



## Business Rates Discretionary Hardship Reduction Policy

Section 49 Local Government Finance Act 1988

June 2024



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## **1 Introduction**

- 1.1 Councils have the power to reduce or remit the business rate charge where it is considered that 'hardship' would otherwise be caused to the ratepayer.
- 1.2 The provisions allowing the council to make a discretionary decision are set out in Section 49 of the Local Government Finance Act 1988
- 1.3 Applications to reduce or remit the business rate charge will only be considered where the Council is satisfied that the rate payer would otherwise sustain hardship, and that it is reasonable to grant relief having regard to the interest of council taxpayers, residents and businesses of Durham who are affected by decisions under this section.
- 1.4 The policy is part of a suite of policies including the Debt Management Policy and Corporate Write off Policy which support the debt management strategies implemented by Durham County Council.

## **2 Criteria**

- 2.1 Each application for discretionary reduction will be assessed on its individual merits.
- 2.2 Awards made under this policy are generally intended as short-term assistance and will not normally extend beyond a twelve-month period. Applicants must state clearly on their application the period that they are seeking hardship / remission / reduction for. Awards are not to be considered as a method of reducing liability indefinitely, repeatedly, or as a debt solution for historic arrears. Awards of hardship / reduction / remission will be the exception and not the rule.
- 2.3 Hardship will not be awarded for any reason other than to reduce Business Rate liability.
- 2.4 Applications and Awards of hardship will not to be considered where they are used to frustrate, delay or prevent ongoing recovery action including bankruptcy/committal to prison proceedings commenced by the Council or any other body. However, consideration will be given to such action being suspended temporarily if there is a hardship application decision pending.
- 2.5 Applicants must detail the reasons for their application, explaining the specific circumstances experienced which is affecting their ability to pay.

- 2.6 There must be clear evidence of business financial hardship that justifies a reduction in Business Rate liability. There is no definition in the legislation for 'hardship' and as the scheme is aimed at covering unexpected difficult and exceptional circumstances it is not possible to list precise criteria.
- 2.7 Unexpected, difficult, and exceptional circumstances considered for hardship will usually be circumstances that are outside the control and beyond normal risks faced by a business. Applicants must demonstrate that they have done all they can to mitigate those risks and are taking action to rectify and minimise them. The policy is not designed to accommodate the effects of significant local, national, or global events affecting multiple businesses.
- 2.8 Awards of hardship are funded by the council and before granting any award we will consider the interests of council taxpayers and the wider impact of granting any hardship.
- 2.9 Applicants must be able to demonstrate that all reasonable steps have been taken to reduce and/or discharge their full Business Rate liability prior to application including exploring entitlement to all other reductions, discounts, exemptions, discretionary payments and valuation office appeals.
- 2.10 The business does not have either capital or other assets that could be realised and used to pay business rates.
- 2.11 The Council's finances must allow for a reduction to be made.
- 2.12 The potential amount of any relief may in some cases be limited by the Subsidy Control Act 2022 and therefore current UK guidance and any subsequent legislation will be adhered to.

### **3 Period of Hardship**

- 3.1 In all cases relief will end in the following circumstances.
  - At the end of a financial year
  - All or part of the unoccupied area becoming occupied.
  - A change of liable person.
  - The property becomes empty or become occupied.
  - The ratepayer or business enters any type of formal insolvency.
  - The ratepayer's financial circumstances significantly change the rate payer must inform the council if their circumstances change (e.g. Change in rateable value)

- The business relocates, closes, or changes ownership.
- The business becomes due to some other form of reduction or support.

#### **4 Making a Claim**

- 4.1 Financial awards of hardship can only be made where adequate evidence of financial circumstances is provided which demonstrates that an award would be appropriate. Unsupported applications cannot be considered accurately and could result in no award being made.
- 4.2 A claim must be made in writing, preferably using the council's application form available online. Applications will be accepted from the rate payer, their advocate/appointee or a recognised third party acting on their behalf. All applications must contain the necessary information and have sufficient supporting evidence attached to allow the council to properly consider the circumstances creating the inability to pay business rates.
- 4.3 Applications and supporting documentation can be emailed to [revenuesenforcement@durham.gov.uk](mailto:revenuesenforcement@durham.gov.uk).
- 4.4 Postal application forms and supporting information can be sent to: Durham County Council Revenues and Benefits PO Box 238 Stanley County Durham DH8 1FP.
- 4.5 Assessment of Hardship requires full disclosure of relevant circumstances to enable an accurate assessment to be made. It is the responsibility of the ratepayer applying for relief to provide sufficient information and documentary evidence to support their applications. Further information may be requested from the applicant for a robust decision to be made. If the Ratepayer applying does not or will not provide the required evidence, we will still consider the application but only based on the information and evidence provided.
- 4.6 The application may be reopened if the applicant demonstrates 'good cause' as to why the information could not be supplied at the time. No costs will be borne by the Council in the provision of this evidence.

#### **5 How Claims will be Assessed**

- 5.1 The Council will only consider awarding hardship relief in exceptional circumstances and where it is satisfied that it would be in the Council Taxpayers or the Local Community's interest to do so. Each case will

be assessed on its own merits. In considering an application the following may be taken into account.

- evidence of exceptional hardship or exceptional circumstances
- details as to how the applicant has attempted to meet their rates liability prior to submitting the application.
- whether all other eligible rates reliefs have been considered and, where applicable, claimed and awarded.
- the amount outstanding/claimed was not as a result of wilful refusal or culpable neglect.
- the situation and reason for the application must be outside of the ratepayer's control.
- is there evidence that it is in the interests of the local Council Taxpayer to make the award (for example does the ratepayer provide a needed community amenity that would be lost if the business closed, is the ratepayer a major local employer and relief needed to keep the business in operation, etc)?
- does the business have assets that could be used to meet or reduce the liability.

5.2 The test of hardship will include an assessment of the ratepayer's business accounts to verify that the payment of rates would cause hardship.

5.3 To aid the Council in making a determination as to the award of hardship, a number of factors will be considered. These include (but are not limited to) as follows:

- % of Rates to Sales
- % of Rates to Gross Profit
- % of Rates to Expenditure
- Ratio of Current Assets to Current Liabilities
- Ratio of Current Assets less Stock to Current Liabilities

5.4 From the assessment of the above criteria, the council will determine if the business is suffering from financial hardship due to the payment of Business Rates.

- 5.5 Examples of appropriate circumstances: (The following examples indicate some circumstances where it may be appropriate to award relief. They are included in this policy in the form of broad general guidelines and are not intended to be prescriptive.)
- Without rate relief the business will close and deprive residents of an essential service and protecting employees.
  - The ratepayer's business has been detrimentally affected by circumstances beyond their control that do not constitute part of the normal risks in running a business e.g., a natural disaster, an unusual or uncontrollable event in the neighbourhood of the business such as a fire making the immediate area of the business unsafe or an event which affects multiple businesses or individuals.

## **6 The Decision Making Process**

- 6.1 Upon receipt of a signed application and all supporting documentation /information a standard decision-making process will be followed.
- 6.2 An Enforcement and Insolvency officer will aim to consider initial applications within 28 days of receipt of a signed application and supporting information. This will include a review of findings, financial implications, and initial recommendations.
- 6.3 Where further evidence is deemed necessary to enable a fair assessment of circumstances to be made the applicant will receive written details of what is needed and timescales which apply.
- 6.4 If the Enforcement and Insolvency Officer proposes to reject then a Senior Officer will assess the review and if in agreement a letter will be issued outlining the reasons for rejection and the redetermination process.
- 6.5 If the Enforcement and Insolvency Officer recommends approving the application and a Senior Officer agrees this will escalate to the Team Leader who will review. Their approval is needed to agree the application. If agreed, amendment to the account will be made and notification sent.
- 6.6 If the Team Leader disputes the decision of the Officer and Senior Officer and rejects the application, a letter will be issued outlining the reasons for rejection and the redetermination process.
- 6.7 Once a decision has been approved the Council Taxpayer will be notified in writing of the decision within 28 days and a revised Council Tax demand notice (bill) will be issued where applicable.



- 6.8 Whilst every effort will be made to meet the deadlines outlined above, failure by the Council to do so does not qualify the claimant for reduction.

## **7 Further Review**

- 7.1 Under the Local Government Finance Act 1992, there is no right of appeal against the Council's use of discretionary powers. However, a ratepayer may ask for a redetermination of the application if dissatisfied with the outcome and provide additional information to support any circumstances.
- 7.2 The Council will accept a request from the applicant for a redetermination of its decision.
- 7.3 Written requests for redetermination should be made within 28 days of the issue of the decision letter stating reasons why the decision should be reviewed.
- 7.4 In the case where the applicant has been notified of a decision and they exercise their rights to appeal, payment cannot be withheld pending an appeal decision. In the event that an appeal is successful, any interim overpayment will be refunded.
- 7.5 Considerations will include any additional information provided by the applicant that may justify a change to its original decision.
- 7.6 The Council will notify the Council Tax payer of its final decision within 21 days of receiving a request for a re-determination.
- 7.7 Whilst every effort will be made to meet the deadline outlined above, failure by the Council to do so does not qualify the claimant for reduction.
- 7.8 Rejected by Officer and Senior Officer - Review by second Officer and Second Senior Officer.
- 7.9 Rejected by Team Leader – Review by Asst Payments Income and Support Manager
- 7.10 The Asst Payments Income and Support Manager is final and there is no further redetermination available.

## **8 Fraudulent Applications**

- 8.1 The Council takes fraud seriously and has adopted a zero-tolerance approach. All allegations of fraud will be investigated; should a person make a false statement or provide incorrect evidence in support of their application for discretionary hardship relief, they may

commit a criminal offence. All such instances will be dealt with in accordance with the Anti-Fraud and Corruption Policy and any overpaid monies will be recovered together with any outstanding business rates.