

# NORTH YORKSHIRE COUNTY COUNCIL

## EXECUTIVE

5 July 2022

### Non Domestic Rating Discretionary Rate Reliefs and Hardship policies

#### **1.0 PURPOSE OF REPORT**

- 1.1 To approve the policies and delegations for use by the new North Yorkshire Council in the granting of discretionary rate relief and hardship relief in respect of Non Domestic Rating.

#### **2.0 BACKGROUND**

- 2.1 The new North Yorkshire Council must adopt policies for the application of discretionary non-domestic rating reliefs and hardship policies for the year commencing 1<sup>st</sup> April 2023. The proposals must be adopted by Full Council by 31 March 2023, however early approval is recommended in order that the financial implications of the decisions can be accommodated within the new organisation's budget and Council Tax setting process. It is intended that a unified approach be adopted by the new organisation to ensure equity across the whole of the North Yorkshire Council area.
- 2.2 The following report identifies key decisions required in respect of a number of areas within the Non-Domestic Rating provisions. The report focusses on discretionary rate relief (as defined by S47 of the Local Government Finance Act 1988) and the hardship provisions (as defined by S49 of the Local Government Finance Act 1988).
- 2.3 All of the above will require consideration by Full Council in order to enable all the policies to be in place for 1 April 2023.
- 2.4 The following sections highlight the decisions required and also make recommendations in a number of areas.

#### **Discretionary Rate Relief**

- 2.5 Non-Domestic Rating has a large number of reliefs divided basically into two types: mandatory and discretionary. Mandatory are dictated by legislation and the new North Yorkshire Council will be obliged to implement those in full. In the case of discretionary relief, these are themselves broadly divided into three types as follows:
- (a) Discretionary relief which is defined by legislation and borne by the Council and Government under the Business Rates Retention provision (50%/50%);
  - (b) Discretionary relief which is wholly defined by the Council and borne by the Council and Government under the Business Rates Retention provision (50%/50%) (Localism Reliefs); and
  - (c) Discretionary relief which is wholly defined by the Government and reimbursed by the Government under a S31 Grant.

- 2.6 In the case of (a), the basic provisions are laid down by legislation (S47) but the decision whether to grant relief is at the discretion of each Council. Councils are required to develop their approach to granting reliefs within the legislative framework.
- 2.7 In the case of (b), each Council has full discretion to develop its own policy and relief can be awarded to any ratepayer.
- 2.8 In the case of (c), Government has for a considerable time developed schemes which are expected to be adopted by Councils. These are normally in response to economic events such as the financial crisis or the recent pandemic. In these cases, where Councils adopt the suggested approach, the full amount of relief is reimbursed by means of a S31 grant. It is therefore obvious, that with these reliefs, all billing authorities currently adopt Government guidance in full.

2.9 For information, the reliefs available under each category are as follows:

**2.9.1 Discretionary relief which is defined by legislation and borne by the Council and Government under the Business Rates Retention provision (50%/50%), comprising:**

- (i) Discretionary relief for those ratepayers who receive mandatory Charity Relief (80%) – discretionary relief can be granted up to 20% and is often referred to as ‘top up’. This category can include Community Amateur Sports Clubs (CASCs);
- (ii) Discretionary relief for those ratepayers who are in a Rural Settlement and who do not receive mandatory rural rate relief – discretionary relief can be granted up to 100%;
- (iii) Discretionary relief for those ratepayers who are not charities but who are not for profit and whose main objects are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature, or the fine arts – discretionary relief can be granted up to 100%; and
- (iv) Discretionary relief for those ratepayers who are not charities but whose premises are wholly or mainly used for purposes of recreation, and all or part of it is occupied for the purposes of a club, society or other organisation not established or conducted for profit. These are largely sports clubs (not CASCs) – discretionary relief can be granted up to 100%;

**2.9.2 Discretionary relief which is wholly defined by the Council and borne by the Council and Government under the Business Rates Retention provision (50%/50%) (Localism Relief);**

Relief under this provision is wholly determined by each Council. This relief is commonly known as the localism provisions and allows authorities to grant up to 100% relief to any ratepayer that meets the Council’s defined policy;

**2.9.3 Discretionary relief which is wholly defined by the Government and reimbursed by the Government under a S31 Grant, currently comprising:**

- (i) Mandatory Rural Rate Relief – Top Up (50%);
- (ii) Local Newspaper Relief – Up to 100%;
- (iii) Transitional & Support for Small Businesses Relief (variable relief for small and medium businesses) (2022/23 only);
- (iv) Retail, Hospitality and Leisure Relief – 50% subject to a cash cap of £110,000;
- (v) Covid Additional Restrictions Fund (CARF) for 2021/22 only, variable subject to fund limits; and
- (vi) Investment Relief (from 2023)– 100% relief based on certificated values from the Valuation Office Agency.

2.10.1 The following broadly summarises the overall approach currently being taken by the districts within the North Yorkshire area:

- **Discretionary relief which is defined by legislation and borne by the Council and Government under the Business Rates Retention provision (50%/50%):**

A variety of approaches are being undertaken within each district; however, a number adopt a 'points based' approach when determining the level of relief to be granted

- **Localism Relief:**

Only one district (Richmondshire) has granted relief in 2022/23 under these provisions. These reliefs relate to Child Care business who are automatically awarded 50% relief.

- **Discretionary relief which is wholly defined by the Government and reimbursed by the Government under a S31 Grant:**

All districts adopt Government guidance in full in order to assist local businesses and fully reclaim the S31 Grants available.

### **Hardship relief**

2.11 All authorities have the ability to reduce or remit rates liabilities where hardship is proven under S49 of the Local Government Finance Act 1988. Most authorities adopt a flexible policy and cases are assessed on a case by case basis. Any amount of reduction awarded is met under the business rates retention scheme.

### **3.0 DISCRETIONARY RELIEF PROPOSALS FOR THE NORTH YORKSHIRE UNITARY COUNCIL**

3.1 The creation of a single North Yorkshire Council requires the development of a single unified approach in all areas relating to both discretionary rate relief and hardship to ensure equality across all the whole of the North Yorkshire area.

3.2 The approach taken in regards to the granting of discretionary NNDR reliefs will affect the new organisation's budget, and an application and assessment process will need to be launched, therefore Full Council's early approval of the policies is recommended.

3.3 The proposals for each category of relief are detailed below.

#### **Discretionary relief which is defined by legislation and borne by the Council and Government under the Business Rates Retention provision**

3.4 As all of the Districts currently operate separate approaches, it is essential that a single approach is adopted which is both robust and simple to operate across the whole of the North Yorkshire area. It is recommended that a points-based system be adopted, whereby the ratepayer's aims and objectives are measured against key criteria set by the Council. The essential advantage of such a system would be that it would allow for uniformity across the whole area whilst at the same time applying a high level of reasonableness given the need to be fair to all applicants and the need to align any relief with the key aims of the new authority. The grid provided at **Appendix A** provides the recommended approach that will be taken and sets out the key criteria that will be assessed.

3.5 All ratepayers wishing to apply for relief will be required to make a full application prior to the commencement of the 2023/24 financial year.

- 3.6 The grid approach is recommended as it provides a comprehensive, easy to use, points system for use in **all** discretionary areas where S31 Grant funding is not provided by Government. It is aimed at:
- Mandatory 'top up' (existing charities);
  - Non-profit making organisations (philanthropic, social welfare etc);
  - Non-Profit Clubs and Organisations providing Recreation; and
  - Rural premises not receiving mandatory relief.
- 3.7 CASCs (although they are mandatory recipients) would be treated in the same way as other sports or recreation clubs.
- 3.8 The 'key elements' shown along the top row of the grid detailed in **Appendix A** should be those that are of major importance to the Council and are recommended for member approval within this report.
- 3.9 Points would be awarded where organisations are able to demonstrate that they meet the key criteria. A typical example would be that points be 'graded' to allow for full compliance (e.g., 2 points); partial compliance (e.g., 1 point); or failure to comply (e.g., 0 points). The total point score would be translated to a 'points range' which is specific to each category and will allow for a fixed percentage of relief to be determined.
- 3.10 Given that the Council has yet to formulate and weight its key objectives, it is recommended that the approval of the specific scoring ranges to be used within the assessment of these reliefs be delegated to the Council's designated S151 Officer and that this be captured in any subsequent scheme of delegation.
- 3.11 It is proposed that Revenues Managers be delegated the authority to approve reliefs granted under this policy and that this be captured in any subsequent scheme of delegation.

### **Localism Relief**

- 3.12 Only one District has awarded localism based reliefs in the 2022/23 year (Richmondshire) and this is a continuation of a policy that was adopted pre-COVID. These reliefs will come to an end on 31 March 2023.
- 3.13 For the granting of future reliefs under the localism provision (post 1 April 2023), it is recommended that each case be considered on an individual basis in line with the overarching policy shown within **Appendix B**.
- 3.14 It is proposed that the Section 151 Officer be delegated the authority to approve reliefs granted under this policy.

### **Discretionary relief which is wholly defined by the Government and reimbursed by the Government under a S31 Grant**

- 3.15 Reliefs granted under these provisions are initiated for and paid in full by Central Government. There are a range of reliefs currently available and the Treasury use these to mitigate the effects of economic downturns or to encourage businesses to develop in certain areas or sectors.
- 3.16 Given that the reliefs are fully funded, it is recommended that the Council adopts all S31 Government funded discretionary reliefs in accordance with any guidance issued.

## **Hardship Relief**

- 3.17 The Council will have the power to remit or reduce rates under S49 of the Local Government Finance Act 1988. The recommended policy to be adopted by the Council is shown at Appendix B. Applications for hardship relief post 1 April 2023 will be considered via this policy on a case-by-case basis.
- 3.18 It is proposed that the Section 151 Officer be delegated the authority to approve reliefs granted under this policy.

## **4.0 CONCLUSIONS**

- 4.1 Given the importance of discretionary rate reliefs and hardship relief, it will be essential for the Council to have robust and unified policies in place for 1 April 2023, which can be applied to the whole of the North Yorkshire area.

## **5.0 FINANCIAL IMPLICATIONS**

- 5.1 The current districts and boroughs currently incur circa £1m per annum in respect of discretionary reliefs which are not fully funded by Central Government. However, this cost is partly funded by Government (approximately 50%) under the business rates retention scheme.
- 5.2 Whilst the Council is not able to fix an exact budget given the nature of discretionary relief, and the need to not fetter the Council's discretion, it is anticipated that the costs for future reliefs will be in a similar region to current spend.

## **6.0 LEGAL IMPLICATIONS**

- 6.1 The recommendations made will meet the Council's legal obligations under Sections 47 and 49 of the Local Government Finance Act 1988.

## **7.0 CLIMATE CHANGE IMPLICATIONS**

- 7.1 None

## **8.0 EQUALITIES IMPLICATIONS**

- 8.1 An Equalities Impact Assessment has been completed on the proposals set out within this report and no adverse impact has been identified.

## **9.0 RECOMMENDATIONS**

- 9.1 Executive Members are asked to consider the contents of this report and recommend that Full Council approve the following:
- (i) Discretionary relief which is defined by legislation and borne by the Council and Government under the Business Rates Retention provision:
- that all businesses and organisations who apply for discretionary relief with effect from 1 April 2023 be assessed for eligibility in accordance with the legislation, and that relief be awarded in line with the key criteria and points based scheme detailed in paragraphs 3.4 to 3.11;
  - that the approval of the scoring mechanism to be used within the assessment of the reliefs be delegated to the Council's designated S151 Officer, having full regard to individual cases and the corporate aims and objectives of the

Council;

- that the authority to grant the relief be delegated to designated Revenues Managers under a scheme of delegation.

(ii) Localism relief

- that the Council adopts the policy attached at Appendix B and awards Localism reliefs in accordance with that policy.
- that the authority to grant relief under the localism provisions be delegated to the Council's S151 Officer.

(iii) Discretionary reliefs wholly defined by the Government and reimbursed by the Government under a S31 Grant

- that the Council adopts all S31 Government funded discretionary reliefs in accordance with any guidance issued.
- that the Council's S151 Officer be delegated the authority to amend any such approach to ensure that any relief granted is in line with the intentions of the Government and is compatible with the Council's objectives.

(iv) Hardship relief

- that the Council adopts the Hardship Relief policy attached at Appendix C and considers reducing or remitting any non-domestic rate in accordance with that policy.
- that the authority to grant relief under the hardship provisions be delegated to the Council's S151 Officer.

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Discretionary Relief Criteria														
Charity Relief Type	Key Elements													
	Max. %	1 Meets Corporate Aims	2 Relieves Public funding	3 Local Charity / Business	4 Premises used for direct service provision	5 Already funded by Council	6 Assists Specific Areas (Example Rural areas or areas of high deprivation/ Employment)	7 Promotes Welfare or Education Training	8 Actively encourage specific groups	9 Membership open to all & reasonable pricing / concessions	10 Local membership	11 Commercial activities or Bar Profits/ Gaming	Point Range	% Awarded
	Mandatory Recipients - <b>Top Up</b> (Discretionary) (Business Rates Retention) (Excluding CASC)	20												
														10%
Discretionary Relief – Non Profit Making <b>organisations</b> (Business Rates Retention)	100													Nil
														25%
														50%
														75%
														100%
Discretionary Relief – Non Profit Making <b>Recreation</b> (Business Rates Retention)	100													Nil
														25%
														50%
														75%
														100%
Mandatory Recipients <b>CASC - Top Up</b> (Discretionary) (Business Rates Retention)	20													Nil
														10%
														20%

**Non Domestic Rating – Localism Discretionary Relief Policy**

## Discretionary Relief – Localism Act 2011

### General Explanation

1. Section 69 of the Localism Act 2011 amended Section 47 of the Local Government Finance Act 1988. These provisions allow all Councils to grant discretionary relief in **any** circumstances where it feels fit having regards to the effect on the Council Taxpayers of its area.
2. 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 Taxpayers.

### Discretionary Relief – Localism – the Council’s Policy

3. Applications will be considered from any ratepayer who wishes to apply. However, where a ratepayer is suffering hardship or severe difficulties in paying their rates liability then relief can be granted under the existing provisions as laid down by Section 49 of the Local Government Finance Act 1988. There will be no requirement to grant relief in such cases under the Council’s discretionary relief policy.
4. The Council will consider any application for discretionary rate relief under these provisions against the following criteria and the amount of relief granted will be dependent on the overall level of compliance;

Factor	Explanation	Compliant	
		Yes	No
	The ratepayer <b>must not</b> be entitled to mandatory rate relief (Charity or Rural Rate Relief)		
	The ratepayer <b>must not</b> be entitled to Central Government funded discretionary reliefs (S31 funded)		
	The ratepayer <b>must not</b> be an organisation that could receive relief as a non-profit making organisation or as a sports club or similar		
	The ratepayer <b>must</b> occupy the premises (no discretionary rate relief will be granted for unoccupied premises)		
	The premises and organisation <b>must</b> be of <i>significant</i> benefit to residents of the Council’s area		
	The premises and organisation <b>must</b> relieve the Council of providing similar facilities		
	The ratepayer <b>must</b> ; (i) Provide facilities to certain priority groups determined by the Council such as elderly, disabled, minority groups, disadvantaged groups; <b>or</b> (ii) Provide <i>significant</i> employment or employment opportunities to residents of the Council; <b>or</b> (iii) Provide the residents of the area with such services, opportunities or facilities that cannot be obtained locally or are not provided locally by another organisation		
	The ratepayer <b>must</b> demonstrate that assistance (provided by the discretionary rate relief) will be for a <i>short time only</i> <b>and</b> that any business / operation is financially viable in the medium and long term		
	The ratepayer <b>must</b> show that the activities of the organisation are consistent with the Council's core values and priorities		

5. Any relief granted will initially be considered for initially a short period (3 months maximum)

**Non Domestic Rating – S49 Hardship Policy**

## **General Explanation**

1. The Council is able to exercise its discretion under Section 49 of the Local Government Finance Act 1988 to provide either partial or full relief for non-domestic rate payments in cases of hardship where it would be reasonable to do so having due regard to the interests of council taxpayers in general.

## **Discretionary Relief – Hardship – the Council’s Policy**

2. The Council will accept applications for hardship relief from individuals and organisations based on their own merits on a case-by-case basis. The *Revenues and Benefits Service* will consider applications. Application forms are available from the Council.
3. A successful applicant will need to demonstrate that each of the following three conditions has been met:
  - (a) that the business is suffering hardship;
  - (b) that the business is viable and that the granting of relief will help to ensure the future of the business; and
  - (c) that the business benefits the local community and its failure will be of significant impact to the local economy.
4. Prior to any reduction in rate liability being applied, the business is expected to have taken appropriate action to mitigate or alleviate their hardship by:
  - taking independent professional business advice;
  - reviewing their pricing structure or its approach to income generation;
  - where allowed by law, to re-negotiating with creditors, including any financial institutions; service providers and the landlord regarding rent (the Council is mindful of insolvency statute that may limit this);
  - having a business plan in place to address the hardship

## **Applications and Decision Making**

5. Hardship relief is intended to provide short term assistance to a ratepayer suffering unexpected hardship, financial, or otherwise, arising because of exceptional circumstances or short-term crisis beyond the business’ control and outside of the normal risks associated with running a business of that type, to the extent that the viability of the business would be threatened if an award were not made or where such a failure may significantly affect the local economy or employment.
6. As the definition covers unforeseen events, it is not possible to offer precise definitions. However, a 'crisis' would have to result in a serious loss of trade, employment or have a major effect on the services that can be provided.
7. 'Exceptional circumstances' will usually be circumstances that came from outside the business or organisation and are beyond the normal risks faced by businesses and cannot be foreseen or avoided. The effect of strikes within a business or organisation, increased day to day running costs and increased competition would not be considered as 'exceptional circumstances' as they are normal business risks.
8. Applications to reduce or remit the non-domestic rate charge will only be considered where the Council is satisfied that the ratepayer would otherwise sustain hardship if no award was made and that it is reasonable to grant relief having regard to the interest of Council Taxpayers who are affected by decisions under this section.

9. Applications for hardship will be examined on a case-by-case basis by the *Revenues and Benefits Service*. Each application will be assessed on its individual merits. Other issues or requirements will also be considered in relation to the application as they arise including:
  - All applications should be made in writing from the ratepayer, their advocate/appointee or a recognised third party acting on their behalf, preferably using the relevant form, and should contain the necessary information to substantiate the request;
  - All applications are only intended as short-term assistance and will not extend beyond the current financial year, and should not be considered as a way of reducing rate liability indefinitely;
  - The financial interests of the Council Taxpayers will not be the sole overriding factor e.g., the impact on employment and amenities provision will also be considered;
  - The test of 'hardship' is not confined strictly to financial hardship - all relevant factors affecting the ability of a business to meet its liability for rates are considered where readily available. Where the granting of relief will have an adverse effect on the financial interests of the council taxpayers, relief may still be granted if the case for relief on balance outweighs the costs to taxpayers;
  - The test of hardship will include an assessment of the ratepayer's individual accounts to verify that the payment of rates would cause hardship; and
  - The how the reduction in rate liability may affected by the Subsidy Control rules.
10. Upon receipt of a written application, all supporting information must be included for consideration.
11. Once a decision has been approved the ratepayer will be advised in writing of the decision.

#### **Review of Decision**

12. Under S49 of the Local Government Finance Act 1988, there is no general right of appeal against the Council's use of discretionary powers. However, on individual applications, the Council will accept a request from a ratepayer for a re-determination of its decision. The Council will consider whether the ratepayer has provided any additional information that will justify a change to its original decision.
13. The Council will notify the ratepayer of its decision within 21 days of receiving a request for a redetermination. This decision shall be final.
14. Should the ratepayer feel aggrieved by the way the Council has considered any application, the matter will be dealt with in accordance with the Council's complaints procedure.

#### **Award of Relief and Period of the award**

15. Relief will normally only be awarded retrospectively. However, where the ratepayer can show that the circumstances will remain the same for a period up to the end of the current financial year, relief may be award for the remainder of the year.
16. Hardship Relief will **not** be granted in respect of an unoccupied premises or where there is little or no expectation of economic survival.
17. In all cases, it is expected that businesses should have taken prompt action to mitigate any factors giving rise to hardship. Examples of mitigating actions may include seeking business advice; discounts and promotions; reviewing pricing; extending the range of stock or services; and negotiating with creditors etc. Applications may be declined in circumstances where the business is unable to demonstrate that it is taking reasonable steps to alleviate the hardship.

18. In all cases relief will end in the following circumstances:
  - At the end of a financial year;
  - A change of ratepayer;
  - The property becomes unoccupied, partly unoccupied or is used for a different purpose;
  - The ratepayer enters any form of insolvency; or
  - The ratepayer's financial circumstances significantly change.
19. The ratepayer must inform the Council if their circumstances change within a period of 21 days from the date of change.
20. The Council will review cases periodically where awards are made to confirm hardship persists.
21. The Council will not accept deliberate manipulation of this policy or fraud. Any person caught falsifying information to gain a discretion award will face prosecution and any amount awarded will be removed from the non-domestic rate account.