

Torbay Council

Council Tax

Exceptional Hardship & Discretionary Reductions Policy

S13A(1)(c) Local Government Finance Act 1992

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### Version

Version	Date	Notes
11	September 2020	Updated
12	April 2021	Updated- Covid 19 Hardship fund references removed

## 1. Introduction

Section 13A(1)(c) of the Local Government Finance Act 1992 (amended), provides the Council with additional discretionary powers to reduce the Council Tax liability where national discounts and exemptions cannot be applied. This can apply to individual council tax payers or groups of taxpayers who have similar circumstances.

Council Tax legislation provides a wide range of discounts, exemptions and reductions that have the effect of reducing the level of Council Tax due. Applicants will be expected to have exhausted all other options before making an application under this policy. Similarly, it will also be considered whether alternative actions could have been undertaken when applying this policy. As such, this policy will consider **Exceptional Hardship**, due to financial need or Crisis when making a decision about a **Discretionary Reduction**.

This policy is therefore divided into the following categories:

- (a) Council Tax Exceptional Hardship Fund** - available to Council Tax payers receiving Council Tax Support who are facing exceptional financial hardship and the level of support does not meet their full Council Tax liability.
  
- (b) Discretionary Reduction** - available to Council Tax payers not receiving Council Tax Support, where exceptional circumstances or a crisis applies and justifies a reduction in their Council Tax liability for a temporary period.
  
- (c) Other Government Initiatives** - currently applies to the Flood Recovery Framework.

## 2. Legislative Framework

The following legislation and regulations are relevant to this document:

- The Local Government Finance Act 2012 Section 13A(1)(a) and 13A(1)(c)
- The Local Government Act 2003 Section 31
- The Local Government Act 1992 Section 13A(2)
- Child Poverty Act 2010
- Equality Act 2010 (incorporating the Disabled Persons Act 1986)
- Housing Act 1996
- Armed Forces Covenant
- The Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012
- The Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 Default Scheme
- Social Security Act 1992

## 3. Objectives

This policy aims to support local people experiencing financial hardship or crisis when they are struggling to pay Council Tax. The reduction will be known as the Exceptional Hardship & Discretionary Reduction Scheme, but will operate under the legal framework outlined in Section 13(1)(a) and 13(1)(c) of the Local Government Finance Act 1992.

The provision stated in (a) allows the Council to reduce the Council Tax liability for taxpayers receiving Council Tax Support that are facing severe financial hardship.

The Government has not prescribed any vulnerable groups, having regard to local authorities' defined responsibilities in relation to, and awareness of, the most vulnerable groups and individuals in their areas through an Equality Impact Assessment.

It should be noted that where the Council has a discretionary power, it must not restrict its discretion by having a set of rules that are inflexible. Each case must be considered on its own merits, determined within the budget provided and administered under the framework set out in this policy.

#### **4. Equalities**

The Council is committed to equality and fairness. Equality is about ensuring people are treated fairly and given fair chances. It is also about ensuring that people receive fair outcomes in the standard of service they receive from the Council and equality of access to Council Services. This incorporates everyone, regardless of their race, gender, age, religion or belief, sexual orientation, marital or civil partnership status and/or disability in line with the principles set out in the Equalities Act 2010.

#### **Vulnerable Groups**

A number of groups have been defined as being eligible to submit an application for Exceptional Hardship, detailed below:

- A household with a claimant, partner or dependent child in receipt of any component of Disability Living Allowance (DLA), or its replacement (PIP)
- A household where a disabled adult is living in supported living accommodation, who have carers and are who unable to work due to their health
- Where the applicant, or applicant's partner, is in receipt of Employment Support Allowance (ESA) with a Limited capability for work component or the equivalent component in Universal Credit
- Where the applicant, or applicant's partner, is a care leaver up to the age of 25 years (careleavers previously looked after by Torbay are exempt from Council Tax anyway)
- Where the applicant, or applicant's partner, is deemed vulnerable through drug or alcohol dependency who are attending a rehabilitation programme
- The applicant or household has suffered domestic violence and is being supported by accredited local schemes to move into permanent accommodation
- Where the applicant or household is a foster carer and has current foster child placements
- Where the applicant or household has dependent children under the age of 5 and is in receipt of Income Support or the equivalent Universal Credit
- Applicants or households who provide care who are single or a couple, and have no other income (other than Income Support or the equivalent Universal Credit), where they are in receipt of Carer's Allowance
- The applicant or household is a foster carer (child or adult) and is in between foster care placements

- Where the applicant or household has parental care responsibility for non-resident children
- Where the applicant or household is a hostel leaver where they were resident in a hostel engaging with support while resident. Minimum period of hostel residency is 3 months

## 5. Exceptional Hardship

The Exceptional Hardship scheme gives the Council the discretion to provide reductions in Council Tax under the policy of up to 100% of the remaining Council Tax liability after Council Tax Support has been granted. It provides further financial assistance for households who are entitled to Council Tax Support but who are suffering severe financial hardship and cannot afford to pay their remaining charge.

Exceptional Hardship applications will also be considered for households who would, but for the Minimum Income Floor for self-employed persons, be entitled to Council Tax Support.

Fundamental to the Exceptional Hardship Scheme is a clear indication of the groups or individuals that can be considered eligible to claim additional help with Council Tax through the Exceptional Hardship fund.

The fund has financial limitations and, as such, awards can only be made based on eligibility, whilst having regard to the level of funding available or remaining within the Exceptional Hardship Scheme each financial year.

Unless specified, all criteria and conditions that apply to the Council's Council Tax Support Scheme will also apply to the Exceptional Hardship scheme.

## 6. Discretionary Reduction

The Council will consider requests for a Discretionary Reduction from Council Tax payers who are not in receipt of Council Tax Support and have experienced a personal crisis that justifies a reduction in the Council Tax liability. This reduction will only be awarded for a temporary period.

All eligible exemptions/discounts/reductions should have been obtained before making an application for a Discretionary Reduction.

Applications must be made in writing or online detailing the **exact** circumstances of why a Discretionary Reduction is required and specifying when the situation is expected to be resolved.

The financial status of the applicant will be assessed and where necessary the Council Tax payer will be signposted to a debt advisory group to re-prioritise debt payments. Council Tax is a priority debt and when considering financial circumstances the Council may not take into account non-priority debts.

## 7. Other Government Initiatives

The Council will consider requests for a Discretionary Reduction for other Government initiatives that fall under S13A (1) (C) of the Local Government Finance Act 1992.

This category currently covers the [Flood Recovery Framework](#). In a severe weather event with significant wide area impacts a core package of support has been developed by Government for flood recovery funding.

It will be for Government Ministers to determine when this support will be made available. Weather incidents with localised impacts will not usually trigger a recovery support package.

## **8. Awarding Exceptional Hardship and Discretionary Reductions**

Applicants will need to be able to demonstrate their circumstances and that they have exhausted all other sources of income that are available to them.

Where deemed necessary the Council may refer the applicant or members of their household to obtain money and debt advice. At the discretion of the Council awards may not be made to applicants who have not sought advice where it has been recommended.

Each case will be treated on its own merits and applicants will be expected to have explored and secured any lawful entitlement to other benefits, incomes and other reductions.

Applicants will need to ensure they are able to satisfy the Council that they have taken all reasonable steps to resolve their own situation prior to application.

Generally for an award to be made it would be expected that:

1. There is evidence of financial hardship and circumstances that justify an award
2. The applicant or household has supplied all evidence requested by the Council in respect of their claim for the Local Council Tax Support Scheme
3. The applicant or household must have applied for any appropriate discount or exemption and supplied any evidence requested by the Local Authority in support of their application
4. The applicant or household does not have access to any other financial assets that could be realised to pay the Council Tax
5. The applicant or household has not been disallowed or had their entitlement to Job Seekers Allowance or Universal Credit sanctioned as a result of breaking the terms of their signing on agreement at the Jobcentre
6. The applicant or household has not been prosecuted in the last twelve months for Housing Benefit, Council Tax Support or other benefit fraud
7. The Council's finances must allow for an award to be made

In assessing basic and essential needs the applicant's age, health and status will be taken into consideration. Expenditure which does not relate to basic and essential needs or which appears to be excessive will not normally be taken into account when assessing hardship.

## **9. How to Apply**

Applications should be made in writing or online using the approved claim form together with supporting evidence as required.

Claims can also be made by a referral process – see section 12 'Referrals from other sectors'.

However, the Council may where it sees fit make bulk awards under a specific scheme to entire classes of cases with common criteria, where the Council considers there to be, in general, a financial need. In such cases, a formal application may not be required. For example, where a number of tax payers have been affected by a specific natural disaster such as flooding, the Council may set up a class to award a discount to all properties affected.

The applicant must be the person liable to pay the Council Tax, or be their representative with authority to act on their behalf e.g. Power of Attorney. Claims can only be made to and accepted by Torbay Council, who issues the taxpayer their Council Tax Demand Notice.

If an applicant or household needs advice and support to complete a claim form, the applicant or household will be signposted to an appropriate service that offers support relevant to the needs of the applicant or household.

The applicant must set out the reasons for applying, including explaining any special circumstances or hardship being experienced.

## **10. Information Required**

Evidence will be required to substantiate an application for Exceptional Hardship or Discretionary Reduction.

Evidence can include, but is not limited to:

- A household income statement; using a prescribed form
- A household expenditure statement; using a prescribed form
- Supporting evidence may be requested such as utility bills

- Where a person is self-employed or a director of a private limited company details of their business including business accounts must be supplied
- Evidence of seeking debt advice, if appropriate

Evidence may be requested that is relevant to the nature of the claim e.g. medical certificates as evidence of illness.

Failure to provide supporting information and evidence that is requested may lead to a refusal.

Care will be taken by staff to ensure that the applicant or household is treated fairly and respectfully and that only relevant information and evidence is requested.

All information and evidence provided will be treated in confidence and in accordance with the Data Protection Act 1998 and/or General Data Protection Regulation.

Where the Council requires additional information or evidence it will write to the applicant requesting the information is supplied within one calendar month.

The applicant is required to report any changes in their circumstances or of the circumstances of household members immediately in writing to the Council. A failure to report changes may lead to a loss of Exceptional Hardship, resulting in an overpayment which will be recoverable from the Council Tax account and lead to prosecution where appropriate.

## **11. Notification of an Award**

The Council will notify the outcome of an application for Exceptional Hardship or Discretionary Award in writing. The notification will include:

1. The amount of the award (if any)
2. The period of the award (if any)
3. Provide details of how to appeal or obtain more information about the decision
4. Provide details of how the award (if any) will be made

On the provision of all satisfactory requested information, a decision will be made where practicable within 14 working days.

## **12. Referrals from Other Sectors**

The Council will accept referrals from:

- Torbay Council Children's Services Team
- Registered Social Landlords
- Torbay Council's Housing Needs department
- Third sector organisations i.e. Citizens Advice Bureau, welfare rights advisors

The approved referral form should be completed and returned to the Council.

## **13. Alternative Sources of Funding**

Various alternative sources of financial assistance exist with the public, private and voluntary sectors. If the application for Exceptional Hardship and Discretionary Reduction scheme is not successful applicants or households will be signposted to alternative sources of financial assistance where applicable.

## 14. Debt Advice

It is recognised that debt and poverty are linked. In most cases the Council will expect the applicant or household to seek debt/money management advice as a long term solution to financial problems.

Working age applicants or households are also expected to move into work if they are able to, which will reduce their dependency on support. With this in mind applicant or households should receive more income from work than out of work. Work incentives will be a factor when determining awards for Exceptional Hardship.

The Council will signpost applicant or households to debt advice service, evidence of taking and adhering to advice may be requested from the applicant or household when making an application for Exceptional Hardship.

## 15. Backdating

Applications for Exceptional Hardship or Discretionary Reduction may be backdated from the date the written application is received where continuous good cause exists, for the delay in applying, throughout the period backdating has been requested. Generally, an award will only be considered for the Council Tax payable for the financial year in which the application is made.

## 16. Determining Awards

The Council will consider each application on its own merits. This will ensure that each application is treated in an open and consistent manner, whilst considering individual circumstances.

The Council will be under no duty to assess applications not made in the approved manner. Where information or evidence requested has not been received within one calendar month, the application will be treated as withdrawn.

Nothing in this policy shall permit the Council to reduce the Council Tax charge for any day to less than NIL.

***A Discretionary Reduction or Exceptional Hardship may only be awarded in respect of the Council Tax liability.***

The order of discounts will be maintained in line with the Local Government Finance Act; therefore the maximum Exceptional Hardship or Discretionary Reduction that can be claimed for will be net of other discounts and reductions already awarded.

Awards will have a defined start and end date. This information will be provided to the applicant or household when the decision is made.

Awards may be a one off payment; an award for a short period of time; until the applicant or household's circumstances change; or for a full financial year. This will be detailed when a decision is made.

Awards will stop immediately if the applicant or household, or their representative, has misrepresented or failed to disclose a material fact, fraudulent or otherwise. The authority may seek to recover any overpayment of award. In instances of proven fraudulent activity, the authority will seek to recover in all cases.

## **17. Paying Awards**

Awards will be credited directly to the applicant or households/liable persons' Council Tax account. This will have the effect of reducing the Council Tax liability.

Taxpayers may find that the award does not reduce their Council Tax to zero. If taxpayers have Council Tax to pay, they should contact the Council's debt recovery section as early as possible and make arrangements to pay the sum due.

## **18. Appeals**

Exceptional Hardship and Discretionary Reductions are granted under S13A (1a) of the Local Government Finance Act 1992 as part of the Council Tax Reduction scheme, as such the normal Council Tax appeal process applies.

If an applicant disagrees with the outcome of their application they should in the first instance ask the Council to look at the decision again (carry out a reconsideration). If the applicant remains unhappy following the Council's reconsideration they then have the right to make an appeal direct to the Valuation Tribunal.

Reconsideration requests must be:

- Be submitted in writing or online at <https://forms.torbay.gov.uk/ContactBenefits>, or by email;
- Received at the Council offices within one calendar month of the date of the decision notice;
- Outline the grounds for appeal.

The Council will write to the applicant once the decision has been reviewed and will explain:

1. The amount of the award (if any);
2. The period of the award (if any);
3. Provide details of how the award (if any) will be made;
4. Provide a summary of the factors considered in reaching the decision and reasons for the decision.

If we do not respond to a reconsideration request within two months you can appeal directly to the Valuation Tribunal.

## **19. Recovery of Overpaid Exceptional Hardship and Discretionary Reductions**

The Council may recover overpaid Exceptional Hardship or Discretionary Reduction by removing the payment from the Council Tax account, increasing the amount of Council Tax due and payable.

## **20. Fraud**

The Council is committed to protect public funds and ensure funds are paid to the people who are rightfully eligible to them.

An applicant who fraudulently applies for Exceptional Hardship or Discretionary Reduction by falsely declaring their circumstances or by providing a false statement or evidence in support of their application, may have committed an offence under the Fraud Act 2006.

Where the Council suspects that such an offence may have been committed, this matter will be investigated as appropriate and may lead to criminal proceedings being instigated.

## **21. Data Sharing**

The Council may use any evidence and information supplied to it when applying for Exceptional Hardship or Discretionary Reduction to check the eligibility of the applicant in respect of this scheme or any other welfare benefit, discounts or exemptions.

The Council takes part in data matching exercises to assist in the prevention and detection of fraud. Data matching involves comparing sets of our data, such as Council Tax or benefit records against other records held by the Council or other bodies to see how far they match. Data matching allows potentially fraudulent claims, reductions and payments to be identified. Where a match is found it indicates that there is an inconsistency that requires further investigation. No assumption can be made as to whether there is fraud, error or other explanation until an investigation is carried out.

## **22. Budget Constraints**

The Council's Exceptional Hardship scheme will have a fund set each financial year.

Once available funds have been exhausted from the fund, no further awards will be made until the next financial year.

## **23. Policy Review**

The Exceptional Hardship and Discretionary Reduction Policy will be reviewed annually. However, a review may take place earlier should there be any significant changes in legislation or Council policy.

Any major changes will be subject to consultation in accordance with best practice.

This policy will be published and available to view on the Council's website.