

# **POLICY FOR THE BREATHING SPACE SCHEME**

## **PREFACE**

The Council is participating in a regional scheme called Breathing Space. The scheme facilitates the provision of loans in accordance with powers given under S2 Local Government Act 2000, in respect of mortgage repayments for people within the Council district who, due to a change in their circumstances, are in arrears or are having difficulty with their mortgage repayments. The Breathing Space scheme is administered by Wakefield Metropolitan District Council (WMDC) on behalf of local authorities in Yorkshire and Humberside.

### **1. Introduction**

- 1.1 The Breathing Space scheme aims to prevent homelessness and to support homeownership. The scheme will provide loans to owner-occupiers/Applicants in difficulty with their mortgage payments, and will provide support and access to financial, housing and debt advice.
- 1.2 The Breathing Space Loan (the Loan) is an interest free, 3 year fixed term loan which is secured against the property. Its purpose is to help Applicants to avoid repossession of their home.
- 1.3 Applicants will be required to take advice on their financial situation. The Breathing Space Loan will not be the best option for everyone.
- 1.4 At the end of the three year period the Loan will be repayable in full. There are no instalment repayments to make during the three year period.
- 1.5 At the end of the loan period the Applicant may need to remortgage or sell their property to repay the loan.
- 1.6 The Loan will be appropriate where there is a reasonable expectation that the Applicant will be able to meet their mortgage payments after the period of assistance provided by the Loan or where time is needed to allow for the sale of the property and a planned move to alternative accommodation.
- 1.7 As part of the Breathing Space scheme the Council will provide support including referral for debt counselling, to maximise the possibility that the Applicant will be able to retain the property when the loan assistance ends. Where it seems unlikely that an Applicant will be unable to afford their mortgage repayments long term, they will be offered support from the Council's homelessness service to achieve a planned move to affordable accommodation.

## 2. Amount of loan

- 2.1 The maximum amount of the loan available is £15, 000. The minimum amount is £2000.
- 2.2 In calculating the loan assistance that can be offered, the Council will take into account the amount of arrears outstanding on the prior mortgage and any secured loans at the date of the loan application, and a maximum of 12 months future monthly instalments on the mortgage and any secured loans. Alternatively the Loan may be based on the redemption figure of the mortgage or secured loan, if this is below the maximum loan amount.
- 2.3 The Loan can provide assistance in respect of a first mortgage, or second or subsequent mortgage or secured loan. Where there are arrears on more than one mortgage the Loan can be used towards more than one mortgage, but the total cannot exceed the maximum loan limit.

## 3 Eligibility Criteria

The Applicant must satisfy the following criteria to be considered for the Loan:

- 3.1 **The Applicant must have an owner's interest in the property on which the mortgage is secured.**
- 3.2 **The Applicant must be resident at the property and this must be their only home.** Where there are joint owners, it is sufficient in certain circumstances to be approved by the Council that only one of them fulfils this condition.
- 3.3 **The Applicant has sufficient equity in the property.** The maximum value for all secured borrowing, including the Breathing Space Loan must not exceed 90% of the property value. Where the applicant is within the repayment period of the Right to Buy discount, this will be taken into account as secured borrowing.
- 3.4 **The Applicant is in difficulty with their mortgage payments.** The client either has incurred mortgage arrears, or is unable to meet their ongoing mortgage instalments, and so is about to incur arrears.
- 3.5 **The cause of difficulties must be due to a change of circumstances.** eg unemployment, sickness, drop in income, or any other circumstance considered reasonable by the Panel in its sole discretion.
- 3.6 **The Applicant has received advice on their financial situation.** Advice can be obtained from an advice agency, eg Citizens Advice Bureau, who can discuss all options.

- 3.7 **The Applicant does not have the financial resources to pay their mortgage instalments and/or arrears.** A financial assessment will be undertaken to determine this (see Appendix 1).
- 3.8 **There must be an expectation that the Applicant will be able to meet their mortgage and any secured loan repayments after the period of assistance provided by the Loan, or will sell the property.** This will be assessed by the loan officer on the facts of the case, taking into account potential increases in income or reductions in expenditure. WMDC may carry out a credit reference search. WMDC will take into account the whole of the Applicant's financial situation in deciding whether a Loan is appropriate.

#### **4 Conditions**

- 4.1 The Applicant will be eligible for one Loan only.
- 4.2 The Applicant will be required to obtain independent financial advice before they enter into the Loan with WMDC.
- 4.3 The Applicant must agree to receive debt counselling.
- 4.4 The Applicant must agree to regular reviews to monitor their financial situation.
- 4.5 The loan will be secured on the property by registering a Legal Charge at Nottingham (West) District Land Registry.
- 4.6 All owners of the property must be party to the application for it to be considered.
- 4.7 Adequate building insurance for the property must be maintained during the loan period and a copy provided to WMDC if required.
- 4.8 The property must be kept in good repair throughout the loan period.
- 4.9 The applicant (or, in Exceptional Cases of a joint application, one of the applicants) will occupy the property as his or her only residence throughout the loan period. The property must not be left empty for over 6 months without an appropriate reason.
- 4.10 The loan must be repaid in full at the end of the three year term or on first disposal of the property. Where the property is in joint ownership and is subsequently transferred to one of those owners singularly then the Council should be informed. The Panel in its sole discretion will decide whether this disposal will be an exempt disposal.
- 4.11 If there is a breach of the above conditions 4.7, 4.8, 4.9, and 4.10 the owner/s shall on demand from the Council repay the full loan or lesser

amount decided by the Panel in its absolute discretion as being reasonable in the circumstances.

- 4.12 Where the home is jointly owned all the owners will be jointly and severally liable to pay the loan in full.
- 4.13 The Council shall be entitled to demand immediate payment of the loan together with all other sums then owing but unpaid, upon the happening of any of the following events:
- If in the event of the applicant's death the property has not been sold or loan repaid within a period of 18 months by the executors of the applicant's estate: OR
  - If someone else moves into the property with the applicant, without the consent of the Council: OR
  - If the applicant lets out the property to another party without the prior approval of the Council: OR
  - The applicant ceases to live in the property as their principal residence or the property changes type from an owner occupied residential property: OR
  - If any information provided by the applicant for the purposes of the loan proves to be incomplete or inaccurate: OR
  - The applicant takes out an additional charge secured against the property, other than any mortgage or loan taken without the full knowledge and agreement of the Council at the time the property is purchased: OR
  - The applicant takes out a further advance of monies from a mortgage provider who either already has a charge registered on the property or subsequently takes a charge over the property without obtaining the Council's written consent.

## **General Terms**

- 4.14 In the event that the loan does not proceed to completion, the Council and WMDC will not be liable in law or otherwise for any claims, costs or loss.
- 4.15 All assistance in this policy is subject to available financial resources and the final decision to approve or refuse an application for assistance is at the sole discretion of WMDC. In making an application for any assistance under this policy, applicants will be required to sign and accept the conditions. Applicants should seek independent legal and/or financial advice.

## **5 Applications**

- 5.1 Where there are joint owners of a property, only one application can be made.

5.2 Loan applications will normally be considered in order of date of receipt of application. If demand exceeds available funds the loans officer will develop a process to prioritise cases with reference to the priority need criteria at paragraph 10.2 of the Homelessness Code of Guidance for Local Authorities (Department for Communities and Local Government, 2006).

5.3 Enquiries regarding applications for assistance can be made at:

(local council's address and telephone number)

## **6 Exceptional cases**

6.1.1 Where an application for assistance is made outside the approved policy, this will be considered by a panel of representatives from the councils participating in the Breathing Space scheme, who will determine whether it can be approved or refused on a case by case basis.

## **7 Loan Support**

7.1.1 The initial set up costs of the Loan will be met from the Breathing Space funds and will not be repayable by the Applicant. Loan support will be available in respect of the following, if charged:

- Property valuation fee
- Legal Fees
- Administration costs
- Independent Financial Advice up to £300

## **8 Payment of the loan**

8.1 The Loan will be paid directly to the mortgagee (mortgage lender) or client's solicitor where appropriate on completion of the legal charge.

8.2 The Loan will not be paid if the property is repossessed or if all the applicants give up residence in the property before payment of the loan has been issued to the mortgagee (mortgage lender).

## **9 Repayment**

9.1 The Loan will be an interest free, fixed term loan for 3 years. Repayment will be deferred for up to 3 years. The loan is to be repaid in full by the end of the 3 year term.

- 9.2 Any sum outstanding after the end of the 3 years fixed term will accrue interest, which will be charged at the Bank of England base rate which is current on the date that the 3 year fixed period expires.
- 9.3 The Panel will consider cases of financial difficulty sympathetically and positively. However any recovery action on failure to repay the loan will be the responsibility of the Council.
- 9.4 Court action to enforce repayment (which can result in repossession of the property) may be taken by the Council if the Loan is not repaid to WMDC at the end of the 3 year loan period.

## **10 Complaints procedure**

- 10.1 The Council has a complaints procedure. A complaint can be made by contacting:

Address: (local council's complaints team details)  
Phone:  
Fax:  
E-mail:

- 11.1 If an applicant wishes to appeal a determination on their loan application, an appeal can be made to:
- (local council's housing department's address and telephone number)

## **12 Definitions**

- 12.1 The **Applicant** is defined as a person who occupies the property as their only or main home.
- 12.2 **Owner's Interest** is defined as a freehold interest or a leasehold interest of at least 50 years.
- 12.3 **First Disposal** means any change or alteration in the proprietorship register at HM Land Registry.
- 12.4 **Independent Financial Advice** means advice from an independent financial adviser or whole of market mortgage adviser.
- 12.5 **WMDC** means Wakefield Metropolitan District Council
- 12.6 **The Council** means the local council for the district where the Applicant resides.
- 12.7 **The Panel** means a panel of representatives from the councils participating in the Breathing Space scheme appointed to make decisions on exceptional cases and recovery of Breathing Space loans.

12.8 **Exceptional Case** means an individual situation relating to a loan application to be decided in accordance with clause 6.

12.9 **Exempt Disposal** means a disposal of the property during the 3 year loan period to be considered by the panel in its sole discretion as one where repayment of the loan is not required at that time.

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## Appendix 1

### Financial Assessment for the Breathing Space Loan

The following criteria regarding income and capital must be met.

#### Income\*

Applicants will automatically satisfy the income criteria if they receive: Income Support, Guaranteed Pension Credit, Income Based Jobseekers Allowance, or Council Tax Benefit. In other cases the applicant's income will be assessed as below:

#### Step 1: Weekly Income

Total the **weekly income (A)** of the applicant and partner  
Excluding Attendance Allowance/Disability Living Allowance  
Excluding any non dependant contribution

#### Step 2: Applicable Amount

Calculate the **applicable amount (B1)** using council tax benefit rates, but including an extra 25% of the subtotal of the personal and children's allowances (note that the 25% increase is not applied to the premiums).



### Step 3: Expenditure

Total the **weekly expenditure (B2)** of the applicant, partner and dependants for the items listed below. Exceptionally, other expenditure can be included below, where it is both essential and cannot reasonably be met out of the Applicable Amount.

Council tax  
Mortgage instalments  
Secured loan instalment  
Building insurance  
Travel to work costs\*\*  
Child support payments  
Health costs  
Fines

### Step 4

Add the expenditure (**B2**) to the applicable amount (**B1**) = **B**

Step 5: Excess Income over applicable amount + listed expenditure

Subtract **B** from **A** to obtain the **excess income (C)**

### Step 6: Eligibility

- (i) If **A** is less than **B** (ie **C** is a minus figure) -  
or the applicant is on IS, JSA, CTB, or guarantee Pension Credit -  
or has been given Band B status -

**The loan can cover arrears and future instalments**

- (ii) If **C** (excess income) is insufficient to make a realistic offer towards repaying the arrears-

**The loan can cover arrears.** The loan would not normally cover future instalments. Exceptionally where the applicant has other serious financial problems such as priority debts, the loan can cover future instalments to allow time and assistance for the client to achieve control of their finances, without which they are unlikely to be able to maintain payment of their mortgage/secured loan instalments.

- (iii) If **C** is sufficient to make reasonable arrears payments

**No loan for instalments or arrears**

Exceptionally where the applicant has other serious financial problems such as priority debts, a loan for arrears and/or instalments can be made. This will be considered where the applicant needs time and assistance to achieve control of their finances, without which they are unlikely to be able to maintain payment of their mortgage/secured loan instalments and/or arrears.

\*Income:

Where there are joint owners who are not part of the same unit for calculating the applicable amount, but who share the home, their income will be aggregated and their applicable amounts will be aggregated.

Where a joint owner does not live at the property, their income can be disregarded if it is reasonable to do so.

The income and expenditure of any non dependants living in the property will be ignored for the purpose of this assessment.

\*\*Travel to work costs:

Where a car is essential, this includes all relevant expenses such as car loan, MOT, insurance, road tax, service and repairs and fuel.

Capital

£1000 of any capital the applicant(s) possess will be disregarded in calculating the amount of the loan. Capital above this will reduce the amount of the loan available pound for pound.

Capital includes:

- Savings including cash, premium bonds, stocks and shares, unit trusts, bank or building society accounts and fixed term investments.
- The surrender value of any life assurance or endowment policies that are not linked to the mortgage
- Equity in any other property owned by the applicant
- Redundancy payment
- Pension lump sum payment