

London Borough of Brent Deferred Payment Policy (Draft)

1. Purpose

- 1.1 The purpose of this policy is to set out the framework for the Council's Deferred Payment Scheme from April 2015. This framework takes into account the main changes introduced by the Care Act 2014 ("the Care Act").

2. Background and policy summary

- 2.1 Sections 34 and 35 of the Care Act introduce a Universal Deferred Payment Scheme, which comes into force from 1st April 2015. From April 2015 service users entering a care home setting will not be required to sell their home in their lifetime to pay for their care and support costs as long as they qualify for a Deferred Payment Agreement.
- 2.2 A deferred payment agreement is a consensual agreement between a service user and the Council that enables the service user to defer payment of their assessed residential charge that relates to the value of their property.
- 2.3 The Care and Support (Deferred Payments) Regulations 2014 ("the Regulations") set out the legal framework and detail local authorities' responsibilities having regard to the Care and Support Statutory Guidance 2014 ("the Guidance") which the Council must follow.
- 2.4 The Regulations require the Council to offer deferred payment agreements to service users meeting the eligibility criteria outlined in paragraph 11 for a deferred payment. There is some local discretion on how the scheme will be implemented.
- 2.5 The Care Act and Regulations also allow the deferred payment scheme to be offered to service users who have incurred a debt in relation to their care fees but this only open to those who would otherwise qualify under the scheme.
- 2.6 For further information about the Care Act and deferred payment agreements please refer to:

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

3. Timescales

- 3.1 This policy will apply from 1st April 2015 onwards. It will be subject to review periodically to reflect any changes in legislation or Council practice.

4. Aims, objectives and outcomes

- 4.1 The main aim of the deferred payment scheme is to ensure that service users have a viable alternative to selling their properties to fund their care needs. This promotes greater choice for individuals when assessing how to address their care needs and extends their level of independence for as long as possible.
- 4.2 The deferred payment scheme ensures that the any care home fees deferred by the Council are secured and that reimbursement will occur at the appropriate time. It also promotes fairness in that service users that have their capital invested in property are treated equitably with those that have savings in cash or other investments.

5. Universal Deferred Payment Scheme

- 5.1 The Care Act (sections 34 and 35) requires all local authorities to have in place a deferred payment scheme that can be offered to service users entering a care home setting which:
 - (a) Requires Councils to apply the national eligibility criteria on entitlement to a deferred payment agreement;
 - (b) Allows Councils to charge interest and administrative fees;
 - (c) Requires both the service user and the Council to enter into a legal agreement; and
 - (d) Provides Council's with some discretion regarding the offering of and the amounts that can be deferred against the property.

6. London Borough of Brent's Deferred Payment Scheme

- 6.1 The London Borough of Brent'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:
 - (a) 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;
 - (b) 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;

- (c) Ensure that the deferred payment scheme is self-financing and sustainable both to the service user and the Council.

7. Information and Advice

- 7.1 The Council 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:
 - (a) The eligibility criteria to be offered a deferred payment agreement;
 - (b) That interest will be payable from the start date of the deferred payment agreement;
 - (c) That administration costs will be charged; and
 - (d) The person or their legal representative entering the deferred agreement has the right and is encouraged to seek independent financial advice.
- 7.2 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.

8. Mental Capacity

- 8.1 A person must have capacity to enter into a deferred payment agreement. 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.
- 8.2 Where a mental capacity assessment has been undertaken and concluded that the Service User lacks capacity:
 - (a) 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).
 - (b) 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.

9. What care and support is covered by the scheme

- 9.1 The Deferred Payments Scheme will be offered to those who meet the eligibility criteria and require “care and support” needs, which

could be met by a permanent placement in residential or nursing care or in supported accommodation (subject to specific criteria).

9.2 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.

9.3 Brent will not be offering Deferred Payments for non-residential care except in situations where the Council has indicated that it can properly and most cost effectively meet a service user's needs in a residential/nursing provision, but the service user indicates that they wish to remain in their home, where there is deemed to be sufficient equity in the property. In so far as it is legally allowable, medically and socially possible and financially sustainable, the Council will consider granting such service users a deferred payment agreement on a strictly discretionary, case by case basis..

10. Twelve Week property disregard

10.1 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:

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

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

11. Eligibility Criteria for to enter the Deferred Payment Scheme

11.1 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:

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

11.2 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:

- (a) 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;
- (b) Consideration as to whether the person has any other accessible financial means to meet the costs of the care and support;
- (c) 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.

11.3 Permission to refuse entry into the Deferred Payment Scheme:

The Council can refuse to offer a deferred payment agreement even if the individual meets the eligibility criteria where:

- (a) The Council is unable to secure a first charge against the property;
- (b) 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);
- (c) The person and/or any co-owners do not agree with or are unable to adhere to the terms and conditions of the deferred payment agreement.

12. How much can be deferred:

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

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

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

12.3 The person entering into the agreement is allowed to retain up to £144 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.

12.4 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.

12.5 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.

13. Renting the Property

13.1 Best practice would be for the Council to encourage service users to rent their property (though ultimately any decision on rental must be their own). The Council Social Service Department will be working with the Housing Department to offer service users the opportunity to rent their property out.

13.2 Where a service user or their legal representative is interested in renting the property out, with their permission then the details of the service user and the property address will be sent to the Housing Department who will work to identify a tenant for the property in accordance with the allocations policy.

13.3 Where a service user or their legal representative has arranged to rent the property privately, the Council shall request a copy of the tenancy agreement. Good practice would suggest that they should enter a six-month short term assured tenancy.

14. Obtaining Security

14.1 To enter into a deferred agreement with a person there must be adequate security to cover the costs of "care and support". Where the Council is able to secure a first legal charge against the property at the Land Registry; this should always be considered as adequate security.

14.2 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.

14.3 The Council will 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 may at its discretion still enter into a deferred payment agreement providing it is satisfied that there is sufficient value in the property

to meet the care costs and that equity cannot and will not be otherwise diminished.

- 14.4 There may be occasions where the property search discloses that 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.

15. Determining Equity Limits

- 15.1 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.
- 15.2 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.
- 15.3 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.

16. Property Valuations

- 16.1 To ensure that the Council's equity limits are robust, Councils are required to obtain a property valuation. To keep costs down, the Council will use internet based valuation services.
- 16.2 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.
- 16.3 Where the person entering the deferred payment agreement and Council disagree with each other's proposed property valuation, an independent estate agent (the appointment of which must be agreed by both parties) will complete a valuation which must be accepted and the cost borne in equal measure. In the event of a dispute over anything other than actual market value, the District Valuation Service will be instructed, the cost to be borne by the party who is proved to be most incorrect or split where both are significantly incorrect.

17. Applying Interest Rates and Administration Fees

- 17.1 Interest Rates

- 17.1.1 The Care Act also allows the Council to charge interest on the deferred payment amount. Interest rate charges can go up to but not exceed the amount as set by the Government. This maximum rate is fixed for periods of six months, and any changes announced will be effective on 1 January and 1 July as applicable.
- 17.1.2 As the Regulations and Guidance set out, the maximum interest rate for deferred payments is based on the cost of government borrowing – more formally, the 15-year average gilt yield, as set out by the Office for Budget Responsibility twice a year in their Economic and Fiscal Outlook report.
- 17.1.3 The Council will also be applying interest to the deferred fees throughout the duration of the deferred payment agreement. Interest will continue to accrue until the deferred fees (plus administration costs if applicable) and accumulated interest is paid in full.
- 17.1.4 The Council's interest rate shall be 2.25% and will be applicable from the 1 July 2015 and will be reviewed as and when required. Interest will apply from the effective date of the deferred payment agreement.

17.2 Administration Fees

- 17.2.1 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 Council.
- 17.2.2 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.
- 17.2.3 From April 2015 the initial setup fee will be £1120; this fee will be subject to annual review. Prices will be made publicly available.
- 17.2.4 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. In addition to these unquantified charges, the Council will

charge £144 annually to meet the ongoing cost of monitoring the cost of the deferred payment agreement.

18. Effective Date of Deferred Payment Agreement:

18.1 The deferred payment agreement will take effect once:

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

18.2 The person entering into the deferred payment agreement must adhere to the terms and conditions of the agreement signed which include ensuring that:

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

19. Terms and Conditions of the Deferred Payment Agreement

19.1 The Guidance sets out the terms and conditions that are to be included within the Council's deferred payment agreements. The Council will be using the Guidance to define the terms and conditions of the deferred payment agreement.

19.2 The service user entering in to the deferred payment agreement will be required to abide by a number of terms and conditions:

- (a) That the property is maintained in reasonable standard of repair and condition.
- (b) All outgoings associated with the property (e.g. Council tax, service charges and ground rent) are paid.
- (c) The property is fully insured for the full cost of rebuilding. If the property is to be left empty for any period of time, the service user will need to ensure that this is disclosed to the insurance company and that any terms required by the insurer are met.
- (d) That any net rental income derived from letting the property during the period of the deferred payment agreement will be assessed in accordance with the Guidance.

- (e) That the service user receiving care and/or their representative acknowledges that they have received the Council's advice that they should seek independent financial advice before entering into the deferred payment agreement.
- (f) Where the property is jointly owned, the co-owners as well as the service user must agree to the Council's form of charge.
- (g) That the service user or representative notifies the Council of any change in circumstances, which would affect the value of the property or the sustainability of the deferred payment agreement.

20. Contractual Responsibilities

20.1 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 include:

- (a) 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 annually;
- (b) Undertaking systematic review of the property value once the deferred amount exceeds 50% of the security which review must take place no more than every three years;
- (c) 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.

21. Termination of the Deferred Payment Agreement

21.1 A deferred payment agreement can be terminated by:

- (a) The person whilst still in the care home or the person acting on their behalf after their death repays the loan in full through alternative means other than the sale of the property, or;
- (b) The property (or form of security) is sold and the debt repaid, or;
- (c) When the person dies the amount should be repaid to the Council from their estate within 90 days.

21.2 Other circumstances may arise where the Council may refuse to or cannot defer any further care costs against the property:

- (a) Where the person total assets falls below the level of the means test and they become eligible for Council financial support;
- (b) The individual no longer requires care and support in a care home setting or supported accommodation;
- (c) There has been a breach of contract and any attempts to resolve the breach have been unsuccessful;
- (d) The property becomes disregarded for any reason accepted by the Council;
- (e) There was a material misrepresentation when the deferred payment agreement was set up or one arose during its currency.

21.3 In all the situations except (e) in 21.2 above, the Council cannot demand payment which will still be subject to the terms of the termination as set out in the contract.

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

21.4.1 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. Upon being requested to do so, the Council will provide a written undertaking to the seller's solicitors that it will sign and seal the necessary documentation to remove the charge upon confirmed receipt of the full redemption amount into its nominated account.

21.4.2 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).

22. Change in financial circumstances

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

- (a) Receipt of a new benefit or changes/increases to benefits;
- (b) Changes/increases to income or expenditure;
- (c) If the Service User's capital or savings crosses one of the capital thresholds;
- (d) Changes to living arrangements at the property subject to the deferred payment agreement (e.g. their partner moves to a care home).

23. Appeals and Complaints

23.1 Council 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.

23.2 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.

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

24. Debt Recovery

24.1 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.

24.2 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 unsuccessfully written to attempt to resolve the situation, the Council may commence legal proceedings possibly including possession proceedings. This may incur additional costs to the person who has entered the deferred payment agreement.

24.3 Section 70 of the Care Act also provides the Council 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.

25. 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.

26. 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.

27. Further information

Further information can be obtained in relation to this scheme and other services offered by the authority on the London Borough of Brent's website.

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