



THE
Alliance House
Tel: 02

Taban from MACF0000091.
Loans Policy.

12 February 2007

To: The NSSC

Cc Chairman Elect

Hon. Treasurer

Support Services Manager

Finance Manager

I refer to my e-mail dated the 12 February where the proposed loans policy was circulated.

I attach the hard copy and the appendices.

The matter will feature on the committee agenda for March.

MARTIN HARVEY

Chief Executive

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PROPOSED LOANS POLICY

1.0 Introduction

1.1 The committee will recall that at the January meeting, a paper prepared by the Hon. Treasure and Chief Executive was circulated outlining proposals for three modes of loan arrangement to the registrant community.

1.2 The original paper contained a number of legal advices in respect of each arrangement and members will recall that the Chief Executive had some difficulty in explaining that at a meeting he had attended the day before the trustee's committee meeting, it seemed that much of the legal advice offered now no longer applied.

1.3 The Trust still requires a formal policy on loan arrangements.

1.4 This paper reflects the revised legal advice and includes both the formal conclusion and the executive summary from Berwin Leighton Paisner.

2.0 The Consumer Credit Act 1974

2.1 In respect of loans, this will no longer apply to the registrant and infected partner cohort as they can be identified as a "class" where the loan arrangement is specific to them and not the general public (See Executive Summary 4.3)

2.2 The Trust may need a CCA licence for other areas of activity.

2.3 The supporting paperwork for each loan arrangement will have to be constructed in such a way that relates to the class exemption.

2.4 If interest is to be applied, there are restrictions in that application (See Memorandum of Loan Agreements 2a(11)).

2.5 To ensure that the loan agreement remains an exempt arrangement, apart from the imposition of a rate of repayment interest as defined, no other charges can be levied and these include solicitor's fees, mortgage fees etc. If they are "attached" to the sum advances and "rolled up" into the amount repayable, they will no longer be exempt and, therefore, unenforceable unless executed as a regulated agreement.

2.6. It is also clear that the exempt capital arrangement (properly constructed) is defined as exempt from the time the capital arrangement is entered into. There is clearly a possible difficulty where a second mortgage arrangement is entered into and the registrant and spouse are co-signatories where the "partner" is exempt during the lifetime of the registrant and, possibly, non-exempt at the time of death of the registrant.

2.7 There is some (legal) doubt about extending the "class" to non-infected widows being included within the "infected" class. The advice clearly states that the question as of non-infected widows being treated as a class in their own right is open. From a pragmatic point of view, which the Trust may well take, it would seem that they could be reasonably defined as a class (a group of persons having some characteristic in

common) through their civil partnership, cohabitation or marital relationship with the registrant community. The likelihood of that view being challenged by the borrower would be negligible.

3.0 The Supporting Documentation for each Loan

3.1 As the advice makes clear, it is necessary to ensure that the documentation for each loan is constructed so as to avoid the CCA and FSA regulatory regimes.

3.2 The Chief Executive has asked Berwin Leighton Paisner to construct a template to reflect the three modes of loan arrangement mentioned in the first paper and the range of connected documentation that would be required (eg: annual statements of account, declarations of non-connection etc).

3.3 As this is an administrative matter, it is felt that this falls outside the scope of the paper in that it seeks to establish a policy framework and it would be reasonable to assume that the final documentation will be in proper form.

4.0 The Trust as Guarantor

4.1 It has been established that the Trust can, if necessary, act as guarantor for a registrant that takes out a market loan from a commercial lender.

4.2 It would be a matter for trustees to determine the conditions that would have to apply should the Trust be asked to act in this capacity.

5.0 The Macfarlane Trust Proposed Loans Policy

5.1 That the Trust takes a view for the purposes of the CCA 1974 that non-infected widows are a "class" in their own right. There is no point of reference as what defines a "class" it is a matter for the lender to take a view and define the class they reasonably believe exists.

6.0 Short Term Loans

6.1 That the short-term loans as originally presented should remain:-

6.2 All loans under this category would fall repayable in two years of the loan commencement date. They would be interest free and would be recovered from regular payments.

6.3 The maximum loan would be 50% of the annual value of the regular payments the registrant or infected partner or infected widow might receive over the two year period.

6.4 Only where a non-infected widow receives regular payments or is in appropriate employment would a short-term loan be made, the maximum being 50% of the value of the regular payments payable over two years or where regular payments are not payable, the value of up to 50% of the value of two years regular payments a registrant might have expected to receive.

7.0 Medium Term Loans

7.1 That this mode of loan and value be available but at the discretion of trustees as to any term (and subsequent loan repayments) of more than two years but a maximum of 10 years, the payment of any interest (subject to the limitations that enable the loan to be exempted from CCA regulation) would be at the discretion of trustees.

7.2 The rate of repayment interest, within the limitations that enable such arrangement to be exempted from CCA regulation, would be applied uniformly in all cases.

8.0 Capital Loans on Property

8.1 That only a second mortgage is available to comply with the exemption requirements.

8.2 The loans would fall within the range of £10,001.00 to £25,000.00 maximum. Where the request for a loan is in excess of £25,000.00, the matter would be referred to the full board of trustees for determination.

8.3 The loan would be secured by a legal charge on the property and would be repayable upon the death of a beneficiary from his or her estate or upon an earlier sale of the charged property.

8.4 That each loan would attract compound interest within the restrictions that enable such arrangements to be exempt from CCA regulation.

8.5 That to comply with the CCA regulation exemption, any form of associated fees or charges will not be attached to the capital sum made available. That where an application for such assistance was received, this could be made available by way of grant and the office guidelines be amended accordingly and at the same time as the loans policy is agreed and published in the guidelines.

9.0 The Trust as Guarantor

9.1 The Trust has the power to guarantee loans to registrants.

9.2 This may be an option if the Trust is able to secure an affinity arrangement with a market lender at favourable terms to reflect the class of the borrower.

9.3 Clearly, any arrangement would be subject to scrutiny by trustees, probably the full board.

10.0 Default Provision

10.1 Default will occur in respect of the short and medium term loans made available. It is likely that default will occur, in the main, through death

10.2 In light of the difficulties that would present themselves in the pursuit of any repayment following default (whatever the reason) it is proposed that the loan balance

would be converted to a grant and effectively “written off”. This provision would not be published to likely borrowers.

11.0 Recommendations

11.1 The Hon. Treasurer and Chief Executive have sought to prepare a policy on the availability of loans that is transparent and easily understood by the borrower. The proposed policy embraces three loan modes; with the benefit of revised legal advice given, they are:-

11.2 Short Term Loans that are repayable within two years from monthly reductions in regular payments. They are made interest free are fixed at a level that is no more than 50% of the annual value of the regular payments that the beneficiary can expect to receive. They would only be made available to those beneficiaries receiving regular payments.

11.3 Medium Term Loans that are repayable over a period from 2 to 10 years less one day and would be subject to trustee’s discretion in respect of amount and term. Such loans should in all likelihood not exceed £10,000.00 unless properly secured.

11.4 Capital Loans that would be secured by a second charge and would be capped at £25,000.00 with a minimum advance of £10,001.00. They would attract interest as described and in line with the CCA exemption provisions. The loans would not be transferable. Where an advance in excess of £25,000.00 was sought, that would be a matter for the trustees to determine.

12.0 Conclusion

12.1 This policy seeks to introduce a range of loans that can meet most circumstances and have a reasonable opportunity of recovery that can satisfy the auditor in respect of a sensible lending criterion. It is accepted that recovery for short and medium term loans may well be at risk and a pragmatic solution has been advanced but should not be made widely known.

12.2 That the Trust should publish the menu of loans that it is prepared to consider and clearly make known the terms and conditions of each loan and the requirements to ensure they are exempt from CCA and FSA regulation.

12.3 That for the reasons given, the ESA arrangement should be abandoned. Equally, the notion that the Trust might purchase outright a property where a widow might be in mortgage difficulty should also be abandoned because of the administrative, legal and fiscal complications that might well arise.

12.4 The Hon. Treasurer and Chief Executive commend the policy proposals contained herein for adoption.

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Appendices

- 1) Advice to the Trustees in connection with the Trust’s Proposed Loans Policy
- 2) Executive Summary – The Trust’s Loans Policy
- 3) Memorandum of Loan Agreements