

# **Central Bedfordshire Council's Discretionary Rate Relief Policy**

**Revenues & Benefits Service**



**Central  
Bedfordshire**

**Approved by Executive:**

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## **1. Introduction**

The Council recognises the importance of supporting local businesses and organisations to promote the provision of local facilities, economic growth, employment and investment to improve prosperity across Central Bedfordshire and in particular support the most disadvantaged communities.

Councils have the power to grant discretionary rate relief to organisations that meet certain criteria. Public funds are not however unlimited, with a proportion of the costs of relief granted being borne by council tax payers. In making decisions the Council must be confident that money invested in this way will be repaid in economic and/or community benefit.

The powers for granting discretionary rate relief by councils' is provided in Section 47 of the Local Government Finance Act 1988 which has been amended by subsequent legislation to incorporate wider powers to grant relief under local discretion.

This policy document outlines the areas of local discretion and the Council's approach to the various discounts. There is also a summary provided of the reliefs which are awarded by Government under national initiatives.

### **Exceptions to this Policy**

In accordance with the Council's Constitution the Chief Finance Officer may determine discretionary rate relief applications which fall outside the scope of this approved Policy.

## **2. General Principles**

All decisions in respect of applications for discretionary rate relief must be taken in accordance with statutory requirements and give due consideration to any guidance issued by the Secretary of State.

Decisions shall be taken in accordance with the Council's Constitution.

In addition to these requirements the following shall apply in respect of all requests for rate relief under the powers set out above.

### **The Interests of Central Bedfordshire Council's Council Taxpayers**

In determining an award of rate relief consideration shall be given to the interests of the Central Bedfordshire Council's Council Taxpayers in making an award. Awards shall only be made where the benefits to the Central Bedfordshire Council's Council Taxpayers are considered to outweigh any detriment to those interests including, but not limited to, the financial impact of the award.

## Reviews and Appeals

Decisions on the award or otherwise of rate relief will normally be taken by Head of Revenues & Benefits and the decision will be final. Although not legally required the Council has an internal appeal process in the form of a report being issued to the Chief Finance Officer for him to review the decision undertaken by the Head of Revenues & Benefits in respect of the granting or not granting relief. There will be no automatic right of appeal. An applicant may make a request for the decision maker to review a decision but only where either:

1. Additional information that is relevant to the application and that was not available at the time the decision was made becomes available; or
2. There are good grounds to believe the application or supporting information was not interpreted correctly at the time the decision was taken.

A request for a review must be made within four weeks of notification of the decision and must set out the reasons for the request and any supporting information.

Right of appeal for refusal to grant part occupied relief under section 44a Local Government Finance Act 1988 can be challenged by judicial review under Section 138 Local Government Finance Act 1988.

### How to make an Application for Judicial Review

Within 3 months of the date when the grounds first arose, the applicant must submit a Notice of motion to a High Court Judge. This application must state the grounds on which the application is made

The application is made “ex parte” (i.e.) by one party without notice to the other and is supported by an affidavit detailing the facts. The purpose of this is to ensure applications are dealt with quickly and without necessary expense

If the judge considers that there appears to be reasonable grounds for a challenge, leave will be granted. This allows 14 days to submit a *Notice of motion* to the high court. This document details the issues to be examined, and any relief that is being sought.

Copies of the notice are served on all parties affected who have the right to submit affidavits if they so wish. They must exercise this right within 56 days.

Hearings may be heard by up to 3 judges who consider all the evidence before them. This is sometimes considered with the benefit of only one view of the issues if there is failure to respond by any party.

## **Requirements for Applications**

Applications will only be considered where a written application is received from the ratepayer, or where the ratepayer is an organisation 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.

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

Ratepayers submitting an application shall set out, as part of the application; the benefits that the ratepayer considers will accrue to Central Bedfordshire Council's Taxpayers as a result of the award.

## **Timescale for Decisions**

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.

Each application for discretionary rate relief will 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 this Policy.

## **Requirement to Make Payment of Amounts Falling Due**

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

## **Awards for Retrospective Periods**

With the exception of applications on the grounds of hardship, rate 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 rate relief for a retrospective period where the ratepayer can demonstrate good cause for not submitting the application earlier.

Where the application is on the grounds of hardship an award may be made for a respective period where it is considered that the business suffered hardship during that period.

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**

Rate 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. 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 discretionary rate relief, which the ratepayer has received within the previous three years. Applications shall not be considered until this statement is received.

### **General Overview of Reliefs**

#### **Mandatory Rate Relief Scheme**

The Local Government Finance Act 1988 requires the Council to grant Mandatory Rate Relief of 80% of the business rates to the following categories of business rates payers:

- Registered charities where the property is wholly or mainly used for charitable purposes
- Registered Community Amateur Sports Clubs (CASCs) for any club with the appropriate registration with HMRC.
- Rural shops and businesses

#### **Discretionary Rate Relief Scheme**

The Local Government Finance Act 1988 requires the Council to maintain a Discretionary Rate Relief Scheme that can award up to 100% Business Rates Relief to certain organisations which operate within locally specified criteria. These organisations are:

- a) A further award to registered charities up to 100%, known as discretionary “top up” relief, where the property is wholly or mainly used for charitable purposes;
- b) A further award of 20% on top of mandatory relief to registered Community Amateur Sports Clubs (CASCs); and
- c) Other non-profit making organisations where the property is used for charitable purpose concerned with education, social welfare, science, literature or the fine arts; or is used wholly or mainly for recreation by a not-for-profit club or society.

In determining applications the Council may:

- Grant relief up to a maximum of 100% of the business rates due;
- Grant relief for a sum less than 100% of the business rates due; or
- Refuse any application for additional relief.

Detailed below are the criteria applied.

### 3. Charities and Kindred Organisations

#### Mandatory Relief

Where a property is occupied by a charity or trustees for a charity, and it is used wholly or mainly for charitable purposes (whether of that charity solely, or of that and other charities), the ratepayers will qualify for a Mandatory Allowance of 80%, and therefore the rate liability will be 20% of the full rate.

Where the owner of an unoccupied property is a charity or trustees for a charity, and it appears that "when next in use" the property will be wholly or mainly used for charitable purposes (whether of that charity, or of that and other charities), the ratepayers will qualify for a Mandatory Allowance of 80%, on the 50% unoccupied charge otherwise payable, and therefore the rate liability will be 10% of the full rate.

The Authority has no discretion regarding whether to award Mandatory Relief, however the Authority must satisfy itself that the statutory criteria is met. To assist the Authority in this task, guidance is provided in both the LGFA 1988, and by reference to other enactments and case law.

A "CHARITY" is defined as

**"an institution or other organisation established for charitable purposes only, or any persons administering a trust established for charitable purposes only".**

#### Confirmation of Charity Status

There are a number of sources that can be used to confirm "charitable status", the most common is by reference to:

- The Register of Charities maintained by the Charity Commissioners under Section 4 Charities Act 1960, and an entry in this register is conclusive proof that an organisation is a charity.
- Absence from the register does not mean an organisation has not been established for charitable purposes as certain organisations are exempt from registration.

These are:

- the Church Commissioners;
- units of the Boy Scouts or Girl Guides;
- any registered society within the meaning of the Friendly Societies Act 1896 - 1974;
- Voluntary schools within the meaning of the Education Act 1944 - 1980.



If neither of the above are applicable, the determination of whether an organisation has been established for charitable purposes may be difficult.

However, 4 general principles have been established through case law

- that it should be a trust for the relief of poverty; or,
- a trust for the advancement of religion; or,
- a trust for the advancement of education; or,
- a trust for other purposes that is beneficial to the community.

and these may be used to consider an organisations claim if no other evidence is available.

Once it has been established that an organisation is charitable by any of the above methods, to award the relief the Authority must also be satisfied that the hereditament is used wholly or mainly for a charitable purpose. This covers charitable use "over half of the time" or "use of half the property all of the time" or a combination of both amounting to more than 50%. To assist the Authority to confirm these criteria are satisfied, reference can be made to case law.

### **Charity Shops**

Charity shops are entitled to Mandatory Relief if they use premises:

- wholly or mainly for the sale of goods donated to the charity; and,
- the net proceeds of the sale of goods are applied to the purpose of the charity.

**\*\*There is no definition of "wholly or mainly" and therefore interpretation in the literal sense must be on the basis of "more than half". However, this could be based on floor area, volume of sales or value of sales. The latter should be determined by if the net sales income from donated goods exceeds sales income from bought in goods to satisfy the term "mainly".**

### **Charitable Relief, Relief for Registered Community Amateur Sports Clubs (CASCs) and Discretionary Relief**

Charities are entitled to relief from rates on any non-domestic property that is wholly or mainly used for charitable purposes. Registered CASCs also qualify for relief on any non domestic property that is wholly or mainly used for the purpose of that club or that club and of other such registered clubs. Relief is given at 80 per cent of the bill. Local councils have discretion to give further relief on the remaining bill.

### **Award of Mandatory Relief**

The Authority requests that an application for Mandatory Relief be in writing, and that renewal of applications be made in writing biennially at the beginning of each financial year.

There is also no effective date prescribed from when relief can commence so relief awards can be retrospective.

### **Appeals against refusal to grant Mandatory Relief**

Appeal against refusal to grant relief is to the Magistrates court at a liability order hearing.

### **Discretionary Relief for Charities – “Top Up”**

The Council will consider applications for a discretionary rate relief top up from charities based on their own merits, on a case by case basis.

Discretionary Relief may be awarded where the ratepayer is a charity or trustees for a charity, and the property is wholly or mainly used for charitable purposes (as with Mandatory Relief). In such cases, discretionary relief granted can be anything from 0% to 20%, as 80% will already have been awarded,

In determining the application the following matters will be taken in to consideration:

- ‘Top Up’ relief of up to 20% is only awarded to local charities who can clearly demonstrate financial hardship.
- Unless a special case for hardship can be proved, ‘Top Up’ relief to national charities including charity shops or other premises should not be granted.
- Local charity to be defined as set up with the sole purpose of assisting local residents of Central Bedfordshire Council and whose main office is situated within Central Bedfordshire Council
- Academy, Free, Grant Maintained, Faith and Trust Status schools are classified as charities and therefore receive 80% mandatory relief. Top up relief for schools and educational establishments who receive central or local government support should not be granted unless a special case for hardship can be proved.

The scoring criteria for awards of “Top Up Relief” is as follows:

#### **Maximum Relief Available 20%**

<b>Narrative</b>	<b>% of relief</b>
National Charity Not specific affiliation to the area (not including staff employment)	<b>0%</b>

Local Charity Affiliated to local area	<b>15%</b>
Reserves as % of gross rate liability Less than 300%	<b>5%</b>

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## 4. Discretionary Relief Only

Applications for up to 100% discretionary relief can also be made by any business that does not qualify for mandatory relief and where the property is not an excepted property, and where all or part of it is occupied by one or more institutions or other organisations which are – not established or conducted for profit, and, whose aims should be charitable or otherwise philanthropic, or concerned with the promotion of social welfare, education, science, literature or the fine arts.

Also discretionary relief may be granted where the property is wholly or mainly used for the purpose of recreation and all or part of the property is occupied for the purpose of a club, society or other organisation not established or conducted for profit.

Discretionary Relief to any one organisation will be limited to a total Rateable Value of £150,000 (Approximately £72,300 of rate relief).

The Council will consider applications for discretionary rate relief from non profit making organisations based on their own merits, on a case by case basis.

**(NB. Sports Clubs have a separate qualify criteria – see page 16)**

- **The application will be considered on the following three criteria**

### **1. Members resident in Central Bedfordshire**

Whilst the Council accept that clubs and organisations provide a valuable leisure facility, it must be remembered that any relief granted is partially paid for by the Council Tax payers of Central Bedfordshire. As such, consideration is given as to the percentage of members/users of the facility who reside in Central Bedfordshire area.

<b>Residents of Central Bedfordshire as Percentage of Overall Membership</b>	<b>% of Relief</b>
Between 75% and 99%	50%
Between 50% and 74%	35%
Between 25% and 49%	20%
24% and below	0%

### **2. How are funds raised?**

The Council is keen to see how clubs or organisations are trying to help themselves and be self sufficient wherever possible. Whilst income can be received by external grants from other bodies (e.g.) the lottery or another public sector body, charging subscriptions and running fundraising events can also raise income.

<b>Self Financing Income</b>	<b>% of Relief</b>
60% and Over	25%
Between 25% to 60%	15%
24% and below	0%

### **3. Level of Reserves or Savings**

This is a very important factor to take into account and information will be drawn from the audited balance sheet provided in support of applications. Where this is not available, copies of bank statements with a profit and loss position must be provided. Failure to supply adequate records will result in no award under this heading.

<b>Reserves as a Percentage of Net Annual Rate Liability</b>	<b>% of Relief</b>
Over 300% or more	0%
Between 100% and 299%	15%
Between 0% and 100%	25%

## 5. Community Interest Companies

CIC's are a new type of limited company designed specifically for those wishing to operate for the benefit of the community rather than for the benefit of the owners of the company. This means that a CIC cannot be formed or used solely for the personal gain of a particular person, or group of people. CIC's can be limited by shares, or by guarantee, and have a statutory "Asset Lock" to prevent the assets and profits being distributed, except as permitted by legislation. This ensures the assets and profits are retained within the CIC for community purposes, or transferred to another asset-locked organisation, such as another CIC or charity. A company that is a charity cannot be a CIC, unless it gives up its charitable status.

- **Discretionary relief to any one organisation will be limited to a total rateable valuation of £150,000 (Approximately £72,300 of rate relief).**
- **The application will be considered on the following three criteria**

### 1. Users resident in Central Bedfordshire

It must be remembered that any relief granted is partially paid for by the Council Tax payers of Central Bedfordshire. As such, consideration is given as to the percentage of members/users of the facility who reside in Central Bedfordshire area.

<b>Residents of Central Bedfordshire as Percentage of people using the facility</b>	<b>% of Relief</b>
Between 75% and 99%	50%
Between 50% and 74%	35%
Between 25% and 49%	20%
24% and below	0%

### 2. How are funds raised?

The Council is keen to see how clubs or organisations are trying to help themselves and be self sufficient wherever possible. Whilst income can be received by external grants from other bodies (e.g.) the lottery or another public sector body, charging subscriptions and running fundraising events can also raise income.

<b>Self Financing Income</b>	<b>% of Relief</b>
60% and Over	25%
Between 25% to 60%	15%

24% and below	0%
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### 3. Level of Reserves or Savings

This is a very important factor to take into account and information will be drawn from the audited balance sheet provided in support of applications. Where this is not available, copies of bank statements with a profit and loss position must be provided. **Failure to supply adequate records will result in no award under this heading.**

<b>Reserves as a Percentage of Net Annual Rate Liability</b>	<b>% of Relief</b>
Over 300% or more	0%
Between 100% and 299%	15%
Between 0% and 100%	25%

### **An Excepted Property**

An excepted property is one occupied by a Billing or Precepting Authority" and prevents authorities awarding relief to themselves.

### **Award of Discretionary Relief**

The Authority requests that an application for Discretionary Relief be in writing, and that renewal of applications be made in writing biennially at the beginning of each financial year.

### **Changes in Liability**

The Organisation must inform the Council of any change in circumstances, which might affect eligibility for Relief.

## 6. Discretionary Rate Relief for Sporting Organisations

### Introduction

When an application has been received from a rate payer for Discretionary Rate Relief, the following questions must be asked and considered. Remembering that the Authority must only work within guidelines, each application must be looked at individually; the Authority must not have a blanket policy.

First of all, we will check to see if the organisation qualifies for a mandatory relief, such as Small Business Rate relief, as unlike discretionary relief, there would be no cost to the Council. If it does qualify, then this will be applied first and then topped up by the discretionary relief. *(If a club fails to complete the necessary forms to apply for a mandatory relief, discretionary rate relief will not be granted.)*

### Questions the Authority must ask when considering an application

#### 1. Does the organisation have a licensed bar?

Some sporting Clubs in the area have a licensed bar which is open throughout the year, not only for members who participate in the sporting activities offered, but also used by members who have no direct interest in the clubs activities only the reduced cost of drinks

The bar profits of clubs who are open throughout the year contributes towards a substantial portion of a club's income, and there has been evidence in the past to suggest that members subscriptions have been artificially low when a thriving bar exists.

Where Sports Clubs in Central Bedfordshire are only open seasonally or on match days, for these clubs the bar trading is a significant help towards the overall running expenses.

Licensed Bar	% of Relief
Full license operating throughout the year	No relief
Seasonal License/ Hire only	10%
Open match days only	15%
No bar	20%

#### 2. How else are funds raised (excluding bar takings)?

The Council is keen to see how clubs or organisations are trying to help themselves and be self sufficient wherever possible. Whilst income can be received by external grants from other bodies (e.g.) the lottery or another



public sector body, charging subscriptions and running fundraising events can also raise income.

<b>Self Financing Income</b>	<b>% of Relief</b>
60% and Over	15%
Between 25% to 60%	5%
24% and below	0%

### **3. Level of Reserves or Savings**

This is a very important factor to take into account and information will be drawn from the audited balance sheet provided in support of applications. Where this is not available, copies of bank statements with a profit and loss position must be provided. Failure to supply adequate records will result in no award under this heading.

<b>Reserves as a Percentage of Net Annual Rate Liability</b>	<b>% of Relief</b>
Over 300% or more	0%
Between 0% and 299%	10%

### **4. Members resident in Central Bedfordshire**

Whilst the Council accept that clubs and organisations provide a valuable leisure facility, it must be remembered that any relief granted is partially paid for by the Council Tax payers of Central Bedfordshire. As such, consideration is given as to the ratio of members within the club who reside in Central Bedfordshire to the overall membership.

<b>Residents of Central Bedfordshire as Percentage of Overall Membership</b>	<b>% of Relief</b>
Between 75% and 99%	30%
Between 50% and 74%	15%
Between 25% and 49%	5%
24% and below	0%

Also we are keen to know a split on what level of the membership play an active role in the clubs activities as opposed to merely being social members.

<b>Percentage of Active Members as Percentage of Overall Membership</b>	<b>% of Relief</b>
66% or more	15%
Between 33% and 65%	5%
32% and below	0%

## 5. How you contribute to the development of your organisation.

Clubs within Central Bedfordshire are encouraged to have an active Youth Development Policy, provide their facilities for use by disabled people or special interest groups, provide coaching/workshops/training and/or their facilities free of charge or at reduced rates to these groups. The Council also wishes to see facilities provided that compliment its own or that it does not provide. All this will contribute to providing opportunity and access to encourage participation by as wide a group as possible.

Youth Policy	% of Relief
Youth Policy, Disabled or Special Interest Group Activities/Training <b>and</b> Access to facilities for all or reduced fees for special groups	10%
Access to facilities for all or reduced fees for special groups	5%

## 7. Rural Rate Relief

### Introduction

Rural Rate Relief is a scheme of relief for qualifying businesses situated in rural areas.

Businesses that qualify are General Stores, Post Offices, Petrol Filling Stations, Public Houses and Food Stores.

The business must be in a rural area that has a population of no more than 3,000 people on 31<sup>st</sup> December of the preceding financial year.

Relief is only available on occupied properties.

### Mandatory Rate Relief

This will automatically entitle the only general store and post office in a qualifying rural settlement to Mandatory relief of 50% on the full rates payable provided that the rateable value is below a specified threshold. This has been agreed at a rateable value of £8,500 or less.

Any award of Mandatory can be backdated across financial years if it has not been applied correctly as it is a statutory entitlement.

General Stores, Post Offices and village food shops with a rateable value of less than £8,500, Public Houses and Petrol Filling Stations with a rateable value of no more than £12,500, are entitled to mandatory relief. The business must be the only one of its type in the rural area and the amount of relief is 50% of the full rate.

A general store is defined as being a trade or business consisting “wholly or mainly” of selling (by retail) food for human consumption (not confectionery) and general household goods. The phrase “wholly or mainly” is not defined but is generally household goods and is generally accepted to mean “more than half”. A store that only sold food would not qualify and vice versa.

A qualifying post office is a hereditament (or part of) used for the purposes of the post office and is the only hereditament in the area.

The mandatory scheme was extended in April 2001 to entitle the sole Public House or Petrol Filling Station in a qualifying rural area to relief. The business must be cited in a property with a rateable value of not more than £12,500.

The scheme was extended further in August 2001; this entitled any shop selling (by retail) food for human consumption (not catering or confectionery), meaning shops that sell mainly confectionery, food eaten on the premises or

hot food to take away will not qualify. The business must be cited in a property with a rateable value of not more than £8,500.

Any award of mandatory relief can be backdated across financial years if it has not been applied correctly. This is because it is a statutory entitlement.

### **If the circumstances change after the beginning of the financial year**

If another qualifying shop opens in a designated rural area settlement during a financial year and Mandatory Relief has been awarded by the Council to another shop, this will continue until the end of the financial year in question.

Likewise if the rateable value increases above the £8,500 rateable value threshold, relief will still be awarded based on 50% rate liability until the end of the financial year.

### **Discretionary Rate Relief**

Businesses that qualify for mandatory relief can also request the Council consider increasing the amount of relief up to 100%.

Applications for discretionary relief can also be made by any business that doesn't qualify for mandatory relief. The business must be a property that has a rateable value of not more than £16,500. For example, where there are two general stores in a rural settlement, neither would be entitled to mandatory relief but both could apply for discretionary relief.

Applications for discretionary relief can also be made by any business that does not qualify for mandatory relief and where the property is not an excepted property, and where all or part of it is occupied by one or more institutions or other organisations which are – not established or conducted for profit, and, whose aims should be charitable or otherwise philanthropic, or concerned with the promotion of social welfare, education, science, literature or the fine arts. Also discretionary relief may be granted where the property is wholly or mainly used for the purpose of recreation and all or part of the property is occupied for the purpose of a club, society or other organisation not established or conducted for profit.

When assessing whether to award discretionary relief, the council must consider the importance of the business to the local community. Would its absence have a detrimental effect on the lives of the community?

<b>Gross Profit expressed as a % of Turnover</b>	<b>Relief to be Awarded</b>
Up to 20%	50% (maximum that can be awarded)
21% - 25%	40%
26% - 30%	30%
31% - 35%	20%
36% - 40%	10%

Over 40%	Nil
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Three years accounts are required to support each application; the figure used for recommendation purposes will be an average of the last three years gross profit expressed as a percentage of annual turnover, i.e. the overall profitability of the business before taking into account expenses.

Where no accounts are available, because it is the first year of trading, you will be granted the same relief as the previous occupier of the premises. This will be reviewed after the first year of trading.

A fresh application is required each year, together with updated accounts to consider future applications, this ensures a consistent approach is applied and assistance is targeted towards businesses most in need.

### **Financial Implications**

Rate relief is not separately funded by Central Government. From April 2013, with the localisation of business rates, the existing costs of mandatory and discretionary reliefs have been accounted for within local authorities' business rates baselines. However, any changes in these costs i.e. by the awarding of further Mandatory or Discretionary relief, is shared as a cost between central government (50%), the Council (49%) and the Fire Authority (1%).

However, where rate relief is awarded under the powers contained in section 69 of the Localism Act 2011 the full amount of the resulting reduction in rate yield is to be deducted from the local share of the rates yield.

## 8. Applications under Section 44a (Partly Occupied Property)

The Council has discretion under Section 44a of the Local Government Finance Act to award rate relief where part of a property is unoccupied for a temporary period. The amount of rate relief that is awarded is determined by statute and is calculated by reference to the rateable value ascribed to the unoccupied area by the Valuation Office Agency.

The council has discretion to accept or refuse such a request. If the request is accepted, then the Valuation Office Agency is asked to supply a certificate indicating the relevant values for the occupied and unoccupied portions and this certificate is binding on the Council.

It is not intended that Section 44a be used where part of a property is temporarily not used or its use is temporarily reduced. Instead Section 44a is aimed at situations where there are practical difficulties in occupying or vacating a property in one operation perhaps because new accommodation to which the ratepayer is moving is not fully ready for occupation and it is phased over a number of weeks or months.

In determining an award of rate relief, consideration shall be given to the interests of Central Bedfordshire Council Taxpayers in making an award. Awards shall only be made where the benefits to the Central Bedfordshire Council Taxpayers are considered to outweigh any detriment to those interests, but not limited to, the financial impact of the award.

The decision whether or not to recommend an apportionment to the Valuation Office is taken by the Revenues Manager in conjunction with one of the Council's property inspectors.

The effect of the apportioned values applies for the **operative period**, which is defined as the period beginning with the day on which the hereditament became partly unoccupied and ending with the first day on which one or more of the following events occurs.

- The occupation of any of the unoccupied part of the property
- The ending of the financial year in which the apportionment was required
- The requiring of a further apportionment or
- The complete occupation of the property
- The complete vacation of the property

Applications will only be considered in respect of unoccupied parts of a property that can be clearly defined and are reasonably segregated from the occupied part of the property.

For the purposes of this policy a period of up to 12 calendar months shall be considered to be temporary and longer periods shall not be considered to be temporary.

No award shall be made where it appears to the Council that the reason that part of the property is unoccupied is wholly or mainly for the purposes of applying for rate relief.

A ratepayer making an application under section 44a shall provide a plan of the property showing the dimensions of the occupied and unoccupied area of suitable quality to enable the Valuation Office Agency to apportion the rateable value of the property between the occupied and unoccupied areas. Applications will not be considered until such time as the plan is provided.

Rate relief under this section will not be awarded in respect of partly occupied property where the partial occupation of the property may be considered to arise due to the ordinary day to day nature of the business (for example the operation of a warehouse).

Because the decision to grant a Section 44a is discretionary, any challenge relating to the non granting of the relief would be in accordance with Section 138 of the Local Government Act 1988 by way of judicial review.

### **Termination of Awards**

Awards of rate relief shall end at the earliest occurrence of one of the following:

- a) The end of the statutory period for which relief may be allowed;
- b) The end of the financial year;
- c) All or part of the unoccupied area becoming occupied;
- d) The whole of the property becoming unoccupied;
- e) The ratepayer ceasing to be the person or organisation liable to pay non-domestic rates in respect of the property;
- f) Where all or part of the unoccupied area has remained unoccupied for one year;
- g) The commencement of a further award in respect of the property;
- h) The Council is unable to verify, following reasonable notice, that the area remains unoccupied.

### **Further Applications**

A further application may be submitted in the following circumstances, however, where any part of an unoccupied area has remained unoccupied for more than 12 months the partial occupation shall no longer be considered to be temporary:

- a) There is a change to the area of the property which is unoccupied; or
- b) The commencement of a new financial year.

## **Verification of Unoccupied Areas**

The ratepayer must allow a Council Officer access to the property by appointment during normal working hours within two weeks of the Council receiving the application in order to verify the occupation of the property.

Further access may be required on at least one occasion each month, during normal office hours, during the period for which relief is being awarded. In order to enable verification, access to the unoccupied area may be requested immediately without advanced notice. In the event that access is not allowed promptly without good cause the award of rate relief may be withdrawn.

## **Further Guidance for Applicants**

All applications must be made in writing and be made either by the occupier or owner (if different) or persons acting on their behalf, e.g. agents, solicitors.

The applicant must submit with the application a plan, which clearly identifies the areas of occupation and areas unoccupied (estimated size must also be documented).

In considering the application, a visit will be made to the premises to confirm the accuracy of the submitted plan.

Relief will not be considered for a period after which full occupation has taken place (retrospective). An exception to this would be when it was possible to obtain independent evidence to support a backdated claim. Independent evidence might be in the form of surveyors' reports, dated photographs, solicitors letters, estate or letting agents records.

Applicants where favourable consideration would be likely would include although not limited to the following:

- Where there is a partial occupation of a warehouse, factory or commercial property to facilitate relocation of the company
- Where, because of a temporary downturn in trade, there is part occupation of the premises, or
- Where fire, flood or other natural disaster prevents full use of the premises

Favourable consideration would not normally be forthcoming if (but not limited to)

- For a period that has now passed
- Where the owner sublets part of the premises on a commercial basis



- Where the part occupation is likely to continue year on year
- Where there appears to be no effort to let, sell or occupy the empty part or
- Where part occupation is seasonal

At all times consideration will be made for the regulations contained within section 44a of the Local Government Finance Act 1988 and any relevant case law.

### **9. Ratepayers that would otherwise suffer hardship (awards under section 49 of the Local Government Finance Act 1988)**

Section 49 of the Local Government Finance Act 1988 allows the authority the discretion to reduce or remit the payment of rates, under section 43 of the Local Government Finance Act 1988 (occupied) or Section 45 of the Local Government Finance Act 1988 (unoccupied) either in part or full i.e. up to 100%.

The overriding principle shall be that each case is considered on its own merits based on the information supplied through the application process

The burden of proof for hardship lies with the ratepayer. Whilst the authority can award hardship rate relief there is no obligation to do so unless evidence of hardship can be established.

The principle purpose of awards of rate relief under this section of the Policy shall be to provide short-term assistance to businesses that are suffering unexpected hardship, arising from circumstances beyond the business' 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.

Rate relief on the grounds of hardship shall only be awarded where it is considered that:

- The ratepayer would sustain hardship if the Council failed to grant Hardship Relief; and
- It is reasonable to grant Hardship Relief having regard to the interest of person's subject to the Council Tax. For example, where employment prospects in the area would be worsened by a company going out of business or the amenities of an area would be reduced because they are the only provider of a service in the area.

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

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.

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 whether a business is profitable account shall be taken of reasonable drawings by the proprietor or reasonable remuneration of directors. For the purpose of this policy the reasonable remuneration shall be no more than 150% of the minimum wage.

Where the circumstances giving rise to the hardship pertain for a only part of the business’ 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.

It is expected that businesses 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 in circumstances where the business is unable to demonstrate that it is taking reasonable steps to alleviate the hardship.

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 disaster.

The business must demonstrate the loss of trade or business by producing the following:

- Accounts
- Order books
- Till receipts
- VAT returns

They must show a marked decline in trade compared to corresponding periods in previous years. This can be done by the following questions being answered:

- Do the accounts show a profit or loss?
- How do previous years’ accounts compare to the current?
- What reserves are held?
- Are there long term investments which might not necessarily be reflected in the balance sheet?
- Is the ratepayer part of a larger organisation or family trust?

In addition the ratepayer must submit reasons giving rise to the application and what has contributed to them seeking hardship relief, they should also provide a business plan outlining how the award of any relief will contribute to the survival of the business. The rate payer should also indicate the impacts that closure of the business would cause to the local community e.g. how many local people are employed and where is the nearest similar facility.

In addition where the rate payer is a sole trader or operating as a partnership, details of drawings from the business and a break down of their personnel income and outgoings should also be supplied.

If they are a director of a limited company details should be provided of other interests and whether they have been involved in a business entering liquidation or ceasing to trade.

Hardship will only be granted for the period for which there is clear evidence of hardship for the ratepayer concerned.

Before any hardship is granted the Authority must be fully satisfied that the claim is from the ratepayer suffering genuine hardship.

Although applications for relief on the grounds of hardship need not be in writing the Authority does request such to ensure a consistent approach enabling elected members to consider the request having a full understanding of the situation.

Applicants must supply the last two years accounts, a current cash flow forecast and a comprehensive business plan 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.

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 circumstances that may give rise to hardship, financial or otherwise, and/or to put in place measures to prevent or mitigate the circumstances

Applications will be viewed favourably where the criteria of the Policy 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 vice versa.

## **New Businesses**

4.11 Award of hardship rate relief will not be made for the purposes of enabling a new business to become established except where the viability of the business is threatened by events that could not reasonable have been foreseen when establishing the business.

## **Unoccupied Properties**

4.12 Rate relief on the grounds of hardship in respect of rates payable for an unoccupied property will only be awarded in the most exceptional circumstances where there are clear and tangible benefits to local Council Taxpayers in making the award.

### **Relationship to other forms of Rate Relief**

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

### **Duration of Awards**

4.14 All awards shall terminate at the end of the financial year if the award has not ended at an earlier date. Where the hardship continues a further application may be made in the new financial year, however in considering repeated applications consideration should be given to the number and value of previous awards. Where an application is repeated for a subsequent period the Council may require the applicant to provide evidence (preferably from an accountant or other professional adviser) regarding the long-term financial viability of the business.

**10. In exercise of the Council's general power to award discretionary rate relief (awards under Section 47 of the Local Government Finance Act 1988 as amended by Section 69 of the Localism Act 2011)**

Section 69 of the Localism Act 2011 amends the 1988 Act to allow local authorities the discretion to award rate relief to all types of businesses. The Plain English Guide to the Act addresses this as follows:

*"The Localism Act gives councils more freedom to offer business rate discounts - to help attract firms, investment and jobs. Whilst councils would need to meet the cost of any discount from local resources, they may decide that the immediate cost of the discount is outweighed by the long-term benefit of attracting growth and jobs to their area."*

This section sets out the Council's agreed policy for dealing with applications from such cases.

**General Requirement**

Applications for rate relief under this section of the Policy will normally only be considered favourably where the Council is satisfied that an award will result in tangible benefits to local residents and in particular where the award will directly result in attracting businesses, investment or jobs to the local area.

**Maximum Amount of Awards**

The Localism Act allows scope for the Council to award up to 100% rate relief in any one year for qualifying businesses. The maximum amount awarded shall normally be limited to no more than 50% of the rate liability except where there are exceptional circumstances which justify a greater amount.

**Duration of Awards**

Each amount of rate relief awarded under this policy shall normally apply for no more than one financial year at a time but new applications may be made each financial year.

In exceptional circumstances and where each of the following conditions are met an award may be made for up to three financial years:

- a. The award relates to Non-Domestic Rates payable in respect of a new hereditament or an increase in rateable value of an existing hereditament;
- b. New employment opportunities will be created as a result of the new hereditament or enhancements to an existing hereditament;

c. The award is considered to be essential to securing the development of the hereditament;

d. The award will not result in a lower amount of retained rates yield in respect of the hereditament than that retained prior to the development.

### **Information to Support Applications**

All applicants are required to complete the Council's rate 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.

In submitting an application the ratepayer must demonstrate with verifiable supporting evidence the benefits to the Central Bedfordshire Council Council Taxpayers that will accrue from making an award.

On receipt Council officers will prepare a report setting out the merits of the application. This report will detail, amongst other elements the economic, social and environmental benefits that may derive from granting the application.

### **Relationship to other forms of Rate Relief**

Applications under this section will only be considered after consideration of any other forms of rate relief to which the applicant may be eligible (excluding hardship rate relief).

### **Guidelines for Making Awards**

Each application will be considered on its individual merit but in making a decision on the award the following factors must be considered by the decision maker:

1. That awards should only be made in exceptional circumstances;
2. The value of any previous awards and the benefits to local Council Taxpayers realised from previous awards;
3. The cost to the Council, including the loss of income or of retained rates yield, in making an award;
4. The impact of the cost or loss of income in relation to the Council' overall financial situation;
5. The benefits to the Central Bedfordshire Council Council Taxpayers in making an award, and in particular whether the award will directly result in attracting businesses, investment or jobs to the local area;

6. The impact on other Non-Domestic Ratepayers in the Central Bedfordshire Council area

7. The Council's statutory equality duties;

8. That awards should normally only be made where the ratepayer' activities in the Central Bedfordshire Council area will contribute towards the aims and objectives of "Our Plan for Central Bedfordshire 2012-2016", the details of which can be found at:

[http://www.centralbedfordshire.gov.uk/Images/DeliveringYourPriorities\\_tcm6-32481.pdf#False](http://www.centralbedfordshire.gov.uk/Images/DeliveringYourPriorities_tcm6-32481.pdf#False)

9. The extent to which an award will support the Council's aspiration to promote and encourage economic growth, and in particular growth in the Non-Domestic Rating tax base and in employment opportunities for residents of the Central Bedfordshire Council area;

10. The overall profitability of the business

## 11. Small Business Rate Relief

Small business relief came into effect from 1<sup>st</sup> April 2005. it is a self-funding scheme, which ensures that larger companies pay more business rates to enable the smaller business to pay less

### Eligibility

Eligible businesses with rateable values of under £6,000 are entitled to a 50% reduction as rate relief on their liability, with additional relief available on a sliding scale of 1% for every £120 of rateable value over £6,000 and up to £11,999

Eligibility	% of Reduction
Rateable value under £6,000	50% reduction
£7,200	40%
£8,400	30%
£9,600	20%
£10,800	10%
£6,001 - £11,999	Additional 1% for each £120 i.e: .Rateable value £7,500–relief 37.5% Rateable value £9,000–relief 50% Rateable value £10,500–relief 12.5%

The relief is available to persons who are responsible for one property for which they pay non-domestic rates

Or

For one main property and other additional properties, providing the additional properties do not have rateable values of more than £2,600 and the combined rateable value of all properties is under £18,000

In addition to this relief on liability, eligible businesses with rateable values of between £12,000 and £18,000 that are not entitled to relief will be entitled to be included within the 'buffer zone' which means although they do not benefit from being granted relief they do not have to pay an additional amount towards small business relief.

With effect from 1 April 2010 the Government Doubled the amount of Small Business Rates to be awarded. This has now been extended to 31 March 2015.

A temporary change has been introduced by the Government with effect from 14 February 2014. This allows ratepayers receiving Small Business Rates Relief that take on an additional property, that would current disqualify them from receiving relief, to continue to receive the relief on the existing property for a further period of 12 months.



## **The application**

An application form must be completed for either Small Business Relief or to be included within the buffer zone, (not having to pay towards small business relief).

All applications must be in writing. The application form will inform applicants that it is a criminal offence under section 61 Local Government Act 2003 to knowingly or recklessly make a false statement on an application for Small Business Rate Relief. Applications are renewable on an annual basis

## **Other Relief's taking priority over Small Business Relief**

- If a ratepayer is entitled to rural rate relief, they will not be entitled to small business relief
- If a ratepayer is entitled to charity relief, they will not be entitled to small business relief
- If the ratepayer is entitled to former agricultural premises relief, they will not be entitled to small business relief

## 12. Retail relief of up to £1,000

Properties that will benefit from the relief will be occupied hereditaments with a rateable value of £50,000 or less, that are wholly or mainly being used as shops, restaurants, cafes and drinking establishments, up to state aid limits. Determination and award of any exemption will be in accordance with DCLG Retail Relief Guidance. This relief will operate between 1st April 2014 and 31<sup>st</sup> March 2016.

The list of the types of properties which are considered to be both eligible and not eligible is provided at Appendix 1. However the Council will consider each award based on individual merits and will refuse the award where it is considered that the business/retail property is not supporting the Council's wider objectives or determined to be having a detrimental impact on neighbourhoods and communities.

This is especially relevant for off licenses, take away and late night food establishments and pubs, bars and shisha bars where applications will be considered in the context of their impact on the neighbourhood and community, for example the Council would be unlikely to favourably consider an application for relief if a retail property/business has had their premises licence reviewed within the last twelve months.

This list is not exhaustive and the Council reserves the right to decline any application or withdraw any award where the retail property and business is determined to be having a detrimental impact on the neighbourhood or community.

Properties not included on the list or are mixed use will be reviewed by the Heads of Revenues & Benefits on a case by case basis to determine eligibility to the relief.

### **State Aid**

State Aid law is the means by which the European Union regulates state funded support to businesses. Financial support from public bodies to businesses could have the potential to be anti-competitive and affect trade between member states of the EU.

EU state aid rules generally prohibit government subsidies to businesses. Providing discretionary relief to ratepayers can in some cases be deemed to be State Aid.

There is, however, a general exception to the state aid rule where the aid is below a "de minimis" level. The De Minimis Regulations allow an undertaking to currently receive up to €200,000 of De Minimis aid in a three year period (consisting of the current financial year and the two previous financial years). The De Minimis Regulation and limit is subject to update and changes in

legislation.

To administer De Minimis it is necessary for the Council to establish that the award of aid will not result in the undertaking having received more than €200,000 of De Minimis aid. The Council will ensure compliance with the legal requirements and any permitted exemptions. Each case will be considered based on the organisation's individual circumstances in full consideration of the state aid rules.

Business ratepayers who receive the retail relief, reoccupation relief or new build relief will be sent a letter attached to their ratepayer information which will require them to make a declaration if they have or are receiving state aid. This is particularly likely to affect large retail chains where the cumulative retail relief may cause them to exceed the €200,000 limit

### **13. New build empty property relief**

All newly built commercial property completed between 1st October 2013 and 30 September 2016 will receive empty property rates relief for the first 18 months, up to state aid limits. Determination and award of any exemption will be in accordance with DCLG New Build Empty Property Guidance. The aim of the relief is to stimulate the construction industry and to incentivise property projects to go ahead.

### **14. Policy Review**

This policy will be reviewed periodically, taking into account Council policies and priorities and any changes in legislation.

## **APPENDIX 1- RETAIL RELIEF GUIDANCE**

### **Types of uses that will be considered to be retail use for the purpose of this relief.**

#### **i. Hereditaments that are being used for the sale of goods to visiting members of the public:**

- Shops (such as: florist, bakers, butchers, grocers, greengrocers, jewellers, stationers, off licence, chemists, newsagents, hardware stores, supermarkets, etc.)
- Charity shops
- Opticians
- Post offices
- Furnishing shops/ display rooms (such as: carpet shops, double glazing, garage doors)
- Car/ caravan show rooms
- Second hand car lots
- Markets
- Petrol stations
- Garden centres
- Art galleries (where art is for sale/hire)

#### **ii. Hereditaments that are being used for the provision of the following services to visiting members of the public:**

- Hair and beauty services (such as: hair dressers, nail bars, beauty salons, tanning shops, etc.)
- Shoe repairs/ key cutting
- Travel agents
- Ticket offices e.g. for theatre
- Dry cleaners
- Launderettes
- PC/ TV/ domestic appliance repair
- Funeral directors
- Photo processing
- DVD/ video rentals
- Tool hire
- Car hire

#### **iii. Hereditaments that are being used for the sale of food and/ or drink to visiting members of the public:**

- Restaurants
- Takeaways
- Sandwich shops
- Coffee shops
- Pubs
- Bars

To qualify for the relief the hereditament should be wholly or mainly being used as a shop, restaurant, cafe or drinking establishment.

Therefore, hereditaments which are occupied but not wholly or mainly used for the qualifying purpose will not qualify for the relief.

The list set out above is not intended to be exhaustive as it would be impossible to list the many and varied retail uses that exist. There will also be mixed uses. However, it is intended to be a guide for authorities as to the types of uses that government considers for this purpose to be retail. Authorities should determine for themselves whether particular properties not listed are broadly similar in nature to those above and, if so, to consider them eligible for the relief. Conversely, properties that are not broadly similar in nature to those listed above should not be eligible for the relief.

As the grant of the relief is discretionary, authorities may choose not to grant the relief if they consider that appropriate, for example where granting the relief would go against the authority's wider objectives for the local area.

The list below sets out the types of uses that government does not consider to be retail use for the purpose of this relief. Again, it is for local authorities to determine for themselves whether particular properties are broadly similar in nature to those below and, if so, to consider them not eligible for the relief under their local scheme.

### **Types of uses that will not be considered to be retail use for the purpose of this relief.**

#### **i. Hereditaments that are being used for the provision of the following services to visiting members of the public:**

- Financial services (e.g. banks, building societies, cash points, bureau de change, payday lenders, betting shops, pawn brokers)
- Other services (e.g. estate agents, letting agents, employment agencies)
- Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)
- Professional services (e.g. solicitors, accountants, insurance agents/ financial advisers, tutors)
- Post office sorting office

#### **ii. Hereditaments that are not reasonably accessible to visiting members of the public**

The Council will consider each award based on individual merits and will refuse the award where it is considered that the business/retail property is not supporting the Council's wider objectives or determined to be having a detrimental impact on neighbourhoods and communities.

This is especially relevant for off licenses, take away and late night food establishments and pubs, bars and shisha bars where applications will be considered in the context of their impact on the neighbourhood and community, for example the Council would be unlikely to favourably consider

an application for relief if a retail property/business has had their premises licence reviewed within the last twelve months.

The relief will be applied against the net bill after all other reliefs.

Ratepayers that occupy more than one property will be entitled to relief for each of their eligible properties, subject to State Aid De minimis limits. State Aid law is the means by which the European Union regulates state funded support to businesses. Providing discretionary relief to ratepayers is likely to amount to State Aid. However Retail Relief will be State Aid compliant where it is provided in accordance with the De Minimis Regulations (1407/2013).

The De Minimis Regulations allow an undertaking to receive up to €200,000 of De Minimis aid in a three year period (consisting of the current financial year and the two previous financial years).

This list is not exhaustive and the Council reserves the right to decline any application or withdraw any award where the retail property and business is determined to be having a detrimental impact on the neighbourhood or community.