

Deferred Payment Scheme Policy

Adult Social Services

April 2015

Haringey Council Deferred Payment Scheme

This report sets out the policy for Haringey Councils Deferred Payment Scheme from April 2015.

1. Background

- 1.1 The Care Act 2014 establishes a universal Deferred Payment Scheme, which means that from April 2015 people may not need to sell their home in their lifetime to pay for the costs of care. A deferred payment is a way of deferring some of the costs of care against a property which is the person's main home. It is a loan against the value of the property.
- 1.2 From April 2015, all Councils in England are required to provide the option of deferring payment of some of the cost of residential or nursing care to local residents who own their own home and have other assets below a prescribed amount. They must also have assessed care needs for residential or nursing care. The new scheme will have national eligibility. Local authorities are required to follow new national guidance on the eligibility criteria for a deferred payment.
- 1.3 The purpose of this policy is to set out the framework for Haringey Council's Deferred Payment Scheme from April 2015. This framework takes into account the main changes introduced by the Care Act 2014 and the statutory guidance published by the Department of Health (Oct 2014).
- 1.4 For further information about the Care Act and Deferred Payment Scheme please see:
www.gov.uk/government/uploads/system/uploads/attachment_data/file/366104/43380_239_02777_Care_Act_Book.pdf

2. Universal Deferred Payments Scheme (April 2015)

- 2.1 Under Sections 34-36 of the Care Act 2014, all Councils will have a Deferred Payment Scheme which includes:
 - 2.1.1 A set of national eligibility criteria on entitlement
 - 2.1.2 Allows Councils to charge interest and administrative fees to offset the costs of the scheme
 - 2.1.3 Retains some local discretion, for example the amounts that can be deferred

3. Haringey Council's Deferred Payment Scheme (from April 2015)

- 3.1 Haringey Council's Deferred Payment Scheme is consistent with relevant legislation and statutory guidance. The principles underpinning the scheme are:
 - 3.1.1 To ensure that those who have been assessed as needing care may not need to sell their property to pay for care.
 - 3.1.2 That those who can afford to pay a contribution towards care should do so.
 - 3.1.3 To ensure that residents are fully informed about deferred payments and eligibility.
 - 3.1.4 That the scheme is self-financing and sustainable.

4. Eligibility Criteria for a Deferred Payment Scheme

4.1 Haringey Council must offer a Deferred Payment Scheme to people who own their own home and meet the eligibility criteria set out below:

4.1.1 Anyone whose needs are to be met by the provision of care in a care home or nursing home; and

4.1.2 Who has less than (or equal to) the prescribed amount (currently £23,250) in assets excluding the value of their home (i.e. in savings and other investments); and

4.1.3 Whose home is not disregarded, for example it is not occupied by a spouse or dependent relative (i.e. someone whose home is taken into account in the local authority financial assessment and so might need to be sold).

4.2 Additionally:

4.2.1 The person must have a beneficial interest in the property.

4.2.2 There should be no outstanding mortgage on the property.

4.2.3 The adult or their lawful representative must consent to the agreement.

4.2.4 The Deferred Payment Agreement must be signed by a person with capacity to make the decision or their lawful representative, i.e. someone acting under a Power of Attorney or a Financial Deputy appointed by the Court of Protection.

5. Refusal of a Deferred Payment Agreement

5.1 Cases where the Council will refuse:

The Care Act 2014 gives the Council the discretion to refuse a Deferred Payment Agreement in certain circumstances. It is the policy of Haringey Council to refuse a Deferred Payment Agreement where:

5.1.1 The Council is unable to secure a first charge on the person's property (i.e. there is an outstanding mortgage or charge secured against the property);

5.1.2 The Applicant fails to properly complete the Council's designated application form and disclose and produce full information and evidence about their circumstances and finances;

5.1.3 Where the applicant does not agree to the terms and conditions of the Council's Deferred Payment Agreement ;

5.1.4 In the case of jointly owned property, not all of the owners agree to the terms and conditions of and consent to enter into the Council's Deferred Payment Agreement.

6. How much can be deferred

- 6.1 The Council will defer actual residential or nursing care costs; the amount will be determined in accordance with statutory guidance. This would normally include the actual cost of residential or nursing care less any financially assessed contribution. The Council will consider any reasonable top-ups providing there is enough equity available.
- 6.2 Where a property is used as security for a Deferred Payment Agreement the Council must not allow any amount to be deferred beyond the upper limit of the equity limit and must refuse to defer care costs beyond this (see section 17 entitled 'Discontinuance'). However, interest can still accrue beyond this point, and administrative charges can still be deferred.
- 6.3 The equity limit must be set at the value of the property minus 10%, minus the prescribed amount of the lower capital limit (currently £14,250 for financial year 2015/16).
- 6.4 The 'upper limit' means the point at which the applicant has deferred 90% of the value of the equity limit in the property.
- 6.5 When someone is approaching or reaches the point at which they have deferred 70% of the value of the equity limit in the property the Council will review the cost of their care and discuss if the person might be eligible for any means tested support.

7. Applying for a Deferred Payment Agreement

- 7.1 All applicants for a deferred payment must complete Haringey Council's designated application form and disclose and produce full information and evidence about their circumstances and finances.

8. Obtaining Security

- 8.1 Haringey Council is required to ensure that adequate security is available when deciding whether a person is entitled to a Deferred Payment Agreement. It is the responsibility of the applicant or their lawful representative to produce evidence that they are able to give the Council adequate security in the form of a legal charge on the property. In cases of jointly owned property the Council require all of the owners to agree to the charge being registered against the property.

9. Administration fees and interest charges

- 9.1 Haringey Council will charge an administration fee for arranging the deferred payment. There will also be an on-going administration fee which becomes payable during the course of the Deferred Payment Agreement. These fees can also be deferred. Administration fees are the actual costs of providing and maintaining a Deferred Payment Agreement including (but are not limited to) the costs incurred by the Council of:

- a) Registering a charge with the Land Registry, including any Land Registry searches.
- b) Costs of valuation and any re-valuation of the property.

c) The Councils staffing, management and legal costs.

d) The cost of removal/ redemption of the registered charge.

9.2 The Care Act allows and it is the policy of the Council to charge interest on the deferred payment amount in accordance with the National Maximum Interest Rate. The rate changes every six months on 1st January and 1st July to track the market gilts rate specified in the Economic and Fiscal Outlook. The interest rate is a rate that does not exceed the relevant rate for the relevant period plus 0.15%.

9.3 All charges and fees will be clearly set out within the Deferred Payment Agreement. Fees and charges will be set at a level to ensure that they only cover the actual cost to the Council. A schedule of deferred payment fees and charges will be publicly available. This will enable the person applying for a deferred payment full transparency on the costs of the scheme and to enable the person or their carer to plan for the costs of care.

10. Property valuation

10.1 Haringey Council will arrange for a valuation of the property at the expense of the applicant. The applicant may also request an independent valuation in addition to the Councils valuation. If there is a substantial difference the Council and applicant must agree an appropriate valuation before proceeding. If agreement cannot be reached the dispute will be dealt with under the Council's Review and Appeals Procedure. If a Deferred Payment Agreement is approved the costs of valuation can be rolled up into and deferred as part of the Deferred Payment Agreement.

10.2 The valuation of the property will be reassessed once the amount deferred exceeds 50% of the initial valuation. Thereafter it will be reviewed periodically to ensure that the upper limit is not exceeded and in any other circumstance where the value of the property will affect the sustainability of the Deferred Payment Agreement.

11. The Deferred Payment Agreement

11.1 Successful applicants will be required to enter into a Deferred Payment Agreement with the Council. This is a formal legal agreement giving the Council the right to secure the deferred fees against the property by means of a legal charge. The agreement must be signed by the applicant or his lawful representative (Attorney or Deputy) and any joint owner of the property

11.2 The Deferred Payment Agreement shall only take effect upon being signed by the applicant or lawful representative and any joint owner and being sealed by the Council.

11.3 The applicant and his lawful representative and any joint owner must produce satisfactory evidence of identity before signing.

11.4 If the applicant or any joint owner has capacity but the agreement is being signed by the lawful representative the Council will also require sight of an original Power of Attorney or a copy certified by solicitor.

11.5 If the applicant or any joint owner lacks capacity the agreement must be signed on their behalf by a person authorised by an Enduring Power of Attorney that has been registered with Court of Protection; or a Lasting Power of Attorney for Financial Affairs that has been registered with the Court of Protection; or by a Financial Deputy appointed by the Court of Protection under the Mental Capacity Act 2005 and evidence of such authority in the form of a sealed or certified copy must be produced prior to signing.

11.6 The Deferred Payment Agreement will set out the following terms:

11.6.1 Interest rates and how interest will be worked out against the deferred payment.

11.6.2 How the agreement can be terminated.

11.6.3 Circumstances on which the Council can refuse to pay any more care fees.

11.6.4 Details of the property charge or any other form of security.

11.6.5 Information on the effects of taking out a Deferred Payment Agreement.

11.6.6 Restrictions on what the deferred amount can be spent on.

11.6.7 How problems should be resolved if either party feels the terms of the agreement have been broken.

12. The 12 week property disregard

12.1 Where a person has been assessed as having eligible needs for residential or nursing care and owns a property, the capital value of the main property is disregarded during the first 12 weeks stay in residential accommodation.

12.2 After 12 weeks, unless there is statutory disregard of the property, the property is taken into account as a capital resource. 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.

12.3 During this 12 week period the Council will provide advice and information about deferred payments. Advice and information will include, as appropriate, signposting the person or their carer for independent financial advice. Advice and information about deferred payments will be available in a variety of mediums, for example: leaflets; the Councils website.

13. Conditions of entering into a Deferred Payment Agreement

13.1 The person entering into the Deferred Payment Agreement will also be required to abide by a number of conditions:

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

13.1.2 All outgoings associated with the property (e.g. Council tax, service charges and ground rent) are paid.

- 13.1.3 The property is fully insured for the full cost of rebuilding. If the property is to be left empty for any period of time, the person will need to ensure that this is disclosed to the insurance company and that any terms required by the insurer are met.
- 13.1.4 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.
- 13.1.5 That the person receiving care and/or their representative acknowledges that they have received the Council's advice that they should seek independent legal and financial advice before committing themselves to this agreement.
- 13.1.6 That the applicant makes a full application on the Council's designated application form, and provides any evidence required by the Council in support of the application.
- 13.1.7 Where the property is jointly owned, the co-owners as well as the applicant must agree to and be a party to the agreement.
- 13.1.8 That the applicant or his lawful representative notifies the Council of any change in circumstances which could affect the value of property or the sustainability of the Deferred Payment Agreement. This includes but is not limited to circumstances including changes in the need for the care and support, changes in the occupation of the property, changes in financial circumstances and changes in the insured risk.

14. Financial Assessment of contributions

- 14.1 Applicants entitled to a Deferred Payment Agreement will be assessed to make a financial contribution towards the costs of care from their assessable income and capital (for example, savings and investments).

15. Annual reviews and Deferred Payment statements

- 15.1 The Deferred Payment Agreement will be reviewed at least annually to assess the value of the property and ensure that there is adequate security to protect the Council's legal charge on the property and/or any other asset accepted as security. The frequency of this review will be decided on a case by case basis.
- 15.2 In addition to reviewing the deferred payment an annual statement will be sent to the person entitled to the deferred payment and/or their lawful representative. The annual statement will set out: the amount of fees deferred; interest and administrative charges to date; total amount due and equity available in the property. The statement will record the amounts deferred and progress towards the deferred payment upper limit.

16 Terminating the Deferred Payment Agreement

- 16.1 The Deferred Payment Agreement can be terminated in a number of ways:
 - 16.1.1 Voluntarily by the person receiving care or someone acting on their behalf redeeming the charge by paying the full amount that is due.

- 16.1.2 When the property is sold.
- 16.1.3 When the person receiving care dies.
- 16.2 Where the agreement is voluntarily terminated the Council will require written notice of termination (the full terms under which the agreement can be terminated will be set out in the Deferred Payment Agreement).
- 16.3 On termination the full amount due (care charges, interest accrued, administrative and legal fees) will be paid to the Council.
- 16.4 If the person decides to sell the property they must notify the Council. They will be required to pay the Council from the proceeds of the sale.
- 16.5 The deferred payment will automatically come to an end on a person's death. The debt can either be paid from a person's estate or by a third party, for example a family member may choose to settle the debt rather than sell the deceased's property. If the agreement is terminated through a person's death the total amount due becomes payable within 90 days after the person dies.

17. Discontinuance

- 17.1 There may also be circumstances when the Council decides not to continue with a Deferred Payment Agreement, for example:
 - 17.1.1 When a person becomes eligible for public funding support to pay for their care.
 - 17.1.2 Where a person no longer has need for care in a care home (or where appropriate supported living accommodation).
 - 17.1.3 If a person breaches certain predefined terms of their contract (which must be clearly set out in the contract) and the Council's attempts to resolve the breach are unsuccessful and the contract has specified that the Council will stop making further payments in such a case.
 - 17.1.4 Where a spouse or dependent relative has moved into the property after the agreement has been made, where this means the person is eligible for Council support in paying for care and no longer requires a Deferred Payment Agreement.
 - 17.1.5 Where a relative who was living in the property at the time of the agreement subsequently becomes a dependent relative. The Council may cease further deferrals at this point.
 - 17.1.6 If the property is subsequently disregarded (and the person qualifies for local authority support as a consequence) then the deferred payment is frozen and interest will continue to accrue.

18. Reassessments following repayment to the Council

- 18.1 If a Deferred Payment Agreement is terminated other than by death, the Council shall undertake a reassessment of the persons social care needs and finances.

19. Refusing an application

- 19.1 If the Council refuses a request for deferred payment, the decision will be notified in writing to the applicant and/or their lawful representative. The decision letter will set out the grounds for refusal and provide for appeal rights.

20. Review and Appeals procedure

- 20.1 The decision on the outcome of the application for a deferred payment can be reviewed. The grounds for review could include but are not limited to:

20.1.1 The decision to refuse the application failed to take into account any new information which would have led to a revision of the decision.

20.1.2 There are eligible care costs which the Council have failed to take into account.

20.2 Requests for a review 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.

20.3 If the person is dissatisfied with the outcome of the review, they can then appeal within 20 working days of being notified of the outcome of the review. This period can be extended if there are exceptional circumstances..

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

21. Information and advice

21.1 The Council will provide advice and information about deferred payments through a variety of channels; for example, on the Council's web site and in leaflets. Information and advice will be provided during the 12 week property disregard period and at other stages during the care and financial assessment process.

21.2 Advice and information also includes financial advice and under the Care Act all local authorities are required to ensure that people have access to independent financial advice. If the person considers seeking advice from an independent financial advisor who has specialist knowledge of long term care funding and can discuss the most appropriate options for their situation, they can find an independent advisor on the following website:

<http://societyoflaterlifeadvisers.co.uk/find-an-adviser/>

22. Discretionary provisions

This policy cannot cover every eventuality. In special cases with exceptional needs the Director of Adult Services has discretionary power to permit and approve a Deferred Payment Agreement which does not meet the Councils standard criteria.