

Appendix 3

LONDON BOROUGH OF BRENT

DEFERRED PAYMENT AGREEMENT POLICY

1. Background

- 1.1. Under s. 55(1) of the Health and Social Care Act 2001 (“HSCA”) a local authority has a power to enter into a deferred payment agreement with a person who:
- a) is availing themselves of residential accommodation provided by the local authority, or is proposing to do so; and
 - b) is liable, or would be liable, to pay for the accommodation (whether at the full rate standard rate determined in accordance with section 22(2) or 26(2) of the National Assistance Act 1948 or at any lower rate).

Such persons will be referred to in this policy as “service users”.

- 1.2. Such regulations allow local authority’s to agree and operate deferred payments whereby the local authority agrees to defer a service user’s assessed contribution towards the cost of their residential accommodation in return for agreement that the local authority registers a legal charge on the service user’s property in which they have an interest. The aim of the regulation is to allow people with property, but without income and other assets sufficient to meet their full assessed contribution, to have a legal charge placed on their property to meet any shortfall. This enables service users to keep their homes upon admission to residential care for the duration of the deferred payment agreement.
- 1.3. Brent Council has a discretionary power to decide whether, and in what circumstances, to enter into deferred payment agreement with such service users.
- 1.4. This policy was written to provide service users and employees of Brent Council with guidance as to the circumstances the Local Authority will take into consideration when deciding whether to enter into a deferred payment agreement.
- 1.5. This policy has taken into account the Charging for Residential Accommodation Guide (CRAG) issued by the Department of Health, in particular paragraph’s 7.024 and 7.025 of that guide. Also taken into consideration is the Local Authority Circular issued by the Department of Health, numbered LAC (2001) 25.
- 1.6. In accordance with s. 55(2) of HSCA this policy should be read subject to any directions issued by a relevant authority which requires the local authority to enter into a deferred payment agreement.

2. Meaning of Deferred Payment Agreement

- 2.1. A deferred payment agreement is to be given the meaning attributed to it by s. 55(3) of the HSCA, namely an agreement whereby –
- a) during the exempt period the resident will not be required to make payment to the authority of any relevant contributions in respect of periods (or parts of periods) falling within the exempt period, but
 - b) the total amount of the relevant contributions shall become payable to the authority on the day after the date on which the exempt period ends, and
 - c) the resident will grant the authority a charge in their favour in respect of any land specified in the agreement in which he has a beneficial interest (whether legal or equitable) for the purpose of securing the payment to the authority of the total amount payable to them as mentioned in paragraph (b).
- 2.2. The “exempt period” is the period beginning with the time when the agreement takes effect and ending 56 days after the date of the service user’s death, or with any earlier date which, in accordance with the agreement, the service user has specified in a notice given by the service user to the local authority as set out in paragraph 2.4 of this policy.
- 2.3. The terms and provisions of the deferred payment agreement shall be determined by the local authority, subject to any directions from a relevant authority and to the mandatory provision set out at paragraph 2.4 of this policy.
- 2.4. It shall be the term of any deferred payment agreement entered into by Brent Council that any charge may be terminated by notice given to the authority by the service user and on full payment of the full amount which the service user is liable to pay.

3. Guiding Principles

- 3.1. There are four principles that support this policy, namely to ensure that:
- a) Service users are aware of their right to apply for a deferred payment agreement.
 - b) There is an easily understandable, clear and transparent policy regarding deferred payment agreements.
 - c) There is a deferred payment policy which is consistently applied to all service users, taking into account their individual circumstances and needs.

- d) The council will provide administrative efficiency and convenience for service users.

4. Applying for a deferred payment agreement

- 4.1. Should a service user wish to enter into a deferred payment agreement they shall communicate their request to the Council, preferably in writing, and set out the reasons they wish to enter into a deferred payment agreement.
- 4.2. Service users should assist the Council by providing any documentary evidence or information which the Council requires so as to determine whether to exercise its' discretion to enter into a deferred payment agreement with the service user. Service users have the right to choose not to provide requested information, however failure to provide relevant information requested by the Council may result in the Council being unable to exercise its' discretion.
- 4.3. Where a deferred payment agreement has been requested by a service user, the Council must give consideration as to whether or not to exercise its' discretion to offer a deferred payment agreement.

5. Eligibility Criteria

- 5.1. To be eligible for a deferred payment agreement the service user must meet the following criteria:
 - a) The service user must have been financially assessed under the National Assistance Act 1948 and accompanying guidance under CRAG.
 - b) The service user must have insufficient income and other assets, other than the value of their main or only home, to meet the cost of their care.
 - c) At the time at which the deferred payment agreement is entered into, the value of the service user's main or only home must exceed the upper capital limit set annually in CRAG.
 - d) The service user, for whatever reason, must not wish to sell their home or is unable to sell their home quickly enough to pay for their care home fees.
 - e) Deferred property agreement must not be entered into while mandatory property disregards apply.
 - f) The service user must be entering into, or have entered into, residential accommodation on a permanent basis.
 - g) The service user must have a legal or beneficial interest in the property.
 - h) The service user must have capacity to enter into a deferred payment agreement or have appointed a lawfully authorised agent to enter into the

deferred payment agreement on their behalf. Any such agent must evidence their lawful authority to do so.

6. Relevant Considerations

- 6.1. When determining whether to exercise its' discretion to enter into a deferred payment agreement, the local authority will give consideration to all relevant factors including, but not limited to, to the following matters:
- a) Whether the size of the weekly deferred contribution is such that it may limit the Council's ability to enter into deferred payment agreements with other service users.
 - b) Whether entering into a deferred payment agreement would impact negatively upon the Local Authority's ability to meet its' statutory duties to other residents of the London Borough of Brent.
 - c) Whether any other person has a legal or equitable interest in the property.
 - d) Whether all persons who have a legal or equitable interest in the property have provided their written agreement to the local authority registering a charge over the property and agreed to the value of the service user's interest in the property.
 - e) Whether the property is subject to a legal or equitable mortgage and whether any such mortgage affects the service user's ability to meet their assessed contribution.
 - f) Whether the mortgagee consents to the local authority registering a charge over the property.
 - g) Whether the property is subject to a registered or equitable charge or caveat.
 - h) Whether the service user intends to leave the property unoccupied or intends to do, or omit to do, and other action which would negatively impact upon the value of the property.
 - i) Whether the service user intends to use the property to earn rental income and to use any such rental income as a means to off-set any unpaid contribution which the service user owes the Council or reduce the amount of the contribution which is to be deferred.
 - j) Whether the service user, or any other person, would suffer exceptional hardship if a deferred payment agreement was not entered into.
 - k) Any other relevant factors.

7. Terms of a Deferred Payment Agreement

- 7.1. A copy of the Local Authority's standard draft Deferred Payment Agreement is attached to this policy.

- 7.2. The Deferred Payment Agreement referred to at paragraph 7.1 is subject to review and change. In exercising its' discretion whether to offer a deferred payment agreement, the Council may request that the deferred payment agreement include additional conditions and may edit or remove the terms of the standard draft Deferred Payment Agreement.

8. Who can authorise the offer of a deferred payment agreement

- 8.1. An offer to enter into a deferred payment agreement must be authorised by the Assistant Director of Finance of Brent Council.

9. Communication of the Council's decision

- 9.1. The Council must communicate its' decision as to whether or not it will offer a deferred payment to the service user who made the request (or the person who was lawfully authorised to make the request on the service user's behalf).
- 9.2. The decision must be communicated in writing and set out the reasons for the decision.

10. Complaints

- 10.1. The Council welcomes feedback from service users, and has dedicated officers to manage complaints.
- 10.2. If service users are dissatisfied with the way they have been treated during the financial assessment process, or the service that they receive, they have the right to make a complaint to the Complaints Officer. The Council has a statutory complaints process to ensure that service user's views and concerns are considered and dealt with appropriately and that Council holds itself accountable to the highest standards.

11. Use of financial information and privacy

- 11.1. The information the Council collects and keeps about service users is confidential and can only be seen by authorised staff. This information will only be shared with other relevant people and agencies in accordance with the Data Protection Act 1998 or with the written consent of the service user or their legally appointed representative. This Act also gives people the right to see information that the Council keeps about them at any stage.

12. Equality Impact

12.1. The Council has considered the impact this policy will have upon the diverse communities of Brent. The Council has assessed that this policy does not discriminate against groups of service users or present adverse impacts due to their race, gender, disability, sexuality or age.