



15 December 2016

**Corporate Policy and Resources
Committee**

Subject: Hardship Rate Relief Scheme

Report by:

Director of Resources

Contact Officer:

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Purpose / Summary:

This report seeks to clarify the Council's policy on Hardship Rate Relief and sets out the details of the proposed guidelines for determining applications for reductions in business rate in individual cases.

RECOMMENDATION(S):

That the Policy and Resources Committee members;

- 1. Approve the guidelines for considering applications for Hardship Rate Relief.**
- 2. Approve that individual applications for Hardship Rate Relief are determined by the Director of Resources/Section 151 Officer under his delegated powers.**
- 3. Approve that, in the event of an appeal, it be heard by the Appeals Board.**

IMPLICATIONS

Legal:

Section 49 of the Local Government Finance Act 1988 gives billing authorities the discretion to reduce or remit the payment of rates.

Ratepayers who disagree with a refusal to grant relief or by the amount of relief awarded may challenge the decision via Judicial Review, on the grounds that the Council has failed to act reasonably in exercising its discretion.

In order to minimise the likelihood of any such challenges, where the amount of relief to be granted is below £5,000, it is recommended that the Ratepayer be given appeal rights to the Housing Appeals Board, as agreed for applications for a similar scheme under Section 13a of Local Government Finance Act 1992 in respect of Council Tax.

Once the Board has considered the appeal, the applicant will be informed of the decision in writing within 10 working days, and notified that any further appeal would need to be by way of judicial review to the High Court, but that this could only be on a point of law.

Financial : FIN/90/17 CP&R
FIN/GCLT/46/17 GCLT

The implications of granting Hardship Rate Relief are set out below:

Type of Relief	Maximum relief	Cost to WLDC Collection Fund	Cost to Lincolnshire County Council	Cost to Central Government
Hardship	Up to 100%	40%	10%	50%

WLDC has to take into account the interests of its Council Tax payers as 40% of any Hardship Rate Relief granted is funded by them.

It is anticipated that only a small number of reductions are likely to be granted and those that are will likely be for short periods of time. This being the case it is expected that any reductions granted can be provided for out of existing budgets.

Staffing :

None directly resulting from this report

Equality and Diversity including Human Rights :

It is important that all applications for relief are assessed on their merits and with due regard to guidance criteria as detailed.

Risk Assessment :

Any new policy or decisions made based on such a policy would be open to legal challenge however failing to adopt a policy could damage the Council's reputation.

Climate Related Risks and Opportunities :

None arising from this report.

Title and Location of any Background Papers used in the preparation of this report:

Local Government Finance Act 1988 – Section 49

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

Yes No

Key Decision:

Yes No

Executive Summary

Section 49 of the Local Government Finance Act 1988 gives the Council the discretion to reduce or remit the payment of business rates and this can be considered for both occupied and unoccupied properties.

The principle purpose of an award of hardship relief is to provide short-term assistance to businesses that are suffering unexpected hardship, arising from circumstances beyond the business's 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.

The test of "hardship" need not be confined strictly to financial hardship and all relevant factors affecting the ability of the business to meet its rate liability should be disclosed.

The "interest" of local Council Taxpayers may go wider than direct financial interests; for example, where employment prospects in an area would be worsened by a ratepayer going out of business, or the amenities of an area might be reduced by, for instance, the loss of a neighbourhood shop. It is unlikely that Hardship Relief would be granted in respect of an empty property or where there is little expectation of economic survival.

However, West Lindsey District Council has to take into account the interests of its Council Tax payers as 40% of any Hardship Rate Relief granted is funded by them.

It is anticipated that only a small number of reductions are likely to be granted and those that are will likely be for short periods of time. This being the case it is expected that any reductions granted can be provided for out of existing budgets.

The scheme is discretionary and the applicant does not have a statutory right to a payment other than the normal challenge against the decision via Judicial Review. However, in the interests of fairness, the council should operate an internal review procedure for appeals and it is envisaged that individual applications for Hardship Rate Relief be determined by the Director of Resources under his delegated powers.

In the event of an appeal these should be considered by the Housing Appeals Board.

Notifications will always be made in writing to the applicant and any awards will be made by crediting the business rate account to which it applies.

1 Background

- 1.1 Section 49 of the Local Government Finance Act 1988 gives billing authorities the discretion to reduce or remit the payment of rates. Hardship Rate Relief can be considered for both occupied and unoccupied properties.
- 1.2 The Billing authority can reduce or remit the payment of rates where it is satisfied that;
- 1.2.1 The ratepayer would sustain hardship if it did not do so, AND,
- 1.2.2 It is reasonable for it to do so having regard to the interests of its council taxpayers.

2 Background to Guidance

- 2.1 The West Lindsey District Council will consider awards of Hardship Rate Relief to ratepayers based on 'good practice' guidance issued by the former Office of the Deputy Prime Minister:

These are:

- That although the council may adopt rules for the consideration of hardship cases, a blanket policy either to give or not to give relief should not be adopted; each case should be considered on its own merits.
- The application process should be kept as simple and streamlined as possible to enable decisions to be made quickly.
- Reduction or remission of rates on the grounds of hardship should be the exception rather than the rule.
- The test of 'hardship' need not be confined strictly to financial hardship. All relevant factors affecting the ability of a business to meet its liability for rates should be taken into account.
- The interests of Council Tax payers in an area may go wider than direct financial interests. For example, where the employment prospects in the area would be worsened by a company going out of business, or the amenities of an area might be reduced, if for instance the company is the only provider of a service in the area.
- Where the granting of relief would have an adverse effect on the financial interests of Council Tax payers, the case for a reduction or remission of rates payable may still on balance outweigh the cost to Council Tax payers.
- The hardship caused to a ratepayer may be self-evident, for example where a business has been affected by severe loss of trade due to external factors such as natural disasters.

- The Council may, however, wish to consider how the business can demonstrate such loss of trade or business. For example, accounts, order books, till receipts or VAT returns may show a marked decline in trade compared to corresponding periods in previous years.
- The Council should be clear in awarding relief that it will be granted only for the period where there is clear evidence of hardship for the ratepayer concerned.
- To guard against fraudulent claims, the Council should be satisfied that the claim is from a ratepayer suffering genuine hardship.
- Hardship Rate Relief constitutes state aid which may need to be notified to the European Commission. The de-minimis threshold for state aid is €200,000 (or approximately £176,000) in a three year period.

2.2 As a general principle the following circumstances should not be considered as exceptional for the purposes of granting Hardship Rate Relief:

- A general market turndown
- Strikes internal to a business
- Non-domestic property becoming vacant and liable to the unoccupied rate
- External market conditions, such as;
 - * Energy costs
 - * Insurance costs
 - * Transportation costs
 - * Increased interest rates
 - * Strength of Sterling in the European market
 - * Increased competition elsewhere.
- External risk that would be covered either by commercial insurance or by the availability of compensation from public funding would not be considered 'exceptional circumstances' on the basis that an alternative means of assistance is already available. Where circumstances are sudden, such as severe flooding, there may still be a case for Hardship Rate Relief.

3. Applying for Hardship Rate Relief

- 3.1 In order to claim Hardship Rate Relief, the ratepayer must provide the Council with all of the information necessary to consider the application. An application form is appended to this document at Appendix A.
- 3.2 The Council reserves the right to consider applications, which provide all the necessary information, regardless of whether the application form has been submitted.
- 3.3 Applications may only be made by the ratepayer personally or, where the ratepayer is a body corporate, a person authorised to act on behalf of the ratepayer.

- 3.4 The Council may request any reasonable evidence in support of an application for Hardship Rate Relief. The Council will make such requests in writing. The ratepayer should provide the evidence within one month.
- 3.5 If the ratepayer does not provide the required evidence, the Council reserves the right to either treat the application as withdrawn or to consider the application in the absence of the missing evidence. However, the Council may disregard any unsubstantiated statements or draw its own conclusions from other evidence available.
- 3.6 The Council may in any circumstances verify any information or evidence provided by the ratepayer by contacting third parties, other organisations and the ratepayer.
- 3.7 An application for Hardship Rate Relief must be completed for each financial year, or part thereof, but the total period for which relief can be granted should not exceed 12 months unless exceptional circumstances exist.

4 Decision Making Process and Administering Applications

- 4.1 The City of Lincoln/North Kesteven District Council partnership will undertake the administration of applications for Hardship Rate Relief in accordance with the framework agreement for the provision of business rates services.
- 4.2 Where the ratepayer appears to have provided sufficient evidence to be considered for relief, an appropriate officer of the City of Lincoln/North Kesteven District Council partnership will provide an indicative figure for the amount of Hardship Rate Relief to be granted based on the evidence supplied by the Ratepayer.
- 4.3 If the suggested amount of relief is less than £5,000, this will be reported to the Revenues Team Manager (WLDC) who will inform the Director of Resources/Section 151 Officer under delegated powers, who will be asked to confirm, or suggest a different amount of Hardship Rate Relief.
- 4.4 Where any recommendation to grant Hardship Rate Relief is over £5,000, this will be reported to the Corporate Policy and Resources Committee for consideration.

5 Notification of Decision

- 5.1 The Council will inform ratepayers of the outcome of the application within 14 days of making a decision to either grant or not grant Hardship Rate Relief.
- 5.2 The Council will notify those whose application is successful, of the following:
- The amount of rate relief awarded and their revised liability
 - The period of the award
 - A summary of the reasons for the award
 - Any requirement to notify the Council of changes in circumstances that could affect the award.
 - What happens next year

- The appeals process, for cases where the rates payable have not been wholly remitted

5.3 The Council will notify those whose application is unsuccessful, of the following:

- The reasons why the Council have decided not to grant an award
- The appeals process

6 Appeals

6.1 Section 49 of the Local Government Finance Act 1988 gives billing authorities the discretion to reduce or remit the payment of rates.

6.2 Ratepayers who are aggrieved by a refusal to grant relief or by the amount of relief awarded may challenge the decision via Judicial Review, on the grounds that the Council has failed to act reasonably in exercising its discretion.

6.3 In order to minimise the likelihood of any such challenges, where the amount of relief to be granted is below £5,000, the Ratepayer has the right of appeal to the Housing Appeals Board.

6.4 Once the Board has considered the appeal, the applicant will be informed of the decision and notified that any further appeal could only be on a point of law and this would need to be by way of judicial review to the High Court.

7 Risks

7.1 Any new policy or decisions made based on such a policy would be open to legal challenge.

7.2 Conversely the risk associated with not adopting the suggested policy will significantly reduce the risk that decisions on discretionary discounts could be successfully challenged.

7.3 Damage to reputation is a risk by failing to adopt a policy.

8. Recommendations

8.1 The committee is requested to approve the guidelines for considering applications for Hardship Rate Relief.

8.2 Approve that individual applications for Hardship Rate Relief are determined by the Director of Resources under his delegated powers.

8.3 Approve that, in the event of an appeal, it be heard by the Housing Appeals Board.

Appendices

A. Application Form



Guildhall
 Marshall's Yard
 Gainsborough
 DN21 2NA
 Telephone: (01427) 676676
 Fax: (01427) 675173
 Web: www.west-lindsey.gov.uk

APPLICATION FOR HARDSHIP RELIEF UNDER SECTION 49 OF THE LOCAL GOVERNMENT FINANCE ACT 1988

Period of Application	
Name of Business	
Your Account Reference Number	
Address of premises on which relief is being applied for:	
Telephone Number	
Email Address	
What is the nature of the business?	
Is the business part of either a group of chain?	
How long has the business been trading at this address?	
How many people do you employ? Where do they live?	

Please provide your previous 2 years' audited accounts.
Please provide details of your income and expenditure over the last 3 months if not covered in your audited accounts.
Please provide your bank statements for the latest 6 months.

Please explain below the reasons why you/your organisation should be considered for Discretionary Hardship Relief.

What measures are you taking to improve your situation?

Your application will not be processed unless all the details requested are completed and returned with this form.

I declare that the information I have given on this form is complete and accurate, to the best of my knowledge and that the Council may check the information given.

I also understand that whilst this application for relief is pending I am not entitled to withhold payment of the business rates due to the council.

Signature: _____ Date: _____

Full Name (please print): _____

Position: _____

**Please return your completed form to
Business Rates Section, City of Lincoln Council, City Hall, Beaumont Fee, Lincoln, LN1 1DB**

