

REQUEST FOR MAYORAL DECISION – MD1335

Title: Administration of equity loan post sales programme delegation

Executive Summary:

By virtue of the Localism Act 2011 from 1 April 2012 the Homes and Communities Agency's ("HCA") powers to operate in Greater London ended, and from this date the Greater London Authority ("GLA") has undertaken the HCA's former role in the capital.

There are activities that are undertaken by the HCA in relation to the equity loan investments in London that the Mayor and the HCA have agreed that the HCA should continue to undertake in Greater London. This new delegation replaces the current delegation (MD978), as of 1 April 2014.

This Mayoral Decision asks that the Mayor make the necessary delegations to the HCA.

Decision:

That the Mayor:

- Authorises, under section 38(1) of the Greater London Authority Act 1999 (as amended) ("GLA Act") the HCA as of the 1 April 2014 to exercise such of the GLA's powers under sections 30 and 34 of the GLA Act as the HCA considers necessary or expedient for the purposes of undertaking or continuing all or any of the activities specified in the Instruments of Delegation (attached at Annex A) in relation to the administration of post sales matters relating to Equity Loans in Greater London, until 31 July 2016.
- Revokes the delegation given under MD 978

Mayor of London

I confirm that I do not have any Disclosable Pecuniary Interests in the proposed decision, and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature

Date

8 April 2014

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- (a) By virtue of the Localism Act 2011 from 1 April 2012 the HCA's powers to operate in Greater London ended, and from this date the GLA has undertaken the HCA's former role in the capital using its new powers in relation to land and social housing contained in Part 7A of the GLA Act, and its general and subsidiary powers under sections 30 and 34 of that Act, which are exercisable by the Mayor.
- (b) Relevant property, rights, and liabilities of the HCA transferred to the GLA on 1 April 2012 under a statutory transfer scheme made under the Localism Act 2011, this included the equity loan investments in London that were provided to home buyers in Greater London to enable them to access low cost home ownership in the capital. A number of Equity Loans in Greater London that were not originally included in the 2012 statutory transfer scheme may also be transferred to the GLA and the activities to be delegated by this Mayoral Decision will also apply to those equity loans. Together they are referred to in this Mayoral Decision as "the Equity Loans". Each recipient of these loans is legally obliged to repay their loan when the property is sold or by the end of the loan agreement term, typically 25 years.
- (c) As part of the GLA's financial settlement, it has been agreed with the Department for Communities and Local Government ("DCLG") that, from 1 April 2012, all repayments of equity loans in London and their associated interest fees payable by home buyers under the terms of the loan agreements will be payable to the GLA.
- (d) Through an existing delegation (MD978) the HCA undertakes and oversees a number of activities in relation to these Equity Loans in London. These activities include monitoring and reporting on the performance of the equity loan portfolio, collecting repayments from home buyers of loans granted and associated interest fees, management of equity investments, and contract management of the national service provider appointed to administer the programme.
- (e) The Mayor and the HCA have agreed that, on grounds of efficiency and business continuity, the HCA should continue to undertake its activities in relation to the Equity Loans in London after the existing contract ends on 31 March 2014. For clarity and as some schemes delegated in 2012 have now ended, it is proposed to renew, through this MD, the original Mayoral delegation (MD978) which gave the HCA the necessary legal powers to undertake these activities.
- (f) The Mayor is therefore asked to authorise the HCA to exercise such of the GLA's powers under sections 30 and 34 of the GLA Act accordingly, upon the basis and upon the terms and conditions set out in the Instrument of Delegation attached at Annex A.

2. Issues for consideration

- a) Links to strategies and Mayoral and corporate priorities

This work links in with the Mayoral priority to assist working Londoners into affordable and sustainable home ownership and the pledge from the 2012 Mayoral Manifesto to boost the First Steps programme to increasing home ownership options for working Londoners.

- b) Impact assessments and Consultation

No consultation has been carried out specifically in relation to this scheme but does build on the consultation carried out in relation to the *Mayor's Housing Covenant: Homes for working Londoners* which invited consultation responses up until 19 December 2012.

c) Risk

The HCA will be carrying out the activities and functions specified in the Instrument of Delegation on behalf of the GLA. This means that the GLA is, in law, legally responsible (and potentially liable) in respect of the discharge of these activities and functions. The risks pertaining to the delegation are mitigated by the conditions contained in the delegations and the Mayor's right to revoke the delegations if required.

3. Financial Comments

- a) The GLA will be required to pay a proportion of the HCA's national contract price per annum towards the administration costs of the equity loan portfolio being managed on the GLA's behalf. This will be calculated and based upon the GLA's equity loans as a proportion of the total equity loan portfolio administered by the HCA.
- b) The 2012-13 fee was considered when the devolution settlement was drawn up and confirmation is being sought on the liability relating to the 2013-14 fee, which may have been accounted for in the same way.
- c) If a liability for a 2013-14 fee is confirmed, this will be in the order of £24k and can be met from underspend on revenue budgets to assist working Londoners into home ownership in 2013-14. It is expected that significant improvements to and extension of the scope of the replacement service will result in future fees being approximately £90k per annum for the next 25 years. The fees associated with the initial two years of this delegation can be met from the budget intended for FirstBuy agent fees for 2014-15 to 2015-16 (subject to the annual budget process).

4. Legal Comments

Section 30 of the Greater London Authority Act 1999 ("the GLA Act") allows the Mayor, acting on behalf of the GLA, and after appropriate consultation, to do anything which the Mayor considers will further the promotion of economic development and wealth creation, social development or the improvement of the environment within Greater London. This MD indicates that the relevant purposes in this case are the promotion of economic and social development in Greater London, which will be achieved by administering the Equity Loans referred to in paragraph 1(a) above. Previously the GLA was prohibited from using these general powers to incur expenditure in relation to housing. This prohibition was removed by section 186 of the Localism Act 2011, which came into force on 1 April 2012.

Section 32 of the GLA Act provides that the power under section 30 is exercisable only after consultation with such bodies or persons as the GLA considers appropriate in the particular case. Paragraph 2(b) above notes that consultation was previously undertaken in relation to the Mayor's Housing Covenant. GLA has also consulted with HCA in relation to arrangements for the administration of the Equity Loans in Greater London.

Section 33 of the GLA Act requires the GLA, when exercising a section 30 power, to make appropriate arrangements with a view to securing that there is due regard to the principle that there should be equality of opportunity for all people. In addition, section 149 of the Equalities Act 2010 requires that GLA and the Mayor have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations

between people who share a protected characteristic and those who do not. The HCA is also subject to statutory duties under the Equalities Act 2010 and published an Equality and Diversity Strategy in November 2012, including nine equalities objectives. The HCA will be carrying out the delegated functions in line with their published strategy and address their objectives where appropriate.

Section 34 of the GLA Act provides a further power for the Mayor to do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of any of his functions (including his functions under section 30).

Delegation to HCA

The HCA's objects are specified in the Housing and Regeneration Act 2008 ("the HRA 2008") and include improving the supply and quality of housing in England and securing the regeneration or redevelopment of land or infrastructure in England. The HRA 2008 provides that HCA may do anything it considers appropriate for the purposes of its objects or for purposes incidental to those purposes.

The HCA's powers in the HRA 2008 used to cover the whole of England including Greater London. From 1 April 2012 the HCA's powers in Greater London were devolved to GLA under the Localism Act 2011. As a consequence, HCA no longer has the legal power to operate in Greater London and its property, rights and liabilities in Greater London were transferred to the GLA by statutory transfer scheme.

Sections 38(1) and (2) of the GLA Act allow the Mayor to authorise HCA to exercise his functions under the Act, including those contained in sections 30 and 34. It is therefore necessary that the Mayor delegates his powers under sections 30 and 34 to HCA to enable the HCA to carry on the activities specified in this MD in Greater London.

Section 38(3) of the GLA Act requires that HCA must consent to the delegation. HCA have informally consented to the delegation and will, in due course, be providing formal written consent to the Mayor.

Section 38(7) of the GLA Act gives HCA the power to exercise any functions delegated to it by the Mayor pursuant to section 38, whether or not HCA would otherwise have had that power and irrespective of the nature of that function.

Section 38(10) of the GLA Act requires the delegation to be in writing. The proposed Instrument of Delegation is attached as Annex A. The Mayor may impose conditions on any delegations under section 38(1) and a number of conditions have been included in addition to the delegation.

The powers contained in sections 30 and 34 of the GLA Act, which are to be delegated to HCA, are sufficient to enable HCA to do all things it considers necessary or expedient to undertake the activities specified in the Instrument of Delegation at Annex A.

5. Investment & Performance Board

The GLA will be required to contribute its proportion of the costs of administering the Equity Loans through the HCA's national contract. As such, and when known, these costs will need to be considered by the Investment and Performance Board.

6. Background/supporting papers

Annex A – Instrument of delegation

Public access to information

Information in this form is subject to the Freedom of Information Act 2000 (FOI Act) and other legislation. Part 1 of this form will be made available on the GLA website within 1 working day of approval. Any facts and advice that should not be made automatically available on request should not be included in Part 1 but instead on the separate Part 2 form. Deferment is only applicable where release before that date would compromise the implementation of the decision being approved.

Is the publication of this approval to be deferred? No
 If yes, for what reason:

Until what date:
 Is there a part 2 form - NO

ORIGINATING OFFICER DECLARATION:

	Tick to indicate approval (✓)
Drafting officer: <u>John McManus</u> has drafted this report in accordance with GLA procedures and confirms the following have been consulted on the final decision.	✓
Assistant Director/Head of Service: <u>Nick Taylor</u> has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.	✓
Sponsoring Director: <u>David Lunts</u> has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.	✓
Mayoral Adviser: <u>Richard Blakeway</u> has been consulted about the proposal and agrees the recommendations.	✓
Advice: The Finance and Legal teams have commented on this proposal.	✓

OFFICER APPROVAL

Executive Director, Resources

I have been consulted about the proposal and confirm that financial and legal advice have been taken into account in the preparation of this report.

Signature **Date**

Chief of Staff

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature **Date**

INSTRUMENT OF DELEGATION

MAYORAL DELEGATION TO THE HOMES AND COMMUNITIES AGENCY'S ACCOUNTING OFFICER IN RESPECT OF THE "Administration of the equity loan post sales programme"

Background

1. The Equity Loans in Greater London were provided to home buyers in Greater London to enable them to access low cost home ownership in the capital. Each recipient of these loans is legally obliged to repay their loan when the property is sold or by the end of the loan agreement term, typically 25 years.
2. By virtue of the Localism Act 2011 from 1 April 2012 the HCA's powers to operate in Greater London have ended and the GLA is undertaking the HCA's former role in the Capital using its general and subsidiary powers under sections 30 and 34 of the Greater London Authority Act 1999 ("the GLA Act", as amended), which are exercisable by the Mayor.
3. The Mayor and the HCA have agreed that the HCA should continue to undertake its activities in relation to the administration of these Equity Loans in Greater London.
4. The HCA is a body to whom the Mayor may authorise to exercise the GLA's powers under section 38 of the GLA Act and so the Mayor has agreed to delegate his legal powers to the HCA for that purpose. The delegation of powers itself is for up until 31 July 2016 in order to provide sufficient time to any incoming Mayor to consider any further extension.

Delegation

5. Accordingly, under Section 38(1) of the GLA Act I authorise the HCA to exercise such of the GLA's powers under sections 30 and 34 of the GLA Act as it considers necessary or expedient for the purpose of undertaking or continuing all or any of the activities required for the administration of the equity loan post sales programme in Greater London, including (without limitation):
 - to manage the administration in London in accordance with the process agreed with the GLA;
 - to procure and contract with as many agents as the HCA feels is necessary to provide a post sales administration service post 31 March 2014 and to renew and re-procure that/those contract(s) as and when the HCA feels appropriate;
 - to contract and manage with an agent to provide a post sales administration service for all equity loans in London until 31 July 2016;
 - to repay any eligible fees and receipts back to GLA in accordance with arrangements agreed with the DCLG.
6. The powers conferred by this Delegation are supplemental and without prejudice to any functions the HCA otherwise has at common law or under any relevant legislation.

Conditions

The authorisation conferred by paragraph 5 above to the HCA is made subject to the following conditions:

- a) Insofar as it is permissible in law to do so, the HCA must arrange for its Accounting Officer to be responsible, under delegated authority from the HCA, for exercising all of the functions specified in and conferred by this Delegation;
- b) That the HCA complies with the requirements of section 31 of the Housing and Regeneration Act 2008, in the circumstances prescribed by that section.
- c) That the HCA will operate the administration in a manner agreed with the GLA.
- d) The HCA will report on the performance of the portfolio of equity loans in London to the GLA on a monthly basis.
- e) The delegation relating to the administration of the programme will end on 31 July 2016, unless it is agreed by the Mayor to terminate the delegation at an earlier date or to extend it to a later date.
- f) No costs incurred in the implementation of this Delegation shall be borne by the GLA, save for where the GLA is required to contribute its proportion of the costs of the HCA’s national contract to administer the Equity Loans.
- g) The HCA will charge the GLA based upon the proportion of the annual fee agreed between the HCA and their appointed Post sales Agent equivalent to the proportion of London properties within the agent’s management at the start of the financial year. The HCA will invoice GLA this fee each October
- h) The HCA shall at all times afford the member of staff designated from time to time as the GLA’s Monitoring Officer all reasonable co-operation and access to documents and facilities as may be required from time to time in respect of that person’s duties as Monitoring Officer under section 5(2) of the Local Government and Housing Act 1989 (as substituted by section 73(6) of the GLA Act).

Signed

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Boris Johnson
Mayor of London

Date

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