

APPENDIX 1

CARE AND SUPPORT DEFERRED PAYMENT SCHEME POLICY

Updated February 2015

London Borough of Barking and Dagenham Universal Deferred Payments

1.0 Introduction

- 1.1 The introduction of the Universal Deferred Payment Scheme means individuals entering a permanent care home setting will not be required to sell their home in their lifetime to pay for their care and support costs. The deferral of the costs represents a loan against the property.

2.0 Legislative Context

- 2.1 The Care Act 2014 introduces a universal deferred payment scheme which comes into force April 2015. This means an individual entering a care home setting will not be required to sell their home in their lifetime to pay for their care and support costs. Individuals can defer the care costs against their property; this being regarded as a loan against the property.

<http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

- 2.2 The local authority must follow the Care and Support (Deferred Payments) Regulations 2014 that sets out the legal framework and details the local authorities' responsibilities and have regard of the Care and Support Statutory Guidance 2014.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315215/draft_regs.pdf

- 2.3 The arrangements of the deferred payment agreement (DPA) can be retained until the termination of the such as the sale of the property whilst the person is still in the care home (the deferred payment providing a bridging loan) or until death of the person in the care home, with the amount becoming repayable from their estate.

3.0 Universal Deferred Payments

The Care Act 2014 (Sections 34 and 35) requires all local authorities to have in place a deferred payment scheme that can be offered to individuals entering a care home setting. The Care Act 2014:

- Requires Councils to apply the national eligibility criteria on entitlement to a deferred payment agreement;
- Allows Councils to charge interest and administrative fees;

- Requires both the individual and the Council to enter into a legal agreement, which will be legally enforceable;
- Provides Council's with some discretion regarding the offering of and the amounts that can be deferred against the property.

4.0 Barking and Dagenham's Deferred Payment Scheme

Barking and Dagenham's Deferred Payment Scheme will be consistent with relevant legislation and guidance, applying discretion where the Care Act 2014 allows such discretion to be applied.

The principles underpinning the scheme are:

- Those who can afford to pay a contribution towards their care should do so;
- Those who are eligible for the scheme and do not wish to sell their home are not forced to do so to fund the care home costs;
- Residents and family members are fully informed of the deferred payments scheme and the eligibility criteria to help them both plan for now and their future care and support needs;
- Ensure that the Deferred Payment Scheme is self-financing and sustainable both to the individual and the Council;

5.0 Information and Advice

The local authority must provide information and advice to persons entering a care home and their family regarding the option to enter into a deferred payment agreement. The information is to include:

- The eligibility criteria to be offered a deferred payment agreement;
- That interest will be payable from the start date of the deferred payment agreement;
- That that administration costs will be charged;
- The person or their legal representative entering the deferred agreement has the right to seek independent financial advice.

A deferred payment agreement should **not** be entered into unless the person or their legal representative has been provided with or sought information and advice regarding the Deferred Payment Scheme.

6.0 Mental Capacity

6.1 A person must have capacity to enter into a DPA.

Where the service user has capacity they can give consent for someone else to represent them or to advocate on their behalf. The Council will need to see written proof that the consent has been given. However, it will be the person in the care home who signs the deferred payment agreement.

6.1 Where a mental capacity assessment has been undertaken and concluded that the Service User lacks capacity:

- The person who enters the deferred payments agreement must be legally appointed to manage their financial affairs, for example a Deputy with appropriate Lasting Power of Attorney (proof is required)
- Where there is no legal representative a referral should be made to the Client Affairs Team for the relevant approach to be made to the Court of Protection to appoint a Deputy.

7.0 What care and support is covered by the scheme

The Deferred Payments Scheme will be offered to those who meet the eligibility criteria and require “care and support” needs, which will be met by a permanent placement in residential or nursing care or in supported accommodation (subject to specific criteria).

The deferred payments scheme cannot be offered to those persons whose stay in a residential and nursing home is either for respite or is of a temporary nature.

7.1 12 week disregard property disregard

To provide the person entering the care home and their family members the opportunity to consider the options available to them, the Council must disregard the person’s main home where they have assets less than the upper capital limit (excluding their main home) for the first 12 weeks in circumstances where:

- The person enters a care home for the first time; or

- The person has unexpectedly lost an alternative property disregard (e.g. The spouse or other qualifying relative has died or is no longer resident in the home)

7.2 This 12 week property disregard period is to be used to put in place all the arrangements to set up the deferred payment agreement.

8.0 Eligibility Criteria for to enter the Deferred Payment Scheme

8.1 All Councils must apply the national eligibility criteria. A deferred payment scheme is to be offered to a person who can provide adequate security for the debt and meets the following criteria:

- That the individual has eligible care and support needs that the Council determines will be met through a permanent care home placement;
- The individual has less than £23,250 in capital.
- The home does not meet one of the qualifying disregard criteria i.e. spouse or dependent is still resident in the property
- The person entering into the agreement has the capacity to do so.

8.2 Applying discretion to the eligibility criteria (Discretionary Scheme)

The Care Act allows the Council to exercise its discretion to offer a deferred agreement where the person may not meet all of the eligibility criteria and where a deferred agreement is the most sensible approach in all the circumstances, this can include:

- Where the person may be required to meet their costs through alternative assets but the use of their assets may leave them with no or little accessible assets;
- Consideration as to whether the person has any other accessible financial means to meet the costs of the care and support;
- The person's capital may narrowly exceed the upper capital limit of £23,250 however they are likely to reach below the threshold in a short period of time.

8.3 Permission to refuse entry into the Deferred Payment Scheme

The Council can refuse to offer a deferred payment agreement where the individual may meet the eligibility criteria however;

- The Council is unable to secure a first charge against the property;

- The person is seeking to place a top-up against the deferred charge; this is not an automatic refusal but should be guided by considerations of affordability, sustainability and availability of equity.
- The person does not agree with or is unable to adhere to the terms and conditions of the deferred payment agreement.

9.0 How much can be deferred:

9.1 The level of debt that can be deferred is determined by:

- The amount of equity the individual has available in the property to be used as security;
- The amount the person is contributing from their care costs from other sources such as third parties, or their savings.
- The total care costs including any top-ups that have been agreed as part of the care costs.

9.2 The actual amount deferred should be the individual's residential/ nursing costs including a top-up where applicable **less** any financially assessed contribution.

9.3 The person entering into the agreement is allowed to retain up to £144.00 of their net disposable income allowance. The increase of the personal expenditure allowance (PEA) to £144 per week takes into account that the person will have to maintain the property i.e. insurance costs, general maintenance and utility bills.

9.4 The person can retain less than the £144 per week and increase the contribution towards their care costs; thus reducing the deferred charge against the property.

9.5 On termination of the deferred payment agreement, if the person is still in the care home their personal expenditure allowance will reduce to the normal figure as prescribed by guidance.

10.0 Renting the Property

In some circumstances the person may wish to rent out their home during the course of their deferred payment agreement.

11.0 Obtaining Security

11.1 To enter into a deferred agreement with a person there must be adequate security to cover the costs of "care and support". Where the local authority is able to secure

a first legal charge against the property at the Land Registry; this should always be considered as adequate security.

Where there are co-owners or those with a beneficial interest in the property the Council must seek consent and agreement from all parties before the charge can be placed on the property.

- 11.2 The Council will place aim to obtain a first charge against the property. In some circumstances the Council may not be able to obtain a first charge (a mortgage may be outstanding), however the Council can still enter into a deferred payment agreement where it can assure itself there is sufficient value in the property to meet the care costs.
- 11.3 There may be occasions where the property search discloses the property is not registered with Land Registry. The Council is unable to enter into a deferred payment agreement at that time; the property will need to be registered. The Council can ask the person or their legal representative to register the property.

12.0 Determining Equity Limits

- 12.1 The Act introduces an 'equity limit' as to the maximum amount that can be charged against a property. In 2015/16 guidance and regulations sets the equity limit at the value of the property minus 10% minus a further £14,250.
- 12.2 The value of the property is the value of the person's share entering the care home less any outstanding loans/ mortgage on the property.
- 12.3 Local authorities **cannot** accrue further care costs where the person has reached their equity limit. Only interest and administrative fees can still be accrued until the debt is paid in full.

13.0 Property Valuations

- 13.1 To ensure that the Council's equity limits are robust, Councils will be required to obtain a property valuation. There are various methods that can be adopted such as:
- Local knowledge and newspapers
 - Person/ family or legal representative obtaining a valuation;
 - Internet sites,
 - In-house Valuers or Estate Agents
 - Land registry information

It is expected that all of the above methods are adopted at different times however it is proposed that in the first instance the Council uses property websites and local newspapers where recent valuations of the property or properties in the area provides a reasonable indicator of the property value.

13.2. This approach does not remove the individual's right to seek an independent valuation where it is felt the proposed valuation does not reflect the market value of the property. Please note that this will not be funded by the Council.

13.3 Where the person entering the deferred payment agreement and Council disagree with each other's proposed property valuation, in that circumstance a valuation will be applied that has been met with mutual agreement by both parties.

14.0 Applying Interest Rates and Administration Fees

14.1 Interest Rates

The maximum interest rate that can be charged will be fixed by Government.

Where the local authority decides to apply interest charges to those entering the deferred payment scheme:

- Compound interest will be charged.
- interest will apply from the date upon which the individual enters into the Deferred Payment Scheme;
- The interest rate charged can be less but not more than the nationally set-maximum rate.
- The interest rate will change on the 1st of January and 1st July every year. Compound interest will be in line with these interest rate changes.

14.2 Administration Fees

The Care Act 2014 allows the Council to recoup its administration costs for arranging any on-going expenses associated with managing the deferred payment agreement. The administration costs and any subsequent expenses must not be more than the actual costs incurred by the local authority.

A set-up administrative fee will be charged which the person can pay before the start of the deferred payment agreement or this can be added to the accrued debt. The fee includes the costs of registering a charge with the Land Registry, staff, management and legal costs.

In April 2015 the initial setup fee will be £500; this fee will be subject to annual review. Prices will be made publicly available.

The Council can also charge for additional costs incurred during or at the end of agreement including costs associated with the revaluation of the property, costs of providing statements, removing legal charges and other costs associated with the deferred payment agreement. These will be charged at actual costs as they incur.

15.0 Effective Date of Deferred Payment Agreement:

The deferred payment agreement will take effect once:

- The applicant or their legally appointed representative has signed the deferred payment agreement.
- The co-owner or other person with a beneficial interest has agreed to, and has signed the deferred payment agreement.
- Confirmation that the Council can secure adequate security against the property to cover the care costs.

The person entering into the deferred payment agreement has agreed to adhere to the terms and conditions of the agreement signed which includes:

- maintenance of the property to an acceptable standard;
- The property is adequately insured;
- Any outgoings associated with the property (e.g. Council Tax, insurance, utility bills) are paid in a timely fashion;
- That they understand their obligation to seek permission or notify the Council of any changes which will may result in a breach/ change or termination of the deferred payment agreement.

16.0 Terms and Conditions of the Deferred Payment Agreement

The Care and Support Guidance 2014 sets out the terms and conditions that are to be included within the agreements. Barking and Dagenham will be using the guidance to define the terms and conditions of the deferred payment agreement.

17.0 Contractual Responsibilities

Most if not all of the contractual responsibilities of the person will or should be specified within the terms and conditions of the deferred payment agreement. However the Council has contractual responsibilities whilst the agreement is in place which includes:

- Ensuring the individual or their financial representative receives timely written updates/ statements which must include the amount deferred including interest and administration charges and the available level of equity still available. It is intended the Council will send these statements quarterly;
- Undertaking systematic review of the property value once the deferred amount exceeds 50% of the security;
- Ensuring no further care costs are deferred against the property where the person has reached the equity limit or circumstances arise where it is no longer appropriate to continue to defer care costs against the property.

18.0 Termination of the Deferred Payment Agreement

18.1 A deferred payment agreement can be terminated by:

- The person whilst still in the care home on the person acting on their behalf after their death repays the loan in full through alternative means other than the sale of the property;
- The property (or form of security) is sold and the debt repaid;
- When the person dies and amount repaid of the local authority from their estate.

18.2 Other circumstances may arise where the Council may refuse to or cannot defer any further care costs against the property. These circumstances are set out below:

- Where the person total assets falls below the level of the means test and they become eligible for local authority financial support;
- The individual no longer requires care and support in a care home setting or supported accommodation;
- There has been a breach in contract and any attempts to resolve the breach have been unsuccessful;
- The property becomes disregarded for any reason e.g. the dependent in the home now means the property is to be disregarded.

In all the situations above the Council cannot demand payment; they are subject to the terms of the termination as set out in the contract.

- 18.3 In all cases parties must be given appropriate notice period that there is an intention to terminate the deferred payment agreement:

On intention to sell the property the person or their legal representative must provide the Council with 30 days written notice that this is to happen. The Council will be required to remove the legal charge from the property for the sale to proceed. In these circumstances the Council should request that the person provides a written undertaking from the person's solicitor that they will discharge the debt.

Where it is intended the Council will be terminating the deferred payment agreement, a minimum of 30 days advance written notice is to be provided to the person who has entered the deferred payment agreement setting out the reasons for the termination and an indication of how their future care costs will be met (if applicable)

19.0 Change in financial circumstances

The person or their legal representative must notify the Council in a change of their financial circumstances which may change the amount that can continue to be deferred against the property. This can include:

- Receipt of a new benefit or changes/increases to benefits.
- Changes/increases to income or expenditure
- If the Service User's capital or savings crosses one of the capital thresholds
- Changes to living arrangements (e.g. their partner moves to a care home)

20.0 Appeals and Complaints

Local Authority Social Services and NHS Complaints Regulations 2009, made under powers in Sections 113 to 115 of the Health and Social Care (Community Health and Standards Act) 2003.

If a Service User is dissatisfied with the way in which they have been treated during the financial assessment process, or the service that they have received, they

have the right to make a complaint to the Complaints Officer. The Council has a statutory complaints procedure to ensure that Service User's views and concerns are considered, dealt with and appropriately investigated.

If the decision is turned down and the service user is still not happy with the decision, the Local Government Ombudsman can be contacted.

21.0 Debt Recovery

If the service user does not pay the charges in full or in part and the debt remains unpaid, the Council has the right to seek collection of the debt under Section 69 (2) of the Care Act 2014.

Where the person dies the debt will become payable 90 days after death. If the Council has concluded that the necessary steps are not being taken to progress the sale of the property and the Council has taken steps to resolve the situation, the Council will commence legal proceedings. This may incur additional costs to the person who has entered the deferred payment agreement.

Section 70 of the Care Act also provides the local authority with the power to recover charges from a third party in circumstances where a person has deprived themselves of assets in order to reduce the care cost contribution payable.

22.0 Use of Financial Information and Privacy

Information will be collected to enable the set up of the deferred payment agreement. In accordance with the Data Protection Act 1998, this information will only be shared with other relevant agencies in accordance with the data protection principles/exemptions or with the written consent of the service users or their legal representative/advocate.

23.0 Policy Review

This policy will be reviewed in March 2016 and at least annually thereafter. This policy may also be subject to review at other times in response to case law, statutory amendment and Guidance from the Department of Health or other statutory organisations.

24.0 Further information

Further information can be obtained in relation to this scheme and other services offered by the authority on Barking and Dagenham's website.