Deferred Payment Policy

Solihull Adult Care & Support

Solihull Metropolitan Borough Council

Version Control Log

Version:	Date:	Author Name:	Rationale:
1.0	2014	Alison McGrory - Head of Income & Awards	Initial policy creation
2.0	01/07/2019	Joanne Robinson - Head of Income & Awards	Policy updated to include loan style deferred payment agreements.

1. Purpose

The aim of the policy is to reflect the introduction of a universal deferred payment scheme from April 2015 as detailed in the Care Act 2014.

The establishment of the universal deferred payment scheme will mean that people should not be forced to sell their home in their lifetime to pay for their care home fees.

A deferred payment agreement can provide additional flexibility for when and how someone pays for their care and support.

2. Background

Local schemes for deferred payments have been in operation for some time, the Care Act 2014 now provides a national single legal framework for the establishment of a universal deferred payment scheme. For people with a current deferred payment agreement entered into prior to the implementation of this policy, there will be no change to the terms of their agreement.

This policy came into effect from April 2015 and has subsequently been revised in 2019. Any new applications received after this date will be considered under the terms of this policy.

3. Principles

The policy complies with the Care and Support (Deferred Payment) Regulations 2014; sections 34 and 35 of the Care Act 2014 and chapter 9 of the Care and Support Statutory Guidance issued by the Department of Health, and will be updated in line with any subsequent changes to the legislation.

Access to the deferred payment scheme is available to people who have local authority arranged care in a care home and people who arrange and pay for their own care in a care home.

The policy will only apply to people who meet the deferred payment eligibility criteria and who are able to provide adequate security.

The person must have capacity to enter into a deferred payment agreement, or must have a Deputy or Attorney (a person with a relevant Enduring Power of Attorney or Lasting Power of Attorney) to act on their behalf, or have someone who is their deputy appointed by the Court of Protection.

The person must agree to all the terms and conditions in the deferred payment agreement.

The Council can refuse a deferred payment agreement even if all of the eligibility criteria are met if:

- there is already a charge on the property which could limit the Council's ability to recover the deferred payment amount or
- a person is seeking to defer a top up payment or
- where a person does not agree with the terms and conditions of the deferred payment agreement.

In cases where a deferred payment agreement is to be secured with a jointly owned property, the Council will not enter into a deferred payment agreement unless all owners' give their consent and agreement to a charge being placed on the property.

All beneficial owners will need to be signatories to the charge agreement and they must agree to repay the debt due to the Council within 90 days of the person's care stay ending or the sale of the property.

Interest will start to accrue if the debt is not settled within 90 days.

A person who enters into a deferred payment agreement and then chooses to rent out the property subject to the deferred payment agreement will be allowed to retain 10% of the rental income in addition to the maximum disposable income allowance.

The remainder of the rental income will be used in their financial assessment to calculate their assessed contribution.

The Council will offer two types of deferred payment agreements:

- **Traditional type** - the Council contracts with the home and pays the care home directly and defers the charges due to it from the individual

- **"Loan Style deferred payments –** this can only apply if all of the following are met:

- the eligibility criteria for a Deferred Payment Agreement are met and

- a person has already made the care arrangements themselves and

- has chosen to contract directly with the care home (rather than ask the Council to do this on their behalf)

- and has been paying the full cost of their placement themselves

If this payment option is chosen, the Council will pay the care home fees to the person to pay the care home and will monitor that the loan is being used for this purpose.

If the person has been paying for their costs of care and then seeks a DPA, they are still able to choose either the loan style DPA option or the traditional style DPA. The deferred payment agreements that the Council enter into are not regulated credit agreements in line with the Credit Act 1974 and Financial Services and Markets Act 2000.

4. Eligibility Criteria

The person must be eligible for a DPA, the eligibility requirement are:

a) the adult's needs for care and support are being met or are going to be met under section 18 or section 19(1) or (2) of the Care Act 2014 and the care and support plan as per section 25 of the Care Act 2014 for the adult, specifies that the Council is going to meet the adult's needs by the provision of accommodation in a care home (Care home is defined in the Care and Support (Deferred Payment) Regulations 2014). **Or**

b) If the adult's needs for care and support are not being met by the Council and the Council considers that if it had been asked to meet the adult's needs it would have done so under section 18 or section 19(1) or (2) of the Care Act 2014 and the Council would have met the adult's needs by the provision of accommodation in a care home, **and** the Council is satisfied that the adult has a legal or beneficial interest in a property which is the adult's main or only home, **and**

   the Council has assessed the value of that interest, **and**

c) the value of this interest is not disregarded within the financial assessment, for example it is not occupied by a spouse or dependent relative as defined in regulations on Charging for Care and Support , **and**

d) the adult's capital excluding this property is less than £23,250 (this figure will be updated in line with changes to legislation).

Additional matters you should be aware of:

- When a person enters permanent care in a care home the value of any property that they normally occupy as their main or only residence will be disregarded for the first 12 weeks from the date of permanent admission. This may follow a temporary stay. This 12 week disregard is mandatory if the person does not have income or other assets sufficient to cover the costs of care.

- The deferred payment agreement will come into effect from the start of the 13th week from the date of permanent admission into the care home or from the date you enter into an agreement with the Council if you still own your home and have been paying the full cost of your care home from other resources
- In relation to an adults needs being met by the provision of care in a care home, this is determined if they have been assessed as having eligible needs which the Council has decided should be met through a care home placement. If a person is arranging their own care and support and the

Council has not undertaken an assessment, one will be undertaken to determine that the person has eligible needs.

- The person's home is not disregarded for the purposes of the financial assessment carried out under section 17 of the Care Act 2014. If the property has already been disregarded, for example because one spouse remains living in the home, the regulations (Care and Support (Deferred Payments Regulations 2014) mean you are not also eligible to request a DPA.

- The Council will not extend deferred payments to those residents in supported living accommodation and independent living schemes.

5. The amount of deferral

The amount the Council will agree to defer is defined in the Care and Support (Deferred Payment) regulations 2014 and will be based on three elements;

a. The equity in their property
b. The amount a person is contributing to their care costs from other sources
c. The total care costs which the Council deem to be reasonable, this could include any top ups (a top up is defined in the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014), the person may be seeking.

The maximum amount that can be deferred will be governed by an equity limit. The equity limit will be set at 90% of the value of a person's property less the lower capital limit less any other charges against the property, such as a mortgage. The amount to be deferred will not be more than this figure but may change during the lifetime of the deferred payment agreement if the value of the property changes. The amount of the deferred payment will be agreed between the Council and the person. Interest and administration fees are not included in the equity limit.

6. Sustainability of the Deferred Payment

When deciding on the amount to be deferred, the Council will work with the person to ensure the arrangement is sustainable.

Factors which will be considered include

- the likely period the person would want a deferred payment agreement (if they intend to use it as a "bridging loan")
- the equity available
- the sustainability of a person's contributions from their income
- the flexibility to meet future care needs
- the ability to meet future top up payments
- the period of time a person would be able to defer their care costs for

The amount being deferred will be reviewed on a regular basis, minimum once a year, to ensure the deferred amount does not exceed the equity limit.

7. Security

The Council will obtain a valuation of the property, the cost of which will be added to the administration fees. The Council and the person will agree the value of the property prior to proceeding with the agreement if there is an independent valuation with a different value to that of the Council.

It will secure a legal mortgage charge against a property on the Land Register as a form of “adequate security” for the payment of the adult’s deferred amount and any interest or administration costs associated with the deferred payment.

The Council will only accept a charge on a property as security for a deferred payment agreement.

The Council will revalue the property at the point where the amount deferred equals or exceeds 50% of the value of the security to assess any potential change in the value, and to reassess the person’s equity limit.

After this revaluation, the Council will revalue the property annually to monitor any potential further changes in value.

If the revaluation of the property shows there has been a substantial change in its value, Solihull Council will review the amount being deferred under the deferred payment agreement.

The costs to obtain the revaluations will be charged to the person who has entered into the deferred payment agreement and can be added to the deferred payment amount or paid separately.

A person may request an independent reassessment of their property’s value but this will be at their own cost and will be in addition to, not instead of the Council’s revaluation.

If an independent reassessment finds a substantially differing value to the Council’s revaluation, the Council will refer to the Valuation Office Agency’s valuation and abide by their determination.

8. Interest rate and administration charge

The Council will charge interest on any amount deferred. It will also charge the person its administration costs incurred in relation to their deferred payment agreement.

The administration charge will include all costs reasonably incurred by the Council in agreeing, maintaining and ending a deferred payment agreement. Therefore if the costs to the Council are different for a loan style deferred payment agreement than for a traditional type (due to the additional monitoring required to ensure the Council’s funds are being spent on the purpose they have been loaned for), the Council may charge respective people different amounts.

Administration charges and interest can be added on to the total deferred as they are accrued, although a person may choose to pay these on a quarterly basis.

All fees deferred, alongside any interest and administrative charges incurred must be repaid in full by the person and will be calculated in line with legislation.

The Council will inform people before they make the agreement what interest rates are currently set at and when interest rates are likely to change.

Interest will continue to accrue on the amount deferred once a person has reached their equity limit. It will also accrue after the person has died until the point at which the deferred amount is repaid to the Council in full.

The Council will maintain a publicly available list of administration charges that a person may be liable to pay.

9. The Agreement

The terms of the agreement will be discussed and agreed with the person or their representative and will take the form of a legal contract between the Council and the person.
The agreement will set out all terms, conditions and information necessary to enable the person to ascertain their rights and obligations under the agreement as required by the regulations.

The agreement for a loan style deferred payment agreement will also include the provision for the withdrawal of the loan if it is not being used for the purpose it was loaned for.

The decision to award a deferred payment will be authorised by the Assistant Director Finance and Property Services.

Where a person chooses to enter into a deferred payment agreement,
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 a deferred payment agreement in other circumstances.
- include in the agreement that the person confirms they have sought and received adequate information on options for paying for care and that they understand how the deferred payment agreement works and understand the agreement they are entering into.
- provide a hardcopy of the deferred payment agreement to the person and any other beneficial owner and they will be provided with reasonable time to read and consider the agreement.
- provide people with six monthly written updates of the amount of fees deferred, of interest and administrative charges accrued to date, and the total amount due and the equity remaining in the home (the equity limit). The update will set out the amount deferred during the previous period, alongside the total amount deferred to date. It will also include a projection of how

quickly the person will deplete all equity remaining in their property up to the upper limit.

The person must:

- notify the Council of any changes in their income
- ensure that appropriate arrangements are in place to maintain their home whilst in care, that it is maintained adequately and regularly and that they have adequate insurance for their property
- nominate a 3rd party who is aware of the Deferred Payment Agreement who will help the Council reclaim the amount deferred
- obtain the Council's consent before allowing someone to move into the property after the agreement has been made
- notify the Council if they have placed the property on the market to sell
- not default on payment to the care home (for loan style deferred payment agreements)
- provide the Council with evidence of payment to the care home upon request

10. Termination of agreement

The agreement can be terminated in three ways:

- at any time by repaying the full amount due
- when the property is sold and the Council is repaid. If a person decides to sell their home they must 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. At this point, the Council will relinquish the charge on their property and confirm that it has done so.
- when the person dies and the amount is repaid to the Council from their estate. The Council will approach the executor with a full breakdown of the total amount deferred following the person's death. If terminated through the person's death, the amount owed to the Council under the deferred payments agreement falls due 90 days after the person has died. If after this 90 day period, the Council concludes active steps to repay the debt are not being taken, it will enter into legal proceedings to reclaim the amount due to it.

The Council will terminate a loan style agreement if it cannot be satisfied that the person has used the loan for its intended purpose.

On termination, a final invoice will be issued for the full amount due to the Council, including deferred care costs, any interest accrued and any administrative or legal fees charged.

Other Relevant Policies

This policy should be read in conjunction with the Councils Charging Policy - Adult Social Care Non-Residential Care and Support Services and Choice of Accommodation Policy.

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