

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 5 December 2018	<b>Meeting Name:</b> Cabinet Member for Housing and Modernisation
<b>Report title:</b>		Right To Buy Discretions	
<b>Ward(s) or groups affected:</b>		Borough wide	
<b>From:</b>		Michael Scorer – Strategic Director of Housing and Modernisation	

## RECOMMENDATION

1. The cabinet member is asked to approve the expansion to the Right to Buy Discretions 2005 policies as set out below in order to bring this in line with the guidance provided by the Communities and Local Government paper issued in January 2010 ("Right to Buy – the use of discretionary powers on repayment of discount")<sup>1</sup>.

## BACKGROUND INFORMATION

2. Following the sale of a council property under right to buy ("RTB") a leaseholder may be required to repay some or all of the discount if that property is sold again within the first 5 years<sup>2</sup>. Any amount payable reduces by 20% per annum over the 5 year period.
3. It is accepted that a landlord has a wide discretion as per section 155(2) of the Housing Act 1985 whether to demand any repayment of the discount on disposal within the 5 year period. In January 2010 Communities and Local Government issued a paper titled "Right to Buy – the use of discretionary powers on repayment of discount" in order to provide guidance to local authorities in exercising this discretion. The paper acknowledges the wide discretion and notes that the government considers it is justified to waive payment of the right to buy discount in circumstances where repayment would lead to demonstrable personal hardship or where a leaseholder cannot afford to repay all or part of the discount.
4. Housing and Modernisation Senior Management meeting agreed under the RTB Discretions paper dated 5 September 2005 the policies under which waiving all or part of the RTB discount repayment could be exercised.
5. The 2005 RTB discretions policy agreed the discount repayment only be waived under the following circumstances<sup>3</sup>:

5(c) Discount Repayment	Only allow waiving where: (a) There are severe medical reasons [affecting the resident] or the families; and (b) These reasons necessitate a move; and
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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/8300/320232.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/8300/320232.pdf)

<sup>2</sup> Section 155 of the Housing Act 1985.

<sup>3</sup> Page 5, RTB Discretions 2005

	(c) The move cannot happen without such waiver Appeal to South Arbitration Services.
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6. The RTB discretions policy already adequately provides for discretion on the basis of medical grounds therefore we will not explore this particular aspect further.

## KEY ISSUES FOR CONSIDERATION

### Exercising discretion under the 2010 paper

7. Following publication of the 2010 paper it is suggested that the discretion is extended to include the following:
- (a) where an owner of the property wishes to move because otherwise he or she and/or other family members (especially children) face a demonstrable threat of violence or of significant harm; for example, due to:
    - relationship breakdowns involving actual or threatened domestic violence
    - racial, religious, homophobic or any other kind of harassment
    - extreme anti-social behaviour, such as persistent drug dealing in an adjoining or nearby property
  - (b) where an early move is essential to return to employment; for instance where an individual has a firm offer of a job in another area and would thereby be able to return to work, either:
    - after long term unemployment; or
    - after having been made redundant, when his/her skills are such that there is no prospect of getting another job locally.
  - (c) where a traumatic personal event (for example, sudden bereavement) makes a move essential for emotional or psychological reasons.
8. The 2010 papers states that in each case it would be necessary to establish both the facts justifying the move, and that such a move could not take place unless part or the entire repayable discount were to be waived.
9. In order to properly address each scenario as set out above in paragraph 7, it is submitted that the council extends the RTB discretion policy to include the following circumstances with the suggested supporting evidence to be provided by those requesting the council exercise their discretion:

Scenario	Suggested Supporting Evidence
(a) where an owner of the property wishes to move because otherwise he or she and/or other family members (especially children) face a demonstrable threat of violence or of significant harm; for example, due to: <ul style="list-style-type: none"> <li>• relationship breakdowns involving actual or threatened domestic violence</li> </ul>	Police report addressing the following: <ul style="list-style-type: none"> <li>• Incident of violence at the property;</li> <li>• Continued threat of violence at the property;</li> <li>• Violent incident being treated as a hate crime or violence on the basis of the resident's race, religion, or sexual</li> </ul>

<p>threatened domestic violence</p> <ul style="list-style-type: none"> <li>• racial, religious, homophobic or any other kind of harassment</li> <li>• extreme anti-social behaviour, such as persistent drug dealing in an adjoining or nearby property</li> </ul>	<ul style="list-style-type: none"> <li>• orientation;</li> <li>• Persistent drug use or drug dealing at the property or nearby property that is shown to be persistent hazard to the residents.</li> </ul> <p>Investigative report and continued reports or correspondence to Council staff regarding anti-social behaviour, persistent issues with drug dealing/use, or threats of violence.</p>
<p>(b) where an early move is essential to return to employment; for instance where an individual has a firm offer of a job in another area and would thereby be able to return to work, either:</p> <ul style="list-style-type: none"> <li>• after long term unemployment; or</li> <li>• after having been made redundant, when his/her skills are such that there is no prospect of getting another job locally.</li> </ul>	<p>Employment documents:</p> <ul style="list-style-type: none"> <li>• Employment agreement; and</li> <li>• Letter of employment on letter head confirming place of employment requiring resident to move out of London.</li> </ul> <p>Evidence of "long term" unemployment:</p> <ul style="list-style-type: none"> <li>• Bank account statements associated with resident showing no income received over the last 3 months;</li> <li>• Bank statements showing beneficiary payments as primary source of "income".</li> </ul> <p>Prospect of getting job locally:</p> <ul style="list-style-type: none"> <li>• Sufficient evidence to demonstrate that London does not have a market for the skill set or qualifications possessed by the resident.</li> </ul>
<p>(c) where a traumatic personal event (for example, sudden bereavement) makes a move essential for emotional or psychological reasons.</p>	<p>Documentation:</p> <ul style="list-style-type: none"> <li>• Death certificate</li> <li>• Professional opinion that resident remaining in current home would result in irreparable harm.</li> </ul>

10. Following sufficient evidence being provided to show that the above circumstances exist, the council will then need to assess what (if any) of the right to buy discount should be repaid. As discussed above, the amount to be repaid will need to be assessed on a case by case basis with reference to the financial position of the

resident. In making that assessment the council should consider (but not limited to) the following:

Right to Buy Discount	Financial circumstances	Evidence
(a) Waiving part or all of the Right to Buy discount	The resident would need to illustrate an inability to be able to pay all or part of the discount.	<ul style="list-style-type: none"> <li>• Current value of the property;</li> <li>• Equity available to the resident following sale of the property and redemption of any mortgage; and</li> <li>• Purchase price of a replacement property.</li> </ul>

11. It should be noted that this protection is not available to people who purchase on the open market and to waive repayment of the discount entirely should only be exercised where the resident would have no equity available to repay the discount upon sale and redemption of any mortgage. We anticipate this to be very rare given that residents will already have the value of the right to buy discount as equity in the property.
12. Should the resident establish that the conditions in paragraphs 9 and 10 above exist, it is proposed that the council exercise the following discretions in repayment of any right to buy discount on sale of the property:

Value of Equity	Amount to be repaid
Over £150,000.00	Repayment of the “maximum value” of the Right to Buy Discount
Equity between £100,000.00-£150,000	Repayment of the “maximum value” pro-rata from the date of sale to expiry of the 5 year term.
Under £100,000.00	Repayment of the “discount only”, pro-rata from the date of sale to the expiry of the 5 year term.
£0.00 Equity	No repayment of the Right to Buy discount.

13. The maximum value is defined as “a percentage of the [sale price] which is equal to the discount to which the secure tenant was entitled, where the discount is expressed as a percentage of the [original sale price]”.<sup>4</sup>
14. The “discount only” is the discount received against the original purchase price for the property.
15. In exercising the council’s discretion the sales and acquisitions manager will submit a delegated authority to the strategic director setting out the factual matrix and the amount to be repaid (if any) with reference to the above policies.

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<sup>4</sup> Section 155A of the Housing Act 1985.

16. The council is required to instruct external solicitors on the redemption of the right to buy discount. In exercising our discretion the resident will also be liable for the council's reasonable legal fees.

### **Community impact statement**

17. This policy will provide greater clarity to residents but will not have a negative impact on the community.

### **Resource implications**

18. Processing requests is currently completed by the residential conveyancing and compliance team. This will remain the same and any instances where discretion should be exercised the sales and acquisitions manager will submit a report to the strategic director of housing and modernisation with recommendations.

### **Legal implications**

19. None

### **Financial implications**

20. The proposed amendments to the council's right to buy discretions policy are intended to bring it line with central government guidance. A decision to waive the requirement to repay some or all of a right to buy discount will result in a loss of income to the council in the form of a reduced capital receipt. Although the proposed amendments to the policy extend the criteria under which a right to buy discount may be waived, it is envisaged that the council will exercise its discretion only in exceptional circumstances and so the expected loss in income is unlikely to be significant.

### **Consultation**

21. None

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

22. This report is concerned with the limited number of cases where the council decides not to require the full repayment of the remaining discount when a right to buy leaseholder decides to sell the property in the first 5 years after acquisition from the council.
23. It is assumed that the circumstances which give rise to the claim for relief did not exist prior to the acquisition of the property from the council. The report also explains at paragraph 10 that the resident will need to show not only demonstrable personal hardship but also a financial justification which in a borough where property prices have consistently risen in recent years may not be easy.
24. The ultimate decision as to whether or not to allow a discretion will be taken by the strategic director who clearly has the authority for this. Accordingly, there are no legal issues arising out of this decision although there are clearly financial constraints in view of the council's commitment to provide social rented units.

## **Strategic Director of Finance and Governance**

25. The report is requesting the cabinet member to approve amendments to the right to buy discretions policy, which are consistent with central Government guidance on when it might be appropriate to exercise discretion. The council is afforded discretion to waive repayment of right to buy discount under section 185 of the Housing Act 2004. The strategic director of finance and governance notes from the financial implications set out in this report that the financial impact of the proposed amendments on the housing Investment Programme are expected to be minimal.

## **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
n/a		

## **APPENDICES**

<b>No.</b>	<b>Title</b>
Appendix 1	RTB Discretions - 5 September 2005

## **AUDIT TRAIL**

<b>Lead Officer</b>	Michael Scorer, Strategic Director of Housing and Modernisation	
<b>Report Author</b>	Ross Reddy, Sales and Acquisitions Manager	
<b>Version</b>	Final	
<b>Dated</b>	November 2018	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
Officer Title	Comments Sought	Comments Included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>		3 December 2018