

CABINET

16 February 2015

Title: Care and Support Deferred Payments Scheme	
Report of the Cabinet Member for Adult Social Care and Health	
Open	For Decision
Wards Affected: All	Key Decision: Yes
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Accountable Divisional Director: Glynis Rogers, Divisional Director of Community Safety and Public Protection	
Accountable Director: Anne Bristow, Corporate Director of Adult and Community Services	
Summary The Care Act 2014 brings in a right for a person in a care home who owns a property and has less than £23,250 in capital/savings (excluding the value of the property), to defer some or all of their care costs by having a charge placed on the property. This is intended to avoid the situation where individuals have felt forced to sell their homes to meet their care costs. These rules will change again in April 2016. The reports summarises the key changes introduced by the Care Act 2014 and sets out the proposed Care and Support Deferred Payment Scheme for the borough.	
Recommendation(s) The Cabinet is recommended to: (i) note the introduction of national eligibility criteria for Deferred Payment Schemes to be introduced by all Councils; (ii) agree the Care and Support Deferred Payment Scheme policy as set out in Appendix 1; (iii) agree the Council applies the nationally-set maximum interest rate; (iv) agree the Council applies one-off set up administration fee of £500 and subsequent administration charges as incurred; (v) agree the use of online property sites and local newspapers, in the first instance, for determining whether there is sufficient equity to be eligible for the scheme.	

Reason(s)

There is a legal requirement for the Council to implement the Care Act 2014. Sections 34 and 35 set out the requirement of the Council to offer a Deferred Payment Scheme.

1. Introduction and Background

- 1.1 The Council has run a Deferred Payment Scheme since 2003. The Care Act introduces a universal deferred payment scheme which comes into force in April 2015. This means a person entering a care home setting will not be required to sell their home in their lifetime to pay for their care and support costs. The individual can defer the care costs against their property; this representing a loan against the property.
- 1.2 From April 2015 the Act requires all local authorities to offer a deferred payment to a local resident entering a care home setting who meets the national eligibility criteria. The scheme being introduced is broadly similar to the Council's existing scheme except the Care Act 2014 allows the local authority to operate the scheme in such a way as to recoup its costs.
- 1.3 The report sets out the requirements of the Care Act 2014 in line with the Care and Support (Deferred Payments) Regulations 2014 and Care and Support Statutory Guidance 2014 and proposes how this will be implemented in Barking and Dagenham.

2. Proposal and Issues

- 2.1 The Council currently has a Deferred Payment Scheme under Section 55 of the Health and Social Care Act 2001. The current scheme allows an individual to defer their permanent care home setting costs against the property on the understanding that the Council will place a legal charge against their main home as security.
- 2.2 The Care Act 2014 (Sections 34 and 35) requires all Councils to put in place a deferred payment scheme which applies the national eligibility criteria or such schemes. The Care and Support (Deferred Payments) Regulation 2014 details how the deferred payment scheme is to be administered.

2.3 Service User Journey

The detail regarding Deferred Payment Scheme is in the body of the report however a summary of entering into the deferred payment agreement (DPA) is shown below:

- it is agreed the person's eligible care and support needs will be met through a placement in a care home;
- they own their own home and are offered information and advice on the Deferred Payments Scheme;
- the individual/ representative expresses an interest in the Deferred Payment Scheme;
- the person meets the deferred payments eligibility criteria;
- the equity limit in the property is agreed;
- the person enters into the deferred payment agreement;

- a legal charge is placed on the property;
- administration fees are charged for the set-up of the deferred payment agreement;
- interest charges are applied from the start of the deferred payment agreement and continues until the debt is recovered;
- the debt accrues against the property; quarterly statements are sent;
- the care and support in the care home is no longer required; the debt is paid to the Council.

2.4 **The provision of information and advice**

The local authority must provide information and advice to a person 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;
- advice that interest will be payable from the start date of the deferred payment agreement;
- advice that administration costs will be charged;
- advice that the person or their legal representative entering the deferred payment agreement has the right to seek independent financial advice.

2.5 A deferred payment agreement is to be offered where the person meets the following eligibility 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 meets the 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.

The Council in offering a deferred payment scheme has to ensure:

- that the offer of a deferred payment agreement is sustainable both to the individual and Council;
- the Council can enter a legal agreement which allows the local authority to place a 'legal charge' on the property to safeguard the loan;
- the Council can obtain adequate security against the property; and
- the person entering the deferred payment agreement has the capacity to do so.

2.6 **Permission to refuse to offer a deferred payment agreement**

The Act provides the Council with the permission to refuse to offer a deferred payment agreement although the person may meet the national eligibility criteria. This can include:

- the Council being unable to obtain a first legal charge against the property;
- the person entering the deferred payment agreement does not agree with or is unable to adhere to the terms and conditions set out in the deferred payment agreement e.g. unable to obtain the right level of property insurance

- the person in the care home lacks capacity and there is no legally appointed representative to make the decision.

2.7 Discretionary deferred payment scheme

The Care Act 2014 allows the Council to exercise its discretion where the person may not meet the national eligibility criteria but offering a deferred payment would act in the interest of the person and the Council. This can include:

- the person entering a care home narrowly exceeds the upper capital limit however they are likely to reach below the threshold in a short period of time;
- where the person is required to meet their costs through other assets but the use of these assets may leave them with little or no accessible assets;
- the person's care and support will be provided in supported living and they wish to retain their main home and pay the associated care and accommodation costs from their deferred payment.

The proposal is the Council exercises its discretion to offer a discretionary deferred payment agreement where this will be in the interest of the person and enable the Council to meet its statutory duties.

2.8 Entering the Deferred Payment Scheme

To agree a deferred payment agreement with the person in the care home or their legal representative the Council has to ensure:

- all parties with a beneficial interest in the property have agreed to the legal charge to be placed against the property;
- the Council can obtain a first legal charge on the property or if there are other legal charges there is adequate security to safeguard the Council's interest.

2.9 Interest and Administration Charges

The new universal deferred payment scheme is intended to be cost-neutral to local authorities. The Care Act 2014 allows Councils to charge interest against the loan and administration fees for the setup and management of the DPA.

Interest Rates - The maximum interest rate that can be charged will be fixed by the 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. The proposal is the Council applies the nationally set maximum interest rate.

Administration Fees - The Care Act 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 it is proposed the initial setup fee is £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.

2.10 Equity limit

The Act introduces an 'equity limit' as to the maximum amount that can be charged against a property. The Council can only offer a deferred payment agreement where there is sufficient equity in the property. The regulations and guidance prescribe how this needs to be calculated.

At the point the debt reaches the equity limit, the deferred payment agreement is terminated.

2.11 Property Valuations

To ensure that the Council's equity limit is 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 depending 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.

This approach will minimise administration costs of the scheme benefiting both the Council and the individual.

3. Options Appraisal

- 3.1 The Council must introduce a Deferred Payment Scheme, there are limited opportunities to exercise legal choice and these options are in the report and summarised in this section. Members are asked to consider which options they may wish to exercise.

- 3.2 To consider recouping some administrative costs by charging a set up fee. It is recommended that Cabinet introduce the set-up fee charge.
- 3.3 Whether or not to charge the maximum interest rate set by Government or set a lower rate. It is recommended that Cabinet applies the maximum interest rate.

4. Consultation

- 4.1 The Deferred Payment Scheme has formed part of the wider Department of Health consultation on The Care Act 2014.

5. Financial Implications

Implications completed by: Roger Hampson, Finance Group Manager

- 5.1 The Department of Health New Burdens Grant included £231k for the implementation of Deferred Payment Scheme for Barking and Dagenham. The Deferred Payments element of the grant is for non collectable deferred payments, system development for information and advice and financial assessments, and legal support.
- 5.2 Detailed recommendations on this grant and other grants available to fund Care Act implementation costs in 2015/16 will be presented to the Health and Wellbeing Board for decision at its March meeting.

6. Legal Implications

Implications completed by: Dawn Pelle, Adults Legal Advisor

- 6.1 The Legal Implications of the Deferred Payments Scheme has been fully set out in the report and accords fully with the provisions in the Care Act 2014. This is a complex area as it affects not only finances but also ordinary residence. The entire tenet of the scheme relies on consent. Officers must be alert to any efforts to frustrate the offering of the scheme, for example from relatives reluctant to lose an inheritance.

7. Other Implications

- 7.1 **Risk Management** – The Universal Payment Deferred Scheme aims to minimise the risk to the Council in meeting the care and support needs of those in a care setting with the means to pay for their care and support. By ensuring that the Council can secure the first legal charge or a charge against the property which secures the care costs, the costs to the Council are significantly minimised.
- 7.2 **Corporate Policy and Customer Impact**- The customer impact for those eligible for the deferred payments scheme is set out in this report. The Council must introduce the scheme to comply with the Care Act. Consideration has been given to equality implications of implementation and no obvious impacts for any of the equality groups have been identified. As set out in the policy, the Council will provide information and advice to those entering care homes and ensure those entering an agreement have the mental capacity to understand the implications.

Public Background Papers Used in the Preparation of the Report:

- <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>
- https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315215/draft_regs.pdf
- http://www.local.gov.uk/web/guest/care-support-reform/-/journal_content/56/10180/6522542/ARTICLE

List of appendices:

- **Appendix 1** – Draft Care and Support Deferred Payment Scheme Policy (February 2015)