



Southend on Sea Borough Council Policy for the granting of COVID-19 Additional Relief Fund Discretionary Non-Domestic Rate Relief

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1.0 Purpose of the Policy

- 1.1 The purpose of this policy is to determine the level of discretionary relief payable under the Council's COVID-19 Additional Relief Fund (CARF) scheme.
- 1.2 Central Government has provided the authority with funding to assist those ratepayers who businesses have been (and continue to be) affected by the pandemic but that are ineligible for existing support linked to business rates.
- 1.3 The Government has not changed the legislation relating to the business rates reliefs available to properties. Instead, the Government will, in line with the eligibility criteria set out in this policy, reimburse local authorities where relief is granted using discretionary relief powers under section 47 of the Local Government Finance Act 1988.
- 1.4 Whilst funding is provided by Central Government, it is for the Council to decide its own local scheme and determine in each individual case whether to grant this particular relief.
- 1.5 Relief under the CARF scheme will only be available to reduce chargeable amounts in respect of the 2021/22 financial year.
- 1.6 This document outlines the following areas:
 - Details of the criteria for receiving Discretionary Reliefs under the COVID-19 Additional Relief Fund (CARF) scheme;
 - The Council's policy for the granting the relief;
 - General guidance on granting and administering the reliefs and awards;
 - Subsidy Controls applicable; and
 - The Council's Scheme of Delegation.
- 1.7 Where ratepayers apply for relief they will be granted (or not granted) relief under the COVID-19 Additional Relief Fund (CARF) scheme in line with the following policy.

2.0 Discretionary Relief – Legislative Background

Introduction

- 2.1 The original purpose of discretionary relief was to provide assistance where the property does not qualify for mandatory relief, or to ‘top’ up cases where ratepayers already receive mandatory relief.
- 2.2 Over recent years and particularly since 2011, the discretionary relief provisions have been amended to allow authorities the flexibility to provide more assistance to businesses and organisations.
- 2.3 The range of bodies, which are eligible for discretionary rate relief, is wide and not all of the criteria laid down by the legislation will be applicable in each case.
- 2.4 The Council will expect all businesses provide such information and evidence as required in order to determine whether relief should be awarded.
- 2.5 There is no statutory appeal process or Tribunal against any decision made by the Council although, as with any decision of a public authority, decisions can be reviewed by Judicial Review. The authority will however, upon request, review decisions made. Details of the internal review process are given within this policy.
- 2.6 The decision to grant or not to grant discretionary relief is a matter purely for the Council.

3.0 Eligibility for discretionary relief under the COVID-19 Additional Relief Fund (CARF) scheme

- 3.1 Whilst the Council has determined its own scheme, the Department for Levelling Up, Housing and Communities has stated that, in order for the Council to receive the allocated funding, it must:
 - (a) **not** award relief to ratepayers who for the same period of the relief either are or would have been eligible for the Expanded Retail Discount (covering Retail, Hospitality and Leisure), the Nursery Discount or the Airport and Ground Operations Support Scheme (AGOSS);
 - (b) **not** award relief to a hereditament for a period when it is unoccupied (other than hereditaments which have become closed temporarily due to the government’s advice on COVID-19, which should be treated as occupied for the purposes of this relief), and
 - (c) direct their support towards ratepayers who have been adversely affected by the pandemic and have been unable to adequately adapt to that impact.

- 3.2 In line with section 47(8) of the Local Government Finance Act 1988, the Council must not grant any relief to itself or to either local or major precepting authorities.
- 3.3 The relief will be applied after mandatory reliefs and other discretionary reliefs funded by section 31 grants have been applied, excluding those where the Council has provided relief using its wider discretionary relief powers introduced by the Localism Act 2011 which are not funded by section 31 grants.
- 3.4 Where any reduction or remission is granted to a ratepayer under S49 Local Government Finance Act 1988 (where hardship is proven to the Council), then there will be no requirement to grant CARF Discretionary Rate Relief for that amount.
- 3.5 In certain cases, the order in which relief is granted is specified. Mandatory relief shall be granted in all cases where the relevant criteria are met irrespective of whether discretionary relief can be granted or not.

4.0 Discretionary Relief to be awarded under the COVID-19 Additional Relief Fund.

- 4.1 Over the past few years, a number of schemes (such as the COVID-19 Additional Relief Fund) have been led by Central Government but without specific legislative changes.
- 4.2 The Council is keen to support such initiatives especially where they are designed to help local businesses and will look to maximise both the reliefs given as well as maximise any grants receivable.
- 4.3 In view of this, the Council has decided that where a ratepayer meets **all** of the relevant criteria listed below, relief will be 50% of the 2021/22 liability **after** any other reliefs and reductions have been applied.
- 4.4 Relief will be based on the liability and rateable value of the hereditament at 15th December 2021.
- 4.5 Where there is an increase in liability after relief has been applied, the relief will remain at the level originally granted. Where there is a decrease in liability, the relief will be adjusted to reflect the reduction. Relief cannot be awarded where it would exceed the pre-relief rate liability.
- 4.6 The criteria for the COVID-19 Additional Relief Fund are as follows:
- (a) the ratepayer is **not** eligible (or would not be eligible) for the Expanded Retail Discount (covering Retail, Hospitality and Leisure), the Nursery Discount or the Airport and Ground Operations Support Scheme (AGOSS);

- (b) the ratepayer is not entitled to either Small Business Rate Relief or Rural Rate Relief granted at 100%;
- (c) the ratepayer is **not** entitled to mandatory relief (80%);
- (d) the hereditament is one of the following and is treated and shown as occupied on the Council's records on 15th December 2021:
 - Business Unit and Premises;
 - Factory;
 - Warehouse; or
 - Workshop;
- (e) the ratepayer confirms that they have been adversely affected by the pandemic and have been unable to adequately adapt to that impact;
- (f) the ratepayer is **not** subject to Subsidy Control as defined within section 6; and
- (g) the hereditament is not excluded under the section 5 below

5.0 Excluded hereditaments

5.1 The Council has decided that the hereditaments / ratepayers shown below will be excluded from relief under the Council's COVID-19 Additional Relief Fund (CARF) scheme:

- Advertising rights;
- Banks, Building Societies and similar financial institutions;
- Beach Huts;
- Car Parks and car spaces;
- Communication hereditaments including phone masts etc.;
- Concrete batch plants;
- Courthouses, Fire stations, Police Stations and similar Government or Public authority premises;
- Health Centres, Surgeries, Hospitals and similar premises;
- Land including storage land;
- Marinas and moorings including wharfs;
- Offices and similar premises;
- Playing fields, parks and recreation fields and spaces;
- Schools, colleges, universities, and other educational establishments; and
- Stores.

6.0 Subsidy Control

6.1 The Council's COVID-19 Additional Relief Fund (CARF) scheme is subject to the subsidies chapter within the UK-EU Trade and Cooperation Agreement (TCA). However, for CARF there is an exemption for subsidies under the value of approximately £2,243,000 per economic actor (broadly speaking, for example, a holding company and its subsidiaries).

- 6.2 This allowance comprises 325,000 Special Drawing Rights (at current exchange rates about £343,000) for Small Amounts of Financial Assistance and a further £1,900,000 for COVID-19 related subsidy.
- 6.3 Therefore, to be awarded CARF the ratepayer must not have claimed over the period 2019/20 to 2021/22 more than £2,243,000 from schemes which fell within the Small Amounts of Financial Assistance or COVID-19 related allowances.
- 6.4 Any COVID-19 business grants a ratepayer has received from local government generally and the 2019/20 Retail Relief should count towards this limit, but the ratepayer should not count any Expanded Retail Discount they have received since 1 April 2020.
- 6.5 Further details of subsidy control can be found at:
<https://www.gov.uk/government/publications/covid-19-additional-relief-fund-carf-local-authority-guidance>
- 6.6 The ratepayer will need to indicate to the Council:
- if they have not to date received any subsidy which fell within the Small Amounts of Financial Assistance or COVID-19 related allowances; or
 - if the ratepayer has received other such subsidies, they will be required to provide the name and total value of those subsidies.
- 6.7 A ratepayer must not apply for or receive CARF if they have already exceeded the £2,243,000 allowance. However, the Council will still consider applications for support under the CARF scheme if they have reached this limit provided they can evidence that they:
- (a) Intend to use the support to fund uncovered fixed costs (costs not covered by profits for insurance etc) during the period of COVID-19. Economic actors may claim for up to 70% of their uncovered costs (although this 70% limit does not apply to small businesses with less than 50 employees and less than £9 million turnover where the limit is instead 90%); and
 - (b) Have shown a decline in turnover of at least 30% within the April 2020 to March 2021 period, compared to the same 2019 to 2020 period.
- 6.8 The ratepayer may claim up to a further £10 million of additional allowance (on top of the £2,243,000) if they meet the above tests and they have not claimed any other support from the additional allowance up to an aggregate £10 million limit (such as from the COVID-19 business grants).
- 6.9 Government and the Council will not tolerate any business falsifying their records or providing false evidence to gain this relief including claiming support above these thresholds.
- 6.10 A ratepayer who falsely applies for any relief or provides false information or makes false representation in order to gain relief may be guilty of fraud under the Fraud Act 2006.

7.0 Effect on the Council's Finances

- 7.1 As Central Government leads this initiative, funding will be provided through section 31 of the Local Government Act 2003. This is not automatic and Central Government will look to the Council to adopt the recommended approach when granting in these areas.
- 7.2 In order to guarantee funding, the Council will ensure that the criteria in this policy are met in full

8.0 Administration of Discretionary Relief

- 8.1 The following section outlines the procedures followed by officers in granting, amending, or cancelling discretionary relief and reduction. This is essentially laid down by legislation¹

Applications and Evidence

- 8.2 The Council will award the relief to eligible businesses.
- 8.3 Where appropriate, ratepayers will be required to provide such evidence necessary to allow the Council to make a decision. Where insufficient information is provided, then no relief will be granted. In some cases, it may be necessary for officers to visit premises and we would expect ratepayers claiming relief to facilitate this where necessary.
- 8.4 **The Council will provide this relief and provide guidance free of charge. Ratepayers are encouraged to approach the Council direct and NOT pay for such services through third parties.**

Granting of relief

- 8.5 In all cases, the Council will notify the ratepayer of decisions made.
- 8.6 Where an application (if required) is successful, then the following will be notified to them in writing:
- The amount of relief granted and the date from which it has been granted;
 - If relief has been granted for a specified period, the date on which it will end.
 - The new chargeable amount; and
 - A requirement that the applicant should notify the Council of any change in circumstances that may affect entitlement to relief.

¹ The Non-Domestic Rating (Discretionary Relief) Regulations 1989

8.7 The relief will only be made for the 2021/22 financial year.

9.0 Scheme of Delegation

Granting, Varying, Reviewing and Revocation of Relief

- 9.1 All powers in relation to reliefs are given under the Local Government Finance Act 1988, the Local Government and Rating Act 1997, the Local Government Act 2003 and the Localism Act 2011. However section 223 of the Local Government Act 1992 allows for delegation of decisions by the Council to Cabinet, Committees, Sub-Committees or Officers.
- 9.2 The Council's scheme of delegation allows for the Revenues Manager to award, revise or revoke any discretionary relief applications. However, any application which is considered to be of a significant nature, will be subject to consultation with the Council's Section 151 Officer, prior to final determination.
- 9.3 Applications that are refused will, on request, be reconsidered if additional supporting information is provided or the refusal is subsequently considered to be based on a misinterpretation of the application.

Reviews

- 9.4 The policy for granting relief will be reviewed annually or where there is a substantial change to the legislation or funding rules. At such time, a revised policy will be brought before the relevant committee of the Council.

Disputes

- 9.5 Where the Council receives a dispute from the ratepayer regarding the granting, non-granting or the amount of any discretionary relief, the case will be reviewed by the Revenues Manager. Where a decision is revised then the ratepayer shall be informed, likewise if the original decision is upheld.
- 9.6 Where the ratepayer wishes to appeal the decision of the Revenues Manager, the case will be considered by the Council's Section 151 Officer whose decision on behalf of the Council will be final.
- 9.7 Ultimately the formal appeal process for the ratepayer is Judicial Review although the Council will endeavour to explain any decision fully and openly with the ratepayer.

10.0 Reporting changes in circumstances

- 10.1 Where any award is granted to a ratepayer, the Council will require any changes in circumstances which may affect the relief, to be reported as soon as possible or in any event within 21 days of the change. This will be important where the change would result in the amount of the award being reduced or cancelled e.g., where the premises comes unoccupied or is used for a purpose other than that determined by the Council as eligible for relief.
- 10.2 Where a change of circumstances is reported which would cease or revise eligibility, the relief will, if appropriate, be revised or cancelled as appropriate. Where any award is to be reduced, the Council will look to recover the amount from the date the change of circumstances occurred.

11.0 Fraud

- 11.1 Where a ratepayer falsely applies for any relief, or where the ratepayer provides false information, makes false representation, or deliberately withholds information in order to gain relief, prosecutions will be considered under the Fraud Act 2006.