



Corporate Director: Andrew Wallhead

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Typetalk calls welcome

Dear

Mortgage Breathing Space Loan Scheme

For the purposes of this letter, the following definitions shall apply:

“Applicant” shall mean the homeowner making the Mortgage Breathing Space Loan Application.

“Wakefield Council” shall mean The Council of the City of Wakefield

“Delegation” shall mean the formal delegation by the Local Authority to the Council of the Function

“Mortgage Breathing Space Policy” shall mean the Local Authority’s policy for providing financial or other assistance for mortgage repayments in accordance with the General Power of Competence given under S1 Localism Act 2011.

“Letter of Agreement” shall mean this Letter including the attached appendices.

“Loan Application” shall mean an application for a Loan under the Local Authority’s Mortgage Breathing Space Scheme

“Loan” shall mean a sum of money paid as a loan to a homeowner provided under and in accordance with the Local Authority’s Mortgage Breathing Space Scheme.

“Mortgage Breathing Space Scheme” shall mean the Local Authority’s loan scheme provided under its Mortgage Assistance Loan Policy in which loans are provided to homeowners in the Local Authority’s area.

“Local Authority” shall mean East Riding of Yorkshire Council

“Scheme” shall mean the Mortgage Breathing Space Scheme to be delivered by Wakefield Council and the Local Authority as set out in the Scheme Handbook.

“Scheme Handbook” shall mean the document titled the Mortgage Breathing Space Handbook for the Yorkshire and Humber Regional Breathing Space Scheme attached at Appendix 1 setting out the process and procedures for the delivery of the Scheme.

Wakefield Council has received funding from the Yorkshire and Humber Regional Housing Board for the provision of Loans by Wakefield Council and on behalf of various local authorities in the Yorkshire and Humber region. The funding includes costs associated with the Loans such as appropriate legal and valuation fees and any costs in respect of relevant training provided by Wakefield Council to officers of the local authorities. The funding is granted on the basis that the Council issue Loans to homeowners resident in Wakefield and in each of the local authorities’ areas within the Yorkshire and Humber region.

In accordance with the provisions of the Localism Act 2011 and Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2012, in order for Wakefield Council to issue Loans on behalf of the Local Authority, it has been necessary for the Local Authority to formally delegate to Wakefield Council the function of the payment of loans by the Local Authority under its Breathing Space Scheme (“the Function”).

Wakefield Council has now received a Delegation from the Local Authority dated 19 May 2015 which confirms the Local Authority’s formal approval that the Function be delegated to Wakefield Council.

In order to facilitate the issuing of Loans by Wakefield Council on behalf of the Local Authority, the parties therefore agree that the Delegation be subject to the following terms:

1. The Local Authority hereby confirms that it has formally delegated, and has obtained all necessary approvals (statutory or otherwise) to delegate, its Function to Wakefield Council.
2. The parties agree to deliver the Scheme and each party hereby agrees to comply with the appropriate provisions contained in the Scheme Handbook setting out the duties and responsibilities of each party for the delivery of the Scheme.
3. The terms of this Agreement shall be binding on each party from the date of this Agreement until the date on which the Agreement is terminated in accordance with paragraphs [24 or 25] (“Period of Agreement”).
4. Wakefield Council and the Local Authority hereby agree that upon receipt by the Local Authority of a Loan Application, the Local Authority and Wakefield Council shall thereafter take the appropriate steps in respect of the Loan Application as set out in the Scheme Handbook.
5. The Local Authority shall ensure that any assessment made by it of a Loan Application is carried out appropriately in accordance with the procedures set out in the Scheme Handbook.
6. The Local Authority shall ensure that in respect of each Loan Application referred to Wakefield Council under the Scheme:

- a. the Loan Application shall comply with the Local Authority's Mortgage Breathing Space Scheme; and
 - b. the Local Authority shall have complied with its responsibilities as set out under the 'Local Authority Responsibilities' section of the Scheme Handbook in advance of such referral to Wakefield Council.
7. The Local Authority shall use its best endeavours to ensure that any information it provides to Wakefield Council in respect of an Applicant and/or Loan Application is true and accurate in all respects.
8. The Local Authority shall use its best endeavours to assist Wakefield Council in delivering the Scheme during the Period of Agreement and shall, upon request, provide Wakefield Council with any documentation it may require in order for Wakefield Council to deliver its element of the Scheme or otherwise in connection with the Scheme or the terms of this Agreement. The Local Authority shall ensure that any documentation it provides to Wakefield Council in accordance with this paragraph 8 shall be true and accurate in all respects.
9. The Local Authority shall ensure that it, and its employees or agents, do not take any decision or course of action which would prevent, restrict or affect in any manner Wakefield Council's delivery of its element of the Scheme or cause Wakefield Council to be in breach of this Agreement or any relevant legislation save where such decision or course of action is necessary in order for the Local Authority to comply with any relevant legislation.
10. The Local Authority hereby agrees to indemnify Wakefield Council and to keep it fully and effectively indemnified against all losses, costs, claims, expenses, demands and liabilities whatsoever which it may incur, receive or suffer as a result of any act, omission, or negligence by the Local Authority or its employees, successors, assigns and contractors in connection with or in respect or in consequence of the performance of the Local Authority's obligations under this Agreement and/or delivery of the Scheme by the Local Authority.
11. Wakefield Council will enter into the loan offer document [attached at appendix 2] with each applicant for the provision of a Loan. The Local Authority will if required act as agent for Wakefield Council to recover the amount outstanding under the loan in the event that it remains unpaid at the end of the three year loan period and no other repayment provisions have been agreed by the Mortgage Breathing Space Panel. In such circumstances Wakefield Council will provide a letter of consent on a case by case basis to enable the Local Authority to act on behalf of Wakefield Council.
12. All loan monies recovered by the Local Authority through a debt recovery process shall be repaid to Wakefield Council within 10 working days for further use within the Breathing Space Scheme. Any loan monies recovered by the Local Authority after the scheme has ended shall be repaid to the Regional Housing Board within 10 working days. The parties agree that the Local Authority's reasonable legal and administrative costs may be deducted from the amount repaid prior to repayment to the relevant body as set out above.

13. The Local Authority hereby warrants that:

- a. Its Mortgage Breathing Space Scheme complies with S1 Localism Act 2011 and will continue to so comply for the Period of Agreement;
- b. Its Mortgage Breathing Space Scheme complies with the Scheme, provisions of Scheme Handbook and terms of this Letter of Agreement;
- c. Subject to paragraph 14, its Mortgage Breathing Space Scheme will continue to comply with the Scheme, provisions of Scheme Handbook and terms of this Letter of Agreement (including any variations to the Scheme, provisions of Scheme Handbook and/or Letter of Agreement agreed by the parties under paragraph 20) for the Period of Agreement; and
- d. it has obtained all approvals (statutory or otherwise) in respect of the Scheme, provisions of the Scheme Handbook and the terms of this Agreement;
- e. its Delegation and the format thereof complies with all requirements of any relevant legislation (including, but not limited to the Local Authorities (Arrangement for the Discharge of Functions) England Regulations 2012 and Localism Act 2011.

14. In the event that the Local Authority proposes to revise its Mortgage Breathing Space Scheme in such a manner so as to create a conflict between any revised policy of the Local Authority and the terms of the Letter of Agreement (including the provisions of the Scheme Handbook) then the Local Authority shall inform Wakefield Council as soon as reasonably practicable of that fact in writing (including the nature of such revision) and of the measures the Local Authority will take to deal with such conflict. Wakefield Council shall be under no duty to process any Loan Application referred to it by the Local Authority whilst any such conflict subsists.

15. The parties hereby agree that in the event of any conflict between the terms of this Agreement and the provisions of the Scheme Handbook then the provisions of this Agreement shall apply.

16. The parties shall not disclose to any third party any documents and information in connection with the Scheme or this Agreement without the written permission of the other party unless such disclosure is necessary for the purposes of performing their obligations under this Agreement and/or a duty to disclose to any person is required of either party under any statute (including but not limited to the Freedom of Information Act 2000), regulations or by Court Order.

17. The obligations of each party specified in paragraph 16 shall cease where it can demonstrate that any such documents and/or information is already in the public domain through no fault of its own and through no contravention or failure to comply with its obligations under this Agreement.

18. Each party shall take all reasonable steps to ensure that its employees and the employees of its consultants or contractors are aware of and comply with the obligation of confidence provided at paragraph 16.

19. Subject to paragraphs 20 and 22, no party to this Agreement may vary any of the provisions of the Agreement (including the Scheme Handbook) without the written consent of the other party in writing.
20. During the Period of Agreement, Wakefield Council may, upon giving reasonable notice in writing to the Local Authority, unilaterally vary any of the provisions of the Scheme Handbook provided that the variation is as a result of any of the following:
- a. any necessary changes in the administration or processes involved in the delivery of the Scheme (including, but not limited to, format of letters, standard forms, interview processes); or
 - b. any necessary changes to the Scheme in order to comply with changes in relevant legislation or Government policy or guidance.
21. In the event that The Council proposes to vary the Scheme Handbook in accordance with paragraph 20a then it shall give reasonable consideration to the views of the Local Authority prior to effecting such variation.
22. If, following a request by Wakefield Council, The Council is offered any Grant in respect of the Scheme in addition to that provided in this Agreement then the parties agree that this Agreement shall be varied appropriately in order for such additional Grant to be incorporated into the provisions.
23. If, during the Period of Agreement, a Loan is repaid to Wakefield Council by a homeowner then Wakefield Council may use the funds received on repayment to provide further Loans to homeowners under the Scheme provided that any such further Loans are provided by Wakefield Council during the Period of Agreement.
24. Either party may:
- a. terminate this Agreement at any time on the giving of 6 months notice in writing to the other; or
 - b. terminate this Agreement forthwith in the event of any of the following:
 - i. the other party materially breaches any of the terms of the Agreement (including any provisions of the Scheme Handbook); or
 - ii. the details of any information provided by the other party (including the details of any Loan Application referred to Wakefield Council by the Local Authority under the Scheme) are materially inaccurate or misrepresented in any respect whatsoever; or
 - iii. any conflict arising under paragraph 14 subsists following the period of 3 months from the date on which Wakefield Council is informed of it under that paragraph 14.
25. In the event that, at any time during the Period of Agreement, the Delegation is rescinded by the Local Authority or Wakefield Council decides to no longer exercise the Delegation

then this Agreement shall terminate forthwith and the provisions of paragraph 26 shall apply.

26. In the event that the Agreement is terminated in accordance with paragraphs 24 or 25 then the following shall apply:

- a. Wakefield Council and the Local Authority shall cease forthwith to provide the Scheme;
- b. the provisions at paragraph 10 of this Agreement shall apply.

27. Any dispute which may arise between the parties concerning this Agreement shall be determined as follows:

- a. The dispute shall first be referred to the Service Director (Strategic Housing and Economic Development) of Wakefield Council and the [insert here the title of the appropriate officer that will deal with it for the Local Authority] of the Local Authority who shall negotiate in good faith in an attempt to resolve the dispute within 10 days of their commencement
- b. Any dispute which is not resolved under paragraph 27a within the period of days set out there under shall be referred to the Chief Executive or his/her nominee of Wakefield Council and the Chief Executive or his/her nominee of the Local Authority who shall negotiate in good faith in an attempt to resolve the dispute within 28 days of the date on which the matter is referred to them.
- c. In the event that any dispute is not resolved in accordance with paragraph 27b then the matter shall then be determined by mediation under the auspices of the Centre for Dispute Resolution, to which both parties hereby agree to submit. Neither party shall wilfully delay or obstruct the mediation process. Only in the event of failure of the mediation process shall either party be free to apply to the courts.

28. The parties agree that paragraphs 10, 16, 17, 18 and 27 shall survive termination of this Agreement.

29. The parties agree that a person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

Please confirm your authority's acceptance of the above conditions by arranging for both copies of this letter to be signed on behalf of your authority as indicated below.

Both copies should then be returned to Janet Howley, Mortgage Breathing Space Scheme, Strategic Housing, Floor 2, Wakefield One, Burton Street, Wakefield, WF1 2EB and arrangements will then be made for both copies to be signed on behalf of Wakefield Council.

Once this is done, one copy of the signed letter will be returned to you for your authority's records.

Yours sincerely

Janet Howley

Mortgage Breathing Space Manager

We hereby accept the terms of this letter of agreement

..... Dated
Signed on behalf of East Riding of Yorkshire Council

(Name of Person and Position Held)

..... Dated
Signed on behalf of the Council of the City of Wakefield

Sarah Pearson, Service Director, Economic Growth and Housing