

SWALE BOROUGH COUNCIL- REVENUES AND  
BENEFITS SERVICE- POLICIES AND  
PROCEDURES

DISCRETIONARY  
AND  
HARDSHIP RELIEF  
POLICY

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## **1. Introduction and purpose of policy document**

### **1.1 Powers**

1.1.1 The power to award discretionary relief for Business Rates and Council Tax is allowed under the following Regulations:

- Business Rates – Sections 44a, 47 and 49 of the Local Government Finance Act 1998

### **1.2 Purpose**

1.2.1 This policy has been written to.

- set guidelines for the factors that should be considered when making a decision to award or refuse relief.
- set out the delegated authority to award relief in appropriate circumstances.
- establish an appeals procedure for customers dissatisfied with Swale Borough Council's decision; and
- safeguard the interest of the local taxpayers by ensuring that funds that are allocated for the award of relief are used in the most effective and economic way.

## **2. Business Rates – Relief for Charities, Not for Profit Organisations, Community Amateur Sports Clubs (CASC), Rural properties and under Section 69 of the Localism Act 2011**

### **2.1 Legal Requirements**

2.1.1 Section 47 of the Local Government Finance Act 1988 (amended under Section 69 of the Localism Act 2011) provides the discretion to award relief in the following circumstances:

- the customer is a registered charity, or a charitable organisation and the property is used for charitable purposes;
- the organisation is not established or conducted for profit and the main objects are philanthropic, religious or concerned with education, social welfare, science, literature or fine arts.
- the property is used for recreational purposes and all or part is occupied for the purposes of a club, society or an organisation not established or conducted for profit.
- the property is within a Rural Settlement List for the chargeable financial year and the rateable value does not exceed the amount prescribed by the Secretary of State; and
- the property is used for the benefit of the community, and it would be reasonable for Swale Borough Council to make a decision having taken the considerations of persons liable to pay Council Tax.

2.1.2 Under Section 69 of the Localism Act 2011 discretionary relief may also be used to encourage business which may help to regenerate the Borough. Discretionary relief will be considered for any request that may bring exceptional regeneration benefits.

2.1.3 Registered Charities and CASCs are entitled to Mandatory Relief of 80%. Swale Borough Council has the discretion to award further rate relief of up to 20%, which is commonly referred to as a 'top-up'.

2.1.4 For CASCs the Council will consider applications that can demonstrate:

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

2.1.5 Rural properties are entitled to Mandatory Relief of 100% providing the relevant qualifying criteria are met.

2.1.6 Swale Borough Council has the discretion to award relief of up to 100% to organisations which are not established for profit, and which meet the relevant criteria.

2.1.7 The amount of relief awarded is entirely at the discretion of Swale Borough Council.

**2.2 Legal Requirements – The Cash Cap and Subsidy Control**

2.2.1 Under the cash cap, no ratepayer can in any circumstances exceed the £110,000 cash cap across all their hereditaments in England.

2.2.2 Rate relief for charities and non-profit making bodies is not normally considered under the cash cap because the recipients are not in market competition with other businesses. However, if they are engaged in commercial activities, compete with commercial bodies, or have a commercial partner, rate relief could constitute a government subsidy. In such cases it would be unlikely that the customer would be considered for rate relief.

**2.3 Financial Impact**

2.3.1 Since April 2013 Discretionary Relief has been funded partly by the billing authority, the major preceptors (excluding the Police), and partly by the Government through the Non-Domestic Rates Pool.

2.3.2 The percentage of Discretionary Relief that must be funded by each Local Authority is as follows.

Type of Relief	% Cost to Central Government	% SBC (Billing authority)	Kent County Council	Kent & Medway Fire & Rescue
'Top Up' Discretionary Relief	50%	40%	9%	1%
Other Discretionary Relief (where Mandatory Relief is not applicable)	50%	40%	9%	1%

2.3.3 To minimise the cost of discretionary relief, ratepayers that may be entitled to Mandatory Relief must endeavour to qualify for such relief before an application for Discretionary Relief can be considered.

**2.4 Persons who can make application**

2.4.1 Applications must be made by the ratepayer.

2.4.2 Where the ratepayer is an organisation, the application must be made by a person with the authority to act on behalf of the organisation. Swale Borough Council may ask for evidence that the person making the application is entitled to act in that capacity.

## 2.5 The Decision-Making Process

- 2.5.1 Although there is no statutory necessity to complete a formal application form, it is recommended that a form be completed, as it will act as a checklist of criteria to be met or questions to be answered. This will assist in speeding up the application process.
- 2.5.2 All applications will be considered on an individual basis. Consideration for awarding Discretionary Relief is based on the organisation's ability to meet its Business Rate liability. Therefore, copies of the last two years' audited accounts are to be submitted with the application form. Where audited accounts are not available, financial statements prepared by, or approved by, an appropriate representative shall be considered. For a new organisation 12 months' projected cash flow forecast are required. Any award will be based on the organisation's recent income/expenditure results.
- 2.5.3 Where an organisation has retained funds, or built-up reserves, for a purpose related to the aims and objectives of the organisation, provided that the works are completed within three years of the date of application, those funds/reserves may be disregarded for the purposes of the award of relief. It is accepted that funds may have to be accrued over many years to fund major projects e.g. replacing an ageing building, and consideration to this will be given on an individual basis.
- 2.5.4 In formulating its policy for discretionary rate relief the Council will take into account the following factors:

The extent to which the organisation:

- Meets local needs in the community, and either
- Provides a valuable service to the community, or
- Provides facilities which indirectly relieves the Council of the need to do so subject to the conditions that:
  1. Membership, where appropriate, or facilities, are available to the general public and not unduly restricted; and
  2. Premises are not used for sales of a commercial nature on more than ten occasions in any one year.
  3. For premises such as village halls, this includes community halls, scout or guide halls, community hubs and any community buildings provided in local areas by a not-for-profit organisation.

The policy also reflects the Council's priorities.



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

	Criteria	How this is measured
1	Membership is open to all sections of the community subject to legitimate restrictions	A club or organisation will not be considered if it has membership rates at such a high level as to exclude the general community  Membership or attendance must not be restricted by race, religion or gender
2	The organisation actively encourages membership from the local community.	An organisation which encourages such membership can expect more sympathetic consideration than one which does not
3	The facilities are made available to people other than members, i.e. schools, casual public sessions etc	The wider use of facilities should be encouraged and rate relief might be one form of recognition that an organisation was promoting its facilities more widely
4	The organisation provides training, education or schemes for particular groups such as young people, the disabled or retired people to develop their skills	An organisation providing such facilities might deserve more support than one which does not
5	The facilities have been provided by self-help or grant aid	This is an indication that a club or organisation is deserving of relief if it has made efforts for self-help or submitted applications for grant aid
6	The organisation does not run a bar	The mere existence of a bar will not in itself be a reason for not granting relief, but the main purpose of the organisation will be examined. An organisation with a commercially operated bar will not be considered for relief.
7	The organisation provides facilities which indirectly relieves the Council of the need to do so	A need, not being provided by the Council, but identified as a priority for action, might be particularly deserving of support
8	Membership is drawn mainly from people residing in the Borough	There will be a cost borne by the Council taxpayers in the area if any relief is granted. A club or organisation with the majority of members residing in the Borough will be more deserving of relief
9	The organisation is in need of financial assistance	Latest audited accounts will be examined to determine the need for financial assistance
10	Clubs tried to gain Community Amateur Sports Club (CASC) status	Where a club has made an application for CASC status, where this is practical, the Council will look at

		the application favourably, irrespective of the outcome
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- 2.5.5 Relief may be refused or capped if it is considered that the financial cost to Swale Borough Council or the local community outweighs the benefits generated through the award of relief.
- 2.5.6 Organisations with unallocated reserves or substantial assets (taken to mean 12 months or more of operating costs) will be excluded from qualification if it is determined that those reserves or assets could reasonably be used to provide financial support.
- 2.5.7 To ensure there is a fair and consistent approach to the award of Discretionary Relief, all applications will be considered within the guidelines of this Policy, and a written record will be kept on file of the decisions and factors considered in the process. The decision will be available free of charge to the applicant on request.
- 2.5.8 Swale Borough Council will consider applications within 1 calendar month of the application and all supporting information being received and will notify the customer should there be a delay in processing the application.
- 2.5.9 Swale Borough Council will notify the applicant of the decision in writing, and where less than the maximum amount of relief is granted or the relief is refused, an explanation of the reasons why will be given.
- 2.5.10 Swale Borough Council will not consider applications where the customer has failed to provide information within the timescales provided to them and will notify the customer in writing that the application has been refused.
- 2.5.11 Where an application has been refused either initially or through an appeal, further applications will not be considered within the same financial year unless:
- the use of the property changes; or
  - the objectives of the organisation change; or
  - there have been other changes that may affect Swale Borough Council's decision e.g. where an organisation has taken action to address an issue which had previously precluded an award of relief.
  - There are grounds to believe the application or supporting information was not interpreted correctly at the time the decision was made.
- 2.5.12 There is no time limit for an organisation to make an application for Discretionary Relief. Swale Borough Council must determine applications within six months after the end of the financial year (between 1 April and 30 September) for which the application for relief is made. After this time applications are invalid.

## 2.6 Period of Rate Relief

- 2.6.1 In the majority of cases: The relief will be granted for 3 years, but if circumstances change within the 3 years, the club or organisation must inform the Council of any changes. If a club or organisation moves address within the 3 years, a fresh application will need to be made for the new address. Relief will not be carried forward to the new property. After 3 years, a fresh application will need to be made.
- 2.6.2 Successful applications will be sent a letter confirming the new award of discretionary relief. This letter will explain the period of the award and the date it will end.

## 2.7 Calculation of relief

- 2.7.1 Relief will be calculated as a percentage of the Business Rates bill. Should the Business Rates bill reduce within the period Discretionary Rate Relief is granted, the relief will be reduced proportionately.
- 2.7.2 If the Business Rates bill increases within the period Discretionary Rate Relief is granted i.e. there is an increase in rateable value, the amount awarded will not automatically be increased. In such cases, Swale Borough Council, upon request of the customer, will reconsider the application and may award additional relief.

## 2.8 Authority to process applications and award Relief

- 2.8.1 In the interests of efficiency, the authority to consider applications is delegated as set out in the table below.

Thresholds – Annual Cost to Local Authority	Position of Authority	Counter Authority
Up to £30,000	Head of Revenues and Benefits	Not required
Over £30,000	Head of Revenues and Benefits	Director of Resources

## 2.9 Special Provisions

- 2.9.1 The full 20% 'top up', discretionary relief may be applied to charities and other premises (apart from charity shops) but will normally only be awarded if the charity is a local one, not a national one (a local charity is defined to be one who only operates in the particular Council area or who are part of a national charity but whose accounts and finances are specific to a local area). If the premises are operated by a national charity that does not exist to wholly or mainly benefit the residents of the local area, then discretionary relief will not normally be awarded to 'top up' the 80% mandatory award. If the charity can provide proof that part of their time is spent providing

services to residents of Swale, the 20% 'top up' may be allocated in proportion to the amount of their work that is provided for Swale residents.

2.9.2 Swale Borough Council will consider the contribution and benefit that the charity has made to the local community.

2.9.3 Discretionary Relief for clubs will normally be granted at a lower rate if the organisation operates a licensed bar. Membership must be active rather than social membership, and wholly or mainly benefit the residents of the local area. Consideration to award relief will only be given if the club is able to fully demonstrate that the bar is not the primary or significant attraction for the majority of the members.

2.9.4 Schools with Academy status will not normally be awarded Discretionary Relief to top up the mandatory award.

## **2.10 Backdating Applications**

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

2.10.2 The Non-Domestic Rating Bill, which comes into effect 1 April 2024, means that local authorities can set their own rules for notifications of discretionary reliefs in their area. Within this Policy, the Borough Council will continue to determine the awards of backdated discretionary relief under the terms of 2.10.1 above. Applications will be considered for the backdating of discretionary relief from 1 April 2024 for a maximum period of 12 months from the date of the application.

## **2.11 Right of appeal**

2.11.1 There is no statutory right of appeal against a decision regarding discretionary relief made by Swale Borough Council. However, Swale Borough Council recognises that customers should be entitled to have a decision objectively reviewed if they are dissatisfied with the outcome. For further information on how to appeal please refer to Section 6 of this Policy.

### **3. Business Rates - Relief for properties that are partially unoccupied for a temporary period (Section 44a)**

#### **3.1 Legal Requirements**

- 3.1.1 Under section 44a of the Local Government Finance Act 1988 a Local Authority has the discretion to allow rate relief where a property is partly occupied for a short period. Each case will be decided on its own merits.
- 3.1.2 The definition of a 'short period' is not prescribed with the law, and therefore Swale Borough Council has discretion to decide the period relief should be awarded. In the guidance issued by the Office of the Deputy Prime Minister in 2002 it is suggested that this could be a period of weeks or months.
- 3.1.3 Partially occupied rate relief (also referred to as Section 44a Relief) is not intended to be used where part of a property is temporarily not used. The intention is aimed at situations where there are practical difficulties in occupying or vacating part of the property. For the purposes of this policy, a period of 6 months will be considered temporary. Periods of time exceeding 6 months will be treated as a permanent change and will not be eligible for partly occupied relief.

#### **3.2 Financial Impact**

- 3.2.1 From April 2013 the cost to Swale Borough Council and major preceptors of such relief, is set out in the table below.

Organisation	Central Government	Swale Borough Council	Kent County Council	Kent & Medway Fire & Rescue
Share of the cost	50%	40%	9%	1%

- 3.2.2 Swale Borough Council recognises that awarding this relief is beneficial to local businesses. Therefore Section 44a Relief will be awarded in all cases that meet the statutory requirements. All other cases will be considered on their merits.

#### **3.3 Persons who can make an application**

- 3.3.1 Applications must be made by the ratepayer.
- 3.3.2 Swale Borough Council will require a written application, and the ratepayer must supply a plan of the property, with the unoccupied portions clearly identified.

#### **3.4 The decision-making process**

- 3.4.1 There are no restrictions in the provisions of a Section 44a Relief regarding the type of property or circumstances in which relief can be awarded.

- 3.4.2 Once Swale Borough Council has received an application, providing the application meets the qualifying criteria, relief will be awarded.
- 3.4.3 Swale Borough Council will require accompanied access to the property during normal working hours in order to verify the application. Further access will be required on at least one occasion each month, during normal office hours, during the period for which relief is being awarded.
- 3.4.4 Relief will not be awarded under any circumstance where it is not possible to verify the application.
- 3.4.5 Swale Borough Council will consider applications within 1 calendar month of the application and all supporting information being received and will notify the customer should there be a delay in processing the application.
- 3.4.6 Swale Borough Council will notify the applicant of the decision in writing, and where the relief is refused, an explanation of the reasons why will be given.
- 3.4.7 Swale Borough Council will not consider applications where the customer has failed to provide information within the timescales provided to them and will notify the customer in writing that the application has been refused.
- 3.4.8 To ensure there is a fair and consistent approach to the award of Section 44a Relief, all applications will be considered within the guidelines of this Policy, and a written record will be kept on file of the decisions and factors considered in the process. The decision will be available free of charge to the applicant on request.

### **3.5 Period of Section 44a Relief**

- 3.5.1 Section 44a Relief will only be applied to a property that is partly occupied for a short period. The relief will normally only be awarded to properties that are being progressively occupied or progressively vacated.
- 3.5.2 Section 44a Relief will end under the following circumstances:
- at the end of a financial year, regardless of the date relief was applied;
  - where all or part of the unoccupied area becomes occupied; or
  - where the person liable for Business Rates changes.
- 3.5.3 A new application may be submitted immediately by the customer if relief ends for any of the reasons outlined in 3.5.1.

### **3.6 Calculation of Section 44a Relief**

- 3.6.1 Where Swale Borough Council agrees to award a Section 44a Relief, we will notify the Valuation Officer to seek a reduction in the rateable value.

3.6.2 The amount of relief is calculated on a statutory basis based on the rateable value of the empty portion of the property. The appropriate rateable value is provided to Swale Borough Council by the Valuation Office Agency.

### **3.7 Authority to Award Section 44a Relief**

3.7.1 In the interests of efficiency, the authority to consider applications is delegated to Swale Borough Council Business Rates Officers.

### **3.8 Backdating Section 44a Applications**

3.8.1 Where a backdated application is received, the customer will be required to produce evidence to prove the area was unoccupied for the period the relief relates to. Acceptance of such evidence is at the discretion of Swale Borough Council.

### **3.9 Right of appeal**

3.9.1 There is no statutory right of appeal against a Section 44a decision made by Swale Borough Council because the award is discretionary. However, Swale Borough Council recognises that customers should be entitled to have a decision objectively reviewed if they are dissatisfied with the outcome. For further information on how to appeal please refer to Section 6 of this Policy.

## **4. Business Rates - Hardship Relief**

### **4.1 Legal Requirements**

- 4.1.1 Section 49 of the Local Government Finance Act 1988 provides a Local Authority with the discretion to reduce or remit payment of rates under the grounds of hardship.
- 4.1.2 Swale Borough Council can reduce or remit the payment of rates where it is satisfied that the customer would sustain hardship if we did not do so, and that it is reasonable to award relief having taken into account the interests of the Council Taxpayers.
- 4.1.3 There is no statutory definition of 'hardship', and so it is for Swale Borough Council to decide on the facts of each case as to whether to exercise our discretion. Swale Borough Council may adopt rules for the consideration of hardship, but are unable to adopt a blanket policy, and so each case will be considered individually.
- 4.1.4 It is the Government's guidance that remission of business rates on the grounds of hardship is the exception rather than the rule.

### **4.2 Legal Requirements – Subsidy Control**

- 4.2.1 Competition rules restrict Government subsidies to businesses. Relief from taxes, including business rates, could be considered such subsidy.
- 4.2.2 Hardship Relief for customers engaged in commercial activities, which compete with commercial bodies or have a commercial partner, could constitute a subsidy. In such cases it would be unlikely that the customer would be considered for Hardship Relief.

### **4.3 Financial Impact**

- 4.3.1 Discretionary Hardship Relief is funded partly by the billing authority, major preceptors (excluding Kent Police), and partly by Central Government.
- 4.3.2 The percentage of Discretionary Hardship Relief that must be funded is as follows.

<b>Type of Relief</b>	<b>% Cost to Central Government</b>	<b>% Cost to Swale Borough Council</b>	<b>% Cost to Kent County Council</b>	<b>% Cost to Kent &amp; Medway Fire &amp; Rescue</b>
Hardship Relief	50%	40%	9%	1%

### **4.4 Persons who can make an application**

- 4.4.1 Applications must be made in writing by the ratepayer or their agent.
- 4.4.2 Applications for hardship relief must be accompanied by the following:
- the most recent accounts and the last audited accounts.



- an up-to-date trading statement showing the current financial position of the business;
- details of the amount of relief being requested and the period of time it is being requested for; and
- an explanation of the benefits to the community arising from an award of hardship relief.

#### **4.5 The Decision-Making Process**

- 4.5.1 Although there is no statutory necessity to complete a formal application form, it is recommended that a form be completed, as it will act as a checklist of criteria to be met or questions to be answered. This will assist in speeding up the application process.
- 4.5.2 All applications will be considered on an individual basis, and decisions will be made in accordance with this Policy. The following examples indicate circumstances where it may be appropriate to award Hardship Relief. They are included in this Policy in the form of broad, general guidelines and are not intended to be prescriptive:
- the customer will suffer hardship if the relief is not granted.
  - there is a direct benefit to the ratepayer or the community or no adverse impact to other ratepayers or the community as a result of awarding relief.
  - the cost to local Council Taxpayers is proportional to the benefits to the community;
  - the ratepayer's business has been detrimentally affected by circumstances beyond the ratepayer's control and that do not constitute part of the normal risks in running a business e.g. a natural disaster or an unusual or uncontrollable event in the neighbourhood of the business.
  - by refusing to award the relief may result in the loss of the business. The impact on local amenities must be considered if the business is the sole provider of a service in the local area e.g. the only village shop; and
  - by refusing to award the relief may result in the loss of the business. The impact on employment prospects in the local area must be considered i.e. if the closure results in a large number of redundancies, the social aspect of increasing unemployment and the possible negative impact in attracting further investment in the area must be considered.
- 4.5.3 Swale Borough Council will only grant Hardship Relief for a period where there is clear evidence of hardship for the ratepayer concerned. This will ordinarily be for short period of time and not on an on-going basis.
- 4.5.4 Hardship Rate Relief may not be awarded if there are alternative facilities within the area or if the business is situated in an area with adequate public transport links to alternative businesses. Relief should be in the interests of the community as a whole. If the decision is that it is not in the interests of the community as a whole to grant Hardship Relief, then the decision will be final, with no rights to appeal.

- 4.5.5 Swale Borough Council will also consider applications from new businesses as well as established businesses. We recognise that a new business could also be the sole provider of a service in our local area which contributes to the health and quality of life of the Council Taxpayers generally.
- 4.5.6 Swale Borough Council recognises that there may be occasional circumstances in which the use of this power is beneficial to either an individual ratepayer or the community. However, in accordance with Government guidelines, it accepts that this power should be used sparingly and only in the most exceptional of circumstances.
- 4.5.7 Swale Borough Council will consider applications within 1 calendar month of the application and all supporting information being received and will notify the customer should there be a delay in processing the application.
- 4.5.8 Swale Borough Council will notify the applicant of the decision in writing, and where less than the maximum amount of relief is granted or the relief is refused, an explanation of the reasons why will be given.
- 4.5.9 Swale Borough Council will not consider applications on the grounds of hardship where the customer has failed to provide information within the timescales provided to them and will notify the customer in writing that the application has been refused.
- 4.5.10 To ensure there is a fair and consistent approach to the award of Hardship Relief, all applications will be considered within the guidelines of this Policy and a written record will be kept on file of the decisions and factors considered in the process. The decision will be available free of charge to the applicant on request.

#### **4.6 Period of Hardship Relief**

- 4.6.1 Swale Borough Council will normally only award Hardship Relief retrospectively. However, where the applicant can show that the circumstances will remain the same for a period up to the end of the current financial year, relief may be award for the remainder of the year.
- 4.6.2 In all cases Hardship Relief will end in the following circumstances:
- at the end of a financial year.
  - a change of liable person.
  - the property becomes empty or unoccupied.
  - the customer enters any form of Insolvency proceedings; and
  - the customer's financial circumstances change. The customer must inform Swale Borough Council if their circumstances change.

#### **4.7 Calculation of Hardship Relief**

4.7.1 Hardship Relief will be calculated as a percentage of the Business Rates bill. Should the Business Rates bill reduce within the period Hardship Rate Relief is granted, the relief will be reduced proportionately.

4.7.2 If the Business Rates bill increase within the period Hardship Relief is granted, i.e. an increase in rateable value, the amount awarded will not automatically be increased. In such cases, Swale Borough Council, upon request of the customer, will reconsider the application and may award additional relief.

#### **4.8 Authority to process applications and award relief**

4.8.1 In the interests of efficiency, the authority to consider applications is delegated as set out below.

<b>Thresholds – Annual Cost to Local Authority</b>	<b>Position of Authority</b>	<b>Counter Authority</b>
Up to £30,000	Head of Revenues and Benefits	Head of Finance & Procurement
Over £30,000	Head of Revenues and Benefits	Director of Resources

#### **4.9 Backdating Applications**

4.9.1 Legislation allows claims received between 1 April and 30 September in any year to be backdated to 1 April of the previous year. Customers requesting hardship relief to be backdated i.e. for the previous year will be dealt with in the same way as applications for the current year.

4.9.2 Applications outside of the qualifying period in 4.9.1 will not be backdated beyond 1 April of the year in which it is awarded.

#### **4.10 Right of appeal**

4.10.1 There is no statutory right of appeal against a decision to award hardship relief made by Swale Borough Council because the award is discretionary. However, Swale Borough Council recognises that customers should be entitled to have a decision objectively reviewed if they are dissatisfied with the outcome. For further information on how to appeal please refer to Section 6 of this Policy.

## **5. Retail Discount**

### **5.1 Introduction and Purpose**

5.1.1 The 2024-25 Retail, Hospitality and Leisure Business Rate Scheme will provide eligible, occupied, retail, hospitality, and leisure properties with a 75% relief, up to a cash cap limit of £110,000 per business.

5.1.2 This section provides guidance about the operation and delivery of that policy, including:

- factors that should be considered when making a decision to award or refuse relief.
- arrangements to delegate authority to award relief in appropriate circumstances; and
- appeals procedure for customers dissatisfied with the Council's decision.

### **5.2 How will the relief be provided?**

5.2.1 The Government will, in line with the eligibility criteria set out in this guidance, reimburse the Council where it uses its discretionary relief powers, introduced by the Localism Act (under section 47 of the Local Government Finance Act 1988, as amended) to grant relief.

5.2.2 It is for Swale Borough Council to decide on the scheme which they chose to adopt and decide in each individual case when to grant relief under section 47.

### **5.3 Properties that may benefit from the relief**

5.3.1 Properties which benefit from the relief will be those which for a chargeable day in 2024-25:

- a) meet the eligibility criteria; and
- b) the ratepayer for that chargeable day has not refused the relief for the eligible hereditament. The ratepayer may refuse the relief for each eligible hereditament anytime up to 30 April 2024. The ratepayer cannot withdraw their refusal for either all or part of the financial year.

5.3.2 In line with the legal restrictions in section 47(8A) of the Local Government Finance Act 1988, the Council may not grant the discount to themselves certain precepting authorities (e.g., a parish or county council) or a functional body, within the meaning of the Greater London Authority Act 1999.

5.3.3 We consider shops, restaurants, cafes, and drinking establishments to mean the following.

<p><b>Hereditaments that are being used for the sale of goods to visiting members of the public:</b></p>	<ul style="list-style-type: none"> <li>▪ Shops (such as: florist, bakers, butchers, grocers, greengrocers, jewellers, stationers, off licence, chemists, newsagents, hardware stores, supermarkets, etc)</li> <li>▪ Charity shops</li> <li>▪ Opticians</li> <li>▪ Post offices</li> <li>▪ Furnishing shops/ display rooms (such as: carpet shops, double glazing, garage doors)</li> <li>▪ Car/ caravan show rooms</li> <li>▪ Second hand car lots</li> <li>▪ Markets</li> <li>▪ Petrol stations</li> <li>▪ Garden centres</li> <li>▪ Art galleries (where art is for sale/hire)</li> </ul>
<p><b>Hereditaments that are being used for the provision of the following services to visiting members of the public:</b></p>	<ul style="list-style-type: none"> <li>▪ Hair and beauty services (such as: hairdressers, nail bars, beauty salons, tanning shops, etc)</li> <li>▪ Shoe repairs/ key cutting</li> <li>▪ Travel agents</li> <li>▪ Ticket offices e.g. for theatre</li> <li>▪ Dry cleaners</li> <li>▪ Launderettes</li> <li>▪ PC/ TV/ domestic appliance repair</li> <li>▪ Funeral directors</li> <li>▪ Photo processing</li> <li>▪ DVD/ video rentals</li> <li>▪ Tool hire</li> <li>▪ Car hire</li> </ul>
<p><b>Hereditaments that are being used for the sale of food and/ or drink to visiting members of the public:</b></p>	<ul style="list-style-type: none"> <li>▪ Restaurants</li> <li>▪ Takeaways</li> <li>▪ Sandwich shops</li> <li>▪ Coffee shops</li> <li>▪ Pubs</li> <li>▪ Bars</li> </ul>
<p><b>Hereditaments which are being used as cinemas</b></p>	<ul style="list-style-type: none"> <li>▪ Cinemas</li> </ul>

<b>Hereditaments that are being used for the provision of sport, leisure and facilities to visiting members of the public (including for the viewing of such activities)</b>	<ul style="list-style-type: none"> <li>▪ Sports grounds and clubs <ul style="list-style-type: none"> <li>▪ Museums and art galleries</li> <li>▪ Nightclubs</li> <li>▪ Sport and leisure facilities</li> <li>▪ Stately homes and historic houses</li> <li>▪ Theatres</li> <li>▪ Tourist attractions</li> <li>▪ Gyms</li> </ul> </li> </ul>
<b>Hereditaments that are being used for the assembly of visiting members of the public</b>	<ul style="list-style-type: none"> <li>▪ Public halls</li> <li>▪ Clubhouses</li> <li>▪ Clubs and institutions</li> </ul>
<b>Hereditaments where the non-domestic part is being used for the provision of living accommodation as a business</b>	<ul style="list-style-type: none"> <li>▪ Hotels</li> <li>▪ Guest and Boarding House</li> <li>▪ Holiday homes</li> <li>▪ Caravan parks and sites</li> </ul>

5.3.3 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 as to the types of uses that Swale Borough Council considers for this purpose to be retail. Swale Borough Council will determine 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.

#### 5.4 Properties that will NOT qualify for relief

5.4.1 The list below sets out the types of uses that Swale Borough Council does not consider to be retail use for the purpose of this relief. Again, the Borough will determine 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.

<b>Hereditaments that are being used for the provision of the following services to visiting members of the public:</b>	<ul style="list-style-type: none"> <li>▪ Financial services (e.g. banks, building societies, cash points, bureau de change, payday lenders, pawn brokers)</li> <li>▪ Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)</li> <li>▪ Professional services (e.g. solicitors, accountants, insurance agents/ financial advisers, tutors, employment agencies, estate agents, letting agents)</li> <li>▪ Post office sorting office</li> </ul>
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## **5.5 How much relief will be available?**

- 5.5.1 Subject to the £110,000 cash cap per business, the total amount of government-funded relief available for each property for 2024-25 under this scheme is for chargeable days from 1 April 2024 to 31 March 2025, 75% of the chargeable amount.
- 5.5.2 The relief will be applied after mandatory reliefs and other discretionary reliefs funded by section 31 grants have been applied, but before those where the Council has used its wider discretionary relief powers introduced by the Localism Act 2011, which are not funded by section 31 grants.
- 5.5.3 Subject to the cash cap, the eligibility for the discount and the relief will be assessed and calculated on a daily basis. The formula that will be used to determine the amount of relief to be granted for a chargeable day for a particular hereditament in the financial year 2024-25 is  $V \times 0.75$ , where  $V$  is the daily charge for the hereditament for the chargeable day after the application of any mandatory relief and any certain other discretionary reliefs.
- 5.5.4 Ratepayers that occupy more than one property will be entitled to relief for each of their eligible properties up to the maximum £110,000 cash cap, per business.

## **5.6 The cash cap and subsidy control**

- 5.6.1 Under the cash cap, no ratepayer can in any circumstances exceed the £110,000 cash cap across all of their hereditaments in England. Where a ratepayer has a qualifying connection with another ratepayer then those ratepayers will be considered as one ratepayer for the purposes of the cash caps. A ratepayer shall be treated as having a qualifying connection with another:
- a) where both ratepayers are companies, and
    - (i) one is a subsidiary of the other; or
    - (ii) both are subsidiaries of the same company; or
  - b) where only one ratepayer is a company, the other ratepayer (the “second ratepayer”) has such an interest in that company as would, if the second ratepayer were a company, result in its being the holding company of the other.
- 5.6.2 Furthermore, the Retail, Hospitality and Leisure Scheme is likely to amount to subsidy. Any relief provided by the Council under this scheme will need to comply with the UK’s domestic and international subsidy control obligations.
- 5.6.3 To the extent that the Council is seeking to provide relief that falls within the Small Amounts of Financial Assistance Allowance, Article 364 of the TCA allows an economic actor (e.g., a holding company and its subsidiaries) to receive up to £325,000 Special Drawing Rights (£343,000 as at 9 December 2021) in a three-year period (consisting of the 2024-25 year and the two previous financial years). Expanded Retail Discount granted from 2020-21 onwards does not count towards the

£343,000 allowance but BEIS business grants and any other subsidies claimed under the Small Amounts of Financial Assistance limit should be counted.

- 5.6.4 In those cases where it is clear to the Council that the ratepayer is likely to breach the cash cap or the Small Amounts of Financial Assistance limit then the authority will automatically withhold the relief. The amount of relief awarded will be calculated in the event of a change of circumstances. This could include, for example, a backdated change to the rateable value or the hereditament. This change of circumstances could arise during the year in question or during a later year.

## **5.7 Period of Award and Backdating**

- 5.7.1 This is a measure for 2024/25 only. Where the Council has reason to believe (based on the information held) that the criteria for relief has been met, it will make an annual award at the start of 2024/25.
- 5.7.2 Where liability starts, ends, or changes part way through a year, entitlement to relief will be reviewed in line with the guidance set out above.
- 5.7.3 Swale Borough Council will not accept any backdated requests for relief beyond the end of financial year for which relief is being claimed.

## **5.8 Decision making**

- 5.8.1 Where Swale Borough Council has reason to believe (based on the information held) that the criteria for relief has been met, it will award relief without the need for an application.
- 5.8.2 In all other circumstances an application will be required in writing setting out how the criteria for relief have been met.
- 5.8.3 In the interests of efficiency, the authority to consider applications is delegated to the Business Rates Officer, who will ensure that a decision and notified in writing within 1 calendar month of receipt of application, or as soon as is reasonably practical thereafter.

## **5.9 Right of Appeal**

- 5.9.1 There is no statutory right of appeal against a decision to award retail relief made by Swale Borough Council because the award is discretionary. However, Swale Borough Council recognises that customers should be entitled to have a decision objectively reviewed if they are dissatisfied with the outcome. For further information on how to appeal please refer to Section 6 of this Policy.



## **6. Business Rates Discretionary Relief - Right of Appeal**

### **6.1 Overview**

- 6.1.1 There is no statutory right of appeal against a decision regarding discretionary relief made by Swale Borough Council. However, Swale Borough Council recognises that customers should be entitled to have a decision objectively reviewed if they are dissatisfied with the outcome.
- 6.1.2 Swale Borough Council will give consideration to all appeals in accordance with this Policy and agrees to abide by the following appeals process. Aggrieved customers should make an appeal in accordance with the process.
- 6.1.3 Customers will be notified of the appeals process by Swale Borough Council in writing at the time that they are notified of the outcome of their request for discretionary relief.
- 6.1.4 Appeals against decisions to award discretionary relief will not be considered by the same officers administering the application for relief and will instead normally be considered by an Appeals and Liaison Officer.
- 6.1.5 Decisions made after the appeals process has been followed will be final. Submitting an appeal does not affect the appellant's legal rights to challenge a decision made by the Council through the Judicial Review process.

### **6.2 Persons that can appeal**

- 6.2.1 Appeals may only be made by the original applicant. An appellant may appoint a third party to act on their behalf, and in such cases Swale Borough Council will require written authorisation from the appellant.
- 6.2.2 Customers may appeal against the decision to award or not award relief, or against the level of relief awarded. An appeal must be made within four weeks of the issue of the letter notifying them of Swale Borough Council decision.
- 6.2.3 Any appeals received outside of the four-week period will only be considered if Swale Borough Council is satisfied that exceptional circumstances led to the delay in submitting the appeal.

### **6.3 Applications for appeal**

- 6.3.1 Appeals must be in writing and include the following:
- the reasons why it is believed the decision should be amended; and
  - any new or additional information relevant to the decision-making process.

- 6.3.2 The appellant does not have a right to appear in person but may make a request to present evidence in person. Such requests will be considered at the discretion of Swale Borough Council, as appropriate.
- 6.3.3 Swale Borough Council can request a meeting with the customer to hear evidence in person.

#### **6.4 Notification of the final decision following appeal**

- 6.4.1 Swale Borough Council will consider appeal applications within 1 calendar month of the application and all supporting information being received and will notify the customer should there be a delay in the consideration of the appeal.
- 6.4.2 Swale Borough Council will notify the applicant of the final decision in writing within the 1 calendar month period, and whether an appeal is refused or accepted a full explanation of the decision-making process will be given. A written record will be kept on file of the decisions and factors considered in the process.
- 6.4.3 For Business Rates, both Discretionary Relief and Hardship Relief is the subject of separate applications. Should a Swale Borough Council Officer decide to reject the appeal in respect of Discretionary Relief they cannot offer Hardship Relief as an alternative. However, the applicant can be invited to make a separate application.

#### **6.5 Discontinuation of Applications or Appeals**

- 6.5.1 If Swale Borough Council have requested further evidence from the customer and this has not been received within the specified time given, the appeal will not be considered.
- 6.5.2 Customers will be advised in writing the reason why their application has been discontinued.

#### **6.6 Cancellation of relief**

- 6.6.1 Relief will be cancelled if:
- the applicant ceases to be the ratepayer or taxpayer.
  - the property becomes empty or becomes occupied, or all or part of the unoccupied area becomes occupied.
  - the use of the property changes.
  - the aims or objectives of the ratepayer changes; or
  - the financial circumstances for a customer changes.
- 6.6.2 Where relief is cancelled for any of the reasons above, a new application may be made by customers straight away.

## **7. Action to recover unpaid Business Rates whilst a decision is pending**

- 7.1 Once an application for discretionary relief is received, action may still be taken to recover any unpaid Business Rates until after the decision has been notified to the customer.
- 7.2 In the case where the customer has been notified of a decision and they exercise their rights to appeal, payment cannot be withheld pending an appeal decision. In the event that an appeal is successful, any overpayment will be refunded.
- 7.3 For circumstances where an application is being discontinued, recovery action will commence after the ratepayer has been notified of the discontinuation in writing.

## **8. Promotion of the availability of relief**

- 8.1 Swale Borough Council will proactively promote the availability of discretionary relief, in the following ways:
- all Business Rates will have included accompanying information explaining the availability of relief;
  - Swale Borough Council employees who deal with enquiries from customers will be trained in all aspects of this Policy and will actively promote the availability of relief when responding to customer enquiries.
  - Swale Borough Council will work in partnership with other organisations to promote the availability of relief.
  - information regarding the availability of reliefs will be published on our web site; and
  - a copy of this Policy will be placed on our website, and printed copies will be made available to ratepayers and other stakeholders on request.

## **9. Equalities Statement**

- 9.1 An Equality Impact Assessment has been completed in relation to this Policy and has found that there is no negative impact arising.

## **10. Policy Review**

- 10.1 This Policy will be reviewed on an annual basis in order to ensure it remains valid, effective, and relevant.