

Subject: Discretionary Relief from Council
Tax and Non-Domestic Rates

Status: For Publication

Report to: Cabinet

Date: 15th April 2009

Report of: Head of Customers Services

Portfolio

Holder: Customer Services

Key Decision: Yes

Forward Plan General Exception Special Urgency

1. PURPOSE OF REPORT

- 1.1 To ensure that the Council has adequately defined guidelines and procedures for consideration of applications for the various types of discretionary relief available in respect of Council Tax and National Non-Domestic Rates.

2. CORPORATE PRIORITIES

- 2.1 The matters discussed in this report impact directly on the following corporate priorities and associated corporate objective.
- Delivering Quality Services to Customers (Customers, Improvement)
 - Delivering Regeneration across the Borough (Economy, Housing)
 - Well Managed Council (Improvement, Community Network)

3. RISK ASSESSMENT IMPLICATIONS

- 3.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:
- Failure to update the Councils guidance & procedures in relation to requests for discretionary reliefs may result in poor decision making which adversely affects customers.
 - Failure to update the Councils guidance & procedures in relation to requests for discretionary reliefs may result in decisions which are vulnerable to legal challenge or regulatory censure.

4. BACKGROUND AND OPTIONS

- 4.1 With effect from April 2007 Rossendale Borough Council has exercised its powers to reduce the levels of Council Tax discount available to long term empty property and 2nd homes. The Council has received various requests for a discretionary reduction in Council Tax liabilities affected by this change.
- 4.2 The original report made allowance for consideration of appeals to mitigate the effects of the policy on customers in unusual or vulnerable circumstances. However it was not possible to anticipate all potential circumstances which may give rise to appeals. It is intended that this policy will reinforce existing arrangements in order to ensure that the Councils procedures are robust, transparent and equitable.
- 4.3 It is further anticipated that current economic circumstances will lead to an increasing number of appeals to be considered against charges for long term empty property.
- 4.4 The Council also has powers to award discretionary relief in respect of Non Domestic Rates. These relate to partly occupied property, property owned & occupied by organizations with charitable aims and property owned or occupied by ratepayers suffering hardship.
- 4.5 The Councils arrangements for consideration of requests for non-domestic rate relief have not been reviewed for some time. In some cases, minor changes in legislation have been made in the interim period.
- 4.6 A detailed policy (appendix 1) is attached for consideration. The policy is aimed at enabling effective decision making in this area, with procedures which balance the need for proper scrutiny and the Councils ability to make any appropriate award swiftly enough to provide practical assistance to customers.

COMMENTS FROM STATUTORY OFFICERS:

5. SECTION 151 OFFICER

- 5.1 The policy is designed to reinforce existing arrangements and as such we do not envisage any material financial implications.

6. MONITORING OFFICER

- 6.1 No comments.

7. HEAD OF PEOPLE AND POLICY (ON BEHALF OF THE HEAD OF PAID SERVICE)

- 7.1 There are no HR implications arising from the report

8. CONCLUSION

- 8.1 A robust policy is required in relation to discretionary relief in order to ensure sound decision making on this issue.

9. RECOMMENDATION(S)

- 9.1 That the Discretionary Relief from Council Tax and Non-Domestic Rates policy is approved by Members.

10. CONSULTATION CARRIED OUT

- 10.1 Benchmarking against peer authority policies
- 10.2 Benchmarking against the Local Government Ombudsman report into complaint 05/C/03367 regarding local authority application of discretionary relief.

11. COMMUNITY IMPACT ASSESSMENT

Is a Community Impact Assessment required Yes

Is a Community Impact Assessment attached Yes

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No background papers

Local Taxation Discretionary Relief Policy

1. Introduction

1.1 The Council has powers granted under the local Government Finance Act 1989 (as amended) and the Local Government Finance Act 1992 (as amended) to make discretionary awards of relief against National Non-Domestic Rates and Council Tax in certain circumstances.

1.2 This policy includes a brief summary of the legislative framework in respect of each of the distinct types of discretionary relief available. It is not intended to include an exhaustive guide to the law. All decisions will be made in accordance with the powers conferred by the relevant Acts. Where relevant the policy includes reference to the specific sections of Acts which confer powers.

1.3 The Council's Standing Orders currently allow for awards of this type to be authorised by the Council's Section 151 Officer (Head of Finance) where the value of the award is less than £2000. Any awards with a value of greater than £2000 require consideration and authorisation by Cabinet.

1.4 The current arrangements provide for a proper level of authorisation and accountability. However they do not provide a detailed framework by which the Council is able to ensure and demonstrate that all relevant administrative and legislative factors have been considered and applied to any request.

1.5 It is intended that this policy will provide the guidelines which ensure that the Council has robust and effective procedures in place for the consideration of claims for discretionary relief in respect of local taxation. The levels of authorisation of any awards will remain to be determined in accordance with the Councils prevailing Standing Orders. The procedures outlined in this report will require review and update alongside any changes in the relevant rating legislation.

2 Administration

2.1 On receipt of an application for relief the Councils Revenues Team will liaise with the customer in order to obtain sufficient detail (in line with the criteria as laid out in this policy) to allow for a decision to be made.

2.2 The Councils Revenues Manager will then provide the relevant legislative guidance and information in order to allow for a decision to be made. The decision will then be made by either the Councils section 151 Officer (Head of Finance, or by Cabinet as appropriate.

2.3 Each application will be considered on its merits. Guidelines are included in respect of each of the different types of relief. However the Council should not fetter its exercise of discretion, and therefore it is not possible to include an exhaustive list of all possible circumstances which would allow for an award to be made.

2.4 All appeals should be made in writing, either by application form or letter, by the customer, their advocate or appointee or a recognised third party on their behalf.

2.5 The Council will respond within 10 working days, with

- a determination, including details of the reasons for acceptance/refusal
- a request for additional information if required
- notice of the anticipated date of any decision, for example where a decision is to be made by cabinet.

3 Council Tax Guidelines

3.1 Under Section 13a Local Government Finance Act 1992 (as amended) the Council is empowered to reduce the amount of Council Tax payable in respect of a particular property or in respect of a class of properties determined by the Council. It is possible to either to make a reduction in the Council Tax or to reduce the tax payable to nil.

3.2 In considering any request for an award Rossendale Borough Council will:

- act in accordance with the appropriate legislation and
- obtain evidence of hardship or personal circumstance that justifies a reduction in Council Tax liability
- the Council must be satisfied that the customer has taken reasonable steps to resolve their situation prior to application
- ensure that all other eligible discounts/reliefs/benefits have been awarded to the customer
- assure itself that the customer does not have access to other assets which would allow of the Council Tax to be paid.

3.3 Possible criteria would include but are not limited to:

- financial hardship (where relief is requested in respect of an unoccupied property the value of the property as an asset will be taken into account)
- factors beyond the control of the customer which have prevented any remedy of the situation
- other factors potentially causing hardship, such as ill health, infirmity or bereavement

3.4 Whilst the Council will not fetter its exercise of discretion, it is difficult to envisage circumstances where an award would be made in due to issues which are fundamental to the prevailing system of local taxation, for example:

- the customer does not make use of the full range of services offered by the precepting authorities
- in order to supplement the various time limited statutory exemptions where no other factors exist

3.5 Decisions will be taken with reference to the interest of all other tax payers within the Borough, since any reduction will be funded from the Councils budget.

4 N.N.D.R Guidelines

4.1 In respect of NNDR (business rates) the Council has powers to grant discretionary relief in respect of:

4.2 Partly Occupied Property (Section 44A Local Government Finance Act 1988)

Discretionary Rate Relief (charitable/philanthropic organisations) (Section 47 LGFA 1988)

Hardship (Section 49 LGFA 1988)

4.3 Procedures and background in respect of each case are as follows:

5 Partly Occupied Property

5.1 Under s44A Local Government Finance Act 1988 a Billing Authority is empowered to make a request to the Valuation Officer to apportion the rateable value of a property between the parts which are occupied and those unoccupied if it appears to the authority that this situation will apply for a 'short period of time' only.

5.2 If requested to apportion the rateable value, the Valuation Officer is able to issue a temporary certificate to confirm the apportioned rateable values. Thereafter the ratepayer would be liable to the full occupied rate in respect of the occupied portion only. The charges in respect of the unoccupied portion would be in accordance with the general provisions for exemptions and discounts relating to unoccupied properties under the LGFA 1998 (as amended).

5.3 It should be noted that under s43 LGFA the general principle is that occupation of part of a property constitutes occupation of the whole. The powers conferred under s44A are intended to be applied in circumstances where there are practical difficulties in either taking up occupation or vacating a property, for example:

- removal of heavy machinery/manufacturing equipment on a gradual basis
- installation of heavy machinery/manufacturing equipment on a gradual basis
- inability to occupy part of a property due to major incident i.e. fire or flood

The period of any award would end with:

- the occupation of any of the unoccupied part of the premises
- the ending of the rate period in which the apportionment was requested (end of the charge year)
- the request for a further apportionment

- the complete occupation of the property

5.4 In considering any request for an award Rossendale Borough Council will

- act in accordance with the appropriate legislation and
- obtain plans from the customer which make clear the apportionment of the property
- verify the circumstances as outlined in provided plans by a visit of the revenues property inspector or relevant officer of the council

5.5 Any award of relief under s44A is funded entirely from the national NNDR pool and therefore has no financial implication for the Authority other than its administrative costs.

6 Discretionary Rate Relief (charitable/philanthropic organisations)

6.1 Under s47 Local government Finance Act 1988 the Council is empowered grant discretionary relief in respect of charitable organisations. This may be in addition to mandatory relief or where there is no mandatory entitlement. Relief may be awarded in respect of both occupied or unoccupied property.

6.2 An award may be made where:

- the ratepayer is a charity and the property is used for charitable purposes
- the property is occupied by an organisation that is not conducted for profit and its aims are charitable, otherwise philanthropic, religious or promote social welfare
- the property is occupied by an organisation that is not conducted for profit and is wholly or mainly used for recreation.

6.3 Criteria would include but are not limited to:

- access, is membership open to the general community
- are facilities available to people other than members
- is training & education provided for both members and non-members
- does the organisation relieve the authority of the cost of providing similar services
- does the organisation run a bar which may render it self sufficient
- is the membership of the organisation drawn from local residents

6.4 Decisions will be taken with regard to the interests of the Council Tax payers of the Borough. Where an award of discretionary relief is made under s47 LGFA 1988 in addition to mandatory relief, funding is met 75% by the authority and 25% from the national pool. Where an award is made purely of discretionary relief funding is 25% form the authority and 75% from the national pool.

7 Hardship Relief

7.1 Under s49 of the Local Government Finance Act 1988 the Council is empowered to make awards for relief from non-domestic (business) rates in cases of hardship. This power applies to liability for both occupied and unoccupied rates.

7.2 In considering any application the authority will satisfy itself that the ratepayer would sustain hardship if the Authority did not grant any remission. It should be noted that there is no statutory definition of the term 'hardship'. However some general guidelines are available, emerging from central government guidance and related case law:

- hardship is different from poverty
- hardship should be determined having regard to all relevant circumstances
- the term is not confined to financial hardship
- hardship does not relate solely to private individuals but may apply to any legal entity
- hardship cases should be the exception rather than the rule

7.3 In considering any application the Authority will also satisfy itself that it would be reasonable to grant remission having regard to the interests of its Council Tax payers.

7.4 In considering any request for an award Rossendale Borough Council will:

- act in accordance with the appropriate legislation
- require evidence of hardship or personal circumstance that would justify a reduction in rate liability
- where financial hardship is specified, require provision of at least two years certified accounts as evidence

7.5 Any award of relief under s49 is funded 25% by the local authority 75% from the national pool, therefore the cost implications to the local tax base must be taken into account. However the effects the decision on local taxpayers in a wider context should also be taken into account. For example if employment prospects would be significantly damaged by refusal to make an award, or if the closure or removal of a business would negatively affect the fabric of the community.