

Tunbridge Wells Borough Council

Discretionary Rate Relief Policy



Contents

1. Introduction	3
2. The Discretionary Rate Relief Scheme	3
3. The application process.....	6
4. Charitable Rate Relief	8
5. Registered Community Amateur Sports Clubs (CASCs).....	9
6. Rate relief for not-for –profit organisations	10
7. Hardship Relief	10
8. Properties partly occupied for a temporary period.....	12
9. State Aid	13
10. Complaints and Appeals.....	14
11. Fraud	14
Appendix A	15
Addendum 1	16
Relief for Local Newspapers.....	16

1. Introduction

- 1.1 The Council understands the importance that local businesses and organisations play in achieving its priorities and ensuring its communities and businesses are able to develop and thrive within the Borough.
- 1.2 Councils have the power to award relief from the payment of Non-Domestic Rates (Business Rates) to organisations and businesses that meet certain criteria. Public funds are not however, unlimited and the Council Tax payers of the Borough meet a proportion of any relief granted. The Council therefore needs to be satisfied that money invested this way will be repaid in economic and/or community benefit.
- 1.3 The power for granting discretionary rate relief is provided for by Section 47 of the Local Government Finance Act 1988. This has been amended by subsequent legislation that gives wider powers to grant discretionary relief to any ratepayer where the authority feels the granting of such relief would benefit the local community.
- 1.4 This policy is designed to provide guidance to officers and ratepayers on the application of Discretionary Rate Relief.
- 1.5 The policy covers the following types of discretionary rate relief:
 - Charitable rate relief
 - Community Amateur Sports Clubs (CASCs)
 - Rate relief for not-for-profit organisations
 - Hardship relief
 - Temporary relief for partly occupied properties
 - Local discounts and incentives
- 1.6 This policy document outlines the various areas of local discretion and the Council's approach to the various reliefs. This approach has regard to the impact:
 - of granting discretionary relief on the Council's wider financial position and the impact on its Council Tax payers;
 - on the organisations and businesses that currently receive or may apply for relief in the future;
 - on the residents of the Borough Council if relief is awarded and the economic benefits to the Borough.

2. The Discretionary Rate Relief Scheme

- 2.1 Discretionary rate relief (DRR) is granted in accordance with Section 43 of the Local Government Finances Act 1988 and Sections 47 and 49 of the Local Government Finance Act 1988 as amended by the Localism Act 2011.
- 2.2 Section 69 of the Localism Act amended section 47 of the Local Government Finance Act 1988 to allow billing authorities to fund their own local discounts. The

Council can grant business rate discounts and incentives as it sees fit within the limits of primary legislation and the rules on State Aid. These powers can be used to encourage new business and investment as well as support local shops or services to the community.

2.3 The legislation requires the Council to maintain a DRR scheme to award relief of up to 100% to certain organisations and businesses that operate within specified criteria. This includes:

- Charitable bodies already in receipt of mandatory relief of 80%. The Council has a discretion to 'top-up' this relief to 100% of the business rates due
- Registered community amateur sports clubs (CASCs) already in receipt of mandatory relief of 80%
- Non-profit making organisations – the Council has discretion to grant relief of up to 100% of the business rates due
- DRR for 'other rural businesses'
- Relief on the grounds of hardship
- Relief for part-occupied premises
- Local discounts and incentives

2.4 In making decisions the Council may:

- Grant relief up to a maximum of 100% of the business rates due;
- Or
- Refuse any application for relief.

2.5 In formulating its policy for discretionary rate relief the Council will take into account the following factors:

The extent to which the organisation:

- Meets local needs in the community, and either
- Provides a valuable service to the community, or
- Provides facilities which indirectly relieves the Council of the need to do so subject to the conditions that:
 1. Membership, where appropriate, or facilities, are available to the general public and not unduly restricted; and
 2. Premises are not used for sales of a commercial nature on more than ten occasions in any one year

The Policy also reflects the Council's Priorities.

2.6 General criteria that will be used by the Council when considering applications for relief are shown in the table below:

Criteria		How this is measured
1	Membership is open to all sections of the community subject to legitimate restrictions	A club or organisation will not be considered if it has membership rates at such a high level as to exclude the general community Membership or attendance must not be restricted by race, religion or gender
2	The organisation actively encourages membership from particular groups in the community such as young people, women, older age groups, disabled people etc	An organisation which encourages such membership can expect more sympathetic consideration than one which does not
3	The facilities are made available to people other than members, i.e. schools, casual public sessions etc	The wider use of facilities should be encouraged and rate relief might be one form of recognition that an organisation was promoting its facilities more widely
4	The organisation provides training, education or schemes for particular groups such as young people, the disabled or retired people to develop their skills	An organisation providing such facilities might deserve more support than one which does not
5	The facilities have been provided by self-help or grant aid	This is an indication that a club or organisation is deserving of relief if it has made efforts for self-help or submitted applications for grant aid
6	The organisation does not run a bar	The mere existence of a bar will not in itself be a reason for not granting relief, but the main purpose of the organisation will be examined. An organisation with a commercially operated bar will not be considered for relief.
7	The organisation provides facilities which indirectly	A need, not being provided by the Council, but identified as a priority for action, might be particularly deserving of support

	Criteria	How this is measured
	relieves the Council of the need to do so	
8	Membership is drawn mainly from people residing in the Borough	There will be a cost borne by the Council taxpayers in the area if any relief is granted. A club or organisation with the majority of members residing in the Borough will be more deserving of relief
9	The organisation is in need of financial assistance	Latest audited accounts will be examined to determine the need for financial assistance
10	Clubs tried to gain Community Amateur Sports Club (CASC) status	Where a club has made an application for CASC status, where this is practical, the Council will look at the application favourably, irrespective of the outcome

2.7 Mandatory relief can be backdated to previous financial years.

2.8 Previously, legislation permitted discretionary relief only to be awarded back to the start of the previous financial year where the application is submitted and assessed prior to the end of September in a relevant year.

2.9 The Non Domestic Rating Bill, which comes into effect 1 April 2024, means that local authorities can set their own rules for notifications of discretionary reliefs in their area. Within this Policy, the Borough Council will award backdating for a maximum period of 12 months.

2.10 In the majority of cases:

- The relief will be granted for 3 years, but if circumstances change within the 3 years, the club or organisation must inform the Council of any changes
- If a club or organisation moves address within the 3 years, a fresh application will need to be made for the new address. Relief will not be carried forward to the new property
- After 3 years, a fresh application will need to be made

Successful applications will be sent a letter confirming the new award of discretionary relief. This letter will explain the period of award and the date it will end.

3. The application process

3.1 Applications for relief must be made by completing an application form and submitting the relevant supporting information that includes:

- Details of the applicant's main purposes and objectives (where applicable) as set out in a written constitution, a memorandum of association or membership rules
 - A full set of audited accounts relating to the last two financial years. Where audited accounts are not available projections should be provided instead, along with bank statements
 - Details of how the organisation meets the relevant criteria detailed in these guidelines
- 3.2 Any applications that are made without the supporting documentation will be subject to a decision being made solely on the information that is available at the time of the decision.
- 3.3 As a guide, to be eligible for discretionary rate relief a charity/organisation must not have enough unrestricted funds/reserves to continue to operate for more than 12 months unless a business plan exists detailing how these additional funds are to be used to benefit the local community.
- 3.4 In exceptional cases, discretionary rate relief will be granted to organisations that have enough financial resources in unrestricted funds/reserves to continue to operate for more than 12 months. This may include charities and community organisations that require a large amount of available resources to sustain the service they deliver to the community. In such cases, the application must be able to demonstrate it offers a service which the local residents depend on and which they would be unlikely to find elsewhere in the Borough.
- 3.5 The Council will aim to make a decision within one calendar month of the application and supporting information being received. Decisions on the award of discretionary rate relief will be made by the Member with responsibility for Finance. Ratepayers are required to continue to pay business rates whilst their application is being considered. Failure to make payment will result in the Council pursuing collection through the usual enforcement procedures that could result in Court action.
- 3.6 An unsuccessful applicant may make a request for the Council to review its decision, but only where:
1. Additional information relevant to the application that was not made available at the time the decision was made becomes available.
 2. There are grounds to believe the application or supporting information was not interpreted correctly at the time the decision was made.
- 3.7 A request for a review must be made within one calendar month of notification of the decision and must set out the reasons for the request and any supporting information.
- 3.8 Any decision regarding rate relief will be communicated to the applicant in writing. Where the decision is a refusal, the reasons for refusal will be provided in the letter.

- 3.9 A review of the guidelines will be undertaken every 3 years in line with the Valuation Office Agency's revaluation cycle, or if business rates legislation is amended, or as necessary to ensure it complies with current legislation and the Borough Council's priorities.
- 3.10 The ratepayer must inform the Council immediately of any changes which may affect their eligibility for relief.

4. Charitable Rate Relief

- 4.1 Mandatory Rate Relief of 80% is granted to charities where:
- The ratepayer is a charity or the trustee of a charity; and
 - The property is wholly or mainly used for charitable purposes (including charity shops where the goods sold are mainly donated and the proceeds are used for the purposes of the charity).
- 4.2 Registration under the Charities Act 1993 is conclusive evidence of charitable status. Bodies which are exempt charities are also eligible for mandatory relief.
- 4.3 In cases where a charity is in receipt of mandatory relief of 80%, the Council has direction to grant up to 20% discretionary relief (top-up). The Council will consider applications for discretionary relief from charities based on their own merits on a case-by-case basis. The principle consideration in awarding relief is that it is in the best interests of the residents and Council Tax payers of the Borough to do so and it produces a local benefit, as the Council must contribute to the cost of each award.
- 4.4 Each case will be assessed on its own merits, but generally top-up discretionary relief will only be awarded to the following charities or excepted organisations:
- Scouts, guides, cadets and other clubs and organisations for young people
 - Organisations providing support in the form of advice, employment training and counselling
 - Community schemes including those providing support for those over retirement age, families, children, those with disabilities or learning difficulties, community transport and volunteer organisations
 - Charitable supporting clubs
 - Armed Forces veterans' associations
 - Locally based leisure and cultural organisations
 - Food banks
- 4.5 The following general exclusions will apply:
- 'Top-up' relief will only be granted to local charities (defined as those set up with the sole purpose of assisting residents of the Borough and whose main office is situated within the Borough, unless a special case for

financial hardship can be proved 'top-up' to national charities (including charity shops) will not be awarded;

- 'Top-up' relief for Housing Associations will not be granted.

5. Registered Community Amateur Sports Clubs (CASCs)

5.1 Registered Community Amateur Sports clubs (CASCs) are entitled to 80% mandatory relief. The Council will consider applications for discretionary rate 'top-up' from CASCs based on their own merits on an application-by-application basis.

5.2 The Council will consider applications that can demonstrate:

- The contribution the organisation makes to the Borough;
- The club is open to the whole community and its membership fees are not excessive;
- It is a non-profit organisation;
- Evidence that every effort is made by the organisation to encourage open membership from groups such as young people, disabled persons, and those over retirement age;
- Schemes of education and training are provided particularly for young people, disabled persons, women and those over retirement age;
- How the CASC supports and links into the Council's priorities.

5.3 Applications will only be considered where the club has an open access policy. If a club accepts members who have reached a certain standard, rather than seeking to promote the attainment of excellence by developing sporting aptitude, it does not fulfil the requirements.

5.4 Although clubs should be open to all without discrimination, single sex clubs may be permitted where such restrictions are a genuine result of physical restraint (such as changing room facilities) or the requirement of the sport. In such cases, the application will be required to provide evidence of these factors.

5.5 It should be noted that sports clubs that run a bar are unlikely to be awarded discretionary rate relief if their main purpose is the sale of food and drink. If the sale of food and drink by the organisation aids the overall operation and development of the organisation meaning it achieves its objectives this is permissible if the principle objectives of the organisation meet the eligibility criteria detailed in 5.2. If the bar makes a profit this relief must be reinvested to help the organisation meet its principle objectives. Financial information will be required to evidence any profit and its use.

6. Rate relief for not-for –profit organisations

- 6.1 Not-for-profit organisations that are not classed as registered charities or CASCs can apply for discretionary rate relief of up to 100%. Such organisations include those that are philanthropic, religious, concerned with education or social welfare, science, literature, the fine arts, recreation or are otherwise beneficial to the community.
- 6.2 The Council will consider applications from organisations which can demonstrate:
- Its activities support at least one of the Council’s priorities
 - It promotes its service for the benefit of the Borough residents
 - Membership of the organisation is open to all members of the community
 - The facilities of the organisation are to be made available, where practicable, to other organisations and groups
 - The organisation operates in such a way that it does not discriminate against any section of the community
 - It is not established or conducted for the primary purpose of profit.
- 6.3 If the organisation applying for discretionary rate relief requires membership or any entry fee the Council will consider whether:
- Membership is open to everyone regardless of race, ethnicity, sex, marital or parental status, sexual orientation, creed, disability, age, religious affiliation or political belief
 - The subscription or fee is set at a level which is not prohibitively high and is affordable by most sections of the community
 - Fee reductions are offered to certain groups, for example the under 18s and over 60s
 - Membership is encouraged from the unemployed, young people not in employment, education or training, those of retirement age and people with disabilities
- 6.4 Where the applicant organisation requires membership, at least 50% of members should reside within the Borough and evidence of this will be required.
- 6.5 The organisation must provide a copy of their constitution and copies of the latest two years of audited annual accounts where available.

7. Hardship Relief

- 7.1 The Council has discretion under Section 49 of the Local Government Finance Act 1988 to grant relief of up to 100% where hardship is demonstrated. Hardship relief can only be considered if it would be reasonable to do so in the interests of Council Tax payers in general.
- 7.2 Hardship relief will be awarded where the business is suffering from unexpected hardship that is outside of the normal risks associated with business. Reduction or

remission of business rates on the grounds of hardship will only be made in exceptional circumstances.

7.3 Hardship relief is granted at the discretion of the Council which can reduce or remit the amount of business rates due provided it is satisfied that:

- The ratepayer would sustain hardship if it did not do so, and
- It is reasonable to do so having regard to the interests of its council tax payers

7.4 The following factors will be considered in assessing the application:

- A ratepayer must be providing a service vital to the locality
- The same service is not available in the same locality or within reasonable distance of the property address
- Public transport to the nearest alternative service is not available or is very restricted
- Hardship will generally be determined on the basis of the financial position of ratepayer's business
 - On the basis of the financial position assessed over several years including any forecast of the future position
 - Applications will need to be supported by latest certified accounts
- Relief will be granted for a particular year and will not be extended into another financial year
- Relief if granted, will be effective from the date of application
- Relief may be granted up to 100% of the net business rates charge
- Before reaching a decision, the views of local Ward Members will be sought.

7.5 The test of hardship needs not to be confined strictly to financial hardship. All relevant factors affecting the ability of the business to meet its rates liability will be considered.

- The interests of Council Tax payers in the area may be wider than direct financial interests. Examples of this include where employment prospects in the area would be worsened by a company going out of business or the amenities of the area being reduced by, for instance, the only provider of a service in the area.
- The hardship caused may be, for example, where a business has been affected by severe loss of trade due to external factors such as natural disasters. However, the Council will wish to consider how the business can demonstrate such loss of trade or business. For example, the accounts, order books, till receipts or VAT returns show a marked decline in trade compared with corresponding periods in previous years.
- The ratepayer must provide evidence of hardship, for example a severe loss or marked decline in trade compared to similar periods in previous years.
- The ratepayer must be able to show evidence of its viability for the future, which is two years for these purposes.

7.6 A business will not be considered for hardship relief in the following circumstances:

- Where the business is profitable
- Where the business has experienced a minor loss in trade
- Where the drawings/remuneration of directors, partnerships or sole traders are of an amount not deemed reasonable by the Council
- Where the business is new and hardship relief is being requested to fund the initial progression of the business
- Where the property is empty
- Where similar goods or services are already being provided in the locality or within a reasonable distance

7.7 Prior to any award being made the business is expected to act to mitigate or alleviate their hardship by:

- Considering other options such as renegotiating with creditors
- Contacting the Council's Business Advice officer
- Having in place a business plan to address the hardship

7.8 Applications for hardship relief shall be regarded as a last resort and will only be accepted after consideration of any other forms of rate relief for which the applicant may be eligible.

7.9 The period and amount of any award will be determined on a case-by-case basis but may be up to 100% of business rates liability.

7.10 Hardship relief will only be granted for short periods of time and usually up to a maximum of 6 months.

7.11 All applications for a reduction in Business Rates on the grounds of Hardship should be made in writing. Decisions will be made on the information supplied and no assumptions as to circumstances will be made.

7.12 The Head of Revenues will have delegated authority to grant Hardship relief on the recommendation of the Principal Revenues Officer.

7.13 If an application is refused, there is a right of appeal to the Director of Shared Services.

8. Properties partly occupied for a temporary period

8.1 There may be times where a property is only partly occupied for a short period. This may be due to a business relocating to a new property. In certain circumstances, the Council may use its discretion to award partly occupied relief that is also known as Section 44a (Section 44a of the Local Government Finance Act 1988).

8.2 In these circumstances, the Council may request that the Valuation Office Agency apportion the rateable value of the property between occupied and unoccupied parts.

8.3 Section 44a relief may be awarded in the following circumstances:

- Where the occupied and unoccupied parts of the property can easily be separately assessed, or
- Where there are short-term practical or financial difficulties in either occupying or vacating the premises

8.4 The part occupation must be for a temporary period only. Rate relief will not be awarded where the partial occupation is due to the normal day-to-day operation of the business, for example, where a warehouse has despatched a large order and no longer needs to store stock.

8.5 For the purposes of this policy, a period of up to 6 months will be considered temporary. Periods of time exceeding 6 months will be treated as a permanent change and will not be eligible for partly occupied relief.

8.6 Relief will not be awarded where it appears to the Council that part of the property is being kept empty for the sole purpose of claiming rate relief.

8.7 Prior to an award being made, a visit to the premises will be made by a Council Officer to establish the exact area of the property that is empty. The application must be supported by a plan of the property that clearly marks the boundary of the occupied and unoccupied parts. This plan will be given to the Valuation Office Agency to apportion the rateable value. Further visits may be made to the property throughout the duration of the relief to establish that the property is still partly occupied.

8.8 Part occupied relief will end if one of the following applies:

- The financial year comes to an end
- The end of the award
- Where part or all the unoccupied parts become occupied
- Where the whole of the property becomes unoccupied
- Where the liability for the property changes

9. State Aid

9.1 Prior to 1 January 2021, the award of discretionary rate relief was considered likely to amount to State Aid as defined by the EU. The EU required that all State Aid (including discretionary rate relief) complied with the De Minimis Regulations EC 1407/2013. The De Minimis Regulations allow an undertaking to receive up to €200,000 aid over a rolling three year period.

9.2 From 1 January 2021, the United Kingdom left the EU Single Market and Customs Union and is no longer subject to the De Minimis Regulations.

9.3 The Government has introduced its own rules regarding state subsidies. Discretionary rate relief is considered a subsidy under the rules, but the matters that must be considered all relate to the effect of the subsidy on international trade. In making an award the public body making it must consider:

- effects on international trade
- the subsidy is prohibited under the World Trading organisation (WTO) rules
- are in line with those agreed by the UK –EU Cooperation and Trade Agreement
- are unlikely to trigger a dispute under WTO trade rules

9.4 It is unlikely that an award of discretionary rate relief would fall counter to these rules.

10. Complaints and Appeals

- 10.1 Any customer who feels that they have not been correctly dealt with can use the Customer Feedback procedure to make a complaint.
- 10.2 Rating Law does not allow a ratepayer to appeal a decision by the Council on discretionary rate relief. However, in the interest of natural justice and in keeping with customer care practise and principles of open government, this policy provides a mechanism for review of any decision.
- 10.3 If a ratepayer is unhappy with the decision made, full details should be submitted, in writing to the Council within one calendar month of notification of the decision. Any review will be considered by Cabinet.

11. Fraud

- 11.1 The Council is committed to the prevention and detection of fraud and the protection of public funds. Cases of suspected fraud will be referred to the Mid Kent Fraud and Compliance team, which may result in clawback of payments, made and/or further action being taken against an individual.

Appendix A

Category of Ratepayer	Mandatory Relief	Discretionary Relief
Charities	80%	Up to 20%
Registered Community Amateur Sports Clubs (CASCs)	80%	Up to 20%
Non-Profit Organisations	Nil	Cases considered on individual merit
Hardship Relief	Nil	Cases considered on individual merit
Partly Occupied Hereditament	Nil	Cases considered on individual merit

Addendum 1

Relief for Local Newspapers

From 1 April 2017, the Government announced a business rates discount of up to £1,500 a year to business rates accounts for office space occupied by local newspapers up to a maximum of one discount per local newspaper title and per hereditament. This relief scheme has been extended to 31 March 2025.

Local Authorities are required to adopt a local scheme and decide each individual case using their discretionary relief powers introduced by the Localism Act (under Section 47 of the Local Government Act 1988).

The Council will use the Government criteria to determine qualifying ratepayers.

Eligibility Criteria

Properties that will benefit are those that meet the following criteria:

- The property must be occupied by a local newspaper and must be wholly or mainly used as office premises for journalists and reporters, and
- The local newspaper must be what is considered 'traditional local newspapers'. The relief is not available to magazines.

'Wholly or mainly' is a test on use rather than occupation. Therefore, properties which are occupied but not wholly or mainly used for the qualifying purpose will not qualify for the relief.

Amount of Relief

Up to £1,500 relief a year; the amount of relief is limited to a maximum of one discount:

- Per newspaper title (e.g. per newspaper name); and,
- Per hereditament (property) that is wholly or mainly occupied by the local newspaper.

Recalculation of Relief

The amount of local newspaper relief awarded will be recalculated in the event of a change in circumstances, including changes to occupation of premises by the local newspaper or identification that the relief has been applied on additional accounts.

Application for Local Newspaper Relief

The Council will identify where possible ratepayers entitled to the relief. Ratepayers who believe they might be entitled to this relief should contact the Council.

Amounts of relief awarded under this policy will be notified by the issuing of a rates bill.

Officers will make decisions in respect of Local Newspaper Relief.