

# GP sustainability loans

Frequently Asked  
Questions

The purpose of this document is to provide advice to practices that are considering formally accepting a GP sustainability loan offer.

It is important to note that this FAQ does not constitute legal advice and practices should be taking independent legal and financial advice.

Please note that when we refer to the practice in these FAQs we are referring to the person, partnership or entity holding the core contract for the provision of services from the property in question.

## General

### 01 What is the purpose of the GP sustainability loan scheme?

The key purpose of interest-free sustainability loans is to reduce the risk of premises ownership for practices and to support a model where GP contractors are not required to provide their own premises in delivering primary medical services.

### 02 Have the arrangements for the sustainability loan been agreed with the BMA?

The Scottish GP Committee of the BMA has been directly involved in the development of the arrangements required for the GP sustainability loans. These arrangements are now agreed between the Scottish GP committee of the BMA and the Scottish Government.

While the arrangements have been agreed with the BMA – individual practices will need to take their own individual legal and financial advice before accepting the loan.

### 03 What documents constitute the arrangements for the GP sustainability loan scheme?

The [National code of practice for GP premises](#) introduces the scheme and sets the policy for the GP sustainability loan scheme and GP premises more generally.

The [GP sustainability loan scheme 2018-19 Directors Letter](#) is an important document for practices considering whether to accept a loan. The letter provides detailed advice on the scheme and includes information on the application process, loan offer, loan agreement, use of the loan, loan repayment, loan write-offs, option to purchase, and lease back.

The [GP sustainability loan agreement circular](#) formally opened the scheme on 28 January 2020 and provides additional information to Health Boards and GP practices.

Following the loan application process, practices will receive a **GP sustainability loan offer**. The loan offer outlines the conditions under which the Scottish Ministers would grant a sustainability loan to a GP practice. Once signed by a practice the loan offer becomes the **GP sustainability loan agreement** which is a legally binding contract that, amongst other things, documents the terms of the loan, an option to purchase the property that will benefit your relevant Health Board, and the terms of the leaseback that, if the practice opts to lease the premises, would apply if that option to purchase is exercised.

### 04 This FAQ doesn't address my question – is further advice available?

Yes, as the Scottish Government is responsible for the scheme, they should be approached in the first instance. The best method to receive advice from the Scottish Government is [GPPremisesFund@gov.scot](mailto:GPPremisesFund@gov.scot)

Where a query is not sufficiently resolved by the Scottish Government or you have difficulty with the advice received the Scottish GP Committee of the BMA can provide general advice. Please email [info.gpscotland@bma.org.uk](mailto:info.gpscotland@bma.org.uk). Please note – the BMA cannot provide individual legal or financial advice to practices on the sustainability loan scheme.

## Loan offer

### 05 What happens once a practice receives a loan offer?

Practices with a successful loan application will receive a *loan offer* from the Central Legal Office on behalf of their Health Board. The loan offer will set out the full terms and conditions of the loan.

After receiving the loan offer practices will need to decide whether to accept the loan offer after taking appropriate advice.

### 06 What advice should a practice take before agreeing to the loan offer?

Practices will wish to be familiar with the previous advice and information on the GP sustainability loan scheme. The key documents are outlined above.

**Practices will need to seek independent legal and financial advice before making the decision to accept the offer.**

Practices are required to instruct a solicitor to assist them with completing the loan process. Health boards will request the name and contact details of the solicitor.

### 07 What happens if the practice decides not to accept the loan offer?

If the practice decides not to accept the loan offer, it will not be provided with a loan. The practice will have the opportunity to re-apply in future years.

### 08 What happens if the practice decides to accept the loan offer?

If the practice accepts the loan offer it becomes a legally binding loan agreement – at this stage Scottish Ministers and the practice are committed to the terms and conditions of the loan.

There are a number of conditions in the loan agreement termed ‘the conditions precedent’ which must be met before the loan can be paid to the practice. While not an exhaustive list this includes the practice providing a standard security which allows the lender (Scottish Ministers administered on their behalf by Health Boards) the right to take possession of the property and sell if the practice defaults on the loan.

Practices with an existing lender will need to arrange for the existing lender to provide a ranking agreement to the Central Legal Office. A ranking agreement will need to be negotiated with the existing lender (and may incur a cost) and will rank the properties securities in an order of priority.

Along with the signed loan documentation, standard security, and any ranking agreement the practice will be required to provide the Central Legal Office with additional information as is set out in the Schedule Part 1 of the GP sustainability loan agreement. While not an exhaustive list, this includes:

- A signed certificate of title (as part of the need to verify that there are no matters that would adversely affect the value of the property) from the GP contractor’s solicitor in the form provided by the CLO and evidence that the solicitor has an appropriate level of professional indemnity cover
- Evidence satisfactory to the CLO that the loan documentation, standard security and any ranking agreement are valid
- Where necessary, a completed application form and accompanying documentation sufficient to allow registration of the GP contractor’s title in the Land Register of Scotland

### 09 Are there costs for the practice in preparing for the loan?

Yes, and the practice is responsible for their own costs incurred in preparing to accept the loan. This will include any costs associated with instructing a solicitor or negotiating with an existing lender. There may be tax consequences in ensuring the title deed is held by all the current partners of the practice. Practices will want to have a good understanding of the total costs in preparing for the loan in considering whether they wish to accept the loan offer.

## Loan agreement

### 10 How is the loan paid to the practice?

The Health Board will inform the practice when the CLO is satisfied that all the necessary legal documents are in place. Thereafter the practice can draw down the loan by writing to the Health Board requesting payment. The written request for payment from the practice to the Health Board must be made with 10 business days of being notified that the loan is ready to be drawn down.

The payment will be made by NSS Practitioner Services Division to the practice.

### 11 What can the sustainability loan funds be used for?

The loan can be used to pay back an existing mortgage or any other purpose connected with the provision of GP services. This can include a GP partnership using the loan to facilitate the recruitment of a new partner to improve the sustainability of the partnership and/or buying out a partner who is resigning from the partnership.

In certain circumstances the practice will be obligated to use all or part of the loan for paying back an existing mortgage. Section 8 of the *DL circular* outlines the circumstances the circumstances when this is required:

*If the GP contractor has sums outstanding on an existing mortgage which are greater than the value of its practice premises, it will be considered to be in negative equity and will be required to pay the full amount of the GP Sustainability Loan to its existing lender.*

*If the GP contractor has sums outstanding on an existing mortgage which are equal to the value of its practice premises, it will be required to pay the full amount of the loan to its existing lender. This means that the total sums owed by the GP contractor to its existing lender and the Scottish Ministers will not exceed the Existing Use Value of its practice premises. It is not intended that a GP contractor will enter negative equity as a result of taking a GP Sustainability Loan.*

*If the GP contractor has sums outstanding on an existing mortgage which are between 80-100% of the value of its practice premises, and it receives a loan of 20% of the value of its practice premises, it will be required to pay such proportion of the loan to its existing lender in order to bring the sums due to its existing lender down to 80% of the value of its practice premises.*

*For example, if a GP contractor owes sums equivalent to 90% of the property valuation and receives a GP Sustainability Loan of 20% of the property valuation, it will be required to pay 50% of the GP Sustainability Loan (ie 10% of the value of its practice premises) to its existing lender. It is not intended that a GP contractor will enter negative equity as a result of taking a GP Sustainability Loan.*

*If the GP contractor has an existing mortgage which is 80% or less of the value of its practice premises, and it receives a GP Sustainability Loan of 20% of the value of its practice premises, it is not required to pay any of it to its existing lender (although it may choose to do so).*

*Where a GP contractor is required to pay all or any part of the GP Sustainability Loan to its existing lender, the Health Board will make payment of the relevant part of the GP Sustainability Loan directly to the existing lender.*

### 12 When does the loan need to be repaid?

Practices are required to repay the loan in any of the following cases:

- The GMS or PMS contract is terminated
- The premises are no longer used for the provision of GMS or PMS services
- The premises are sold, transferred or leased to another person
- The premises are otherwise disposed of

Where the contract is terminated or the premises are no longer used for the provision of services the repayment may, providing positive action is taken by the practice to notify the Health Board that it wishes to defer the repayment within 20 business days of the date upon which any of the above circumstances happen, be deferred for up to 12 months (or a longer period of time agreed between the Health Board and the practice to allow the sale of the premises to complete) if the owner actively markets the property for sale during that time.

Repayment of the loan will be subject to the write off policy published by Scottish Ministers (see question 14 below).

The loan may also have to be repaid if an 'Event of Default' occurs and is not remedied by the borrower (being, for the avoidance of doubt, the practice that enters into and draws down the loan and, where the loan agreement is transferred in accordance with its terms, their successors). And 'Event of Default' is outlined in the *DL letter* as follows:

- If the borrower fails to pay any sum due under the loan agreement within five business days of its due date for payment
- If the borrower fails to comply with any of the terms of the loan agreement (if the failure can be fixed, the lender has to give the borrower seven days' notice to fix the failure)
- Someone brings insolvency proceedings against the borrower
- If the borrower is a partnership, LLP or a company, the partnership is dissolved, or the LLP or company is wound-up (there are exceptions to this)
- If the borrower abandons all or a significant part of the premises over which the loan is secured for 28 continuous days or more
- The make-up of the borrower changes (for example, a new partner is admitted) and the borrower does not tell the lender of the change
- The borrower provides incomplete, untrue, incorrect or misleading information in the process of applying for and obtaining the loan
- Someone takes action in respect of the premises to recover a debt (e.g. seeks to take possession of the premises). This includes another creditor calling up another security.
- Other circumstances arise which might, in the lender's reasonable belief, prejudice the standard security in their favour or mean that the borrower's obligations under the loan will not be met.

### **13 Can the practice repay the loan off at any point?**

Generally, yes, the practice can decide at any point to repay any portion of the loan. There is no early redemption penalty for repaying the loan – although the repaid amounts cannot be redrawn by the practice at a later date.

By repaying the totality of the loan the loan agreement is deemed to come to an end – the practice is no longer required to follow any conditions of the agreement.

Despite the above, where a Health Board decides to exercise their option to purchase the property there is a point beyond which the loan cannot be repaid, and the practice will be committed to selling to the Health Board. However, there are provisions that require the Health Board to notify the practice if they are considering purchasing the premises. This triggers a process which requires a valuation to take place in order to determine the purchase price that will be paid. Once that valuation is known, and even if the Health Board indicates that it wishes to proceed with the purchase at that price, the practice is afforded a period of time to decide whether it wants to repay the loan as opposed to selling the property to the Health Board. Where such a decision is taken, the practice will have a further period of time to action the necessary repayment. Please see more detail in question number 16 below.

#### 14 When would a sustainability loan be written-off?

Where a practice sells its property and the price received is insufficient to repay the full amount of the sustainability loan, the part that cannot be repaid will be written-off by the Health Board if:

- the Health Board is satisfied that the property was 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 (ie 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 property has 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 ie the negative equity is due to market conditions, not GP contractor additional borrowing.

The write off policy exists in the [GP sustainability loan scheme 2018-19 Directors Letter](#). While it is not expected that the write off policy will change – practices should be reassured that the Scottish Government has confirmed that the write off policy existing at the point of accepting a loan will apply throughout the period of their loan agreement.

#### 15 Does the Health Board have an option to purchase my property?

Yes, accepting a sustainability loan does provide the Health Board with an option to purchase the practice premises – this is consistent with the stated aims of the scheme to move, over time, to a model where GP are not required to own or provide their own property.

However:

- the Scottish Government will instruct Health Boards not to exercise the option to purchase in the period up to the end of 2023 (the period of the first cycle of loans) except where:
  - the practice has defaulted on the loan
  - notice of termination of the practice's GMS or s17c agreement has been given, or
  - the practice and the Health Board mutually agree to exercise the option to purchase
- the option to purchase the premise requires advance notice by the Health Board (by serving a Valuation Notice). Practices have a period of time, after the purchase valuation is made known to the practice and the Health Board, to decide whether to repay the loan. If the sustainability loan is repaid the right to purchase ceases (and the loan agreement ceases).
- the Scottish Government and Health Board policy is not to exercise the option to purchase if the purchase price is insufficient to clear the GP contractor's other secured debts and arrangements can't be reached with the GP contractors other secured lenders. Practices that are not in negative equity must not deliberately enter negative equity to avoid purchase.
- the Scottish Government and Health Boards do not intend to complete the purchase of the GP owned estate until 2038 to 2043 but there may be cases where it is the best interest of patients to purchase a GP premises before that period.

#### 16 How does the option to purchase process work?

As alluded to above, the Health Board will serve the practice with a Valuation Notice. The Health Board and practice will agree on the appointment of a RICS approved valuer (or failing agreement one will be appointed by RICS). The Health Board will have a period of 4 weeks after receiving the option valuation (purchase price) from the valuer in which to issue a so called 'Decision Notice' to the practice which, if issued, commits the Health Board to the purchase. The borrower will have 2 weeks from receiving the Decision Notice to give notice of intention to repay the loan. If the practice wants to repay the loan it will have a 13-week period to do so. If after receiving a Decision Notice from the Health Board the practice decides not to repay the loan, or fails to repay the loan within 13 weeks, the sale will proceed.

Where the practice gives notice to repay the loan, they will compensate the Health Board for any legal or valuation costs incurred in the process of serving the Valuation Notice and following the valuation procedure set out in the loan agreement.

## 17 How is the option valuation (purchase price) determined?

The option value will be determined based on the following instruction:

*The option value is to be assessed to Market Value as defined in the latest Edition of the 'Red Book', currently RICS Valuation – Global Standards 2017.*

*The Market Value is to be given on the special assumption that it takes into account the availability of any notional rent payments from the relevant Health Board under the Premises Directions.*

The Scottish Government is clear that this instruction should derive the best and highest use value (including alternative and existing use by specifically including consideration of ongoing rent reimbursement under the Premises Cost Directions).

## 18 Can the practice sell the property under the loan agreement?

Yes, the loan agreement has a process that allows the practice to market and sell its premises under the loan agreement. To avoid a situation where the process of marketing and selling takes place only for the Health Board to exercise its option to purchase, the practice may notify the Health Board that it intends to sell the premises – and the Health Board must confirm, within 3 months of receiving notice of the practice's intention, whether it intends to exercise the option to purchase. If the Health Board does not respond (or confirm that it does not intend to exercise the option) then a grace period of 12 months is afforded to the practice within which it can market and sell without the possibility of the Health Board exercising its option to buy. The finer detail of the process is outlined in the loan agreement.

## 19 How will the loan agreement impact new or retiring partners?

Sustainability loans will make it easier for partnerships to address financial aspects of premises ownership and partnership changes. Sustainability loans can be used to release retiring partner equity and/or reduce existing bank loans lowering the financial burden for new partners.

To receive a sustainability loan, the premises title must be up to date and common issues, such as the property being held in the name of ex contractors and the property being held by the current partners but there is no reference that they are holding the property on trust for the partnership, will need to be regularised ahead of the loan agreement being entered into. Practices will need to engage a solicitor to resolve ownership position before receiving the loan. Transfer of ownership and drawdown of the sustainability loan can happen simultaneously.

Practices that operate as partnerships will want to review their partnership agreements (and any subsequent partnership agreements or deeds appointing new partners) so that they account for the requirements of the sustainability loan agreement. They should make provision for the change of partnership over time specifically addressing premises ownership and sustainability loan responsibilities. The borrower in terms of the sustainability loan is the GP practice. As such new partners should be clear that they will be responsible for the terms of the loan agreement in the same way as existing partners. Departing partners should have no ongoing responsibility for the loan agreement.

Whilst partnership agreements will be an important consideration, practices will need to be aware that the loan agreement should be transferred in accordance with the terms of the loan agreement so that it always remains in the names of the current property owners.

## 20 Does notional rent reimbursement continue after receiving a sustainability loan?

Yes, practices will continue to receive notional rent reimbursement under the Premises Directions in the same way as they did prior to accepting a sustainability loan.

## 21 What obligations does the practice have for maintaining their property?

Practices receiving rent reimbursement have always been responsible for maintaining the building. The standard of repair required is specified in Schedule 1 of the Premises Cost Directions:

*The premises, fittings and furniture should be in good repair and (when being used for the provision of primary medical services) clean and hygienic.*

Practices will need to be aware that failure to maintain the premises may have considerable cost implications, so called dilapidations, where the Health Board purchases the premises at a future date under the Loan Agreement (as the property value may be suppressed when it comes to the Health Board's exercising their option to purchase the premises and the practice may, under the terms of the leaseback, be responsible for repairing costs to bring it up to such standards). **Practices are strongly advised to maintain their buildings to the standard required under the Premises Cost Directions.** Practices should have regular planning in place to maintain and repair the building to the required standard and/or the capital available to meet this obligation.

## Lease terms

### 22 What are the leaseback arrangements?

Where a health board purchases a property under the sustainability loan scheme the practice can 'lease back' the premises at a rental valuation determined by a RICS approved valuer on the date the Health Board assumes ownership. A practice wishing to lease back the premises will need to notify the Health Board of its intention.

The lease arrangements are specified in the loan agreement as a draft lease.

**The terms of the lease should be considered carefully by the practice before signing the loan offer.**

### 23 What is the length of the lease?

The lease terms specify a 15-year lease with mutual break options at 5 and 10 years on providing no less than 12 months written notice.

The lease will contain a right for the Health Board to break the lease where it is in the interests of the proper running of the NHS. However, this will require prior consultation with the GP subcommittee (LMC). This break can't be exercised before guidance, that is agreed with the BMA, has been released that details the process of how the breaks should be handled to ensure practices stability and continued patient services.

There are several other conditions that are required for the lease to continue and other options for termination by either party – practices are advised to take advice on the lease before committing to the loan agreement.

### 24 Does rent reimbursement continue where a practice leases back the premises?

Yes, rent reimbursement will continue. Rent reimbursement will normally not be less than the rent charged under the lease. The rent charged may be higher where a Health Board is required to abate the rent reimbursement if the practice earns more than 10% of its income from private practice.

### 25 Is Land and Buildings Transaction Tax charged at the start of the lease term?

Yes, LBTT is charged at the start of the lease term and is payable by the tenant. However, we have agreed with Scottish Government that the Premises Cost Directions will be amended to require Health Boards to reimburse GP contractors for the LBTT they pay when a Health Board:

- Buys a GP premises through exercising an option to purchase under the loan agreement, and
- The practice chooses to exercise the right to lease back the premises from the Health Board.



**26 What is the standard of repair required under the lease?**

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.

Under the leaseback arrangement, the practice will also be required to maintain the premises to the standards set out in the Premises Directions. The practice will not be required to maintain the premises to a higher standard than that set out in the Directions.

**27 How will repairs operate under the lease?**

Whilst the obligation for repairs primarily rests with the practice, the Health Boards will have an option to elect to take over responsibility for such repairs and maintenance (or any part thereof).

In the vast majority of cases the Health Board will exercise an option so they will be responsible for external repairs and maintenance. It is possible for the practice to agree to undertake external repairs – but we expect this will only be used in a small number of cases. Practices will want to take advice before agreeing to take on external repairs.

Where the Health Boards opts to take over the responsibility for external repairs, they will not re-charge the costs back to the practice.

Whether the Health Board opts to take over responsibility for internal repairs (or any part thereof) the reasonable and proper cost of these repairs will be re-charged to the practice. These costs will be subject to various safeguards around value for money and transparency. Whilst it is envisaged that this will not prove necessary, the ability to refer disputes to an independent surveyor is enshrined within the lease.

Before the Health Board can exercise their options to elect to take over the responsibility for repairs, the Scottish Government and the BMA will agree a Service Level Agreement will outline, amongst other things, the process of internal repairs and charging. Health Boards and practices will be notified when the SLA is available.

**28 Are practices required to take out insurance under the lease?**

Yes, practices are required to insure the premises under the lease. Buildings insurance is reimbursed under the Premises Directions.

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