

Eden District Council

Cabinet

19 April 2022

Covid -19 Additional Relief Fund Policy 2022

Portfolio:	Resources
Report from:	Interim Director of Resources
Wards:	All Wards
OPEN PUBLIC ITEM	

1 Purpose

- 1.1 To seek approval for the Policy for the Covid-19 Additional Relief Fund (CARF) Discretionary Non-Domestic Rate Relief for the financial year 2021/2022.

2 Recommendations

It is recommended that Cabinet:

- 2.1 Approve the use of discretionary powers by the Council under Section 47 of the Local Government Act 1988 (as amended).
- 2.2 Approve the CARF Policy attached at Appendix A.

3 Report Details

- 3.1 The purpose of this policy is to determine the level of discretionary relief payable under the Council's Covid 19 CARF scheme.
- 3.2 Central Government has provided the Council with funding to assist those ratepayers whose businesses have been (and continue to be) affected by the pandemic but are ineligible for existing support linked to business rates.
- 3.3 As with previous schemes the Government is not changing legislation, therefore we are to use our discretionary relief powers under section 47 of the Local Government Finance Act 1988. Any relief under this CARF scheme will only be available to reduce chargeable amounts in respect of the 2021/22 financial year.
- 3.4 At this stage we cannot determine the percentage of relief which will be awarded. This will be determined after the closing date for applications. This is detailed at 4.3 of the Policy.
- 3.5 As part of the application process ratepayers will be asked to sign a self-declaration.
- 3.6 A copy of the Policy is attached (Appendix A) along with a list of hereditaments excluded from the scheme.

4 Policy Framework

4.1 The Council has four corporate priorities which are:

- Sustainable;
- Healthy, safe and secure;
- Connected; and
- Creative

4.2 This report meets the Sustainable corporate priority.

5 Consultation

5.1 The portfolio holders for Resources, and Economy and Enterprise have been consulted in the drafting of this report, along with Economic Development Team.

6 Implications

6.1 Financial and Resources

6.1.1 There are no financial implications arising from the adoption of the scheme, as set out in the Policy, as the cost of relief will be reimbursed by Central Government.

6.2 Legal

6.2.1 The Council has powers to award this relief under the Local Government Finance Act 1988.

6.3 Human Resources

6.3.1 There are no Human Resources implications.

6.4 Environmental

6.4.1 There are no Environmental implications or significant effects on carbon emissions and ecosystems.

6.5 Statutory Considerations

Consideration:	Details of any implications and proposed measures to address:
Equality and Diversity	No implications
Health, Social Environmental and Economic Impact	The relief will provide an economic benefit for the eligible businesses
Crime and Disorder	No implications
Children and Safeguarding	No implications

6.6 Risk Management

Risk	Consequence	Controls Required
Reputational damage due to non-introduction of the relief	The Council is criticised by ratepayers and Central Government.	Relief schemes are approved and introduced.

Risk	Consequence	Controls Required
Local business will struggle to pay business rates	Less income for the Council.	

7 Other Options Considered

7.1 There are no other viable alternatives to what has been recommended.

8 Reasons for the Decision/Recommendation

8.1 This relief will provide financial assistance to ratepayers at no cost to the Council and will assist those ratepayers whose businesses have been (and continue to be) affected by the pandemic but are ineligible for existing support linked to business rates.

Tracking Information

Governance Check	Date Considered
Chief Finance Officer (or Deputy)	10 March 2022
Monitoring Officer (or Deputy)	18 March 2022
Relevant Assistant Director	N/A

Background Papers:

Appendices: Policy for the Covid-19 Additional Relief Fund (CARF)
Discretionary Non-Domestic Rate Relief

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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 level of relief to be awarded will be decided by the Council after the closing date for applications. Once all applications have been considered, the % of relief will be calculated as follows:

The total funding received by Eden District Council

The total net rates liability of all qualifying applications

The % of relief to be awarded will be applied to the 2021/22 liability after any other reliefs and reductions have been deducted.

- 4.4 The criteria for the COVID-19 Additional Relief Fund are as follows:
- (a) the ratepayer is **not** eligible (or would 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%) and discretionary (top up) of 20% which is funded through business rates retention;
 - (d) the hereditament is treated as occupied by the Council;

(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 within Appendix A will be excluded from relief under the Council's COVID-19 Additional Relief Fund (CARF) scheme.

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 Extended 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 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 you 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 specify how (and if) applications are to be made and received. This may vary from time to time.

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

- 8.3 Where appropriate, ratepayers are 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 service and provide guidance free of charge. Ratepayers are encouraged to approach the Council direct and NOT pay for such services through third parties. Applications will be accepted from ratepayers only.**

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;
 - The details of any planned review dates and the notice that will be given in advance of a change to the level of relief granted; and
 - A requirement that the applicant should notify the Council of any change in circumstances that may affect entitlement to relief.
- 8.7 Where relief is not granted, then the following information is provided, again in writing:
- An explanation of the decision within the context of the Council's statutory duty; and
 - An explanation of the appeal rights (see below).
- 8.8 Discretionary relief is to be granted from the beginning of the financial year in which the decision is made or when liability begins whichever is the later. Since 1997 decisions can be made up to 6 months after the end of the financial year for which the application was made. In such cases, the Council *may* backdate its decision. Given the timing of this relief, awards will only be made for the 2021/22 financial year.

Variation of a decision

- 8.9 Variations in any decision will be notified to ratepayers as soon as practicable and will take effect as follows:
- Where the amount is to be increased due to a change in rate charge (excluding rateable value increases) or a change in the Council's decision which increases the award – this will apply from a date determined by the Council as appropriate;

- Where the amount is to increase for any other reason, it will take effect at the expiry of a financial year unless it is granted for a fixed period;
- Where the amount is to be reduced due to a reduction in the rate charge or liability including any reduction in rateable value, awarding of another relief or exemption this will apply from the date of the decrease in rate charge; and
- Where the amount is to be reduced for any other reason, it will take effect from a date determined by the Council as appropriate;

8.10 A decision may be revoked at any time and a one-year period of notice will be given and the change will take effect at the expiry of a financial year. However, the Council will terminate the relief at any time the ratepayer fails to meet **any** of the relevant eligibility criteria.

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 Assistant Director of Customers & Performance 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 Assistant Director of Customers & Performance. 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 Assistant Director of Customers & Performance, 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.

Appendix A Ratepayers / hereditaments excluded from the scheme

Non-qualifying Properties/Businesses

- Properties not in the rating list on the 15 December 2021. If properties are subsequently brought into the rating list and backdated to a date before the 15 December 2021, they will not be considered for this relief;
- Properties occupied by businesses who have already received or would have been eligible for the Expanded Retail Relief or the Nursery Relief;
- Properties which are unoccupied (other than for reasons attached to Covid restrictions) will not be awarded the relief;
- Properties which are occupied by Public Bodies e.g., NHS, Post Office;
- No relief will be granted to those businesses who already have no Business Rates liability, due to already receiving another mandatory or Section 31 Business Rate Relief.
- The relief will not be awarded to any business in administration, insolvent or that has a striking off notice issued against it prior to 15 December 2021.

Property Descriptions excluded from Relief

Relief will not be awarded on properties with the following Valuation Office property descriptions:

- Advertising rights and premises;
- Car parking spaces and premises;
- Communication station and premises;
- Bank and premises;
- Building Society and premises;
- ATM and premises;
- College and Premises;
- School and premises;
- Hospital and premises;
- Independent distribution network and premises;
- Land (for any use) and premises;
- Marketing Suite and premises;
- Show home and premises;
- Store and premises;
- Surgery and premises;
- Sports ground and premises;
- Health centre and premises; and
- Any other description which the Council does not feel is in the spirit of the scheme.