

# Discretionary rate relief (hardship rate) policy framework

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# Introduction

- 1.1 If Luton is to continue to prosper the council needs to remove barriers to business growth, enable disadvantaged communities to share the benefits of sustainable economic growth and offer a pleasant and safe place to live and work. The Hardship Relief Policy Framework support this statement; enabling the council to use its discretionary powers to award relief from payment of non-domestic rates.
- 1.2 The principal purpose of awards of Hardship Relief under the Policy Framework shall be 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.
- 1.3 The legislation under section 49 of the Local Government Finance Act stipulates that a local authority in considering hardship must be satisfied:
  - the ratepayer will suffer hardship if relief is not granted
  - there is a direct benefit to the ratepayer, or the community, and there are no adverse impacts to other ratepayers or the community as a result of awarding relief
- 1.4 Applications for rate relief from charities and not-for-profit organisations shall be considered under the separate policy ('Charitable and Non Profit Making Organisations Discretionary Rate Relief') agreed by the executive.
- 1.5 Each application for hardship relief shall be considered on its individual merit but in making a decision on the award the decision maker will give due consideration to the requirements of the policy framework.

## Exceptions to the policy framework.

- 1.6 In accordance with the council's constitution, the portfolio holder with responsibility for finance may determine partly occupied relief applications which fall outside the scope of the approved policy framework.

# Definition

- 2.1 All decisions in respect of applications for partly occupied relief must be taken in accordance with statutory requirements and give due consideration to any guidance issued by the secretary of state.
- 2.2 Decisions shall be taken in accordance with the council's constitution.
- 2.3 In addition to these requirements the following shall apply in respect of all requests for hardship relief under the powers set out above.

## Requirements for applications

- 2.4 Applications will only be considered where a written application is received from the ratepayer, or where the ratepayer is an organisation, or a person properly authorised to make

an application on behalf of the organisation. Where the council provides an application form the application must be made on that form.

- 2.5 The council shall request such supporting evidence as it considers necessary to enable the council to properly assess the merits of the application.

## Publication of decisions and applications

- 2.6 All decisions taken in respect of an application for hardship rate relief will be published.

## Timescale for decisions

- 2.7 The council will aim to make a decision regarding the application within four weeks of receiving the application and all supporting evidence considered necessary to enable the application to be considered.

## Requirement to make payment of amounts falling due

- 2.8 Ratepayers must continue to pay any amount of rates that falls due whilst an application is pending. In the events that the payments are not received as due the council may continue with its normal procedures to secure payment.

## Awards for retrospective periods

- 2.9 Hardship relief will not normally be awarded in respect of any day prior to the day that an application is received. However, in exceptional circumstances consideration may be given to awarding hardship rate relief for a retrospective period where the ratepayer can demonstrate good cause for not submitting the application earlier.
- 2.10 No consideration shall be given to an award for a retrospective period where the council is not able to verify to its satisfaction that the circumstances giving rise to the application pertained for that period.

## State aid

- 2.11 Hardship relief shall not be awarded in any circumstances where it appears that an award will result in the ratepayer receiving state aid that is above the current de minimis level, (currently set at 200,000 euro over three years).

Each application must be accompanied by a statement signed by the appropriate person representing the business setting out the amount of state aid, including but not limited to hardship relief, which the ratepayer has received within the previous three years. Applications shall not be considered until this statement is received.

## Maximum amount of award

- 2.12 The Localism Act allows scope for the council to award up to 100 per cent rate relief in any one year for qualifying businesses. The maximum amount awarded shall normally be limited

to no more than 45 per cent of the rate liability except where there are exceptional circumstances which justify a greater amount.

## Duration of awards

2.13 All awards shall terminate at the end of the financial year if the award has not ended earlier. Where the hardship continues, a further application may be made in the new financial year; however, in considering repeated application consideration will be given to the number and value of the previous awards.

2.14 There is no minimum award period. The maximum is 12 months but this would only be in the rarest of circumstances.

## Factors considered when determining an award

2.15 In coming to an individual decision the council will consider the following factors:

### Financial factors

- a. Income and outgoings - ie how is the organisation / individual doing financially. What expenses do they have and what money have they coming in?
- b. Reserves - does the organisation / individual have any reserves, is the hardship just a temporary measure and could be covered by reserves?
- c. Other shops / areas of business - is this a single premises business or are there other areas of the business which could offset any hardship?
- d. Excessive outgoings - is the hardship caused by excessive outgoings, are the level of drawings too large, is the organisation / individual renting excessively large or expensive premises?

### History and future planning

- e. What was the reason for the hardship? Is there a recognisable one-off reason for the hardship, or is it just a slow down in trade, or even that the business is just not sustainable?
- f. Is there an improvement plan? Does the organisation / individual have an improvement plan to relieve them of hardship and if so what are the chances of success?
- g. Will the granting of hardship be effective? Will the organisation / individual still be unsustainable even with the granting of a reduction in the non-domestic rates liability? Will the money spent by the authority have any longer term benefit or could it just serve to delay an inevitable decline of the business?

### Loss of amenity

- h. What would be the effect on the local community? Would the local community suffer if the organisation / individual were no longer in existence?

- i. Are there other similar businesses? If the applicant no longer occupied the premises would the existence of other organisations / individuals mean that there would be no or insignificant loss of amenity.
- j. What area / group is served by the applicant? Does the ratepayer serve a limited target audience or do large sectors of the Luton community benefit from their existence.
- k. Another vacant property? Are there other empty properties in the area and another empty property would degrade the area further and be detrimental to the local public?

### Employment implications

- l. Number of people employed? What number of people are employed by the organisation / individual and would their jobs be in danger if hardship was not granted.
- m. How many live in Luton? If the reason for granting hardship is to prevent job losses, are those employees protected residents of Luton Council.
- n. Are employees family members? Are the people employed by the organisation / individual members of their family or are any vacancies open to the general public.
- o. Are the employees taken from an unemployment black-spot? Is the organisation / individual situated in an area where jobs are more difficult to obtain, or are they in an area where the employees would have a greater chance of finding other employment.

### External factors

- p. Consideration should be given when certain regional, national or global factors affecting hardship are beyond the organisation's control, particularly when central government provides extra funding and including consideration of rules of state aid.

2.16 We are only able to support applications for hardship relief under these provisions, where we are satisfied on all of the following counts:

- that exceptional hardship is demonstrated
- that the business is responsible for providing a local amenity and/or employment to Luton residents
- that notwithstanding this hardship, the business has a credible future
- that a short term award of hardship relief will materially serve to ensure the future of the business
- the continued provision of the amenity and/or employment opportunities
- that there is sufficient budgetary provision available to meet the council's commitment to fund the relief

## Qualification criteria for an award

- 2.17 A business will not be considered to be suffering financial hardship in any annual accounting period during which it is profitable or has experienced a loss which is minor in comparison to the overall turnover of the business. In determining if a business is profitable account shall be taken of reasonable drawings by the proprietor or reasonable remuneration of the directors. For the purposes of the policy framework the reasonable remuneration shall be no more than 150 per cent of the minimum wage.
- 2.18 Where the circumstances giving rise to the hardship pertain for only part of the business's normal annual accounting period, the income and expenditure of the business for the period during which the circumstance pertain may be used to determine whether the business is profitable.
- 2.19 It is expected that the business will take prompt action to mitigate any factors giving rise to hardship. Examples of mitigating actions may include seeking business advice, discounts and promotions, reviewing pricing, extending the range of stock or services, negotiating with creditors etc. Applications may be declined where the business is unable to demonstrate that it is taking reasonable steps to alleviate the hardship.
- 2.20 Applicants must supply the last two years accounts and a current cash flow forecast in order for an application to be considered. Where the business has traded for less than two years, accounts must be provided where available, and draft accounts or budget forecasts must be provided for the period since the business commenced trading.
- 2.21 No award shall be made where it appears to the council that the proprietor of the business has failed to exercise due diligence to anticipate the circumstances that may give rise to hardship, financial or otherwise, and/or put in place measures to prevent or mitigate the circumstances.
- 2.22 Applications will be assessed by a senior officer and viewed favourably where the criteria of the policy framework are met and the business provides the only goods or services of that type in the local area or where the business is a niche business supplying specialist goods or services that are not widely available and visa-versa.

## New businesses

- 2.23 Awards of hardship rate relief will not be made for the purposes of enabling new businesses to become established except where the viability of the business is threatened by events that could not have been reasonably foreseen when establishing the business.

## Unoccupied properties

- 2.24 Rate relief on the grounds of hardship in respect of rates payable for an unoccupied property above the standard three or six month normal exemptions will only be awarded in the most exceptional circumstances where there are clear and tangible benefits to local council tax payers in making the award. Part occupation relief is awarded in accordance with the Partly Occupied Rate Relief Policy Framework

## Relationship to other forms of rate relief

2.25 Applications for Hardship Relief shall be regarded as the last resort and will only be considered after consideration of any other forms of rate relief to which the applicant may be eligible

## Information to support applications

2.26 All applicants are required to complete the council's Hardship Relief application form. Such information and evidence as the council requires must be provided to support an application and in the event that the requested information and evidence is not provided the application may be refused.

2.27 In submitting an application the rate payer must demonstrate with verifiable supporting evidence the benefits to Luton Councils taxpayers that will accrue from making the award.

## Reviews and appeals

2.28 Decisions on the award or otherwise of partly occupied relief will be taken by the delegated officer and the decision will be final. There will be no automatic right to appeal. However, if you disagree with the decision you should write to the council within one month of the decision letter, clearly setting out the reasons why you think the decision is wrong.

2.29 Disagreements of this nature will be considered by an officer independent of the assessment process. There will however, be no further right of appeal following such a reconsideration.