



**POLICY ON THE AWARD OF  
MANDATORY AND  
DISCRETIONARY RATE RELIEF  
HARDSHIP RELIEF AND  
SECTION 44A PART OCCUPIED RELIEF**

## Version Control

<b>DATE</b>	<b>AUTHOR</b>	<b>VERSION</b>	<b>REASON CHANGED</b>
January 2014	Richard Davies Head of Revenues and Benefits	1.00	Initial Policy
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# **1. Introduction**

- 1.1 The purpose of this document is to set out the Council's Policy on the awarding of mandatory and discretionary rate relief, section 49 hardship relief and section 44a part occupied relief
- 1.2 It provides members and officers with a framework for the administration and control of the reliefs.
- 1.3 It sets out the legislative framework within which relief can be awarded and the criteria to be met.
- 1.4 The introduction of this Policy will enable future awards and reviews of reliefs to be carried out in an equitable manner in accordance with best practice.
- 1.5 It will also ensure that regular reviews of entitlement are carried out and that only organisations which operate in accordance with the Policy will continue to receive relief. This will improve the control environment and ensure that in future the budget allocated to Discretionary Relief will be spent in accordance with the Policy, ensuring that the Council's resources are used equitably so providing relief to many deserving organisations within the borough.
- 1.6 This Policy has been formally approved by the Executive Member for Resources.

## 2 Legal Framework

2.1 The law relating to rate relief is set out in the following Acts:

### **Local Government Finance Act 1988**

Section 43 relates to occupied property and requires the Authority to grant Mandatory Rate Relief where the ratepayer is a charity or trustee for a charity and the property is used wholly or mainly for charitable purposes.

Sections 47 and 48 permit the Authority to grant Discretionary Relief to charities and other organisations of prescribed type (as set out in Section 4 below).

Section 49 permits the authority to grant hardship relief to occupied and unoccupied properties where 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 Council Tax.

Section 64 (10) Relates to charity shops and provides that a shop is to be treated as wholly or mainly used for charitable purposes if it is wholly or mainly used for the sale of goods (less expenses) if the goods are donated and the proceeds are to be used for the purposes of that charity.

Section 44A Permits the authority to exercise its discretion in requesting a revised certificated from the Valuation Office in respect of a temporary reduction in the rateable value of premises that are partly unoccupied for a short period of time.

### **Local Government Act 2003**

Section 64 of this Act also amends the 1988 Act as follows:

Section 43 Includes Community Amateur Sports Clubs in the definition of those eligible for Mandatory Relief

Section 45 Deals with the effect of Sports Clubs becoming empty.

Section 47 Adds Community Amateur Sports Clubs to the definition of those eligible for Discretionary Relief.

### **Rating Empty Properties Act 2007**

Amends the 1988 Act as follows:

S45A Unoccupied hereditaments Zero Rating (Charities / CASCs)

S47(10) Unoccupied hereditaments Zero Rating (Discretionary Relief)

### **3 Mandatory Relief**

#### **3.1 Organisations which qualify for Mandatory Relief**

3.1.1 In order to qualify for mandatory relief an organisation must not be conducted for profit and the property they occupy must be wholly or mainly used for charitable purposes or those of a Community Amateur Sports Club. If the property is empty it must appear to the authority that when next in use the property will be wholly or mainly used for charitable purposes.

3.1.2 The types of organisation which normally qualify for relief are:

- (i) Charities registered under Section 3 Charities Act 1983
- (ii) The following organisations which are excepted from registration under the Charities Act:-
  - (a) Church Commissioners
  - (b) Organisations registered with the Friendly Societies Acts 1896 – 1974
  - (c) Boy Scouts and Girl Guides Association
  - (d) Voluntary Schools within the meaning of the Education Acts 1944 – 1980 – having no permanent endowment other than school premises.
- (iii) Charity shops provided they are wholly or mainly used for the sale of goods donated to the charity and proceeds from the sale of goods are used for the charity only.
- (iv) Organisations registered as Community Amateur Sports Clubs.

#### **3.2 Level of Mandatory Relief Available**

3.2.1 Occupied Premises – qualifying organisations are entitled to Mandatory Relief of 80% of the full rate otherwise payable.

## 4. Discretionary Relief

### 4.1 Organisations which qualify for Discretionary Relief

4.1.1 In order to qualify for discretionary rate relief one or more of the following must apply:

- (i) the ratepayer is a charity or trustees for a charity, and the property is wholly or mainly used for charitable purposes (whether of that charity or of that and other charities);
- (ii) the property 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;
- (iii) 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 purposes of a club, society or other organisation not established or conducted for profit;
- (iv) the ratepayer is registered by the Inland Revenue as a Community Amateur Sports Clubs status;
- (v) there may be a special scheme that is introduced by the Welsh Government which the authority adopts for a set period of time, for example (Retail Rate Relief, High Street Retail Rate Relief).

### 4.2 Level of Discretionary Relief Available

4.2.1 Organisations in receipt of Mandatory Rate Relief may be awarded “top up” Discretionary Relief as follows:

- Schools/Museums – 20%
- Rateable value of less than £49,999 – 20%
- Rateable value exceeds £50,000 – 0%

4.2.2 Other organisations may be awarded up to 100% Discretionary Relief as follows:

- Schools/Museums – 100%
- Rateable value of less than £49,999- 100%
- Rateable value exceeds £50,000 – 80%

4.2.3 The following, whilst not exhaustive, is a list of the types of organisations which may qualify for discretionary relief:

- (i) Sports clubs
- (ii) Organisations Providing Community Centres/Halls
- (iii) Centres for Community Welfare and Education
- (iv) Youth Groups, Clubs etc
- (v) Artistic, Musical or Other Such Organisations

- (vi) Other Voluntary Organisations
- (vii) Social Enterprises

#### 4.3 Policy on the Award of Discretionary Rate Relief

##### **Organisations Qualifying for Mandatory Relief**

4.3.1 Council Policy is to award “top up” Discretionary Relief to those organisations that qualify for 80% Mandatory Relief and which meet the Discretionary Relief criteria set out in paragraph 4.3.3 (i) to (xiii), unless:

- (i) the accounts of the organisation show financial reserves which are considered excessive; or
- (ii) there is a bar, shop, restaurant or similar operation and the income from these is greater than 50% of the total income; or
- (iii) the organisation charges fees which are set at such a high level as to be considered excessive and exclude the general community.
- (iv) the organisation is a registered Community Amateur Sports Clubs

in which case no “top up” Discretionary Relief should be awarded.

##### **Other non-profit Making Organisations**

4.3.2 Council Policy is to award Discretionary Rate Relief to organisations that do not qualify for Mandatory Relief but which meet the criteria set out in paragraphs 4.1.1 and 4.3.3.

4.3.3 In order to establish whether an organisation meets the criteria, each case should be considered on its own merits. The following general points and the Social Enterprise UK guidance are considered:-

- (i) Discretionary Relief must only be awarded if it can be demonstrated that the service that is being provided is predominantly for the benefit of the residents of Torfaen.
- (ii) Where goods are sold from premises, the goods sold must be predominantly donated (regardless of the organisations objectives)
- (iii) The premises must be fit for purpose and appropriate inline with the objectives of the organisation.
- (iv) Is membership open to all sections of the community? Clubs or organisations should not be considered if the membership fees are set at such a high level as to exclude the general community. Where the membership fee exceeds £336.00 per annum no relief should be awarded.



- (v) Does the organisation actively encourage membership from particular groups in the Community e.g. ethnic groups, young people, other age groups, women, disabled persons?
- (vi) Is the membership drawn from people mainly resident within the area of the Council?
- (vii) Does the organisation encourage membership or provide support for particular groups considered to be worthy of support; and/or promote social and economic schemes e.g. job clubs, back to work schemes, retraining schemes or the provision of co-operatives?
- (viii) Does the organisation provide training for its members?
- (ix) Are there schemes for particular groups to develop their skills?
- (x) Are the facilities made available to people other than its members?
- (xi) Does the organisation have a licensed bar, shop or restaurant? If so, do the bar, shop or restaurant takings exceed 50% of the gross income?
- (xii) Does the organisation providing the facilities indirectly relieve the Council from providing that facility?
- (xiii) Are the financial reserves of the organisation considered excessive when compared with other similar organisations?
- (xiv) The salaries are considered excessive/inappropriate.
- (xv) Dividends are paid out.

4.3.4 Failure to supply evidence as requested to support any claim will prevent the application progressing.

#### 4.4 Special Circumstances

4.4.1 Where the Council is satisfied that exceptional justification arises it may determine the discretionary rate relief to be awarded.

#### 4.5 Applications for Mandatory and/or Discretionary Relief

4.5.1 Applications should be made in writing using the Application for Mandatory / Discretionary Relief attached as Annex 1. Applications for Discretionary Relief should also provide the following information:

- (i) Latest set of Audited Accounts and the last 3 year accounts where requested
- (ii) A copy of the organisation's constitution
- (iii) Evidence of registration as a Community Amateur Sports Club (if relevant).

- (iv) For organisations that are exempt from registering as a charity – evidence of the exemption is required in the form of a letter from the Inland Revenue stating that they are exempt from tax under S505 Income and Corporation Tax Act 1988.

#### 4.6 Effective Date of Entitlement

##### Mandatory Relief

4.6.1 The effective date for a registered charity will be the latter of:

- the date of occupation of the premises; or
- the date of registration as a charity.

4.6.2 The effective date for a Community Amateur Sports Club will be the latter of:

- the date of occupation of the premises; or
- the date of registration by the Inland Revenue.

##### Discretionary Relief

4.6.3 The effective date for organisations qualifying for Discretionary Relief, whether or not they also qualify for Mandatory Relief will be:

- (i) where the application is made on or before 30<sup>th</sup> September in the current rating year, the latter of:
  - 1st April in the previous year; or
  - the date of occupation of the premises.
- (ii) where the application is made on or after 1<sup>st</sup> October in the current rating year, the latter of:
  - 1<sup>st</sup> April in the current year; or
  - the date of occupation of the premises.

#### 4.7 Reviews

4.7.1 Mandatory and Discretionary Rate Relief awards will be reviewed every 2 years. This will ensure that awards are reviewed for appropriateness. If reviews are not returned, then the relief will be cancelled.

#### 4.8 Special Schemes

4.8.1 Where the Welsh Government introduce special schemes they will be administered inline with the legislation/guidance.

## **5. Hardship Relief**

### **5.1 Organisations which may qualify for Hardship Relief**

5.1.1 Hardship Relief can be granted to any rate payer whether a private individual, commercial company, corporate body or any other legal entity.

### **5.2 Level of Hardship Relief Available**

5.2.1 The authority may award Hardship Relief of up to 100%.

### **5.3 Policy on the Award of Hardship Relief**

5.3.1 In order to qualify for the hardship relief the authority must be satisfied that:

- (i) The ratepayer would sustain hardship if the authority did not do so; and
- (ii) It is reasonable for the authority to do so having regard to the interests of persons subject to its Council Tax.

5.3.2 The Council will consider each application on its own merit and will take into consideration the following:

- (i) What evidence is there of hardship? This is not necessarily confined to financial considerations only, although financial hardship must exist.
- (ii) Is the hardship likely to be a temporary condition e.g. would a one-off award of relief be sufficient to remove the hardship?
- (iii) What is the extent of the hardship; is it likely that the business would be unsustainable even if relief were awarded?
- (iv) Are there employment issues to be considered e.g. would employment prospects in the area worsen if the company went out of business?
- (v) Would the loss of the business result in a reduction in amenities for the local community e.g. loss of sole shop?
- (vi) What benefit will the taxpayer receive from the Council awarding the relief?

### **5.4 Applications for Hardship Relief**

5.4.1 Applications should be in writing and should provide sufficient information to enable the above considerations to be made including providing their most recent set of audited accounts and any other relevant financial information.

### **5.5 Effective Date of Entitlement**

5.5.1 The effective date of any application will be:

- (i) where the application is made on or before 30<sup>th</sup> September in the current rating year, the latter of:
  - 1st April in the previous year; or
  - the date of occupation of the premises.
  
- (ii) where the application is made on or after 1<sup>st</sup> October in the current rating year, the latter of:
  - 1<sup>st</sup> April in the current year; or
  - the date of occupation of the premises.

## 5.6 Review

5.6.1 Hardship Relief will be granted for a maximum of one financial year and applicants will be required to reapply annually.

## **6. Section 44a Relief (Part Occupied)**

### **6.1 Organisations that may qualify under Section 44a**

6.1.1 Section 44a relief can be considered and granted to any rate payer whether a private individual, commercial company, corporate body or any other legal entity.

### **6.2 Level of Section 44a relief available**

6.2.1 This will depend on the area of the premises that are vacant, the reason for this and the operative period. If it is agreed that the Authority will exercise its discretion, then 100% relief will be awarded to the vacant area for the relevant operative period.

6.2.2 The valuation office will be asked to prepare a certificate of apportionment to allow for the relief to be calculated and granted following the Authorities approval of this request.

### **6.3 Policy on the award of Section 44a relief**

6.3.1 In order to qualify the Authority will have to consider each case on its individual merit and be satisfied of the following:

- This is not a long-term empty area in the premises.
- Consider the size of the premise and use of the overall premises
- Reason for part occupation – Phased occupation/vacation, change in production, redevelopment to improve operation, rationalisation etc.

### **6.4 Application for Section 44A Relief**

6.4.1 There is no requirement for a written application. Requests should be made on a timely basis to allow for a visit to be undertaken to verify entitlement.

6.4.2 Where a backdated application is received, there must be substantial evidence available to support the application for it to be considered in retrospect. For an application to be considered in respect of a previous year it must be submitted before the 30 September in the year of application.

### **6.5 Period of entitlement to relief**

6.5.1 The section 44a relief will run for the shorter period of the following:

- 3 months if retail premise/offices or 6 months if industrial/manufacturing
- A change in the extent of partial occupation
- The ending of the rate period to which the apportionment relates
- The beginning of a new operative period under a new certificate
- The hereditament becoming completely unoccupied

## 7. Determination of Applications for Relief

### 7.1 Statutory Provisions

7.1.1 Section 101 of the Local Government Act 1972 provides for a local authority to delegate power to an officer, committee or sub committee.

7.1.2 The Local Government Finance Act 1988 requires authorities to consider all applications for discretionary rate relief on their individual merit.

### 7.2 Authorised officers

7.2.1 In line with Section 101 of the Local Government Act 1972 the Executive Member of Resources has delegated the decision and appeals process to the following officers:

Officer	Initial Award	Appeal
Section 151 Officer		Yes
Head of Revs & Bens		Yes
Revenues Manager Shared Service	Yes	
Nominated Deputy	Yes	

### 7.2.2 Consultation

Consultation with the Head of Finance in respect of the budget implications.

### 7.3 Initial determination of Relief

7.3.1 Initial determination of rate relief in respect of:

- (i) Mandatory Relief
- (ii) Discretionary Relief
- (iii) Hardship Relief
- (iv) Section 44a (part occupied) Relief

7.3.2 In determining eligibility for relief, consideration will be given on an individual basis to each application in line with the Council's Policy as set out in this document, Non-Domestic Rates "Guidance on Rate Relief for Charities and Other Non-Profit Making Organisations" issued by the Welsh Assembly Government in October 2004 and the Social Enterprise UK guidance are considered.

7.3.3 Where an application is refused the rate payer will be notified in writing of the following:

- (i) The decision
- (ii) The reason for the decision
- (iii) The right of appeal

#### 7.4 Appeals Process

- 7.4.1 Where an application has been refused an appeal may be lodged against the decision by writing to the Head of Revenues and Benefits within 28 days of the date of the decision.
- 7.4.2 A further consideration of the application and the initial decision will then be undertaken.
- 7.3.3 The decision of the appeal will be notified to the ratepayer in writing setting out the reasons for the decision.

## 8. UK Subsidy Control

- 8.1 As of 4 January 2023, the new UK subsidy control regime commenced with the coming into force of the Subsidy Control Act 2022. Further guidance can be found on the [GOV.UK webpages](#). European Union State Aid 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 considering granting discretionary rate reliefs.
- 8.2 Where the Council has to exercise discretion in awarding relief, for example Hardship Relief and Discretionary Rate Relief, then Subsidy Control should be considered. Charities and not for profit organisations are not normally in competition with other businesses, so would not be considered. But if they are engaging in commercial activities then they will need to be considered.