2008 Section 45A of the Local Government Finance Act 1988, as amended, allows for no charge to be made in respect of unoccupied premises where it appears that when next in use it will be wholly or mainly used for those purposes.

Charity registration

Charities are defined by s.67 (10) of the Local Government Finance Act 1988 as being an institution or other organisation established for charitable purposes only or by persons administering a trust established for charitable purposes only.

Community Amateur Sports Club (CASC) – Mandatory Relief (80%)

The legislation was amended by the Local Government Act 2003 to include a club/organisation with CASC (Community Amateur Sports Club) status. They automatically receive 80 per cent mandatory relief which is fully paid for by the Government.

Non profit-making bodies - Discretionary Relief (20% Top-up)

Registered as a charity or CASC - up to 20% top-up relief can be granted to:

- Sports clubs if registered as Community Amateur Sports Clubs (CASC)
- Recreational facilities, sports grounds and playing fields occupied by charities
- Applications where special considerations may apply

Discretionary 'Top-up' – up to 20% paid by:

- 40% TMBC
- 9% Kent County
- 1% Kent Fire
- 50% Government

Discretionary Relief (up to 100%)

Section 69 of the Localism Act 2011 allows a local authority to grant discretionary relief in any circumstances where it feels fit.

The provisions are designed to give authorities flexibility in granting relief where it is felt that to do so would be of benefit generally to the area and be reasonable given the financial effect to Council Tax payers.

The Council has a duty to carefully consider every application on its merits, taking into account the contribution that the organisation makes to the amenities of the area.

Discretionary – up to 100% paid by:

- 40% TMBC
- 9% Kent County
- 1% Kent Fire
- 50% Government

It is acknowledged that if a club or organisation has no recognised accreditation it is still entitled to apply for up to 100% discretionary rate relief and the officers will use this criteria to assess whether there are specific circumstances which should be taken into account in making a decision to award rate relief to such an applicant.

Factors to be used in determining awards of Discretionary Rate Relief

In determining awards of relief, the Council will bear in mind all the facts of each case including the following factors;

- The hereditament must be used wholly or mainly for the purpose of the organisation.
- There must be evidence in the Constitution or Articles of Association that the organisation is non-profit making.
- Membership or access is open to all sections of the community. Membership fees should be set so as to be accessible to people on low incomes.
- The facilities are made available to other sections of the community, e.g. schools.

- The organisation provides training/education or coaching to its members and/or the local community.
- There is suitable evidence of safeguarding and equality measures in place for its members or those using the facilities, e.g. for safeguarding children or vulnerable adults and an inclusion policy.
- Consideration will be given to the income and expenditure accounts for as many financial years as deemed necessary and must be provided on request or the application will be refused. Surpluses must be reinvested in the organisation and there must be no substantial reserves which would suggest that support is not necessary.
- Consideration will be given to all sources of income.
- If the organisation operates a bar, it will need to prove that its profits are used solely for the benefit of the organisation and its members.
- The organisation must be a local organisation.
- Consideration will be given to the impact of the organisation on other local businesses.
- Consideration will be given to the use of the property and if it appears to be proportionate to the size of the property.
- The ratepayer must occupy the premises (no discretionary rate relief will be granted for unoccupied premises)
- The organisation must directly benefit Tonbridge & Malling residents and must relieve the Council of providing similar facilities.

In addition, relief may also be granted if the applicant body caters for special needs (see below).

Meaning of 'special needs'

Does the organisation cater for a section of the community which the Authority considers particularly deserving of support, e.g. persons with disabilities, persons with learning difficulties, the very young or the very old?

Where the applicant body provides such special needs or supplies facilities that would not otherwise be available in the area or supports the Council's key priorities, the maximum amount of relief will generally be awarded, subject to the following;

Restrictions on the granting of relief

In determining whether relief should be awarded, the Council will be inclined not to grant relief or to limit the amount of relief awarded in the following cases.

- As a general rule, the Council is unlikely to grant relief to national charities located within the Council's area unless there is some specific benefit to the residents of Tonbridge & Malling Borough Council over and above the benefit to the residents of other areas in which the charity operates;
- The Council is unlikely to grant relief to charity shops or shops operated by the trading arms of charities;
- Where an applicant body is a national organisation but operates only in part of the Council's area, any relief that may be awarded will generally be reduced pro rata the population of the area of the Borough that receives benefit from that

organisation. This restriction will not generally apply if the body is not a national body and has been established to benefit only a part of the Council's area;

- Membership of the organisation is restricted by the amount of the subscription or other limiting factors which preclude the whole of the public from having effective access to the organisation's activities;
- A substantial portion of the organisation's income comes from bar receipts (unless profits are used solely for the benefit of the organisation and its members);
- A club is run for political purposes;
- There would be duplication of financial assistance where grant aid of any other kind is being given by the local authority directly or under Section 48 of the Local Government Act 1985;
- The applicant is a Housing Association.

Special cases

The Council recognises that there will be occasions when an applicant body does not satisfy the above criteria. The criteria are not restrictive and nothing in them shall be taken as restricting the Council's ability to depart from its general policy as to the granting of relief if it sees fit to do so bearing in mind the facts of the case

Application Process

Ratepayers will be obliged to make a written application to the Council, for which forms are provided.

All awards of Discretionary Rate Relief will be subject to Member approval.

In all cases, the Council will notify the ratepayer of decisions made.

Where an application is successful, the following will be notified to them in writing;

- the amount of relief granted and the date from which it has been granted;
- the date on which any relief granted 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 authority of any change in circumstances that may affect entitlement to relief.

Where relief is not granted then the following information will be provided, again in writing;

- an explanation of the decision within the context of the authority's statutory duty; and
- an explanation of the appeal rights

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.

Under the Local Government Finance Act 1992, there is no right of appeal against the Council's use of discretionary powers. However, the Council operate an internal review process and will accept a customer's request for an appeal of its decision.

All requests must be made in writing to the Principal Revenue Officer, within one month of the Council's decision, and should state the reasons why the ratepayer is aggrieved with the decision of the council. New information may be submitted at this stage to support the ratepayer's appeal. Requests will be considered by Members of the Finance, Innovation & Property Advisory Board.

If an unsuccessful applicant decides to make a request for an internal review they will still need to continue to pay their rates bill. If the request is successful, the rates bill will then be adjusted.

For ratepayers who remain aggrieved and wish to pursue the matter further, the next step is to make an application for judicial review.

Affordability

Discretionary Relief is not a matter of right. The Council is entitled through this policy to determine different levels of discretionary relief according to the nature and circumstances of individual organisations.

The above criteria will be subject to budgetary provision being available. Although the Council will aim to achieve equality between organisations in terms of the level of relief that it grants, this might not always be possible. The Council has the right, subject to giving the requisite notice required by law, to vary the level of relief that it has previously granted either in respect of a particular organisation or in respect of a class of organisation or to all organisations in receipt of relief. The Council also has the right to apportion rate relief based on the levels of budget available at the time of applying.

Decision Form

Name of Organisation:

Reason for Application:

Liability.....

Discretionary Rate Relief Awarded

YES

NO

If yes Amount Awarded.....

Awarding Discretionary Rate Relief – Factors Considered by Members of the Finance, Innovation & Property Advisory Board

Reason for refusing Discretionary Rate Relief, if applicable

Signed.....

Dated.....