

Appendix 'A'

Lancashire County Council DRAFT Deferred Payments Scheme

Deferred Payments Policy
April 2015

LANCASHIRE COUNTY COUNCIL.....“the Council”

Contents

1. Introduction
2. Eligibility Criteria
3. Permission to refuse a Deferred Payment Agreement
4. Information and Advice where eligibility criteria is met
5. Arranging a Deferred Payment Agreement
6. How much can be deferred?
7. Interest rate and administration charge
8. Circumstances in which the Council may stop deferring care costs
9. Obtaining security
10. Drawing up the Deferred Payment Agreement
11. The Council’s responsibilities whilst the Agreement is in place
12. Decision making
13. Monitoring the Deferred Payment Agreement
14. Terminating the Deferred Payment Agreement
15. Process for Appeals
16. Glossary

1. Introduction

The Care Act 2014, sections 34-36 establish a requirement for a Deferred Payment Scheme which all relevant Local Authorities must have ready for implementation from April 2015. The establishment of the Deferred Payment Scheme will mean that people ordinary resident in Lancashire should not be forced to sell their home in their lifetime to pay for their residential and/or nursing care. By entering into a Deferred Payment Agreement (DPA), a person can 'defer' or delay paying the costs of their care and support until a later date. Deferring payment can help people to delay the need to sell their home, and provides peace of mind during a time that can be challenging or may be a crisis point in their life as they make the transition into residential or nursing home care.

It should be stressed from the outset that the payment for care and support is deferred and not 'written off' – the costs of provision of care and support will have to be repaid by the individual, or by a third party on their behalf, at a later date.

The new scheme will have national eligibility criteria which replaces the existing eligibility criteria for deferred payments devised separately by local authorities including Lancashire County Council. Local authorities are required to follow this new national guidance on the eligibility criteria for a deferred payment. There has however been some discretion allowed on how the scheme will be implemented locally.

This document details the Deferred Payment Scheme for Lancashire County Council and should be read in conjunction with the Care Act 2014 Regulations and Statutory Guidance.

2. Eligibility Criteria

To be eligible for a deferred payment, a client must meet all of the following three criteria at the point of applying for a deferred payment agreement:

(a) his/her needs are to be met by the provision of care in a care home. This is determined when someone is assessed as having eligible needs which the Council decides should be met through a residential or nursing care home placement;

and

(b) he/she has no more than £23,250 (for the financial year 2015/16, to be updated by regulations for future years) in assets excluding the value of their home (i.e. in savings and other non-housing assets); and

and

(c) his/her home is not disregarded, for example it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support.

The scheme applies to those who are ordinary resident in Lancashire as defined by the relevant provisions of the Care Act, sections 39 – 41 and accompanying Statutory Guidance.

3. Permission to refuse a Deferred Payment Agreement

A deferred payment agreement must be offered to those who are eligible for the scheme and who are able to provide adequate security for the debt.

The Council may refuse a DPA despite someone meeting the eligibility criteria:

- (a) if the Council is unable to secure a first charge on the person's property; and / or
- (b) if someone is seeking a top up; and/or
- (c) if a person does not agree to the terms and conditions of the agreement.

In any of the above circumstances, the Council will consider whether to exercise its discretion to offer a deferred payment.

The Council can refuse a request for deferred payment. In such circumstances the decision will be notified in writing to the applicant and/or their personal representative. The decision will set out the grounds for refusal and provide information on how to appeal.

4. Information and Advice where eligibility criteria is met

Information and advice will be provided during the 12 week property disregard period and at other stages during the care and financial assessment process.

The information provided should, at a minimum set out and explain clearly:

- that the fees are being deferred or delayed and must still be paid back at a later date, for example through the sale of the home (potentially after the individual's death);
- the types of security that the Council is prepared to accept
- that if a home is used as security, the home may need to be sold at a later date to repay the amount due;
- that the total amount they can defer will be governed by an equity limit which may change if the value of their security changes;
- the circumstances where the Council may cease to defer further amounts (such as when the person qualifies for the Council's support in paying for their care), and the circumstances where the Council has to stop deferring further amounts (such as when the person reaches their equity limit);
- how interest will be charged on any amount deferred;
- that they will be liable to pay administrative charges;
- what happens on termination of the agreement, how the loan becomes due and their options for repayment;

- what happens if they do not repay the amount due;
- the eligibility criteria for a DPA;
- the requirements on them during the course of the DPA;
- the implications that a deferred payment agreement may have on their income, their benefit entitlements, and on the charges they may be liable to pay for social care services

The information should also:

- provide an overview of some potential advantages and disadvantages of taking out a DPA, and set out the other options for paying for their care that they may wish to consider;
- note the existence of the 12 week disregard, which will afford those who qualify for it some additional time to consider their options in paying for care; and
- suggest that people should consider taking independent financial advice and highlight the existence of a regulated financial advice sector.

Where a person lacks capacity to request a deferred payment, a Deputy or Attorney (a person with a relevant Enduring Power of Attorney or Lasting Power of Attorney) may request a deferred payment on their behalf.

If a family member requests a deferred payment and they do not have the legal power to act on behalf of the person, then the person and the family member should receive information and advice on how to obtain this, through Lasting Power of Attorney and Deputyships.

Where the Council is the Deputy for a person, then the Council Deputy may apply for deferred payments where this is in the best interests of the person.

The Council must not enter into deferred payment agreements with a person lacking the requisite mental capacity unless the proper arrangements are in place.

5. Arranging a Deferred Payment Agreement

The Deferred Payment Agreement will only take effect upon the applicant or his / her duly appointed representative signing the Deferred Payment Agreement. A certified copy of the appointment of a Power of Attorney or order from the Court of Protection appointing a Deputy will be accepted as evidence of authorisation to sign on behalf of the applicant.

The person entering into the DPA will also be required to abide by a number of conditions:

- That the property is maintained in reasonable standard of repair and condition.

- All outgoings associated with the property (e.g. Council tax, service charges, ground rent, insurance) are paid.
- That any net rental income derived from letting the property during the period of the scheme will be assessed in accordance with Department of Health statutory guidance.
- That the person receiving care and/or their representative acknowledges that they have received the Council's advice that they should seek independent financial advice before committing themselves to this agreement.
- That the client and/or their representative provides any evidence required by the Council in support of the application.
- Where the property is jointly owned, the co-owners as well as the applicant must agree to the Council's form of charge.
- That the applicant and/or their representative notifies the Council of any change in circumstances which would affect the value of the property or the sustainability of the deferred payment.
- The property is insured throughout the length of the DPA term until the debt to the Council is paid.

6. How much can be deferred?

The Council will need to consider whether a person can provide adequate security for the deferred payment agreement.

If the person is considering a top-up, the Council will also consider whether the amount or size of the deferral requested is sustainable given the equity available from their property.

Three elements will dictate how much a person can defer:

- The amount of equity a person has available in their property
- The amount a person is contributing to their care costs from other sources, including income and (where they choose to) any contribution from savings, a financial product or a third-party
- The total care costs a person will face, including any top-ups the person might be seeking.

These are explained in more detail as follows:

(a) The amount of equity a person has available in their property;

When considering the *equity available*, the equity limit will be set at the value of the property minus 10% (ten percent), minus £14,250 (for financial year 2015/16, this is

in line with the lower capital limit, to be updated in future years for changes set out in any new regulations) and the amount of any encumbrance secured on it.

This limit provides some protection to the Council against changes in the value of the security such as possible house price fluctuations.

An independent valuation of the property will be used to establish the equity available.

When calculating progress towards the equity limit, the Council will include any interest or fees to be deferred.

The Council will not allow additional amounts to be deferred beyond the equity limit. However, interest and administrative charges will still accrue beyond this point.

(b) The amount a person is contributing to their care costs from other sources, including income and (where they choose to) any contribution from savings, a financial product or a third-party;

A person may meet the costs of their care and support from a combination of any of four primary sources:

- income, including pension income;
- savings or other assets they might have access to, this might include any contributions from a third party;
- a financial product designed to pay for long-term care; or
- a deferred payment agreement which enables them to pay for their care at a later date out of their property asset.

The share of care costs that someone defers will depend on the amount they will be paying from the other sources listed above. The Council will require a contribution towards care costs from a person's income, but the person has a right to retain a proportion of their income (the 'disposable income allowance'). The disposable income allowance is a fixed amount of a person's income which the Council must allow the person to retain, if the person wants to retain it. For 2015/16 this disposable income allowance is set at £144 per week.

If a person decides to rent out their property during the course of their DPA, the Council can permit that person to retain a proportion of any rental income from the property. The proportion that can be retained will be published annually in the Adult Social Care Fees and Charges Schedule.

(c) The total care costs a person will face, including any top-ups the person might be seeking;

At a minimum, the Council will allow someone to defer their 'core' care costs. To ensure sustainability of the deferral, the Council has discretion over the amount

people are permitted to top up. The Council will accept any top-up deemed to be reasonable given considerations of affordability, sustainability and available equity.

The Council will consider:

- the likely period the person would want a DPA for, that is if they intend to use it as a ‘bridging loan’;
- the equity available;
- the sustainability of any contributions from their savings;
- the flexibility to meet future care needs; and
- the period of time a person would be able to defer their care costs for.

Once a person has reached their equity limit, the Council may no longer fund the top-up, and the person may need to find other ways to pay for it or be prepared for a change in their care package.

7. Interest rate and administration charge

The interest and administration fees will be published annually in the Adult Social Care Fees and Charges Schedule. Administration charges and interest will be added to the total amount deferred as they are accrued, although a person may request to pay these separately if they choose. The interest will accrue on a compound basis.

The Council will charge an interest rate equalling the County Council's average borrowing rate over the preceding financial year. The interest rate charged will not however exceed the maximum amount specified in the Care Act Regulations on Deferred Payments. This states the national maximum interest rate will be updated every six months on 1st January and 1st July to track the conventional gilts rate specified.

Interest will accrue on the amount deferred even once someone has reached the ‘equity limit’, it will also accrue after someone has died up until the point at which the deferred amount is repaid to the local authority. If the Council cannot recover the debt and seeks to pursue this through the County Court system the Council may charge the higher County Court rate of interest.

The Council will set its administration charge at a level which does not exceed the actual costs incurred in provision of the Deferred Payment Scheme, as set out in the Care Act regulations. Relevant costs may include, but are not limited to, the costs incurred by the Council whilst:

- registering a legal charge with the Land Registry against the title of the property, including Land Registry search charges and any identity checks required;
- undertaking relevant postage, printing and telecommunications;
- costs of time spent by those providing the service;
- cost of valuation and re-valuation of the property;
- costs for removal of charges against property;

- overheads, including where appropriate (shares of) the County Council's payroll, audit, management costs, legal service.

8. Circumstances in which the Council may stop deferring care costs

Circumstances in which the Council may stop deferring any more charges include:

- (a) when a person's total assets fall below the level of the means-test, and the person becomes eligible for local authority support in paying for their care; and / or
- (b) where a person no longer has need for or is no longer receiving care and support in a registered residential or nursing care home; and / or
- (c) if a person breaches the terms of their agreement; and / or
- (d) if under the charging regulations, the property becomes disregarded for any reason and the person consequently qualifies for local authority support in paying for their care.

The Council will also cease deferring further amounts when a person has reached the 'equity limit' that they are allowed to defer. This also applies when the value of the security has dropped (e.g. from a fall in house prices) and so the equity limit has been reached earlier than expected.

Interest would continue to accrue on the amount deferred until the agreement was terminated. This may be either by sale of the property, the person's death or by the Council being repaid separately.

If a decision is made to stop deferring care costs, the repayment will be subject to the usual terms of termination.

The Council will provide a minimum of 30 days advance notice that further deferrals will cease. Depending on their circumstances, the person may either receive local authority support in meeting the costs of their care, or may be required to meet their costs from their income and assets.

In exercising these powers to cease deferring additional amounts the County Council will make its decision following a full consideration of the person's relevant circumstances.

9. Obtaining security

The Council must have adequate security in place when entering into a DPA.

The Council will accept a first legal mortgage charge as adequate security. The Council will consider a second legal charge or restriction as adequate security at its discretion.

In cases where an agreement is to be secured with a jointly-owned property, the Council will seek both owners' consent and agreement to a charge being placed on the property.

Both owners will need to be signatories to the charge agreement, and the co-owner will need to agree not to object to the sale of the property for the purpose of repaying the debt due to the Council. This is consistent with the procedure to be followed in cases where an individual is the sole owner of a property.

The Council will obtain similar consent to a charge being created against the property from any other person who has a beneficial interest in the property.

The Council has full discretion in individual cases to refuse a DPA if it is not satisfied that adequate security is in place.

10. Drawing up the Deferred Payment Agreement

Where someone chooses to enter into a DPA, the Council will aim to have the agreement finalised and in place by the end of the 12 week disregard period, or within 12 weeks of the person approaching the Council regarding DPAs in other circumstances.

The Council will provide a hardcopy of the deferred payment agreement to the person or their representative, and they should be provided with reasonable time to read and consider the agreement, including time for the individual to query any clauses and discuss the agreement further with the Council.

The agreement will clearly set out all terms, conditions and information necessary to enable the person to ascertain his or her rights and obligations under the agreement. The Council will follow the model agreement to be made available by the Department of Health.

The individual or their legally appointed representative must:

- sign or clearly and verifiably affirm they have received adequate information on options for paying for their care,
- that they understand how the DPA works and understand the agreement they are entering into;
- and that they have had the opportunity to ask questions about the contract.

11. The Council's responsibilities whilst the Agreement is in place

The Council will at a minimum provide the individual and /or their representative with six monthly written updates of:

- the amount of fees deferred,

- interest and administrative charges accrued to date,
- the total amount due
- and the equity remaining in the property.

The Council will reassess the value of the property once the amount deferred exceeds 50% of the value of the security and periodically thereafter, and adjust the equity limit and review the amount deferred if the value has changed.

When someone is approaching or reaches the point at which they have deferred a substantial proportion of the equity available in their property, the Council will:

- review the cost of their care with the person,
- discuss when the person might be eligible for any means tested support,
- discuss the implications for any top-up they might currently have,
- and consider jointly whether a deferred payment agreement continues to be the best way for the person to meet these costs.

12. Decision making

Individual decisions on Deferred Payment Agreements will be made on behalf of the County Council by the Head of Exchequer Services or other Head of Service nominated by the Director of Governance, Finance and Public Services.

13. Monitoring the Deferred Payment Agreement

The amount being deferred will be reviewed on a regular basis to ensure the deferred amount does not exceed the equity limit with particular regard to the amount deferred as it approaches the equity limit.

14. Terminating the Deferred Payment Agreement

A DPA can be terminated in three ways:

- (a) at any time by the individual, or someone acting on their behalf, by repaying the full amount due. This can happen during a person's lifetime or when the agreement is terminated through the DPA holder's death; or
- (b) when the property is sold and the Council is repaid; or
- (c) when the person dies and the amount is repaid to the Council from their estate.

On termination, the full amount due, including care costs, any interest accrued and any administration fees charged, must be paid to the Council.

If a *person decides to sell their home*, they should notify the Council during the sale process. They will be required to pay the amount due to the Council from the proceeds of the sale, and the local authority will relinquish the charge on their property.

A person may decide *to repay the amount due to the local authority from another source, or a third party may elect to repay the amount due on behalf of the individual*. In either case, the Council must be notified of the person's/the third party's intention in writing and the local authority will relinquish the charge on the property on receipt of the full amount due.

If the deferred payment is *terminated due to the person's death*, the amount due to the Council must be either paid out of the estate or paid by a third party. A person's family or a third party may wish to settle the debt to the Council by other means of repayment, and the Council will accept an alternative means of payment in this case, provided this payment covers the full amount due to the Council.

The Executor of the will or Administrator of the estate can decide how the amount due is to be paid; either from the person's estate, via the sale of the property, or by other means. The Council will wait at least two weeks following the person's death before approaching the Executor with a full breakdown of the total amount deferred, but a family member or the Executor can approach the Council to resolve the outstanding amount due prior to this point.

Responsibility for arranging for repayment of the amount due in the case of payment from the estate falls to the Executor of the will. Interest will continue to accrue on the amount owed to the Council after the individual's death and until the amount due to the Council is repaid in full.

If terminated through a person's death, the amount owed to the Council under a deferred payment agreement falls due 90 days after the person has died. After this 90 day period, if the Council concludes active steps to repay the debt are not being taken, for example if the sale is not progressing and the Council has actively sought to resolve the situation, or if the Council concludes the Executor is wilfully obstructing the sale of the property, then the Council may enter into legal proceedings to reclaim the amount due to it.

In whichever circumstance an agreement is terminated, the full amount due to the Council must be repaid to cover all costs accrued under the agreement, and the person, their legally appointed representative and/or the third party where appropriate, will be provided with a full breakdown of how the amount due has been calculated.

Once the amount has been paid, the Council will provide the individual with confirmation that the agreement has been concluded, and confirm (where appropriate) that the charge against the property has been removed.

15. Process for Appeals

The decision on the outcome of the application for a deferred payment can be appealed. The grounds for appeal could include:

- The decision to refuse the application failed to take into account all the available and relevant information
- There are eligible care costs which the Council have failed to take into account.

Requests for an appeal should be made within 20 working days of being notified of the outcome of the application for a Deferred Payment Agreement. This period can be extended if there are exceptional circumstances.

If the person is dissatisfied with the outcome of the appeal, they can then appeal within 20 working days of being notified of the outcome of the review. This period can be extended for exceptional reasons.

The decision as to whether to uphold the outcome of the appeal will be made by the Director of Financial Resources.

If the person remains dissatisfied with the outcome of the appeal then they can request that this matter is dealt with under Lancashire County Council's Adults Social Care Complaints procedure.

The appeals process will be reviewed following publication of any relevant new regulations.

16. Glossary

To be finalised after Cabinet Member approval.