



# Deferred Payment Agreements Policy

Date April 2016

Education, Health & Social Care

<b>Current Document Status</b>			
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<b>Responsible officer</b>	Dave Coleman, Senior Manager – Business & Administration, Commissioning Performance & Improvements	<b>Review date</b>	21/04/2016
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21.04.16	1.0	Laura Manolchev	Reviewed & amended following amendments to Statutory Guidance issued under the Care Act 2014 (issued March 2016).

<b>Comprehensive Impact Assessment Record</b>					
<b>Date</b>	<b>Type of assessment conducted</b>	<b>Stage/level completed (where applicable)</b>	<b>Summary of actions taken decisions made</b>	<b>Completed by</b>	<b>Impact Assessment review date</b>
20/01/2015	Full	Complete	NFA	Robin Stephenson/ Laura Manolchev	July 2015

<b>Document retention</b>	
<b>Document retention period</b>	<b>E.g.</b> 5 years in hard and electronic copies.

## **Summary**

### **Headlines**

This policy has been created in light of the duties within the Statutory Guidance issued under the Care Act 2014. This policy refers to people who have been assessed by Education Health and Social Care as requiring permanent residential care, and have their own property.

### **Distribution**

People over the age of 18 requiring permanent residential care, and with a property will need to be aware of this policy. Staff within Adult Care and Support will need to be aware of this policy so that they can inform people who require permanent residential care of what their potential options are. The Charging Team will need to be aware to ensure that this policy is implemented appropriately.

## **Context**

### **Background**

The Care Act 2014 establishes a universal scheme for deferred payments which is aimed to ensure anyone who requires residential care should not be forced to sell their home in their lifetime to pay for that care. A qualifying person may delay the sale of their home during their transition into care.

It is important to note that such an agreement does not "write off" the debt but defers the liability to pay to a later date.

A person may enter into a legal contract with the Council which will enable the council to reclaim the outstanding fees at a later date either when the home is sold by the resident or his/her estate or where the agreement is otherwise ended. The deferral may last until death or take the form of a "bridging loan" while the individual takes the time to decide whether they wish to sell their home. Subject to the limits as described below in Condition Section, it is up to the individual to decide when to sell their home.

### **Objectives**

The aims of this policy are to:

- Identify those situations where the Council will enter into a deferred payment agreement under the Care Act 2014
- Identify persons who may be entitled to an offer of a deferred payment agreement
- Identify the procedure and details of the agreement

- To ensure that people are aware of what a deferred payment means and how this will affect them in order to make an informed decision

### **Scope**

This policy will outline who may be entitled to a deferred payment. This will only apply to people who have been assessed by Adult Care and Support as requiring permanent residential care, and have their own property. It would not apply to:

- People who do not own their own property
- For temporary or respite stays in 24 hour residential care
- For care and support in the person's own home.

### **Details**

#### **Policy details**

The duties and powers to offer a deferred payment is to be found in Sections 34 – 36 of the Care Act 2014 ("the Act") and the Care and Support (Deferred Payment Agreements) Regulations 2014 ("the Regulations"). This Policy is intended to assist members of the public who require residential care (and their families and carers) to decide whether they would meet the criteria.

Subject to the terms of this policy a Deferred Payment Agreement will be agreed as either a short-term or long-term measure to assist the resident with payment of fees.

The Policy only relates to residential and nursing care, although may also be considered for those in supported living accommodation under Regulation 3 of the Regulations.

#### **12 Week Disregard**

Where a person becomes a permanent resident in a care home and the value of their non-housing assets is below the upper limit (currently £23,250) the value of any home he/ she would normally occupy as his only or main residence will be disregarded for the first twelve weeks of a permanent stay where arrangements are made by the Council.

Where an application for a Deferred Payment Agreement is successful this would usually commence after the initial twelve week disregard period subject to adequate security being in place.

Where a person enters a care home as a self-funder and subsequently becomes eligible for local authority assistance the property will not normally be disregarded, however, where this has been due to a sudden and

unexpected change in finances, the Council will give consideration to exercise their discretion to apply the disregard.

### **Eligibility**

The option of a deferred payment agreement will be offered to anyone who meets all the following criteria;

- (i) Anyone who has been assessed as requiring residential or nursing care;
- (ii) Who owns a legal or beneficial interest in a property which is his/her main or only home;
- (iii) Who has less than £23,250 in assets (excluding the value of their home);
- (iv) Whose home is taken into account in the financial assessment
- (v) Who can provide adequate security for the debt (usually by way of a legal mortgage or land registry charge over their property)
- (vi) Who agrees with the terms and conditions set out in the Deferred Payment Agreement

In exceptional circumstances the Council may give consideration to offering a deferred payment agreement to those who do not meet all the criteria where it considers it would be fair and reasonable to do so. Each case will be considered on its own facts and a decision will be made.

If the person lacks mental capacity to enter into a deferred payment agreement, a Deputy for Property and Affairs or Lasting Power of Attorney for Property and Affairs may enter into the agreement on their behalf.

The amount of the deferral will be agreed between the Council and person, or their representative, and set out in the agreement. This will be reviewed annually or where there has been a change of financial circumstances.

### **Conditions**

When a person requests a deferred payment arrangement a financial assessment will be carried out, or reviewed, to determine the amount of contribution the resident is liable to pay towards their care costs.

Where a person wishes to enter into a deferred payment agreement they or their representative must complete an application form.

The Council will arrange for a valuation of the property. A person may request an independent assessment of the value of the property. The costs of any valuation will be payable by the service user (see Fees and Charges Section of this policy).

The Council will offer deferred payments in accordance with the "equity limit". The equity limit is the equivalent of the value of the property, less the total amount of any indebtedness secured on the asset, minus 10%, minus £14,250. In the first instance Cornwall Council will offer a deferred payment agreement of 70% of the equity limit of the property.

The Council will review the deferred payment agreement and care when the person approaches 70% of the equity limit of the property or other security to ascertain whether the deferred payment agreement remains the best way to meet the costs.

The Council will expect the property to be adequately maintained and insured during the period of the DPA.

The Council will require a nominated person to deal with the termination of the agreement and to assist to reclaim the costs on the death of the service user.

If a dependent moves into the property during the life of the agreement the Council will require written consent that the debt owed to the Council takes precedence over any beneficial interest they may accrue in the property.

The Council will charge at the maximum rate of interest per annum as set by Government and require payment of administrative costs.

The Council will provide bi-annual written statements of the amount of fees deferred, interest and administrative charges accrued to date, the total amount due and the equity remaining in the home.

Any person wishing to enter into a deferred payment agreement is strongly advised to seek independent financial and legal advice. The person will need to acknowledge that the Council has advised them to seek independent financial and legal advice.

The person must notify the Council of any changes to their circumstances that would affect the agreement or value of the property.

### **Security**

The Council must ensure there is adequate security in place before it will enter into a DPA. This will generally be by way of a legal charge or legal mortgage charge over the property

Where a property is jointly owned we can only offer a DPA with the agreement and consent of all joint owners

Where the above options are not available the Council will consider alternative forms of security such as a third party guarantor if they can provide adequate security; an undertaking from a solicitor; valuable assets. This will be considered on a case by case basis having regard to the circumstances and agreed only where the Council is satisfied there is sufficient security to protect Council interests

Security will be reviewed periodically to ensure it remains adequate. If the value has significantly changed the amount deferred will be reviewed.

### **Ceasing to offer the deferred payment**

The Council may refuse to defer any further charges;

- (i) Where a person has reached the upper limit they are allowed to defer
- (ii) Where the value of the security has decreased so the upper limit has been reached
- (iii) Where a person becomes eligible for local authority support in paying for their care
- (iv) Where the property becomes disregarded for any reason
- (v) Where a person no longer has a need for care in a care home
- (vi) where a person has breached certain terms of the agreement as set out in the agreement

The Council must cease any further payments;

- (i) when a person has reached the "equity limit" (or amount) they are allowed to defer as agreed
- (ii) Where a person is no longer receiving care and support in a care home setting [or supported living].

The Council will give not less than 30 days notice of the date when further deferred payments will cease and will provide an indication of how care costs will be met in the future. The person may be required to meet the future costs from their income or assets

#### **Refusal to Offer a Deferred Payment**

The Council may refuse to offer a deferred payment agreement where;

- it is unable to secure a charge on the property or secure other suitable security
- the person wishes to defer a larger amount than they are able to provide security for
- in certain circumstances if the person is seeking a top up (see Top- Up Section)
- the person's property is uninsured or uninsurable
- the person does not agree to the terms and conditions of the agreement

#### **Termination of the Agreement**

The deferred payment agreement may be terminated in one of four ways;

- (i) Voluntarily by the individual or someone acting on their behalf, repaying the full amount due;
- (ii) On sale of property (or other security);
- (iii) When the person dies; or
- (iv) If the person receives a capital sum that takes them over the funding thresholds

If a person decides to sell their home they must notify the Council at an early stage (as per the terms of the agreement).

Payment of the deferred amount is either the date of sale or disposal of the property or 90 days after the death of the adult with whom the agreement is made, whichever is the sooner.

The Council will discharge any legal charge over the property upon receipt of the full amount due.

### **Fees and Charges**

The Council will charge an administrative fee for arranging the deferred payment which includes Land Registry fees for registering a charge and the costs of valuing (and re-valuing) the property. It will include staff, management and legal costs and ongoing costs to the Council.

Administration charges will only reflect the set-up and ongoing costs incurred in arranging the deferred payment and will be set out within the Agreement.

Administration charges and interest accrued will be added to the amount deferred to be repaid at the end of the agreement. A person can request to pay these separately.

The local authority will charge interest on the amount deferred. Interest will be charged at a rate set by government and will continue until the deferred amount is repaid in full. Full details of interest charges will be set out in the Agreement.

Administration charges are set out in Fees and Charges document which is available at [www.cornwall.gov.uk/health-and-social-care/adult-social-care/paying-for-adult-social-care/](http://www.cornwall.gov.uk/health-and-social-care/adult-social-care/paying-for-adult-social-care/), or on request.

Any additional requests for items such as valuations will be subject to a fee. These can be paid at the time of the request, or can be added to the deferred payment agreement.

### **Top ups**

To ensure sustainability of the DPA the Council will consider any request for top ups having regard to affordability and the amount of available equity.

### **Further Information and advice**

Easy read documents (braille/other languages/LD) are available.

Further information and advice concerning charging, deferred payments etc. can be found at:

[www.cornwall.gov.uk/health-and-social-care/adult-social-care/paying-for-adult-social-care/](http://www.cornwall.gov.uk/health-and-social-care/adult-social-care/paying-for-adult-social-care/)

Any appeals or requests for a review of any decision of the Council should be submitted within 21 days of the date of the decision and will go through the normal reconsideration and appeals process. If the person does not agree with the decision following the reconsideration and appeals process, the person can be referred to the Ombudsman.

## **Management**

### **Policy management**

The Charging Team within Education, Health & Social Care are responsible for implementing the policy.

### **Breaches and non-compliance**

The Council may cease to defer care costs if the individual breaches or fails to comply with the terms and conditions of the agreement.

### **How the impact of the policy will be measured**

The impacts will be measured by reviewing the number of requests for Deferred Payments, number of Deferred Payments are agreed and the financial costs for the person and the directorate.

### **Evaluation and review**

This policy will be reviewed in line with any changes made to legislation.

## **Document information**

### **Contacts**

Policy prepared by Sam Clapp, Service Manager – Charging Team, Commissioning, Performance and Improvement, 25th May 2016.

### **Further information**

Further information can be found at [www.cornwall.gov.uk/health-and-social-care/adult-social-care/paying-for-adult-social-care/](http://www.cornwall.gov.uk/health-and-social-care/adult-social-care/paying-for-adult-social-care/).

### **Alternative formats**

If you would like this information in another format please contact:

**Cornwall Council, County Hall, Treyew Road, Truro TR1 3AY**

Telephone: **0300 1234 100** email: [enquiries@cornwall.gov.uk](mailto:enquiries@cornwall.gov.uk)

[www.cornwall.gov.uk](http://www.cornwall.gov.uk)

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