

Item No.	Classification: Open	Date: 8 December 2011	Decision Taker: Deputy Leader and Cabinet Member for Housing
Report title:		Progress update and recommended revisions to the Cash Incentive Scheme	
Ward(s) or groups affected:		All wards	
From:		Strategic Director of Housing Services	

RECOMMENDATIONS

1. That the Cash Incentive Scheme (CIS) policy be revised to allow grants to be used to fund building works subject to the procedure and risks identified in paragraphs 18 to 21 and appendix 4.
2. That the policy is revised to allow grants to be used by applicants to 'buy into mortgages on private residential properties owned by partners and 'qualifying family members' in accordance with paragraphs 22 to 28.
3. That the council exercises the discretion at its disposal when deciding whether to register a legal charge, securing repayment of a CIS grant where the applicant is taking out a Sharia-compliant mortgage and allows registration of the interest in the lender's name in accordance with paragraphs 30 to 38.
4. That the scheme be open to joint applications made by secure tenants and their friends and/or non-resident partners in accordance with paragraph 29.
5. That the discretion to determine the grant levels be delegated to the Head of Home Ownership Services and Tenant Management Initiatives in accordance with paragraph 42.
6. That the scheme be opened to tenants in two-bedroom properties, where the household is deemed overcrowded by the council in accordance with paragraph 14.

BACKGROUND INFORMATION

7. Home Ownership Services (HOS) operates the council's Cash Incentive Scheme, known as the Home Purchase Grant Scheme (HPG) under a policy originally adopted in October 2005 and further revised in August 2009.

8. The scheme became operational in January 2008 and since the August 2009 revision of the scheme a further 17 properties have been released, bringing the overall total to 24, at a total cost of £570k and an average of £23.75k per grant. The split by bed size is as follows:

2 Beds	0
3 Beds	20
4 Beds	3
5+ Beds	1

9. As was stated in the August 2009 report, the scheme represents excellent value for money when compared against the cost of building new homes or de-converting existing flatted accommodation to make it suitable for families.
10. Although the available budget for the scheme is currently in excess of £500k and the number of current 'live' applications is also substantial, the potential for further success is still being hampered by the difficulties facing the UK housing market – particularly the availability of mortgage finance and more stringent lending criteria employed by mortgage companies. Where applicants do not have savings of their own to reduce the size of mortgage needed to purchase a suitable property, the grant alone is in many cases proving to be insufficient as a deposit. Indeed, the fact that the grant is repayable in certain circumstances means some lenders refuse to treat it as a deposit at all. Nine properties were released in the 2010/11 financial year, three under the anticipated output.
11. At present, the ratio of applications to successful completions is low at approximately 9:1. Whilst the desire to be a homeowner is strong, it is clear that most applications will not meet this aspiration. The financial profile of the majority of successful applicants indicates that they might not have the required grant assistance to buy a suitable property but took the opportunity to bring forward long-term plans to move on from social renting. In this sense, the scheme is very much proving to be an 'incentive'. However, in the intended spirit of such schemes, we would like to enable a greater number of those applicants who are less financially able to access home ownership without the assistance of the grant.
12. Throughout 2009/10 and 2010/11, HOS looked to extend the HPG target audience in four ways. Firstly, we worked with the South East London Housing Partnership (SELHP) co-ordinator in Southwark, with the Homes and Communities Agency (HCA) and with the Department for Communities & Local Government (DCLG) to establish a way around the 'double-subsidy' issue outlined in the August 2009 Revised Cash Incentive Scheme report. In August 2010, the HCA Capital Funding Guide was amended with the effect that local authority CIS grants may be used in conjunction with RSL New Build Homebuy (NBHB) Schemes. This is a significant and positive change.
13. Secondly, in February 2011, the Deputy Leader and Cabinet Member for Housing Management agreed HOS recommendations that the HPG scheme also be opened to a limited number of secure tenants in Maydeew House, Rotherhithe. The recommendations were made subsequent to consultation with residents over the future of the building between March and August 2010. Those residents that would like to take advantage of the scheme, but remain living in the borough or sub-region could be among the first to take advantage of the change to the

HCA Capital Funding Guide noted in paragraph 12 of this report.

14. Thirdly, in accordance with paragraph 9a of the Revised Cash Incentive Scheme report from August 2009, HOS would like to invite applications from tenants of properties in the borough with two bedrooms where the household is deemed to be statutorily overcrowded. However, the 'statutorily overcrowded' definition is quite narrow and research indicates that there are not sufficient numbers in the borough to generate a successful output. We recommend that the word "statutorily" is removed and that the scheme is opened up to tenants who are overcrowded by the council's own standard as this will serve to reduce the number of households requiring re-housing in family-sized units.
15. Fourthly, we have undertaken research into the Sharia-compliant mortgage market to see if there is any possibility of CIS applicants using such mortgage products. Currently, Sharia mortgages are not compliant with statutory requirements under the Right to Buy and Social Homebuy schemes which can be regarded as discriminating against Islamic tenants. Previous attempts by government to resolve this issue have not been successful. However, the CIS policy may be adjusted to enable these groups to access affordable home ownership. Recommendations in relation to Sharia and CIS are contained within this report under paragraphs 3 and 30 to 38.
16. Paragraph 22 of the October 2005 Cash Incentive report deals with eligibility for access to the CIS scheme. The report states: "In purchases involving other family/friends who are not part of the council household, it should be a condition of grant that a restriction be put on the title deeds of the property purchased which provides the tenant(s) leaving council property with lifetime security of the home being purchased". Importantly, when considering how to best implement the scheme during 2007, HOS took the decision to limit joint purchases to 'qualifying family members' as defined by section 186 of the Housing Act 1985 for the purposes of Part 5 – the Right to Buy. We ensure that the former tenant is party to the mortgage, is registered on the title deeds and that our own legal interest (grant repayment) is registered. To date, there has only been one case where a former tenant jointly purchased a property with a non-resident family member with the assistance of a CIS grant.
17. Paragraph 23 of the October 2005 Cash Incentive report stipulates that CIS grant applicants must purchase the full equity in a private home. Whilst the August 2009 report and the changes to the HCA Capital Funding Guide have addressed this issue by allowing shared ownership purchases in tandem with local authority cash incentive grants, we now also recommend a change to the policy to enable mortgage buy-ins.

KEY ISSUES FOR CONSIDERATION

Building Extensions, Conversions & Adaptations

18. The only other local London authority that offers CIS grants for this purpose seems to be LB Wandsworth. Although their applications for CIS in general are reportedly tailing-off, they have completed an average of two 'Building Extension' CIS grants per year over the last five years. The numbers are therefore small, but in terms of success, there is an application to completion ratio of approximately 4:3.

19. It is possible to modify the Wandsworth model to meet our own requirements. With the discretion allowed in the October 2005 CIS policy, this should not require a further Cabinet Member decision to implement it, although we look to seek approval as best practice.
20. Taking cues from the LB Wandsworth model, the basic procedure would be as outlined in Appendix 4.
21. This is a significant departure from current procedure and certain matters should be highlighted:
 - a) We anticipate that the target audience for such a revision would normally be elderly and/or disabled people looking to move in with family members. We will not however place a restriction on who can apply and will adopt a flexible approach when determining eligibility.
 - b) For a tenant releasing a three bedroom property, the maximum grant of £23k may not be enough to fund a building extension. The owner and/or the tenant will need to borrow or otherwise have in place additional monies to make up the shortfall.
 - c) As the council will be making stage-payments, we should also insist on the applicant indemnifying the council against the appropriate risks.

Mortgage 'Buy-In'

22. Neither the October 2005 policy nor the August 2009 revision make a provision enabling tenant-applicants for a Cash Incentive Grant to use that grant to purchase an equitable interest in a home owned by a relative or partner which is already mortgaged.
23. Purchasing an equitable interest or **'buying-in'** would actually involve a legal transfer of equity between the current owner and the new joint owner.
24. Research undertaken indicates that it is possible to effect transfers of equity between non-resident family members and partners (as opposed just to new spouses and civil partners), but that it can be a reasonably complicated matter. As is our usual practice we will insist that applicants employ a solicitor registered with the Law Society to guide them.
25. If there is to be no change in mortgage product, the current lender must consent to the transfer of equity. The lender is likely to require that the new owner provides details of their financial standing. There may be sizable fees payable, especially if the mortgage product is benefitting from a conditional initial rate. We expect the tenant and joint-applicant to meet these fees at their own expense, as we currently do. Home Ownership Officers will carry out due diligence to make sure that the applicants have sufficient savings of their own available to meet these costs up-front.
26. If the Southwark Council tenant is not paying the full price for the equitable share in the mortgaged property (i.e. only using the grant monies) this could constitute a transfer at under market value which has legal and Stamp Duty Land Tax (SDLT)

implications. SDLT might have to be paid if the payment made for the equitable share and the value of the outstanding mortgage (or at least the extent of the liability taken on by the outgoing tenant) exceed the relevant thresholds. As this area is complicated we would prefer that the applicants use a solicitor registered with the Law Society rather than a licenced conveyancer, although the latter should be equally as qualified to deal with the transaction.

27. The existing and new owners might look to effect a re-mortgage in tandem with the transfer of equity. In this case we should be prepared to offer a grant to an applicant on the proviso that the lender agrees to the registration of our legal charge.
28. If the property being 'bought-into' is not mortgaged, we could on a case by case basis look to offer the grant as a cash incentive for vacation of the council home again on the proviso that our legal charge is registered. There is minimal risk of the council being defrauded because of the checks we already have in place to (a) identify that applicants meet the relevant qualification criteria and (b) secure our legal charge against the property. We would however also require that the current owner(s) enter into a deed transferring equity to the outgoing tenant and that the outgoing tenant is registered as an owner in the Proprietorship Register for the property at the Land Registry.
29. In order for this proposal to succeed, the general restriction limiting joint-applications to 'qualifying family members' noted in paragraph 16 will be lifted, which will have the knock-on effect of increasing the overall pool of potential applicants for the scheme.

SHARIA COMPLIANT MORTGAGE PRODUCTS

30. On 6th April 2011, the CIS Officer from HOS met Sheikh Haitham Al –Haddad of the UK Islamic Sharia Council, holder of a PhD in Islamic Jurisprudence and specialist on Sharia Mortgages, to discuss the CIS scheme.
31. The three most common Sharia compliant mortgage products, Ijara, Musharaka and Murabaha all involve the initial purchase of a property being made in the lender's, rather than the buyer's name. This is in contravention to statutory RTB and SHB requirements and the issue has frustrated local authorities and their Islamic tenants for many years. For these types of scheme, there appears to be neither an easy nor satisfactory solution available despite several attempts by central government to find one. Although this also contravenes current requirements for Southwark's CIS, the policy may be altered to allow it.
32. The issue of the legal charge placed against the property to secure repayment of discount under the RTB scheme is a grey area in terms of Sharia compliance.
33. Sheikh Al-Haddad clarified that having a third party legal charge on the property to secure the council's interest does not contravene the validity of the Sharia mortgage. Not allowing any third party charges on the property is a lender stipulation and not a condition imposed by Sharia law. The reason for this is that the council does not stand to benefit from the sale or gain more than they have given (by way of interest for example) to the CIS applicant. This renders the grant scheme Sharia compatible and the Sharia Council is supportive of the scheme and is prepared to endorse it in writing.

34. The council's default position is that a legal charge (mortgage) must be registered against the title of the property purchased with cash incentive grant assistance to secure repayment of the grant in certain circumstances. Paragraph 9d of the August 2009 CIS report allows the council discretion in deciding whether or not to secure repayment of the CIS grant if doing so hampers the number of successful completions.
35. Pending further investigation by HOS and the outcome of a forthcoming meeting with the Islamic Bank of Britain, we recommend prudent utilisation of the discretion described in paragraph 34 should we receive applications from tenants wishing to take out Sharia-compliant mortgages, where the mortgage company refuses to agree to the registration of our charge and this in turn would prevent a successful completion.
36. The difficult matter remains that Sharia mortgage products require that the property being purchased is registered in the name of the lender until the loan is repaid. As stated in paragraph 31, this contravenes the way we currently operate our other home ownership schemes. The recommendation therefore is that an individual decision to offer a grant to a tenant using a Sharia compliant mortgage product is taken by the Head of Home Ownership services based on officer advice, unallocated budget and that this revision is piloted and reviewed after the first two such completions. The decision as to whether or not this revision can continue beyond the initial two cases is to be delegated to the Director of Housing Services.
37. It is important to point out that this recommendation could be viewed as disadvantaging the vast majority of applicants that do not need to take out a Sharia-compliant mortgage product. However, access to the scheme for all applicants will remain based on eligibility and affordability criteria, using the thorough referencing procedures already in place to verify this.
38. Sharia-compliant mortgage products are not restricted to persons of any particular religious belief and therefore the appropriate level of caution must be exercised to prevent potential abuse by applicants seeking to profit from this decision by buying a property with the aid of a grant and immediately selling-on without restriction. Applicants will be required to enter into an unregistered agreement to repay the grant monies and changes to ownership will be regularly monitored and acted upon. In any event, the risk profile is deemed to be low – since the commencement of the scheme, no applicant has yet sold on.

CHANGES TO THE RIGHT TO BUY

39. In early October 2011, The Prime Minister indicated his intention to raise Right to Buy discounts to a level which he hoped would make the scheme attractive again and rejuvenate housing stock. The question and answer document produced by the DCLG is appended to this report – see Appendix 5.
40. This government proposal is in its very early stages and would naturally take some time to implement due to the local authority consultation needed and resulting changes to secondary legislation.

41. An increase in RTB discounts however, is likely to have an effect on the Home Purchase Grant scheme. The current grant levels (see table below) have been set to make them slightly more attractive than the RTB scheme, under which the maximum discount is currently £16,000.00.

2 Beds	£20,000.00
3 Beds	£20,000.00
4 Beds	£25,000.00
5+ beds	£30,000.00

42. It is recommended that the authority to determine the appropriate HPG grant levels is delegated to the Head of Home Ownership Services and Tenant Management Initiatives in response to the bedding-in of any changes to the Right to Buy discounts.

Policy implications

43. Along with the opening of the scheme to 2-bed properties where the household is overcrowded, the revisions to the CIS scheme detailed in this report link directly to objective 6 of the Housing Services Business plan for 2011/12 – namely increasing the supply of housing, using stock effectively and limiting the number of residents in temporary accommodation.
44. The revisions provide the potential for a larger pool of applicants to take advantage of the CIS scheme and in so doing, increase the supply of housing accommodation which can then be let to households awaiting suitable allocation.
45. The ‘trickle-down’ effect of the grant of one new tenancy leading to further grants as tenants move from smaller to larger properties remains a valuable by-product of the Cash Incentive Scheme and complements council policy on reducing overcrowding. The 24 properties released under the scheme to date have generated approximately 40 actual relets.
46. As the proposals made here are untested to date, they can only be further refined (if necessary) by the experience of endeavouring to implement and operate them.
47. The success of these revisions will be measured and statistics reported to the Head of Home Ownership will specify the proportion of completions on these terms against completions under general terms.

Community impact statement

48. This decision will have a positive impact on local people and communities and seeks to directly address to proportionate degrees the six strands of the council’s equalities agenda as its purpose is to increase the number of secure tenants in the borough that will be eligible to apply for a cash incentive grant across all ages, religions, genders, ethnicities, sexual orientations and physical abilities.
49. The decision on the treatment of applications from tenants using Sharia compliant mortgages will mean that those of a particular faith will not be disadvantaged by lack of choice in their method of financing an affordable home

purchase. The pilot and review of this part of the decision will address any suggestion that applicants of one religious belief are being favoured over others.

Resource implications

50. Within Home Ownership's current staffing structure (phase 4), a designated Cash Incentive Officer (Hay 8) is in post. It is not anticipated that additional resources will be required to undertake administration of a cash incentive scheme which includes the revisions detailed in this report, although 2x Acquisitions Officers (Hay 8) in the SHB team may be available to assist the CIS officer should application numbers increase rapidly.

Consultation

51. No formal consultation on these revisions has been undertaken. However, the revisions to the scheme will be advertised to all qualifying tenants.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

52. Section 129 of the Housing Act 1988 as amended by The Regulatory Reform (Schemes under Section 129 of the Housing Act 1998) (England) Order 2003, which came into force on 1 April 2003, enables a local authority in England and Wales to make a scheme to pay grants to certain tenants or licensees of the authority to assist them to buy a dwelling-house or to carry out works to a dwelling-house. The Council therefore has the power to implement the scheme and impose whatever conditions it considers appropriate.
53. Section 2 of the Local Government Act 2000 gives a specific power to a Council to give financial assistance to any person if it considers it is likely to achieve the promotion or improvement of any one or more of the economic, social or environmental well-being of its area. The proposed scheme represents a cost effective way of generating access to affordable housing whilst enabling Households the opportunity to own their own home.
54. This matter is reserved to the Individual Cabinet Member for Housing under Part 3D, paragraph 6 of Southwark's Constitution for decision.

Finance Director

55. The Finance Director notes that the changes in eligibility and arrangements will be carried out within existing financing arrangements for the scheme, discussed under investment implications in paragraph 57 below.
56. Recommendation 3 outlines circumstances in which discretion, at the Council's disposal, might be exercised to replace a charge on the new property with a non-registered agreement. The Finance Director notes that this might make recovery more difficult if a grant recipient sells on. The report outlines that the risk profile is deemed to be low, as since the commencement of the scheme, no applicant has yet sold on. It would not alter the benefit to the Council of the original grant expenditure under the cash incentive scheme.

Investment Implications (inv/ii2573/28Nov11/sc)

57. The Cash Incentive Scheme is self-financing and will continue to operate by means of capital receipts realised from Social HomeBuy (SHB) sales as agreed by Executive in August 2009. Within the 2011/12 housing investment programme, there is £507k currently available. Expenditure will be contained within the available resources, with new resources dependant on further sales through the SHB scheme. There are therefore no wider implications for the investment programme.

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Home Purchase Grant Scheme (HPG)	160 Tooley St, SE1 2T	Mark Maginn Social Homebuy Manager Tel: 020 7525 7431

APPENDICES

No.	Title
1	Proposals for a Southwark Cash Incentive Scheme – IDM Report – October 2005
2	Revised Cash Incentive Scheme – IDM Report – August 2009
3	Home Ownership – Cash Incentive Scheme to assist secure tenants vacating Maydew House permanently
4	Guideline procedure for extensions, conversions & adaptations
5	DCLG Q&A on changes to the RTB scheme

AUDIT TRAIL

Lead Officer	Gerri Scott, Director of Housing Services	
Report Author	Martin Green, Head of Home Ownership and TMI	
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Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Investment implications	Yes	Yes
Cabinet Member	Yes	Yes
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