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Charging Policy Deferred Payment Agreements

Adult Social Care – Prevention and Wellbeing

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Introduction

1. This policy complies with the Care Act 2014 which provides a single legal framework for charging for care and support in Adult Care Services. It describes the principles and procedures used by Cheshire West and Chester Council (the Council) when arranging a Deferred Payment Agreement for service users receiving residential / nursing care in a care home.
2. The Care Act 2014 came into effect from April 2015. The Care Act requires the Council to offer a Deferred Payment Agreement (DPA) in certain circumstances. A deferred payment is a way of postponing some of the costs of care by effectively offering a loan against the value of a customer's house or other property that they might wholly or partially own.
3. To be eligible, service users' individual circumstances are assessed by the Council against a set of national criteria. This means that from 1 April 2015 people may not need to sell their home in their lifetime to pay for the costs of care.
4. From April 2015, all Councils in England are required to provide a DPA for local residents who go to live in residential or nursing care, have a legal interest in a property, or who own a significant asset in their own right and have other assets below the upper capital limit set by the Department of Health. The service user must also have been deemed to have eligible care and support needs for permanent residential or nursing care as determined by a social care manager.
5. The Care and Support Regulations (Statutory Instruments) and Care and Support Statutory Guidance and Annexes issued under the Care Act 2014 inform this policy.

Further information relating to the Care Act 2014 can be found by following the links below to the Department of Health website :

www.careandsupportreqs.dh.gov.uk

www.gov.uk/government/publications/care-act-2014-part-1-factsheets

When do any changes take effect?

6. This Policy sets out Cheshire West and Chester Council's Deferred Payments Scheme from 1 January 2017.

Core Principles of the Policy

7. Cheshire West and Chester Council's deferred payments scheme is consistent with the Care Act 2014 and the supporting Care and Support (Deferred Payment) Regulations 2014 which sets out the legal framework and local authorities' responsibilities in greater detail. The principles underpinning the scheme are:
 - 7.1 to ensure that those who have been assessed as needing care may not need to sell their property to pay for care whilst they are within a DPA with the Council.

- 7.2 that those who can afford to pay a contribution towards care would be required to do so.
- 7.3 to ensure that residents are fully informed about deferred payments and eligibility.
- 7.4 that the scheme is self-financing and sustainable.
- 8 The regulations require the Council to offer deferred payments to people meeting certain eligibility criteria (see paragraph 9 below). These agreements can be retained until the person dies, with the amount repayable from their estate, but can also be offered to persons who decide to sell their home whilst still alive (the deferred payment providing a bridging loan).

Eligibility Criteria

- 9 The Council must offer a deferred payment to those who meet all of the following eligibility:
- 9.1 Anyone whose eligible care needs are to be met by the provision of Council supported care in a care home. This is determined when someone is assessed as having eligible needs. This should comply with choice of accommodation regulations and care and support planning guidance and so take reasonable account of a person's preferences.
- 9.2 Anyone who has less than (or equal to) £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets); and
- 9.3 Anyone whose property or asset interest is not disregarded, for example their previous home is not occupied by a spouse or dependant relative as defined in regulations on charging and support. The disregards are set out in Schedules 1 and 2 of the Care Act Regulations.

10 The Council is also aware of the additional considerations, that :

- 10.1 The person must have a legal or beneficial interest in the property.
- 10.2 There should be no outstanding mortgage on the property (in exceptional circumstances the Council will accept a mortgaged property if, it is believed, the equity in the property is above the capital threshold and is sufficient to pay the fees and any interest and administration costs).
- 10.3 The adult or someone legally authorised to deal with the adults financial affairs must consent to the agreement.
- 10.4 The deferred payment must be signed by a person with mental capacity (as defined by the Mental Capacity Act) to make the decision or someone legally authorised to deal with the adults financial affairs (See paragraph 37- 40 below for more information on mental capacity and deputyship).
- 10.5 If accepting a property as security, the title must be registered with the Land Registry so the Council can place a charge on the property.
- 10.6 If the property is subsequently disregarded (and the person qualifies for Council support as a consequence) then the deferred payment will be frozen and interest will continue to accrue.

The 12 week property disregard

- 11 Where a person has been assessed as having eligible needs for residential or nursing care and owns a property, during the first 12 weeks stay in residential

accommodation, the capital value of the property is not taken into account. The 12 week property disregard starts from the point that the customer/relatives and social care manager agree permanent care is needed. This may pre-date a permanent placement (where a placement is still being sourced, or where panel approval is awaited).

- 12 After 12 weeks, unless the property is subject to a statutory disregard, the property is taken into account as a capital resource.
- 13 A statutory disregard will apply where, for example, the property is occupied by a spouse, partner, or close relative who is incapacitated or aged 60 or over. There are also circumstances where a carer resides in a property and the circumstances are such that the Council can apply its discretion to disregard the property.
- 14 During this 12 week period the Council will provide advice and information about deferred payments through the Financial Assessment Officer who will; signpost the person or their Power of Attorney for independent financial advice, provide detailed information about the Council's deferred payment scheme such as administrative charges, terms and conditions, interest applicable and equity statements. Detailed specific information will be provided in communications between the service user and the Council including by letter.

Refusing a Deferred Payment

- 15 The Council will refuse a deferred payment if we are unable to obtain a legal charge, by way of mortgage, on the property (e.g. unregistered title or prior mortgage on the property).
- 16 A deferred payment will be refused where a person lacks mental capacity and there is no court appointed Deputy (Property and Affairs) or other person legally authorised to make such a decision.
- 17 Where someone is seeking to defer a top up, the Council must consider their request, but retains discretion over whether or not to agree giving considerations of the affordability, sustainability and available equity in the property. A top up is an amount above the Council's contracted rate for care services and is paid directly to the care home.
- 18 The Council will also be unable to offer a DPA where a person does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property.

Securing a Deferred Payment Agreement

- 19 The Care Act 2014 Section 34 Subsection 4 states that we may refuse a DPA unless we can obtain adequate security for the payment of the deferred amount
- 20 The Care & Support (Deferred Payments) Regulations 2014 states (Regulation 4 Subsection 1a) that a local authority MUST obtain adequate security for the payment of the adult's deferred amount and of any interest and administration cost.

- 21 Where a property is owned outright with no mortgage or other charge on it the Council will secure a first legal mortgage against the property on the Land Register. In cases of jointly owned properties the Council will require all of the owners' full agreement and cooperation to the charge being registered against the property.

Equity Limit

- 22 The maximum debt that can be deferred is:

- 22.1 the value of a person's share in the property, less
- 22.2 10%, less
- 22.3 The current lower capital limit (periodically published on the Council website).

Property Valuation

- 23 Under the deferred payment scheme the customer will be expected to provide a valuation of the property or asset against which payments will be deferred. This should be an estate agent valuation or a specialist independent valuation. The Council may in some cases seek to value the property to confirm value. The cost of valuation(s) will be paid for by the deferred payment applicant or their representative.
- 24 The Council may re-value the property periodically during the lifetime of the DPA to ensure the agreement is valid and that the equity limit is not exceeded or where the value of the property will affect the sustainability of the DPA.
- 25 The Council will provide equity statements every 6 months and will notify the customer/representative in advance of the equity being exhausted. It is expected that the customer/representative notifies the Council of any change in the property – such as transfer, sale, building works, damage etc.

Personal Expenditure Allowance

- 26 The Council must allow up to £144 per week as a disposable income allowance for a person deferring their charges under a DPA if requested by the customer. The difference between the disposable income allowance and the actual cost of the services being provided will be deferred.

Information and Charges

- 27 The Council will ensure that persons considering entering residential care are made aware of the ability to defer charges against their property for their care. The Council will provide this information during the person's first 12 weeks in residential care, the period of '12 week property disregard' when the value of the property is not taken into account.
- 28 The Council will provide a twice yearly statement of the outstanding debt to the person(s) entering into the DPA. A statement can be requested at any time and this will be provided within 28 days of request.

- 29 The Council will give the person(s) entering into the DPA at least 6 months' notice that the maximum amount to be deferred is due to be reached.
- 30 The person or their representative will be advised of the costs of entering into a DPA; these are currently:
- 30.1 A one off administrative fee of £450.00 for arranging the deferred payment to cover some of the costs of providing the deferred scheme. This fee can be paid upfront at the start of the agreement or the full value can be deferred, in which case it will be subject to interest (see below). The Council will review this annually;
 - 30.2 Compound interest from the first day of the agreement until all the debt is settled in full. The interest rate is based on the cost of Government borrowing (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.). The Council will review this every January and July. The interest, which is compounded, will be applied daily in line with the accrual of the debt. Interest will continue to accrue until the debt is repaid in full.
- 31 The administrative fee covers some of the costs of providing a DPA, including:
- 31.1 The cost of registering and lifting a charge with the Land Registry
 - 31.2 Legal dispersals, including any Land Registry searches
 - 31.3 Staffing, management and legal costs
- 32 If the Council has to instigate the enforced sale procedure in order to recover our debt, we will charge a fee for any legal and professional costs incurred. All costs can be accrued against the DPA.
- 33 All charges and fees will be clearly set out within the DPA correspondence and included within the Council's schedule of fees and charges.
- 34 The Council is aware of the responsibility to inform those considering a deferred payment to consider seeking independent financial advice.

Renting the property out

- 35 Where the customer does not want the property sold during their lifetime and the property would otherwise be empty, the Council encourages people to rent out their property. The rental income generated, less any reasonable expenses of letting the property e.g. property maintenance and other landlord related costs must be paid to the Council in the customer's assessed weekly charge in order to reduce the accruing debt.
- 36 Where a property is rented out, the Council will require copies of any tenancy agreements that are in place or put in place and would expect this to be via an assured tenancy.

The Mental Capacity Act 2005

- 37 The Mental Capacity Act 2005 (MCA) applies to care, treatment and support of people aged 16 years and over, in England and Wales, who are unable to make some or all decisions for themselves. Staff working with people who lack capacity must have regard to the Mental Capacity Act.

- 38 The Council can only enter into a DPA with someone who has got the mental capacity to understand this, or the person legally authorised to deal with that persons financial affairs. This may be a Deputyship, Lasting Power of Attorney or Enduring Power of Attorney which has been registered at the Court of Protection or in some circumstances a specific order from the Court of Protection. We require a certified copy of the document for our records.
- 39 Where there is no legal authority yet in place but where somewhere is applying for it, the Council will pay the provider and invoice the person who is applying for Deputyship. A letter of undertaking to pay the care fees will need to be signed by the person seeking the Deputyship.
- 40 Where no-one is available to apply for Deputyship the Council will consider applying for Deputyship (see the Council Deputyship Eligibility Criteria).

Ending the Deferred Payment Agreement

- 41 A Deferred Payment Agreement will end in the following circumstances:
 - 41.1 At any time by the person(s) who entered into the DPA by repaying the full amount due.
 - 41.2 When the property (or other form of security) is sold and the Council is repaid
 - 41.3 When the person dies and the amount is repaid to the Council from their estate.
- 42 Debt will stop accruing against the DPA when the equity limit is reached; the person(s) entering into the DPA will be informed 6 months before the equity level is likely to be reached. The Department of Works and Pensions (DWP) will be informed of the changes in circumstances so that a benefits review can be undertaken.
- 43 Where a property is being sold the Council requires a period of notice of the completion date. The net sale price will be used to calculate the final debt due; the net sale price being the actual sale price less associated fees.
- 44 Upon the persons death; the Council will inform the Executor of the estate of the final debt within 28 days. Where the debt is not repaid within 90 days it will be dealt with in accordance with the Council's debt recovery policy.
- 45 The Council will issue an invoice for the total debt once the DPA ends and interest will continue to accrue until the debt is paid in full. The legal charge on the property will not be removed until the debt is repaid in full.
- 46 If someone decides not to continue accruing their care charges against the DPA and can pay the charge from another source instead, a period of notice, given in writing is required to stop the debt accruing. Interest will continue to accrue until the debt is repaid in full.

- 47 A DPA may not end when full Continuing Healthcare is awarded and no funding is due from the Council. The Council may ask for voluntary payments to continue wherever possible. This will reduce the amount of the accrued debt set against the value of the property. Interest will continue to accrue until the debt is repaid in full.
- 48 If any invoice is not paid following the debt management process the Council will issue a Section 103 notice in line with the Law of Property Act (1925). The Notice provides for a period of three months within which the invoice may be paid. If at three months the debt has not been settled the Council can force a sale to recoup the debt thereby becoming the Mortgagee in Possession. The property may be sold at auction or otherwise and any outstanding debt and fees relating to the sale will be deducted from the proceeds, the balance being returned to the person or their estate.

Review

- 49 This policy will be reviewed annually unless an earlier review is required due to changing circumstances or legal framework.

Right to appeal

- 50 If the service user or their appointed representative disagrees with the decision or application of the DPA, they have the right to appeal.
- 51 The service user / carer or their authorised representative have 30 days in which to start the appeal. They can start the appeal process by contacting the Corporate Assessment Client Finance team or their designated social worker and request for the matter to be dealt with under the Council Complaints Procedure.

Contact Us

For more information please contact your designated social worker or

Corporate Assessment Client Finance Team
PO Box 187
4 Civic Way
Ellesmere Port
CH34 9DB
Tel 01244 972685.
E-mail : westclientfinance@cheshirewestandchester.gov.uk

Glossary of terms - Deferred Payment Agreements

12 Week Property Disregard Period	The time frame which allows people to make a decision as to how to meet their contribution to the cost of their eligible care needs.
Administrative Fee	A payment required for setting up a Deferred Payment Agreement. The Administration Fee covers the costs of registering and lifting a Legal Charge with Land Registry, Legal dispersals including Land Registry searches, Staffing, Management and Legal Costs.
AA	Attendance Allowance is a tax free benefit paid to you if you are over 65 and need attention or supervision or help with personal tasks such as getting washed or dressed, or getting around because of illness or disability. A higher rate is paid if you need assistance both during the day and night.
CASS	Care and Support Statutory Guidance also known as the Care Act 2014 which came in to effect on 01 April 2015 and replaced the previous CRAG regulations.
CHC	Continuing Health Care - care costs funded by the NHS where certain criteria is met. NHS Continuing Health Care funding is not means tested.
CRAG	Department of Health Charging for Residential Accommodation Guide. Legislation set down how local authorities can charge for care services. This was replaced by the Care Act 2014 on 01 April 2015.
DPA	A Deferred Payment Agreement is an arrangement with the Council that lets people use the value of their homes to help pay care home costs. The client can therefore delay repaying the Council until they choose to sell their home, or the costs become repayable after their death.
DLA	Disability Living Allowance is a tax free benefit paid if you are under 65 and need help with personal care, such as getting washed or dressed, making a hot meal or get around because of an illness or disability. This benefit has two components – Care and Mobility but not everyone qualifies for both.

	<p>DLA (Care) is paid at three rates: low, middle and high and is not means tested.</p> <p>DLA (Mobility) is paid at two rates: low and high. It is not means tested and is ignored when charges are being worked out.</p>
DIA	Disposable Income Allowance is a fixed amount (currently £144 per week) of a person's income which the local authority must allow the person to retain if they wish to do so. A person may choose to keep less income than the Disposable Income Allowance. This might be advantageous to the person as they would be contributing more to the cost of their care which would reduce the amount they were deferring.
DWP	The Department for Work and Pensions is the government department that pays many of the state benefits that you might receive. Many people still call it the DSS (Department of Social Security) or the Benefits Agency.
Enforced Sale	If a creditor is owed money by someone who owns a property and applies to the courts to secure this debt against the property by way of a "Charge" he/she then has the right to go back to the court and request that the "Charge" be settled by the property being sold.
Equity Limit	The equity limit is the maximum debt that can be deferred against a property. The equity limit is the value of the property minus 10%, minus the Lower Capital Limit (currently £14,250) less any encumbrances such as an outstanding mortgage.
Interest	Money that is paid in exchange for borrowing or using another person's or organisation's money. Interest is calculated as a percentage of the money borrowed. There are two kinds of interest, simple interest and compound interest . Compound interest is accrued on a DPA and is the addition of interest to the principal sum, or in other words, interest on interest.
Joint Tenants	Property can be bought or "held" by two or more people as Joint Tenants (Beneficiaries). This means that each "co-owner" holds equal shares in the

	property whilst they are alive but, in the event of one co-owner's death, their former share will automatically pass to their surviving joint owners. Usually when a couple buy a property they do so as joint tenants beneficiaries
Land Registry	The government body responsible for the maintenance of records relating to property or land ownership.
Legal Charge	Legal charges are a method of securing debts against a property.
Legal Ownership	Details of the legal owner(s) of a property will be recorded on the title deeds. The person (people) detailed on the deeds is/are the only ones legally allowed to sell or transfer the property to A N Other(s).
Lower Capital Limit	Capital below the Lower Capital Limit (currently £14,250) is capital that is not taken into account in the financial assessment.
Option Form	This is the form that you will be requested to complete to apply to enter in to a Deferred Payment Agreement with the local authority.
Tariff Income	If the total value of the assets (usually liquid assets) that you own exceeds the lower capital disregard limit, every £250 of the excess will be assumed to give you £1.00 per week additional income, this is called tariff income.
Tenants in Common	Property can be bought or "held" by two or more people as Tenants in Common. This means that each "co-owner" holds shares in the property (usually based on the amount of contribution to the purchase price) and that, in the event of their death, this share will pass into their estate – and will not automatically pass to the other joint owners of the property.
Title Deeds	The legal document where ownership of the property is detailed. They contain details of the current owner(s) and effective date of ownership. If property has been owned previously by A N Other(s) these details are usually also recorded. Any restrictions (or covenants) on the property are detailed on the Title Deeds – for example that the property cannot be used for commercial purposes
Third Party Payment/Top Up	The Council may only assist with funding a customer's placement to a certain level dependent on their care needs. If the

	care home charge is more than the amount that the Council will pay, the additional amount needs to be paid by a third party (this is known as a top up).
Unregistered Land	Unregistered land is land that is not registered with HM Land Registry. It does not mean that it is not owned, the owner of unregistered land will often have paper deeds, which form a record of previous sales, mortgages and other dealings with the land.
Upper Capital Limit	A person is entitled to apply to access local authority support to meet their eligible care needs if they have capital below the Upper Capital Limit which is currently £23,250.