

**Tewkesbury Borough Council**

**National Non Domestic Rating**

**Policy for the granting of Discretionary 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 to be granted to certain defined ratepayers within the Tewkesbury Borough area.
- 1.2 The Local Government Finance Act 1988 and subsequent legislation requires the council to grant mandatory relief for premises occupied by charities and similar organisations that own or occupy them wholly or mainly for charitable purposes. Likewise certain premises situated within a rural settlement area will be eligible for mandatory relief.
- 1.3 Whilst the council is obliged to grant relief to premises which fall within the mandatory category (and the council is subsequently recompensed for any amounts granted), the council also has powers to grant discretionary relief to ratepayers subject to certain criteria being met.
- 1.4 The range of premises that could potentially receive discretionary relief is wide. Depending on the type of premises and on the level of relief, there would be a cost, which will need to be borne by the council tax payers of the borough.
- 1.5 Full details of the legislative requirements for both mandatory and discretionary relief are given within Section 2 of this policy.
- 1.6 This policy broadly consists of two parts:
  - a) the main policy document;
  - b) a scoring matrix used for the granting of relief to appropriate organisations.
- 1.8 The intention as suggested by Government is to have an established policy covering all aspects of the relief, which would be in place (subject to changes in legislation) for a considerable period of time. Where organisations apply for relief they would be granted relief on the basis of the agreed scoring matrix. It is envisaged that members will review the scoring matrix as the need arises due to changes in legislation or funding criteria.

## 2.0 Legislative Background

### Charity Relief

- 2.1 The powers relating to the granting of relief are given to the council under the Local Government Finance Act 1988<sup>1</sup>. Charities and Trustees for charities are only liable to pay one fifth of the non domestic rates that would otherwise be payable where property is used wholly or mainly for charitable purposes. This amounts to a relief of 80percent. For the purposes of the Act a charity is an organisation or trust established for charitable purposes, whether or not it is registered with the Charity Commission. The provision has recently been extended under the Local Government Act 2003 (effective from 1<sup>st</sup> April 2004) to registered Community Amateur Sports Clubs (CASCs).
- 2.2 The council has discretion to grant relief of up to a further 20 percent for mandatory relief cases and up to 100percent of the amount for non-profit making organisations meeting criteria set out in legislation. These criteria cover those whose objects are concerned with philanthropy, religion, education, social welfare, science literature, the fine arts, or recreation.

### Rural Rate Relief

- 2.3 From 1<sup>st</sup> April 1998, under powers originally granted to the council under the Local Government and Rating Act 1997<sup>2</sup>, certain types of business in rural settlement, with a population below 3000 may qualify for mandatory rate relief of **100 per cent**. Businesses that qualify for this relief are the sole general store and the sole post office in the village, provided it has a Rateable Value of up to £8500; any food shop with a Rateable Value of up to £8500; and the sole pub and the sole petrol station in the village, provided they have a Rateable Value of up to £12500.
- 2.4 In addition to this the authority may decide to give up to 100 per cent relief to any other business (not in receipt of mandatory relief) in such a rural settlement, with a Rateable Value of up to £16,500, if it is satisfied that the business is of benefit to the community and having regard to the interests of its council taxpayers

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<sup>1</sup> S47 & S48 Local Government Finance Act 1988

<sup>2</sup> LGFA 1988, s.47, as amended by Sch. 1 to the Local Government and Rating Act 1997

## 3.0 Background to Discretionary Relief

### Introduction

- 3.1 The primary purpose of discretionary relief is to provide assistance where the property does not qualify for mandatory relief, although discretionary relief can also be given to 'top' up cases where ratepayers already receive mandatory relief.
- 3.2 Where no mandatory relief is given then discretionary relief (subject to the criteria being met) can be granted up to 100percent of the total rates liability. Where mandatory relief is granted, then discretionary relief can be granted up to the difference between the mandatory relief and 100percent. For example, a charity qualifies for 80 percent mandatory relief, the council may award up to a further 20percent discretionary relief.
- 3.3 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.
- 3.4 The council is obliged to consider carefully every application on its merits, taking into account the contribution that the organisation makes to the amenities of the area. There is no statutory appeal process against any decision made by the council although as with any decision of a public council, decisions can be reviewed by Judicial Review.
- 3.5 Granting of the relief falls broadly into the following categories:
  - Discretionary Relief – charity and non-profit making organisations. This is subdivided into
    - premises which are occupied ;
    - premises which are unoccupied – no charge is made in these cases;
  - Discretionary Relief – Rural Rate relief.
- 3.6 The decision to grant or not to grant relief is a matter purely for the council although the general principles are a matter of concern to Government.

## Charity Relief

### Occupied premises

3.7 The following conditions must be met before the council can consider an application with regard to occupied premises:

#### **Mandatory relief recipients**

The ratepayer is a charity or trustees for a charity and the premises are wholly or mainly used for charitable purposes.

#### **Non profit making organisations**

The property is not an *excepted*<sup>3</sup> one and all or part of it is occupied for the purposes of one or more institutions or other organisations, none of which is established or conducted for profit and each of whose main objects are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts; or

#### **Sports clubs and societies**

The property is not an *excepted* one and it is wholly or mainly used for purposes recreation, and all or part of it is occupied for the purpose of a club, society or other organisation not established or conducted for profit.

### Unoccupied premises

3.8 No charge is made where a property is subject to an unoccupied property rate so long, as it appears that *when next in use* it will be used wholly or mainly for the purposes stated above. This also includes Community Amateur Sports Clubs (CASCs)

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<sup>3</sup> an *excepted* property is one where all or part of it is occupied (otherwise than as a trustee) by council including county & parish councils

## Rural Rate Relief

3.9 Where premises are situated in a *rural settlement*<sup>4</sup> both mandatory and discretionary relief may be granted depending on the circumstances.

3.10 Discretionary relief can be granted to premises as follows:

- where a premises does not receive mandatory relief, has a rateable value of £16,500 or less and:
  - the premises are used for purposes which are of benefit to the local community;
  - it would be reasonable to award relief having regard to the interests of persons liable to pay council tax

In this particular case discretionary relief can be granted up to 100 percent of the rate charge payable.

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<sup>4</sup> A rural settlement is an area of part of an area which appears to have a population of not more than 3,000 on 31December immediately before the financial year in question

## 4.0 Effect on the council's finances

4.1 The granting of discretionary relief will in all circumstances involve a cost to the council. The National Non Domestic Rate Pool maintained by Government will finance the cost of the relief as outlined below:

Relief Type	% age cost to be borne by the NDR Pool (Government)	%age cost to be borne by the council
<b>Charity Relief</b>		
Discretionary relief granted to Mandatory Relief recipients	25%	75%
Non profit Making Organisations	75%	25%
Sports Clubs and societies	75%	25%
<b>Rural Rate Relief</b>		
Discretionary relief granted to Mandatory Relief recipients	75%	25%
Other premises within a rural settlement under £16500 RV	75%	25%

4.2 Given the number of recipients and also the overall level of relief granted it is essential that the cost to the council is minimised wherever possible.

4.3 Recommendations and costs for the future granting of the relief are contained within sections 11 and 12 of this document.

## 5.0 Charity Relief – mandatory relief recipients

### General explanation

- 5.1 S43 of the Local Government Finance Act 1988 allows mandatory relief (80percent) to be granted on premises where the ratepayer is a charity or trustees for a charity and the premises are wholly or mainly used for charitable purposes. No charge is made in respect of unoccupied premises where as it appears that *when next in use* it will be used wholly or mainly for those purposes.
- 5.2 The legislation has been amended by the Local Government Act 2003 (effective from 1 April 2004) to include registered<sup>5</sup> Community Amateur Sports Clubs (CASC). These organisations can now receive the mandatory (80percent) relief.
- 5.3 As outlined within Section 4, where mandatory relief has already been granted, any discretionary relief granted would be borne in the main by the council. 75percent would be met by council taxpayers and 25percent only would be financed from Government

### Charity registration

- 5.4 Charities are defined within the legislation as being an institution<sup>6</sup> or other organisation established for charitable purposes only or by persons administering a trust established for charitable purposes only.
- 5.5 The question as to whether an organisation is a charity may be resolved in the majority of cases by reference to the register of charities maintained by the Charity Commissioners under s.4 of the Charities Act 1960. Entry in the register is conclusive evidence. By definition, under the Non Domestic Rating legislation, there is no actual need for an organisation to be a registered charity to receive the relief and this has been supported by litigation<sup>7</sup>, however in all cases the organisation must fall within the following categories:
- trusts for the relief of poverty;
  - trusts for the advancement of religion;
  - trusts for the advancement of education; and
  - trusts for other purposes beneficial to the community, but not falling under any of the preceding heads.

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<sup>5</sup> Registered with HMRC as a CASC

<sup>6</sup> S67(10) Local Government Finance Act 1988

<sup>7</sup> Income Tax Special Commissioners v Pemsell (1891)

- 5.6 Certain organisations are exempted from registration generally and are not required to make formal application to the Charity Commissioners these are:
- the Church Commissioners and any institution administered by them;
  - any registered society within the meaning of the Friendly Societies Acts of 1896 to 1974 ;
  - units of the Scout Association or the Girl Guides Association; and
  - voluntary schools within the meaning of the Education Acts of 1944 to 1980
  - foundation schools within the meaning of the School Standards and Framework Act 1998.
- 5.7 The council would consider charitable organisations, registered or not, for mandatory relief.

### **Use of premises – wholly or mainly used**

- 5.8 Irrespective of whether an organisation is registered as a charity or not, the premises must be wholly or mainly used for charitable purposes. This is essential if any relief (either mandatory or discretionary) is to be granted. In most cases this can be readily seen by inspection but on occasions the council has had to question the actual use to which the premises are to be put.
- 5.9 Guidance from the Department of Communities and Local Government has stated that in the case of ‘mainly’, at least 51percent must be used for charitable purposes whether of that charity or of that and other charities.
- 5.10 As part of the Revenues and Benefits Division’s working practices, an inspection of the premises is made each time an application is received.
- 5.11 The following part of this section gives details on typical uses where relief may be given plus additional criteria that have to be satisfied. The list is not exhaustive but gives clear guidance on premises for which mandatory relief can be granted *and therefore* premises which could be equally considered for discretionary rate relief.

### **Offices, administration and similar premises**

- 5.12 Premises used for administration of the Charity including:
- offices;
  - meeting rooms;
  - conference rooms.

## **Charity shops**

- 5.13 Charity shops are required to meet additional legislative criteria if they are to receive mandatory (and therefore discretionary) relief. Section 64(10) of the Local Government Finance Act 1988 provides that a property is to be treated as being wholly or mainly used for charitable purposes at any time if, at the time, it is wholly or mainly used for the sale of goods donated to a charity and the proceeds of the sale of the goods (after any deduction of expenses) are applied for the purposes of the charity.
- 5.14 Again, in order to ascertain whether an organisation meets these requirements, inspections are made by staff when an application is received

## **Premises already receiving Mandatory Relief**

- 5.15 The council has granted mandatory relief from charitable organisations such as:
- village halls;
  - community halls;
  - museums;
  - swimming pools;
  - leisure centres;
  - scouts / guides.

## 6.0 Discretionary Relief – Non Profit Making Organisations

### General explanation

- 6.1 The legislation<sup>8</sup> allows the council to grant discretionary relief where the property is not an *excepted* one and all or part of it is occupied for the purposes of one or more institutions or other organisations none of which is established or conducted for profit and each of whose main objects are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts.
- 6.2 Relief cannot be granted to any premises occupied by the council, the county council or any parish council (*excepted premises*).
- 6.3 A number of issues arise from the term 'not established or conducted for profit'. This requires the council to make enquiries as to the overall purpose of the organisation although if surpluses and such amounts are directed towards the furtherance or achievement of the objects of the organisation then it does not necessarily mean that the organisation was established or conducted for profit.<sup>9</sup>
- 6.4 Where the council grants discretionary relief under this part of the legislation (no mandatory relief will be given by definition), the majority of the cost of any amount granted will be borne by Central Government. As highlighted within Section 4 of this document, the NDR pool meets 75percent of any relief granted with the balance of 25percent being met by council tax payers of the Borough.

### Premises already receiving Discretionary relief

- 6.5 At the present time the council gives relief to the following premises in this category:
- village halls;
  - community centre.

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<sup>8</sup> S47 Local Government Finance Act 1988

<sup>9</sup> National Deposit Friendly Society v Skegness Urban District Council (1958)<sup>1</sup> and Guinness Trust (London Fund) v West Ham County Borough Council (1959)

## 7.0 Discretionary Relief – Recreation

### General explanation

- 7.1 Sports clubs have been subject to considerable scrutiny in respect of rate relief over the last few years. This has culminated in changes to the legislation, which allow registered Community Amateur Sports Clubs (CASCs) to qualify for mandatory relief. This is in direct response to clubs asking for certainty over liabilities (mandatory relief being established by right rather than by application).
- 7.2 Ideally all clubs should be encouraged to apply for CASC status, which would automatically entitle them to 80percent relief while at the same time ensuring that no cost of the relief is taken on by the council.
- 7.3 Full details of the CASC criteria laid down by HMRC are given within Appendix III of this report.
- 7.4 Sports clubs can also apply to the Charity Commissioners for registration as a charity (thereby falling under the mandatory provisions) where they meet the following conditions:
- a. the promotion of community participation in healthy recreation and by the provision of facilities for the playing of particular sports;
  - b. The advancement of the physical education of young people not undergoing formal education.
- 7.5 Again as with CASC registered clubs, 80percent mandatory relief would be given if they were registered as a charity. It is generally recognised however that very few clubs take up full charity registration.
- 7.6 Where sports clubs do not meet the CASC requirement, and are not registered charities, discretionary relief can be granted (0-100percent) where the property is not an excepted one, it is wholly or mainly used for purposes of recreation and all or part of it is occupied for the purpose of a club, society or other organisation not established or conducted for profit.
- 7.7 If discretionary relief is given to sports clubs who receive mandatory relief, then the local taxpayers would have to finance 75percent of all sums granted and Government would meet the remaining 25percent of the relief. If mandatory relief is not granted, then any discretionary relief given would be met as follows:
- 75percent NDR pool;
  - 25percent local council tax payers.

## Definition of Recreation

7.8 Recreation is clearly defined by the Sports Council as any of the following<sup>10</sup>

Aikido	Croquet	Kabaddi	Real Tennis	Tang Soo Do
American Football	Crossbow	Karate	Roller Hockey	Tenpin Bowling
Angling	Curling	Kendo	Roller Skating	Trampoline
Archery	Cycling	Korfball	Rounders	Triathlon
Arm Wrestling	Disability Sport	Lacrosse	Rowing	Tug of War
Association Football	Dragon Boat Racing	Lawn Tennis	Rugby League	Unihoc
Athletics	Equestrian	Life Saving	Rugby Union	Volleyball
Australian Rules Football	Fencing	Luge	Sailing	Water Skiing
Badminton	Fives	Modern Pentathlon	Sand/Land Yachting	Weightlifting
Ballooning	Flying	Motor Cycling	Shinty	Wrestling
Baseball	Gaelic Football	Motor Sports	Shooting	Yoga
Basketball	Gliding	Mountaineering	Skateboarding	
Baton Twirling	Golf	Movement, Dance, Exercise & Fitness	Skiing	
Biathlon	Gymnastics	Netball	Skipping	
Bicycle Polo	Handball	Orienteering	Snowboarding	
Billiards and Snooker	Hang/Para Gliding	Parachuting	Softball	
Bobsleigh	Highland Games	Petanque	Sombo Wrestling	
Boccia	Hockey	Polo	Squash	
Bowls	Horse Racing	Pony Trekking	Skater/Street Hockey	
Boxing	Hovering	Pool	Sub-Aqua	
Camogie	Hurling	Quoits	Surf Life Saving	
Canoeing	Ice Hockey	Racketball	Surfing	
Caving	Ice Skating	Rackets	Swimming & Diving	
Chinese Martial Arts	Jet Skiing	Raquetball	Table Tennis	
Cricket	Ju Jitsu	Rambling	Taekwondo	
	Judo			

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<sup>10</sup> Definition last reviewed by Sport England in 2002

## **Access to clubs**

- 7.9 Guidance issued by the Department for Communities and Local Government also requires the council to consider access to clubs within the community before granting discretionary relief.
- 7.10 Membership should be open to all sections of the community. There may be legitimate restrictions placed on membership which relate for example to ability in sport or to the achievement of a standard in the field covered by the organisation, or where the capacity of the facility is limited, but in general membership should not be exclusive or restrictive.
- 7.11 Membership rates should not be set at such a high level as to exclude the general community. However, membership fees may be payable at different rates that distinguish the different classes of membership such as juniors, adults, students, pensioners, players, non-players, employed and unemployed. In general, the club or organisation must be prepared to show that the criteria by which it considers applications for membership are consistent with the principle of open access.
- 7.12 The council also asks the following question to help establish the level of access ‘Does the organisation actively encourage membership from particular groups in the community e.g. young people, women, older age groups, persons with disability, ethnic minorities’ etc?’ – Where an organisation encourages such membership, the council looks more sympathetically at their application. Likewise where facilities are made available to people other than members e.g. schools, casual public sessions etc, the council will generally grant relief.

## **Provision of facilities**

- 7.13 Clubs which provide training or education are encouraged as are those who provide schemes for particular groups to develop their skills e.g. young people, the disabled, retired people.
- 7.14 A number of organisations run a bar. The mere existence of a bar should not in itself be a reason for not granting relief. However the council focuses on the main purpose of the organisation. The council is encouraged to examine the balance between playing and non-playing members. Likewise the level of bar profits is considered to be a gauge of how much relief should be given and the need for assistance.
- 7.15 Within this area the council also considers whether the facilities provided relieve the council of the need to do so, or enhance and supplement those that it does provide.

## **Other considerations**

- 7.16 The council encourages the organisation to be affiliated to local or national and again this helps in dictating the overall level of relief.
- 7.17 Of essential importance is whether membership is drawn from people mainly resident in the billing council's area.
- 7.18 There are other conditions, which may encourage the council to grant relief, and all organisations are encouraged to specify these when making an application for discretionary relief.

## **8.0 Discretionary Relief – premises within rural settlements**

### **General explanation**

8.1 The Local Government and Rating Act 1997 allows discretionary relief of up to 100percent to be granted where the rateable value is £16500 or less and

- property is used for purposes which are of benefit to the local community, and
- it would be reasonable for the billing council to award relief, having regards to the council's council taxpayers

8.2 As with all discretionary relief part of the cost is met by Central Government and the balance from local sources. In the case of Rural rate relief, 75percent is met from the NDR pool and 25percent from local taxpayers.

8.3 The main criteria for granting discretionary relief in respect of rural rate relief is that premises are used to benefit the local community.

## **Benefit to the local community**

- 8.4 Whilst each application for the relief will be considered on its own merits there are certain factors which weigh heavily in the decision making process. It is this council's belief that the spirit of the legislation is to assist businesses and amenities which contribute significantly to the quality of life of the people who have their main home in the rural settlement.
- 8.5 To be successful for consideration, a business must show that its existence is a significant benefit to the local community with the majority of local residents directly benefiting from services or facilities provided by that business.

## **9.0 Discretionary Relief – EU requirements**

- 9.1 European Union competition rules generally prohibit Government subsidies to businesses. Relief from taxes, including non-domestic rates, can constitute state aid. The council must bear this in mind when granting discretionary rate relief.
- 9.2 Rate relief for charities and non-profit making bodies is not generally considered to be state aid, because the recipients are not in market competition with other businesses. However, if the charities or non-profit making bodies are engaged in commercial activities or if they are displacing an economic operator or if they have a commercial partner, rate relief could constitute state aid.
- 9.3 Where the relief to any one business is greater than the equivalent of €200,000 over three years. Then permission will need to be obtained from the European Commission. In such cases the matter will be referred to the Department for Communities and Local Government for advice and then referred back to the council for consideration

## 10.0 Administration of Discretionary Relief

10.1 The following section outlines the procedures followed by officers in granting, amending or cancelling discretionary relief. This is essentially laid down by legislation<sup>11</sup>.

### Applications and evidence

10.2 Discretionary rate relief must be applied for in writing by the ratepayer. Application forms are produced within the revenues department and issued to all ratepayers requesting the relief. All applications are acknowledged in accordance with normal targets for responding to correspondence. At this initial stage an estimate is given to the ratepayer of the likely timescale for deciding relief.

10.3 In all cases organisations are required to provide a completed application form plus such evidence, documents, accounts, financial statements etc necessary to allow the council to make a decision. Where insufficient information is provided, despite reminders, then no relief will be granted.

### Granting of relief

10.4 In all cases the council must notify the ratepayer of decisions made.

10.5 Where an application is successful, then the following is 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;
- a requirement that the applicant should notify the council of any change in circumstances that may affect entitlement to relief.

10.6 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;
- an explanation of the appeal rights (see 10.11).

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<sup>11</sup> The Non-Domestic Rating (Discretionary Relief) Regulations 1989

- 10.7 Relief is to be granted from the beginning of the financial year in which the decision is made. When considering backdating discretionary relief, providing an application is received by the 30<sup>th</sup> September in the current financial year, consideration may be given to backdating an award of discretionary relief to the 1<sup>st</sup> April in the previous financial year.
- 10.8 Relief will essentially be granted in fixed periods of one year with re-applications required from organisations as decided necessary.  
**The Borough Council will carry out discretionary relief reviews on a three yearly cycle commencing from the 1<sup>st</sup> April 2020.**

## **Variation and Revocation of a decision**

- 10.9 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 – from the date of the increase in rate charge;
  - where the amount is to increase for any other reason – takes effect at the expiry of a financial year, and so that at least one year's notice is given;
  - where the amount is to be reduced due to a reduction in the rate charge – from the date of the decrease in rate charge;
  - where the amount is to be reduced for any other reason – takes effect at the expiry of a financial year, and so that at least one year's notice is given.
- 10.10 A decision may be revoked, and the change will take effect at the expiry of a financial year, and at least one year's notice must be given.

## **Appeal rights**

- 10.11 While there is no formal right of appeal except by judicial review, we are advised by the Department for Communities and Local Government to constitute a review panel of members where a decision is appealed and where the original decision has been made by officers under delegated powers.

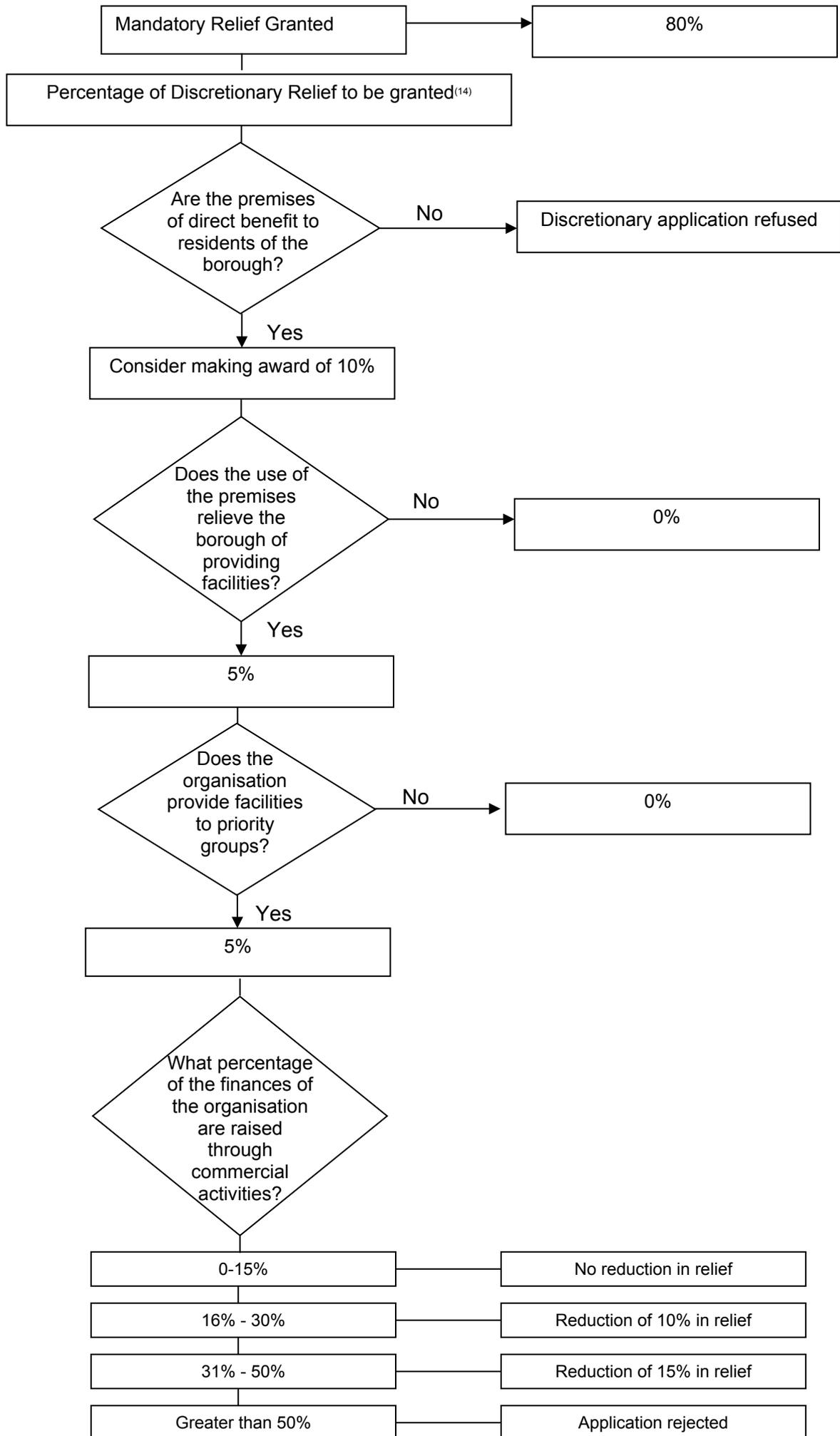
## 11.0 The policy for granting Discretionary Relief

- 11.1 It is essential that discretionary relief is granted in accordance with legislative requirements and taking into account the overall benefit to the borough.
- 11.2 The following matrices show the recommended policy for granting discretionary relief. The amount of relief granted will be dependant on the following key factors:
- a. is the organisation is entitled / or could be entitled to mandatory relief<sup>12</sup>?
  - b. are the premises of benefit to residents of the borough?
  - c. does the use of the premises relieve the borough of providing similar facilities?
  - d. does the organisation provide special facilities to certain priority groups such as elderly, disabled, minority groups, disadvantaged groups?
  - e. the percentage level of funding for the organisation available by commercial means e.g. bar profits , sales of merchandise etc;
  - f. in the case of clubs etc, is the organisation available and open to all members of the public within the borough area?
  - g. in the case of rural rate relief, is the organisation of significant benefit to that rural community?
  - h. charity shops will not be eligible for discretionary relief;

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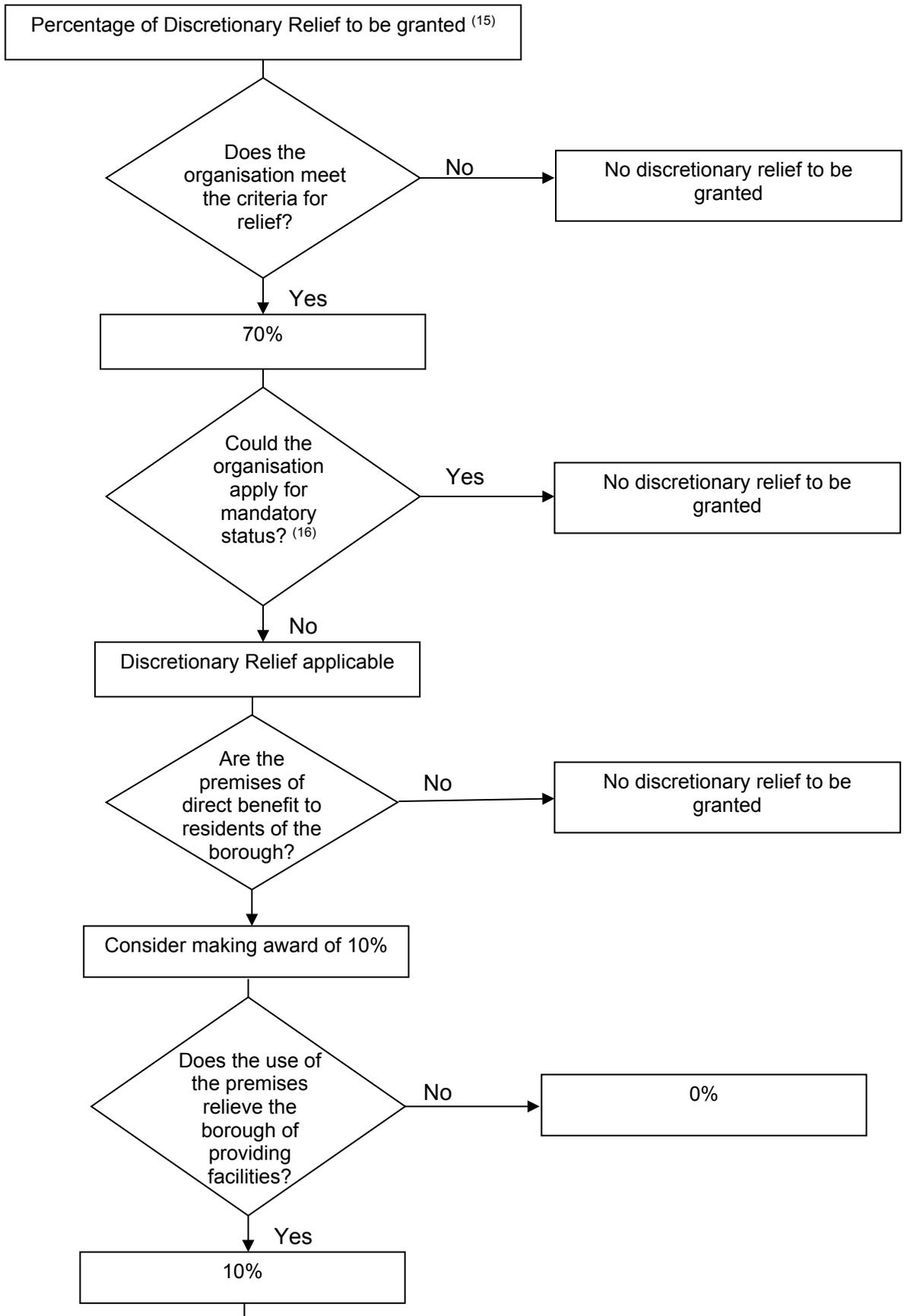
<sup>12</sup> This is particularly important in the case of Community Amateur Sports clubs who may qualify for CASC status. It is intended that where they would qualify to be registered thereby also being eligible for mandatory relief –discretionary relief would not be granted (unless granted together with mandatory relief as per Section 5)

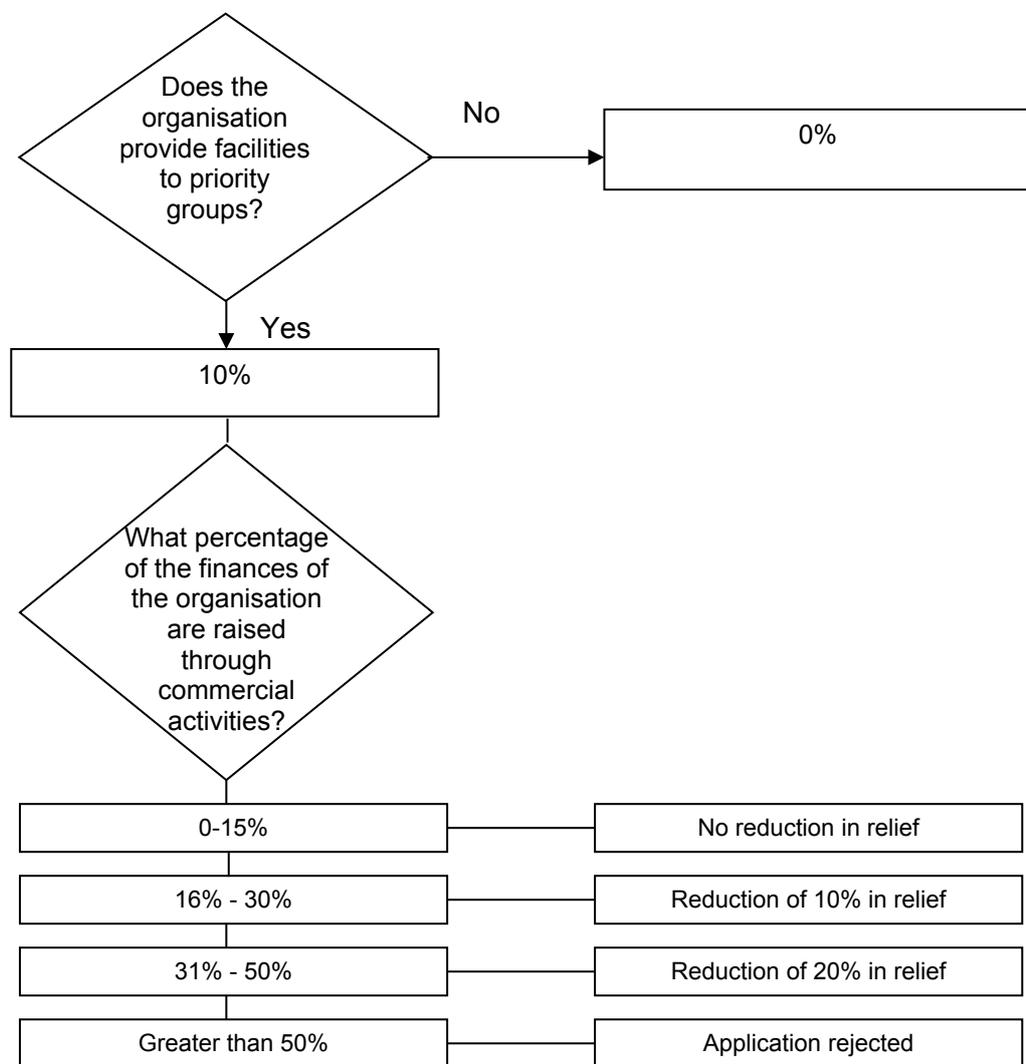
# Charity Relief - Mandatory relief recipients (section 5)



<sup>14</sup> Where discretionary relief is to be granted it can be calculated by adding the relevant percentages together. Where a positive value is obtained then relief will reflect that amount. Where either zero or a negative value is calculated then no discretionary relief will be granted.

**Discretionary Relief – non profit making organisations (section 6)**

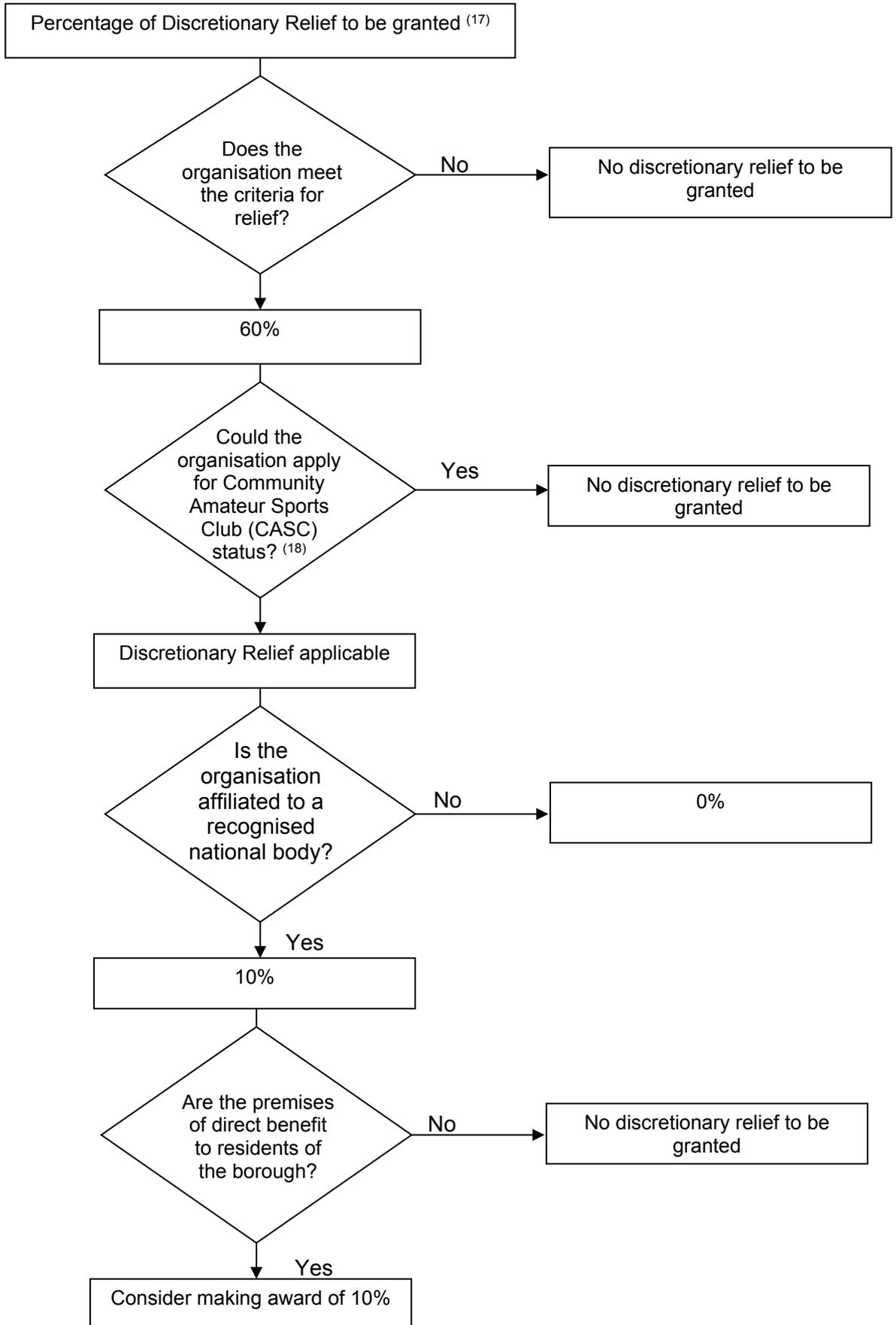




<sup>15</sup> Where discretionary relief is to be granted it can be calculated by adding the relevant percentages together. Where a positive value is obtained then relief will reflect that amount. Where either zero or a negative value is calculated then no discretionary relief will be granted. Failure to meet certain criteria will result in no relief being granted whatsoever.

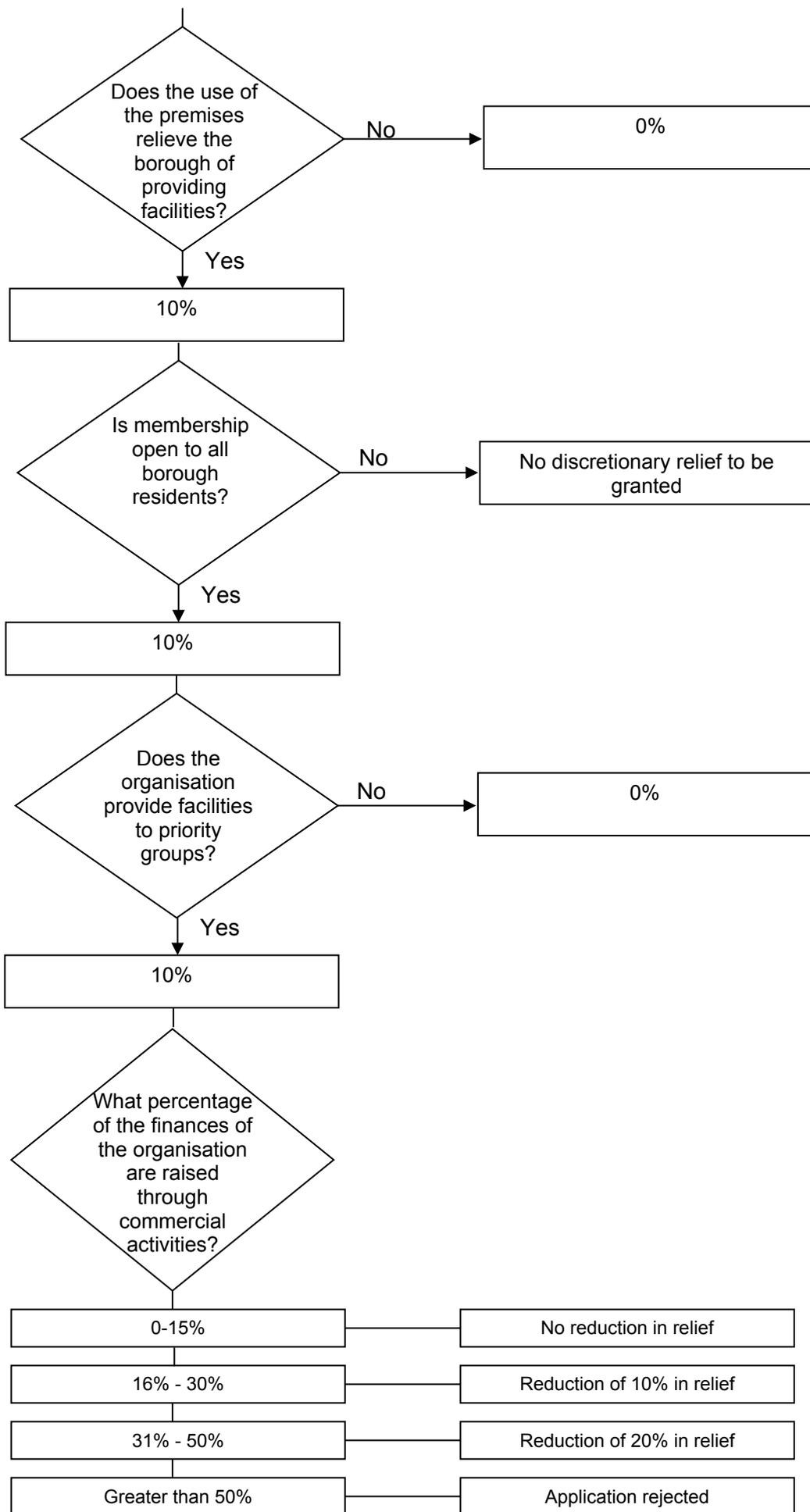
<sup>16</sup> Where mandatory status could be granted then no amount of discretionary relief will be granted except under the provisions laid down in Section 5.

# Community Amateur Sports Clubs - Discretionary Relief – recreation (section 7)

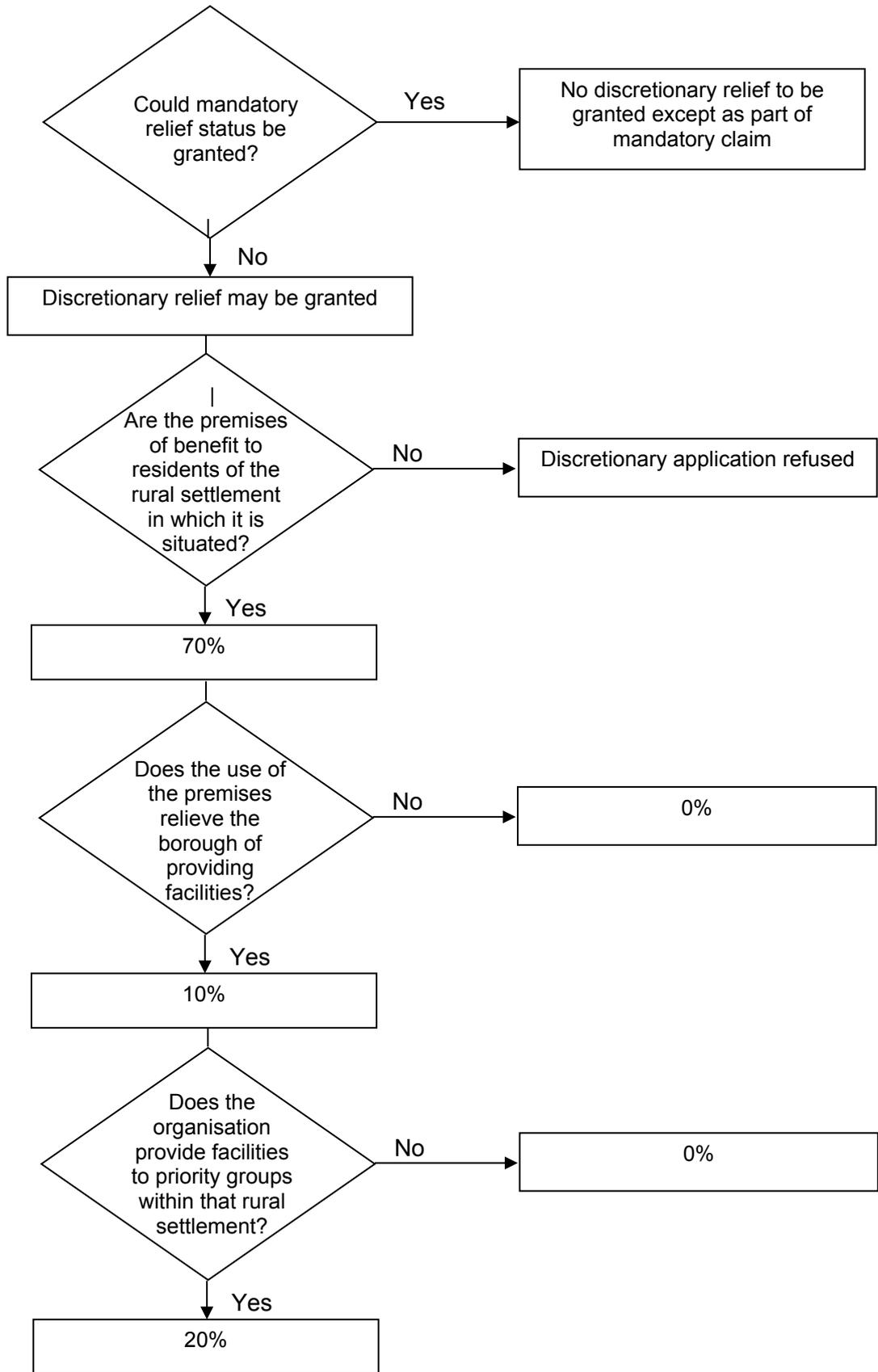


<sup>17</sup> Where discretionary relief is to be granted it can be calculated by adding the relevant percentages together. Where a positive value is obtained then relief will reflect that amount. Where either zero or a negative value is calculated then no discretionary relief will be granted. Failure to meet certain criteria will result in no relief being granted whatsoever.

<sup>18</sup> Where mandatory status could be granted under CASC registration then no amount of discretionary relief will be granted except under the provisions laid down with Section 5. Advice on making application for CASC status should be sort from HMRC via their web site on: [www.hmrc.gov.uk/charities/casc/register.htm](http://www.hmrc.gov.uk/charities/casc/register.htm)



# Discretionary Relief – Rural (Section 8)



## **12.0 Proposed Scheme of Delegation**

### **Granting, Varying, Reviewing and Revocation of Relief**

- 13.1 It is proposed that under powers given to the council by section 223 of the Local Government Act 1992, that all permissions for the granting, varying, reviewing and revocation of discretionary relief given under the Local Government Finance Act 1988, the Local Government and Rating Act 1997 and the Local Government Act 2003 be delegated to the Revenues and Benefits Manager.
- 13.2 The method of administration shall be that laid down within this policy document. The level of the discretionary relief shall be calculated in accordance with the matrices given within this policy document.
- 13.3 The policy for granting relief will be reviewed 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 / portfolio holder
- 13.4 The amount of funding to be provide by the Council in respect of discretionary relief granted shall be determined by the Head of Corporate Finance and approved by Council in the normal budgeting process

### **Appeals**

- 13.5 Where the council receives a written appeal from the ratepayer regarding the granting, non-granting or amount of any discretionary relief, in line with Department for Communities and Local Government guidelines the case will initially be reviewed by the Revenues and Benefits Manager. If he or she upholds the original decision then the appeal will automatically be referred to the Head of Corporate Finance to consider. Where a decision is revised then the ratepayer shall be informed likewise if the original decision is upheld.
- 13.6 Where a further written appeal is made, the matter shall be referred to a panel of members (consisting of not less than three Council members) for a decision to be made. The person making the appeal may wish to attend the appeal hearing to make their case and answer any further questions the panel members may have. They may wish to appoint a representative to attend the appeal to make their case and answer any questions the panel may have.

**Appendix I – Inland Revenue Community Amateur Sports Club Registration (CASC)**

**Guidance Given to Clubs and Societies**

## **1. Introduction**

1.1.1 With effect from April 2002 many local amateur sports clubs will be able to register with HMRC as Community Amateur Sports Clubs (CASCs) and benefit from a range of tax reliefs, including Gift Aid.

## **2. This Guidance**

2.1.1 This guidance is intended to help sports clubs and their supporters understand the rules and take advantage of the scheme announced in Budget 2002. It explains the rules that apply to clubs that want to register as CASCs with HMRC. It does not deal with the requirements that clubs need to satisfy to secure registration as a charity.

2.1.2 Details of the legislation can be found in Schedule 18, Finance Act 2002.

## **3. Community Amateur Sports Clubs (CASCs)**

### **3.1 What kind of club can register as a CASC?**

3.1.1 Sports clubs that are formally constituted and that meet certain requirements will be able to register.

3.1.2 The definition of a CASC is set out in the legislation. It is designed to give relief to clubs that:

- are open to the whole community
- are organised on an amateur basis
- have as their main purpose providing facilities for, and promoting participation in one or more eligible sports

3.1.3 Your club will not qualify if, for example:

- the sports councils do not recognise the sport in which the club is engaged,
- where your facilities are controlled by a Ltd Company, which is separate from the sports club then only the underlying sports club can register,
- you do not have your own membership,
- you provide facilities for others, but do not promote and encourage the sport for your own membership,
- your main purpose is not the provision of facilities for and promotion of participation in an eligible sport.

## **3.2 Open to the whole community**

- 3.2.1 A club is open to the whole community if:
- membership of the club is open to all without discrimination
  - the club's facilities are available to members without discrimination, and
  - any fees are set at a level that does not pose a significant obstacle to membership or use of the club's facilities

## **3.3 Discrimination**

- 3.3.1 Discrimination includes indirect discrimination and includes:
- discrimination on grounds of ethnicity, nationality, sexual orientation, religion or beliefs
  - discrimination on grounds of sex, age or disability, except as a necessary consequence of the requirements of a particular sport
- 3.3.2 This does not prevent a club from having different classes of membership depending on:
- the age of the member
  - whether the member is a student
  - whether the member is waged or unwaged
  - whether the member is a playing or a non-playing member
  - how far from the club the member lives or
  - any restriction on the days or times when the member has access to the club's facilities
- 3.3.3 If a club effectively discriminates by only accepting members who have already reached a certain standard, rather than seeking to promote the attainment of excellence by enhancing access and the development of sporting aptitude, then it does not have an open membership policy. So, a club selecting members on the basis of existing attainment would not come within the CASC requirements.
- 3.3.4 Clubs can refuse or revoke membership, on non-discriminatory grounds, where the membership, or continued membership of the person concerned would be likely to be contrary to the best interests of the sport or the good conduct and interests of the club
- 3.3.5 Although clubs should be open to all without discrimination, single sex clubs may be permitted where such restrictions are not discriminatory in intent but a genuine result of physical restraints (such as changing room facilities) or the requirements of the sport.

## **3.4 Level of fees**

- 3.4.1 A club's fees should be set at such a level that does not pose a significant obstacle to membership or use of facilities. The legislation does not specify what an acceptable level is, however clubs should bear in mind that the object of the scheme is to enable all of the community to participate in sports. So fees must be set at a level that most members of the community are able to afford.

- 3.4.2 Some sports, for example offshore yacht racing or polo, are inherently expensive and that tends to restrict participation. Clubs involved with inherently expensive sports that want to register as CASCs will need to be able to demonstrate that membership and participation is within the financial reach of the wider community. This might be achieved by using other income to cross-subsidise fees or by the club making club-owned equipment available for use by members at reduced rates.
- 3.4.3 Example. Dinghy sailing does not require significant wealth, but even a basic second-hand boat and safety equipment can cost several hundred pounds. If a club required all members to own their own boats this would present a significant obstacle to membership for many people. However, if the club made a boat and equipment available to members for hire at modest rates this obstacle would be removed.

### **3.5 Organised on an amateur basis**

- 3.5.1 A club is organised on an amateur basis if:
- it is non-profit making
  - it provides for members and their guests only the ordinary benefits of an amateur sports club, and
  - its governing document requires any net assets on the dissolution of the club to be applied for approved sporting or charitable purposes

### **3.6 Non-profit making**

- 3.6.1 A club is non-profit making if its governing document requires any surplus income or gains to be reinvested in the club. Surpluses or assets cannot be distributed to members or third parties.
- 3.6.2 This does not prevent donations by the club to charities or to other clubs that are registered as community amateur sports clubs.

### **3.7 Ordinary benefits of an amateur sports club**

- 3.7.1 The ordinary benefits of an amateur sports club are:
- provision of sporting facilities
  - reasonable provision and maintenance of club-owned sports equipment
  - provision of suitably qualified coaches
  - provision, or reimbursement of the costs, of coaching courses
  - provision of insurance cover
  - provision of medical treatment
  - reimbursement of reasonable travel expenses incurred by players and officials travelling to away matches
  - reasonable provision of post-match refreshments for players and match officials

- sale or supply of food or drink as a social adjunct to the sporting purposes of the club

### **3.8 Application of assets on dissolution**

- 3.8.1 The governing document of the club should make it clear how its assets will be applied in the event of dissolution. The CASC legislation requires that the assets be applied for approved sporting or charitable purposes. The term “approved sporting or charitable purposes” means any of the following as may be approved by the members of the club in general meeting or by the members of the club’s governing body:
- the purposes of the sport’s governing body for use in related community sport,
  - the purposes of another CASC,
  - the purposes of a charity.
- 3.8.2 Even small, seemingly innocuous, departures from this precise wording such as “charitable or benevolent purposes” may mean that this requirement is not met.
- 3.8.3 The following examples would be unacceptable for a CASC
- provision for the assets to be divided amongst the members
  - no provision at all for the assets on dissolution
  - provision for assets to be given to non-charitable or not for profit organisation, or
  - provision for the assets to pass to what the club deems to be an approved sporting body
- 3.8.4 HMRC has no objection to a club having a dissolution clause that provides for repayment of any unspent grant to be made to a grant making body, where this was a condition of the original grant.
- 3.8.5 Once the contractual obligation to repay any unspent grant had been met the residual surplus must be applied for approved sporting or charitable purposes as outlined above.

### **3.9 Payments to members**

- 3.9.1 A club is allowed to:
- enter into agreements with members for the supply to the club of goods or services, or
  - employ and pay remuneration to staff who are also members of the club
  - provided the terms are approved by the governing body of the club without the member concerned being present and are agreed with the member on an arm’s length basis.

- 3.9.2 So, a club would be able to pay members for services such as coaching or grounds maintenance as long as the conditions above were satisfied. We would not normally expect a CASC to pay members to play. However, some small payments to some members for playing may be acceptable as long as the object of paying players is to encourage wider participation in the sport. A club which pays players simply to achieve competitive success will not meet the qualifying criteria.
- 3.9.3 Example 1. A cricket club pays a member for his services as a groundsman. The rates of pay are reasonable and negotiated at arms length. This would be acceptable.
- 3.9.4 Example 2. An amateur football club pays two professional players to play in a league. In addition to their playing duties the two players have coaching and development roles with the club's junior squads which are open to all, regardless of ability. Again, this would be acceptable.
- 3.9.5 Example 3. A rugby club fields three teams that play in league tournaments. The first team players are engaged on full-time professional playing contracts. While they are required to undertake a small number of promotional activities they do not have any coaching or junior development role. This would be unlikely to be accepted as a CASC.

### **3.10 Main Purpose**

- 3.10.1 The main purpose of the club must be to:
- provide facilities for, and
  - encourage participation in one or more eligible sport
- 3.10.2 The club's governing document must make it clear that this is the club's main object. That does not rule out the club having social members, but we would expect the substantial majority of the club's activities to be directed at furthering the main object. Where a club's social activities are disproportionately large, that might call into question whether the club meets the main purpose requirement. This might be the case where only a minority of the club's members actively participate in the sport concerned.
- 3.10.3 The club must be engaged in providing facilities and encouraging participation.

### **3.11 Providing facilities**

- 3.11.1 The club does not have to own the facilities for participating in eligible sports. So, a club that regularly hires facilities at a Local Council leisure centre to enable members to participate would be providing facilities. Similarly, a club that provides equipment and organisation, without providing premises, might be eligible.

3.11.2 Example 1. A swimming club that regularly hires pools to hold lessons and training sessions would be likely to qualify.

3.11.3 Example 2. A cycling club that organises social and training rides and open competitions without having any premises would be likely to qualify.

### **3.12 Encouraging participation**

3.12.1 The club's emphasis must be on encouraging all members to participate regardless of their ability. So, a club that pursues a team sport might field a number of teams, ranging in ability from recreational and novice players up to a reasonably high competitive standard. This would be acceptable as long as the overall emphasis was on participation. A club that only allowed participation at an elite level with other members being spectators rather than players would not be acceptable.

3.12.2 In order to qualify as a CASC the majority of a club's membership must participate in an eligible sport. A participating member is not merely restricted to a member who plays, but includes those engaged in activities such as coaching, managing, preparing surfaces, refereeing, supervision of juniors, indeed broadly any non-paid work undertaken on behalf of the club. The club might also have junior members (who are not included as members), but who are participating in the sport.

3.12.3 Certain classes of members, such as family members, who will generally have joined in furtherance of the sporting activities and not primarily to enjoy social benefits, can also be included.

### **3.13 Eligible sports**

3.13.1 Eligible sports are defined by Treasury Order, by reference to the Sports Councils' list of recognised activities.

3.13.2 HMRC cannot consider applications from clubs whose sport is not on the Sports Councils' list. Any requests for new activities to be added to the list should be addressed to the Sports Councils, not to HMRC.

### **3.14 How to register as a CASC**

3.14.1 To register as a CASC you need to apply to Inland Revenue Sports Club Unit with the following information:

- a copy of the CASC's governing document - this might be a constitution, Rules or Memorandum & Articles of Association
- a copy of the CASC's latest accounts
- a copy of any prospectus, member's handbook, rule book etc

3.14.2 We will let you know when we have registered the club as a CASC and tell you what date it is registered from.

3.14.3 We might refuse to register some clubs as CASCs, or register them only after they have changed their rules. If you disagree with our decision, either to not register or to register from a later date, there is provision for you to appeal against our decision. We will provide details of how to appeal when we tell you our decision.

### **3.15 What will be the effective date of registration?**

3.15.1 The legislation gives HMRC discretion to make registration effective from a date before the application is received. Normally, we will register a club with effect from the beginning of the accounting period in which it applies, provided it met the qualifying requirements throughout that period.

3.15.2 Where a club has had to change its rules to meet the criteria, we will only register the club with effect from the date the new rules were formally adopted.

3.15.3 No registration will be effective before 1 April 2002.

### **3.16 Are CASCs charities?**

3.16.1 A sports club that is registered as a CASC is not a charity. However, it is open to any sports club to apply to the Charity Commission ("CC") for registration as a charity. While it is possible for a club to be a CASC and a charity the trading activities that a CASC can carry on may be a bar to charitable status.

3.16.2 The CC will consider registering as charities those sports clubs, in England and Wales, that seek to encourage community participation in healthy recreation for the public benefit.

3.16.3 Sports clubs in Scotland or Northern Ireland may apply to HMRC to be accepted as a charity for tax purposes. We would expect the principles of the CC guidance to apply to Scottish and Northern Irish organisations applying to HMRC for recognition of their charitable status.

### **3.17 The tax reliefs for registered CASCs**

3.17.1 Sports clubs of the kind that are eligible to register as CASCs are treated as companies for tax purposes. Consequently, their profits may be chargeable to Corporation Tax.

3.17.2 Sports clubs that are registered as CASCs will be able to claim the following tax reliefs:

- exemption from Corporation Tax on profits from trading where the turnover of the trade is less than £30,000



- Income from property (gross)      £5,000
- Gift Aid income (gross)            £15,000
- total                                        £26,000

The club also has income of £5,000 membership fees.

During the accounting period the club spends £7,000 on a non-qualifying purpose.

The calculation of the reduction of income, which is available for relief is as follows,

$£26,000 : (£26,000 \times £7,000 / £31,000) = £26,000 - £5870 = £20,130$

HMRC will determine which source of income (£5870) will be brought back into charge to corporation tax. However, the club can, within thirty days of being notified of this, specify which income or gains it wants brought back into charge.

NB: As CASC 4 has no other taxable income, the income of £5870 is charged at nil corporation tax rate.

### **3.18 Claiming the tax reliefs**

3.18.1 Where a CASC receives a CTSA tax return the relief can be claimed in the return. However, most clubs will not receive a CTSA tax return each year. If the club has had tax deducted from its income, or if it has received Gift Aid payments, it will be able to claim a repayment from Inland Revenue Sports Clubs Unit.

3.18.2 If you think that your club is liable to tax, but it has not received a notice to file a tax return you should ask Inland Revenue Sports Clubs Unit to send you a return.

### **3.19 Reliefs for donors**

3.19.1 There is a range of tax reliefs to encourage individuals and companies to support CASCs.

3.19.2 Individuals can make gifts to CASCs using the Gift Aid scheme

3.19.3 Individuals can obtain relief from Inheritance Tax for gifts to CASCs. Gifts will not form part of the donor's estate for inheritance tax purposes, in the same way as gifts to charity.

3.19.4 Businesses that give goods or equipment that they make, sell or use get relief for their gifts. They do not have to bring any disposal amount into account, but can still obtain relief for the cost, for tax purposes.

3.19.5 Gifts of chargeable assets to CASCs by individuals or companies are treated as giving rise to neither a gain nor a loss for Capital Gains purposes.

3.19.6 There are rules to prevent the exemptions for CASCs and the donor reliefs being used for tax avoidance purposes.

### **3.20 Gift Aid**

3.20.1 Individuals who are UK taxpayers can make gifts to CASCs using Gift Aid in the same way as they can make gifts to charities. Relief is available for gifts made to a registered CASC after 6 April 2002. Gift Aid is only available for gifts to CASCs and not for other payments such as membership subscriptions.

3.20.2 A CASC can reclaim basic rate tax on donations made by individuals, whether large or small, regular or one-off - provided the conditions for the Gift Aid scheme are satisfied. In particular, the CASC will have to be able to show an audit trail from the donation to a donor who has given a Gift Aid declaration that covers that donation. 3.20.3 The rules of the Gift Aid scheme for individuals, as they apply to charities, also apply to registered CASC's (but remember, a CASC's membership subscriptions are not eligible as Gift Aid payments).

3.20.4 Gifts made using Gift Aid are treated as having been paid after deduction of Basic Rate income tax. As long as the CASC applies the income for qualifying purposes it can claim repayment of this tax from Inland Revenue Charities (at present 28p for each £1 donated (while the Basic Rate of income tax remains at 22percent))

3.20.5 If the donor pays tax at the Higher Rate they can claim additional relief in their SA tax return. All they need to do is enter the amount paid to the CASC in the Gift Aid box on their SA return.

3.20.6 Companies cannot make gifts to CASCs using Gift Aid, but can normally claim a deduction in computing their profits for either formal sponsorship of a sports club or for payments made to enhance their standing in the local community.

### **3.21 How to register for Gift Aid repayments**

3.21.1 When you apply to register as a CASC we will send you the information and forms that you need to register for repayments under Gift Aid. If you have had tax deducted from other income you can claim repayment at the same time as claiming under Gift Aid.

3.21.2 In particular, you will need to nominate one named individual who is authorised to claim repayments on behalf of the CASC.

### **3.22 Non-domestic rates relief for CASCs**

- 3.22.1 For CASCs in England and Wales Section 64 of the Local Government Act 2003 provides the same relief that would be available to a charity (80percent mandatory relief) where the CASC property is wholly or mainly used for the purposes of that club and of other such registered clubs. For CASCs in Scotland, the Scottish Executive has agreed voluntary relief with Local Authorities for the same amount.
- 3.22.2 HMRC does not administer this relief and therefore requests for advice on non-domestic rates you will need to contact your Local Council Finance Department.

### **3.23 De-registration**

- 3.23.1 There is no provision in the legislation for a club to de-register. Once a CASC always a CASC. Before applying to be a CASC, members really need to be agreed that what they really want is to maintain the club for the continuing use of the community. If members have one eye on selling off the ground for building a supermarket and sharing the profits, then CASC status is not for them. If a CASC ceases to operate, its assets would have to be passed on in accordance with the legislation to another CASC, a registered charity or the governing body of an eligible sport for use in related community sport.
- 3.23.2 It should also be borne in mind that where a club holds property and, without disposing of it-
- ceases to be a registered club, or
  - ceases to hold property for qualifying purposes
- it will be treated as having disposed of and immediately reacquired, the property at the time of cessation for a consideration equal to its market value at that time. As any gain will not be treated as accruing to a registered club, a CASC ceasing to be registered could have a capital gains tax liability.