



Dear Colleague

28 January 2020

GP SUSTAINABILITY LOAN AGREEMENT

Introduction

1. The document accompanying this circular is the standard form GP Sustainability Loan Agreement which is to be used by Health Boards in making GP Sustainability Loans to GP contractors which own and occupy their premises.

2. The loan agreement will confer an option to purchase the premises on the Health Board, acting in the name of the Scottish Ministers. Where a Health Board exercises that option, the GP contractor has the option to lease the premises back from the Health Board. The standard form GP Sustainability Loan Agreement also includes the lease which will apply in that situation.

The option to purchase

3. The Scottish Government does not plan on Health Boards exercising the option to purchase on Ministers' behalf in the period up to the end of 2023 (the period of the first cycle of loans, as envisaged in the National Code of Practice for GP Premises) except where:

Addresses

For Action

Chief Executives NHS Boards
Integration Authority Chief Officers
NHS NSS Chief Executive

For information

NHS Directors of Finance
Integration Authority Chief Finance Officers
NHS Boards Heads of Estates
NHS Board Primary Care Leads
NHS Board premises sustainability loan co-ordinators
Chair, BMA SGPC
Lead Co-ordinator, Practice Manager network

Enquiries to:

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- a) the borrower has defaulted on the loan;
- b) notice of termination of the borrower's GMS contract or PMS agreement has been given; or
- c) both the borrower and the lender agree to the exercise of the option to purchase.

4. Beyond that period, it is not envisaged that Health Boards will exercise the option to purchase in other circumstances until additional tranches of loan funding have been made available.

The lease

5. The tenant is responsible under the lease for repairs and maintenance. However, the lease confers an option on the landlord to take on responsibility for both internal and external repairs and maintenance.

6. It is the Scottish Government's policy that this option (clause 4.8B) is exercised except where the GP contractor and HB agree it is preferable and practical for the GP contractor to have responsibility for external repairs and maintenance. We expect this will only be required in a small number of cases, perhaps due to the remoteness of the premises and the GP contractor. Where the option is exercised, the Health Board will not actually charge the GP contractor for external maintenance or improvements to the premises (as these are reimbursed under the Premises Directions).

7. Under the lease, the Health Board may not take on responsibility for internal repairs and maintenance until a Service Level Agreement is agreed between the Scottish Government and the Scottish General Practitioners' Committee ("SGPC") of the BMA. The Scottish Government and SGPC intend to enter into discussions on a standard Service Level Agreement, with appropriate involvement from representatives of Health Boards. Health Boards and GP contractors will be notified of any agreement which is reached.

Funding for the Primary Medical Services estate

8. Where a Health Board purchases GP owned and occupied premises, the Health Board should continue to use the premises related funding which was provided to the GP owner occupier under the GP Premises Directions (such as notional rent) to support the maintenance and development of the estate used for the provision of primary medical services.

Break rights

9. The lease provides the Health Board with the right, having involved the GP sub-committee of its Area Medical Committee in its decision-making process, to terminate the lease with 12 months' notice where it is in the best interests of the running of the National Health Service or the property is declared surplus to requirements. The lease requires the Health Board to have regard to guidance issued by the Scottish Ministers on the operation of this provision.

10. The Scottish Government will consult with Health Boards, the GP profession and the public to develop this guidance. It is intended to cover the process to be followed and the factors to be taken into account by both Health Boards and GP sub-committees where a Health Board is considering exercising this break right. In particular, it is intended that the right will only be exercised where other premises which:

- a) Are suitable for the delivery of primary medical services;
- b) Are sufficient to meet the reasonable needs of the contractor's patients;
- c) Comply with the minimum standards in the Premises Directions; and
- d) Are within a reasonable distance of the current premises,

are made available to the GP contractor. The guidance will expand on this paragraph.

Further guidance on the Loan Scheme

11. Further guidance on the operation of the GP Premises Sustainability Loan Scheme is set out in [DL \(2018\) 22](#), issued 8 November 2018. The policy on write-offs and the option to purchase, stated in [DL \(2018\) 22](#), is also restated in Annex A to this letter.

Letter of comfort

12. A letter dated 14 January 2020 from the Scottish Government to the Chair of the SGPC regarding GP Sustainability Loans is attached as Annex B.

Conclusion

13. Health Boards should circulate a copy of this letter and the annexes to GP contractors in their area who own and occupy their practice premises.

14. Health Board co-ordinators can seek further advice in relation to the GP Sustainability Loan Agreement by contacting the NHS Central Legal Office.

Yours faithfully



AIDAN GRISEWOOD
DEPUTY DIRECTOR AND HEAD OF PRIMARY CARE DIVISION

ANNEX A – POLICY ON WRITE-OFFS AND OPTION TO PURCHASE

Originally stated in [DL \(2018\) 22](#), issued 8 November 2018

Write-offs of GP Sustainability Loans

1. Where the GP contractor sells its premises and the sale price is not enough to pay off the full amount of the GP Sustainability Loan, the part which cannot be paid off will be written-off by the lender if:

- the Health Board is satisfied that the premises were placed on the open market with proper marketing to sell them at the maximum price achievable;
- the Health Board is satisfied, having taken professional advice, that an increased offer (i.e. an offer that was better than the one that was in fact accepted for the premises) could not reasonably have been achieved;
- the Health Board is satisfied that the premises have not been sold to a person connected to the GP contractor; and
- the GP contractor did not deliberately increase its borrowings so as to enter negative equity in the period between the granting of the GP Sustainability Loan and the marketing of the property i.e. the negative equity is due to market conditions, not GP contractor additional borrowing.

2. The GP contractor's debt will not be written-off if the GP contractor was in negative equity when it drew down its GP Sustainability Loan and it remained in negative equity from that point until the point the premises were sold.

3. A GP Sustainability Loan will not be written-off where the premises are sold by another secured creditor. The payment by Health Boards of notional rent and borrowing costs grants to GP contractors means that practices should never default on the repayments of their secured debts.

Option to purchase

4. It is the Scottish Government and Health Boards' policy not to exercise the option to purchase if the purchase price is not sufficient to clear the GP contractor's other secured debts and an arrangement cannot be reached with the GP contractor's other secured lenders.

5. GP contractors who are not in negative equity must not increase their total secured borrowings to deliberately enter negative equity.

6. The Scottish Government and Health Boards do not intend to complete the purchase of the GP owned estate until the period 2038 to 2043. However, there may be cases where it is in the best interests of patients or the proper running of the health service to purchase a GP building before that period. Therefore, the option to purchase may be exercised over a property before 2038.

7. It is also possible that the Scottish Ministers (through Health Boards acting on their behalf) do not exercise the option to purchase over a large number of premises.

Instead, it is the intention that alternative modern facilities will be provided at some point over the next 25 years for practices. GP practices will be informed at the earliest possible opportunity if they are going to be asked to relocate to alternative modern facilities.

ANNEX B

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Primary Care Division
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Dr Andrew Buist
Chair BMA SGPC

14 January 2020

Dear Andrew,

GP PREMISES SUSTAINABILITY LOAN AGREEMENT

1. I am pleased that we have reached an agreement on the terms of the GP Sustainability Loan agreement for practices which own their premises.
2. As set out in the National Code of Practice for GP Premises, the loan agreement confers on the lender (the Scottish Ministers acting through the Health Board) an option to purchase the premises. At the same time, it confers on the borrower the option to leaseback the premises if the lender purchases them. During our discussions, SGPC requested a letter addressing one point relating to the option to purchase and four points relating to the terms of the leaseback arrangement:
 - the Scottish Government's intention regarding the option to purchase;
 - the relationship between the rent and the rent reimbursement under the Premises Directions;
 - a statement on Land and Building Transactions Tax ("LBTT") payable on the lease;
 - the standard of repair set out in the Premises Directions and its relationship to the standard of repair under the lease; and
 - the Scottish Government's intention to issue guidance on the exercise of break rights.

The option to purchase

3. The Scottish Government does not plan on Health Boards exercising the option to purchase on Ministers' behalf in the period up to the end of 2023 (the period of the first cycle of loans, as envisaged in the Code of Practice) except where:
 - d) the borrower has defaulted on the loan;

- e) notice of termination of the borrower's GMS contract or PMS agreement has been given; or
 - f) both the borrower and the lender agree to the exercise of the option to purchase.
4. Beyond that period, it is unlikely that Health Boards will exercise the option to purchase in other circumstances until additional tranches of loan funding have been made available.

The rent and the rent reimbursement under the Premises Directions

5. The Primary Medical Services – (Premises Development Grants, Improvement Grants And Premises Costs) Directions 2004 (“the Premises Directions”) allow Health Boards to provide financial assistance with rent to GP practices – rent reimbursement. The amount of that financial assistance is calculated using the method set out in the Premises Directions. According to that method, the valuer calculates the amount of the “Current Market Rent” for the premises and this forms the basis of the calculation of financial assistance. In most cases, the Current Market Rent will not be less than the amount of financial assistance paid by the Health Board. The Current Market Rent may be greater than the amount of financial assistance if the actual rent is lower than the Current Market Rent or if the Health Board is required to abate the financial assistance because the practice earns more than 10% of its income from private practice.
6. The rent under the lease will be calculated using the same method as is used in the Premises Directions to calculate the Current Market Rent. Therefore, the amount of rent will not be greater than the financial assistance with rent, except where an abatement due to private income is applied to the financial assistance.
7. The Scottish Government intends to issue updated Premises Directions in this financial year but there will be no material change to the system of providing financial assistance with rent. The Premises Directions will be subject to negotiation with SGPC before they are published.

Land and Buildings Transactions Tax

8. LBTT is chargeable on a lease and is payable by the tenant. The Scottish Government intends to issue updated Premises Directions this financial year. Those Directions will require Health Boards to reimburse GP contractors for the LBTT they pay when the GP contractor chooses to exercise its right under the GP Sustainability Loan agreement to lease back the premises from the Health Board, following the Health Board's exercise of the option to purchase.

The standard of repair under the leaseback arrangement

9. All GP contractors who receive recurring financial assistance with premises (including notional rent and rent reimbursement) from their Health Board have

agreed to maintain their premises in accordance with the standards set out in the Premises Directions and their GP Contract.

10. Under the leaseback arrangement, the tenant will also be required to maintain the premises to the standards set out in the Premises Directions. The tenant will not be required to maintain the premises to a higher standard than that set out in the Directions.
11. During our discussions, SGPC expressed concern that a GP practice which has failed to maintain its premises to the standards required by the Premises Directions may, as a result, find that if the Health Board purchases the premises, the purchase price will be less than it would be if the premises did comply with the Premises Directions. SGPC is concerned that if the GP practice then decided to lease the premises back, it would be contractually required to ensure that the premises comply with the Premises Directions and would have to pay to bring them into compliance.
12. The Scottish Government has agreed that practices should not pay twice for failing to meet their obligations and we are willing to work together to find a solution. The Scottish Government will present proposals aimed at preventing the issue from arising, principally through supporting practices to meet their obligations, and at what to do in the event that it does arise. If there are changes required to the loan agreement or the lease as a result of our discussions, we are prepared to make those changes at a later date by varying the documents.
13. The Scottish Government is providing significant financial support to GP practices which own and occupy their premises. This support includes notional rent, GP Sustainability Loans and Premises Improvement funding from the Primary Care Fund. We are committed to working with SGPC to ensure that this funding ensures that GP practices meet their contractual obligations under the Premises Directions.

Guidance on break rights

14. The lease provides the Health Board with the right, having involved the GP sub-committee of its Area Medical Committee in its decision-making process, to terminate the lease with 12 months' notice where it is in the best interests of the running of the National Health Service or the property is declared surplus to requirements. The lease requires the Health Board to have regard to guidance issued by the Scottish Ministers on the operation of this provision.
15. The Scottish Government will consult with both Health Boards, the GP profession and the public to develop this guidance. It is intended to cover the process to be followed and the factors to be taken into account by both Health Boards and GP sub-committees where a Health Board is considering exercising this break right. In particular, it is intended that the right will only be exercised where other premises which:

- e) Are suitable for the delivery of primary medical services;
- f) Are sufficient to meet the reasonable needs of the contractor's patients;
- g) Comply with the minimum standards in the Premises Directions; and
- h) Are within a reasonable distance of the current premises,

are made available to the GP contractor. The guidance will expand on this paragraph.

Conclusion

16. I wish to thank you for SGPC's constructive approach to our discussions on GP premises and I am confident that our agreed policy for GP Sustainability Loans will significantly reduce the risk to GPs of owning their practice premises.

Yours sincerely,



AIDAN GRISEWOOD
DEPUTY DIRECTOR AND HEAD OF PRIMARY CARE