

North Lincolnshire Council

Deferred Payment Scheme

From 1st April 2015

Based on the NAFAO Implementation Toolkit produced by NAFAO on commission from:



Supporting implementation of the Care Act 2014

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1. Legal Status

- 1.1. This North Lincolnshire Council policy complies with The Care Act 2014 (sections 34 and 36) which requires local authorities to offer from 1st April 2015 Deferred Payments Agreements to allow persons to defer the sale of their home where it is needed to fund care fees. The Care and Support (Deferred Payment Agreement) Regulations 2014 set out the legal framework and local authorities' responsibilities in detail.
- 1.2. The regulations require the council to offer deferred payments to people meeting certain eligibility criteria (see section two below) and who are able to provide adequate security for the amount being deferred, so that they can be confident that the amount deferred will be repaid in the future. A Deferred Payment Agreement is available to people who have council arranged care and support, and also people who arrange and pay for their own care, subject to the eligibility criteria.
- 1.3. 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 "bridging finance").
- 1.4. The Care Act and regulations also allow the deferred payment scheme to be offered to persons who have incurred debt in relation to their care fees.
- 1.5. North Lincolnshire Council will not consider applications under the deferred payment scheme for people living in extra care housing and supported living where the person intends to retain their former home and pay the associated care and accommodation rental costs from their deferred payment. Further details on precisely what qualifies as supported living accommodation are set out in regulations.
- 1.6. The regulations do not allow Deferred Payments for people who live in their own home.
- 1.7. North Lincolnshire Council will consider applications under the deferred payment scheme from people who otherwise might be required to sell their home to pay for care. For example, who has assets, which cannot quickly/easily be liquidated or converted to cash, who has slightly more than the asset threshold.

2. Eligibility Criteria

- 2.1. A deferred payment agreement can provide additional flexibility for when and how someone pays for their care and support. It should be stressed 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 person (or a third party on their behalf) at a later date.
- 2.2. The council will require an assessed contribution from the person's income and non-property assets towards the costs of the person's care with the remaining amount of the care fees being the amount deferred.
- 2.3. Deferred payment agreements are designed to prevent people from being forced to sell their home in their lifetime to meet the cost of their long-term care in a care home. The council must offer a deferred payment to people who meet all three of the following eligibility criteria at the point of applying for a deferred payment agreement:

- a) Anyone who the council assesses as having eligible needs, which are to be met by the provision of long-term care in a care home. This should comply with choice of accommodation regulations and care and support planning guidance and so take reasonable account of a person's preferences.
- b) Subject to clause 1.7 above, anyone who has less than or equal to the upper capital limit in assets excluding the value of their home (i.e., in savings and other assets); and
- c) Anyone whose 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 (i.e., someone whose home is taken into account in the council financial assessment and so might need to be sold).

Additionally:

- 2.2.1 The person must have a beneficial interest in the property.
- 2.2.2 There should be no outstanding mortgage on the property (or if accepting a mortgaged property, the outstanding amount must leave sufficient value to meet the criteria for self-funding and will generally have six months' worth of funding in the property when a deferred payment is offered.)
- 2.2.3 The person or their legal representative must consent to the agreement.
- 2.2.4 The deferred payment must be signed by a person with capacity to make the decision or their legal representative (see section nine for more information on mental capacity and deputyship).
- 2.4. The council requires the person to complete (in full) an application form for the scheme and give us complete information about their circumstances and finances.
- 2.5. When the council is able to secure a Land Registry first legal mortgage charge on the property the regulations require it to accept a property as adequate security.
- 2.6. If the council cannot secure a Land Registry first legal mortgage it may still at its sole discretion accept a property as security.
- 2.7. The council will not routinely accept a Deferred Payment Scheme application if there is less than six months' worth of funding in the property.
- 2.8. The council may exercise its discretion to take other forms of security rather than the person's property.
- 2.9. The council has discretion to refuse a deferred payment agreement if it is not satisfied that its interest is secure. Whatever security is provided, the council would have to be satisfied that it could gain ownership of this asset on the death of the person or sale of the object.
- 2.10. If a spouse or dependent relative moves into the property following entry into the deferred payment scheme, the council will review eligibility based on the Care Act charging guidance.
- 2.11. If the property is subsequently disregarded (and the person qualifies for council support as a consequence) then the deferred payment is frozen, and interest will continue to accrue.

3. How much can be deferred?

- 3.1. When assessing applications for a deferred payment, the council will take the sustainability of the deferred payment into account based on the elements listed at 3.2 and will consider the likely duration of the deferred payment or the period of time you propose to defer part of your weekly care costs (for example pending a planned property sale).
- 3.2. Four elements will dictate how much a person will defer:
 - (a) The amount of equity a person has available in their property (or other form of security);
 - (b) The amount a person is assessed by the council to contribute towards their care costs from their income and savings and any contribution they can make from other sources for example a financial product, rental income or a third-party; and
 - (c) The person's choice to exercise their right to retain a sum greater than the Personal Expenses Allowance up to the maximum set by the Disposable Income Allowance
 - (d) The total care costs a person will face, including any top-ups the person might be seeking.
- 3.3. Where a person has chosen a setting that is more expensive than the amount identified for the provision of the accommodation in the personal budget the additional cost is known as a 'top-up' payment. The amount of the 'top-up' is the difference between the actual costs of the preferred provider and the amount that the council would have set in a personal budget.
- 3.4. A person can ask the council to consider adding a 'top up' payment to the amount to be included in the Deferred Payments Scheme loan. The council assess if this is sustainable by considering the circumstances and checking how much equity a person has available in their property.

4. When the council can decline a deferred payment application

- 4.1. The council can decline a deferred payment application even if a person meets the eligibility criteria and the council would otherwise be required to offer the person an agreement. This discretion to refuse is intended to provide the council with a reasonable safeguard against default or non-repayment of debt.
- 4.2. The council may refuse a deferred payment agreement despite someone meeting the eligibility criteria:
 - 4.2.1. If it cannot obtain a legal charge by way of mortgage on the property.
 - 4.2.2. If the person lacks capacity and there is no appointed deputy to make such a decision.
 - 4.2.3. If the person is seeking a top up which the council does not consider sustainable.
 - 4.2.4. If the person does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property.

5. Information for persons with eligible care needs

- 5.1. In order to be able to make well-informed choices, it is essential that people access appropriate information and take independent financial advice and/or independent legal advice before taking out a deferred payment agreement.
- 5.2. It is also important that people are kept informed about their Deferred Payment Agreement throughout the course of the agreement, and that they (and the executor of their estate where appropriate) receive the necessary information upon termination of the agreement.
- 5.3. The council will assist the person with care and support needs (if they have capacity to consent) or anyone entitled to act for them to involve appropriate carers and/or families to participate in discussions. This will include making available the information that would otherwise be given to the person they care for. In doing this, the council will comply with mental capacity and data protection legislation.
- 5.4. The council will aim to inform persons with eligible care needs who are considering entering residential care of the ability to defer charges against their property for their care.
- 5.5. The council will emphasise that it cannot offer personal financial advice to people wishing to take advantage of the scheme that they should consider seeking independent financial advice and taking independent legal advice.
- 5.6. The council will advise the person or their representative of the eligibility criteria for the Deferred Payment Scheme.
- 5.7. The council will advise the person or their representative of the details of the scheme including:
 - That there are legal and administration charges attached to a Deferred Payment Agreement.
 - That interest will be applied from day one of the agreement and that this will be compounded.
 - The 12-week property disregard must be allowed where the person is eligible.

6. Deferred Payments and the 12 Week Property Disregard

- 6.1. The 12-week property disregard is aimed at preventing people being forced to sell their home at a time of crisis. The regulations under the Care Act 2014 therefore create space for people to make decisions as to how to meet their contribution to the cost of their eligible care needs. The council will not include the value of a person's main or only home when the value of their non-housing assets is below the upper capital limit when:
 - (a) For the first 12 weeks after they enter a care home as a long-term resident; or
 - (b) A property disregard other than the 12-week property disregard unexpectedly ends because the qualifying relative has died or moved into a care home.
- 6.2. This property disregard will be for 12 weeks. Other capital assets and income will be regarded and a contribution towards the care costs required.
- 6.3. When the persons other available resources are below the upper capital limit and it would have been necessary to sell the property immediately to fund the persons care home services, the 12-week property disregard will be

automatically applied to their financial assessment and the Deferred Payment Agreement will be available from the thirteenth week subject to the appropriate eligibility criteria.

- 6.4. If there are sufficient resources in excess of the upper capital limit to fund care for any period, no matter how short, the person would be expected to self-fund and an application to access the Deferred Payment Scheme can be accepted in readiness for the time that capital reduces to the upper capital limit and it would be necessary to sell the property. However, the council will aim to use this time to discuss the availability of the deferred payment scheme; and has discretionary powers to offer a deferred payment to people with more than the upper capital limit.
- 6.5. Persons already contracting privately for their residential care services who may need to access council funding are not entitled to the 12-week property disregard.
- 6.6. The council has the discretion to allow a 12-week property disregard request in other circumstances where access to council support is requested due to a sudden and unexpected change in circumstances.

7. Timescales

- 7.1. For people who are self-funding their care home placement and who meet the councils care eligibility criteria but have capital including their former home the council will aim to have the agreement finalised and in place within 12 weeks of receiving the application. Routinely the deferment of fees will commence from an agreed date after agreement is signed and the council has obtained security. The council may at its discretion accept an application for the deferment of fees to start up to 3 months prior to receipt of the written application.
- 7.2. A person for whom the council is organising long-term care home services who has capital including their former home in excess of the upper capital limit is entitled to the 12-week property disregard which will be automatically applied to their financial assessment. The council aims to ensure that people are able to make a smooth transition from the 12-week property disregard to the follow-on funding arrangement.
- 7.3. Those people to whom 7.2 applies can decide to
 - Contract privately. The person can subsequently make a Deferred Payment Agreement application.
 - Apply for a Deferred Payment Agreement. If they opt to apply for a Deferred Payment Agreement the council will routinely allow the 12-week property disregard period for them to make the application and for it to be processed. The objective being that the Deferred Payment Agreement starts on the first day of the thirteenth week.
- 7.4. If a person does not make their application in sufficient time for it to be processed within the 12-week property disregard period, the council will routinely end the persons care home contract and require them to contract privately. Their Deferred Payment Agreement application can continue to be processed and a start date set by mutual agreement.
- 7.5. If a person with capital in excess of the upper capital limit decides not to apply for a Deferred Payment Agreement the council will seek to discuss the person's options with them or their representative including ending the council contract and them becoming self-funding. The council will seek to confirm that suitable

legal or independent financial advice has been taken before reaching their decision.

8. Deciding not to sell and refusing a Deferred Payment Agreement

- 8.1. If the person does not want to sell their property and also chooses not to take advantage of the scheme, they will be deemed to be able to pay the full cost of their care and will be charged as such.
- 8.2. The council will seek to discuss the person's options with them or their representative including ending the council contract and them becoming self-funding. The council will seek to confirm that suitable legal or independent financial advice has been taken before reaching their decision.
- 8.3. If the person does not pay the full cost of their council arranged services, the debt will be addressed via the council's debt process.
- 8.4. During the debt recovery process, the council will still offer a deferred payment agreement to address the debts and possible future costs.

9. Renting the property out

- 9.1. The council will encourage persons to rent their property (though ultimately any decision on rental must be their own).
- 9.2. The person remains responsible for the general maintenance of the property.
- 9.3. The council requires sight of the tenancy agreement. Good practice would suggest that the person should offer a six-month short-term assured tenancy.

10. Interest charges; calculation; fees

- 10.1. The council will charge interest on any amount deferred, including any legal and administrative charges, which have been deferred. This is to cover the cost of lending and the risks associated with lending, for example the risk of default. The council will apply the compound interest at the maximum rate permitted under the national regulations for Deferred Payment Schemes. This maximum rate is fixed for periods of six months and may change each 1st January and 1st July.
- 10.2. The maximum interest rate for deferred payments is based on the cost of government borrowing - more formally, 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 setting of the national rates will be dictated by the overall economic environment and other fiscal events.
- 10.3. The council will calculate the compound interest daily and apply it quarterly.
- 10.4. There will be administration charges for a Deferred Payment Agreement. These will not exceed the council's actual cost of making, maintaining and discharging the arrangements for the Deferred Payment Agreement.
- 10.5. The person must repay in full all fees deferred, the interest, legal and administrative charges incurred. Interest will accrue on the amount deferred even once someone has reached their 'equity limit' that is the maximum value the council can defer. Interest will accrue after someone has died up until the point at which the deferred amount is repaid to the council.
- 10.6. The person can choose to add the legal and administrative charges and interest to the total amount deferred as they are accrued or may pay these separately.

- 10.7. The council will charge for its costs incurred in setting up, during and at the discharge of the Deferred Payment Agreement, including those associated with revaluing the property, providing statements, and any charges incurred in removing a legal charge from a property. This will include but not be limited to
- Postage; printing and photocopying;
 - Staffing;
 - Land registry fees;
 - Legal costs;
 - Valuation fees and Land search fees.

11. Types of property ownership

11.1. *Sole ownership*

- 11.1.1. This refers to a person who owns their property outright, with no other owners. This will typically be suitable for a Deferred Payment Agreement and requires no special treatment.

11.2. *Jointly owned property*

- 11.2.1. In this situation is where all co-owners effectively own 100% of the property while they are alive and 0% of it if they die leaving a survivor. This means that if two people own a property as Joint Tenants and one of them dies, the survivor automatically becomes the sole 100% owner of the property, and the deceased (and the deceased's estate) owns 0%. This means that the deceased cannot leave the property in his/her Will, as they no longer own any interest in it.
- 11.2.2. To access the Deferred Payment Scheme all parties will have to agree to the charge being placed on the property.

11.3. *Tenants in Common*

- 11.3.1. This refers to a case where each party owns a defined share, this can be two or more persons, but the total shares will add up to 100%. Each person can dispose of their share however they choose.
- 11.3.2. To access the Deferred Payment Scheme this will require all parties who are tenants in common to agree to the council having a charge on the property.

11.4. *Unregistered land*

- 11.4.1. If a property proposed as security for a Deferred Payment Agreement is not registered with the Land Registry, it will need to be registered by the owner (at their expense) before the application can be progressed.

11.5. *Refusal of a Deferred Payment Agreement application*

- 11.5.1. Refusal of a Deferred Payment Agreement does not mean the property cannot be taken into account as part of the persons assets, it just means that they cannot access the deferred payment scheme for part of their care costs. Assuming the persons capital tied up in the house exceeds the upper capital limit (based on the council's estimate of value and knowledge of ownership) the person will be deemed able to self-fund or will be charged the full cost of their council arranged care (if assessed as being

able to do so). The payment and recovery of the council's cost will be subject to its normal income collection and debt resolution processes.

- 11.5.2. The council will seek to discuss the person's options with them or their representative including ending the council contract and them becoming self-funding. The council will recommend that the person seeks suitable legal and/or independent financial advice to help them select their best option for future funding.

12. Mental Capacity Act

12.1. Definition

- 12.1.1. 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.
- 12.1.2. The Act is accompanied by a statutory Code of Practice which explains how the MCA works on a day-to-day basis and provides guidance to all those working with, or caring for, people who lack capacity. The Code has statutory force so that all staff who are employed in health and social care are legally required to 'have regard' to the MCA Code of Practice.

12.2. Where the person lacks the ability to enter into a Deferred Payment Agreement

- 12.2.1. If a person lacks the mental capacity to make decisions about their finances as they cannot be compelled to enter an agreement, they are not able to understand. If there is no one legally empowered to support the person, then their family or a representative and as a last resort the council should make application to obtain a Deputyship Order relating Property and Affairs to support their best interests being observed.
- 12.2.2. Whilst this is being obtained the council will pay any care home costs that the person cannot meet themselves and will send regular invoices detailing the charges to be paid to the person applying for deputyship.
- 12.2.3. The council will ask the person applying for the deputyship order to sign a letter of undertaking to pay the care fees. In addition, the council will ask the person applying for the deputyship order to seek to ensure that the council is granted interested party status in respect of that application and will provide evidence to the council that the application has been made and evidence, upon request, of the progress of that application.
- 12.2.4. When the deputyship is obtained the deputy should be able to pay the persons debts to the council and can consider if they wish to apply for a Deferred Payment Agreement. The council will need to satisfy itself that there is no conflict of interest in exercising the duties of deputy.
- 12.2.5. If the deputy does not apply for a Deferred Payment Agreement or pay the debts the council's expenditure will be subject to its normal income collection and debt resolution processes (which may include obtaining a county court judgement for the debt outstanding) and may report the deputy to the Office of the Public Guardian.

13. Valuation of Property / Securing the Deferred Payment Agreement

- 13.1. The Care Act 2014 section 34 subsection 4 states that:

“Regulations under subsection (1) may, in particular prohibit a council from entering into, or permit it to refuse to enter into a deferred payment agreement unless it obtains adequate security for the payment of the adults deferred amount.”

13.2. The Care & Support (Deferred Payments) Regulation 2014 (Regulation 4(1)(a)) states that a local authority:

“must obtain adequate security for the payment of the adults deferred amount and any interest or administration costs which are to be treated in the same way as the adult’s deferred amount.”

13.3. The regulations also make clear that a council must accept a first legal mortgage charge as adequate security. That is to say, if the person owns the property outright without a mortgage or another charge on it, the council must accept it as adequate security.

13.4. The purpose of the valuation is initially to establish whether the available equity is greater than the upper capital limit, which will make the resident self-funding; however, the value of the property will also inform the limit on the amount of equity the person can draw. The equity limit is set at:

Value of the person’s share in property minus 10% minus the lower capital limit

13.5. When assessing whether the value of the persons share in the property is greater than the upper capital limit, the above calculation includes an allowance of 10% of the estimated value will be allowed for sale costs to give a net estimated value. This is only for the projection and when eventually sold the actual costs of sale will be deducted when assessing the person’s capital.

13.6. If the property was purchased through “Right to Buy” the valuation will be net of any outstanding loan/mortgage on the property and of any repayment requirements of the property. It is established best practice that the discount is the minimum percentage of ownership attributed to the person. The value is at current market value and not that of the original purchase.

13.7. The council will always seek a first legal mortgage charge to maintain adequate security.

13.8. The council requires a professional valuation of the property during the Deferred Payment Scheme application process and during the lifetime of the agreement. The normal method will be for the council’s professional Property Services staff to value the property and the cost of the valuation will be charged to the applicant. These staff are independent of the People Directorate and will provide an impartial valuation report for the applicant.

13.9. Alternatively the applicant may arrange their own professional valuation using a Royal Institution of Chartered Surveyors registered surveyor and submit this with their application. The council reserves the right to validate the valuer’s professional standing and may decline to accept the submitted valuation. The council will accept an existing professional valuation, which was undertaken no more than 12 weeks previously.

13.10. The council will confirm with the person or their representative the approximate value that is being taken into account in their financial assessment.

13.11. If the person or their representative disagrees with the council’s valuation, they will be asked to provide supporting evidence for the council to consider. If the dispute remains a professional valuer appointed by the council may be

employed (at the persons expense) to make a current market valuation of the property.

- 13.12. Whilst seeking to agree the value of the property, the council reserves its right to make its own decision on the value of the property and the available equity.

14. The Land Search

- 14.1. The council will undertake its own enquiry with the Land Registry.
- 14.2. If the response to the enquiry is that the property is registered and in the sole name of the person, the Deferred Payment Agreement application will be progressed.
- 14.3. If the response to the enquiry is that the property proposed as security is not registered the Deferred Payment Agreement application cannot be progressed. It will need to be registered with the land registry by the owner (at their expense) before the application can proceed.
- 14.4. If the response is that the property is registered in joint names then written agreement to register a charge must be obtained from all registered proprietors, to enable the application to be progressed.

15. The Legal Agreement

- 15.1. The council requires the person or their legal representative to enter into a Legal Agreement confirming that they wish to take advantage of the Deferred Payment Scheme and that all implications have been explained.
- 15.2. The complete process, timescales and policy of the council will be provided in writing to any person expressing an interest in applying for a Deferred Payment Agreement.
- 15.3. Before the Deferred Payment Agreement comes into effect, the person or their representative will be asked to inform the council how they plan to use, insure and maintain their property whilst in the deferred payment scheme.

16. Periodic Statement of Accrued Debt

- 16.1. The council will regularly check the current property value, the remaining equity and the person's eligibility for council funding or their self-funding status.
- 16.2. The council will provide a statement at least annually to the person or their representative. The statement will include the outstanding debt inclusive of any legal and administrative charges, the interest rate, an indication of the rate at which the deferred sum is growing and give an estimate of the length of time the persons remaining equity and other assets will be sufficient to fund the full cost of their care.
- 16.3. Invoices for the accrued debt will be issued quarterly to the person or their representative and will be placed on hold, that is payment will not be actively pursued but payment will still be due.

17. Re-valuation of Property

- 17.1. The property valuation will be reviewed annually against reference data and linked into the Periodic Statement of Accrued Debt as noted at 16.2 above.
- 17.2. The property will need to be re-valued, at the customer's expense, at least every five years. The methods of carrying out a re-valuation of the property are noted at 13.8 and 13.9 above. The method used may change over the course of the Deferred Payment Agreement.

- 17.3. If the property value increases or decreases the equity limit will be recalculated and it may mean that it is reached earlier than expected or that the loan can continue for longer than originally projected.

18. Benefits entitlement

- 18.1. A person who is party to a Deferred Payment Agreement is paying for their own care, with the deferred sum to be paid at a later date, without funding from the council. As such they are likely to be entitled to and should apply for Attendance Allowance, Disabled Living Allowance (care component) or Personal Independence Payment.
- 18.2. In assessing the service user contribution, the person can make from their income and non-property assets the council will routinely assume these benefits are in pay.
- 18.3. The council may support the person, or their legal representative make benefit applications, but the claimant remains responsible for notifying the Department for Work and Pensions of any changes to their circumstances.

19. When the Deferred Payment Agreement ends (due to depletion of equity)

- 19.1. When the remaining equity value reduces to the lower capital limit the person, or their representative will be offered support to make an Income Support/Pension Credit Claim. This will require:
- A current professional valuation of the property
 - A copy of the entry held at the Land Registry relating to the property, or a letter from the council's Legal Department acknowledging the council's interest in the property
 - An account detailing the amount of debt currently accrued against the property should be produced.
- 19.2. When completing the Income Support/Pension Credit Claim form the final "Comments" box should be annotated with the following wording or similar.
- Mr/Mrs (name) is the owner of the property detailed on this form. Although the property is not being actively marketed for sale, the value of his/her equity in the property is now [£16,000] and I should be grateful if you would regard this as a valid claim for Income Support. Evidence is attached that confirms the value of the current equity i.e., a current valuation, a copy of the entry held at the Land Registry relating to the property (or a letter from the legal department of the council) and confirmation of the current debt accrued against the value of the property".
- 19.3. When completing the Pension Credit claim form there is not a capital limit as such, but a similar statement showing the equity value remaining in the property after taking into account the accrued debt to the council would be necessary.
- 19.4. As the accrued debt continues to increase it will be necessary to seek a review, by the appropriate Benefits Office, of the level of Income Support/Pension Credit being paid. At these times the Benefits Office will require verification of the level of debt accrued to date and may, depending on the length of time since the initial claim was submitted and the nature of the property market i.e., whether prices remain static, require a re-valuation of the property.

19.5. In the event of an Income Support/Pension Credit claim being rejected on the grounds that the property is not being marketed for sale a request for reconsideration should be made immediately that the refusal of benefit notification is received.

20. Increased Personal Expenses Allowance for Property Maintenance / Insurance

20.1. As noted in paragraph 2.1 above the council requires an assessed contribution from the person's income and non-property assets towards the costs of the person's care with the remaining amount of the care fees being the amount deferred.

20.2. In calculating the assessed contribution, the person must be left with a prescribed minimum allowance. The general Personal Expenses Allowance allowed to every person for whom the council arranges care home services may not be sufficient to cover the maintenance of the property.

20.3. The costs involved in maintaining the property (for example insurance and repairs) must be met by the person. The Department of Health guidelines and regulations specify that a person party to a Deferred Payment Agreement should be allowed to retain a higher weekly amount, the Disposable Income Allowance. This is intended to meet cost of property insurance and maintenance. The amount of income a person chose to keep can be any amount between the Personal Expenses Allowance and the maximum Disposable Income Allowance. This will be discussed with the person or their representative to ensure that there are sufficient funds to for the upkeep of the property but that the value of the deferred contribution is minimised.

20.4. The Disposable Income Allowance will be reviewed annually to coincide with the reassessment of the service user contribution.

20.5. On leaving the deferred payment scheme (or if the deferred payment becomes frozen) the amount of Personal Expenses Allowance reverts to the lower figure as defined in Department of Health guidance from time to time in force.

21. Calculation of equity limit

21.1. The projection of the equity the person has left in their property will deduct

- the lower capital threshold
- 10% of the property value intact to defray any costs incurred with the sale or settlement of the estate.

22. Notification on reaching the maximum deferred amount

22.1. The council will review the Deferred Payment Agreement annually including the remaining equity and a projection of how long for deferred debt to reach the maximum amount that can be deferred. These will be included in the annual statement sent to the person or their representative.

22.2. The annual care review will include discussion of the Deferred Payment Agreement and its likely duration. This will include the council discussing the cost of care with the person or their representative and the viability of any top-ups. In the two annual care reviews preceding the projected end of the Deferred Payment Agreement consideration should be given to what might happen to any top ups or the need to consider movement to another care home/room if they are unable to make other arrangements.

- 22.3. The council is required to give 30 days formal notice that the Deferred Payment Agreement has reached its limit. This letter will also confirm the planned arrangements for the person's future care funding.
- 22.4. Interest and administrative charges will still accrue after the equity limit has been reached.

23. Terminating the deferred payment - sale of property before Death

- 23.1. Sale of the property will terminate the Deferred Payment Agreement as the person should have sufficient funds to pay the accrued debt for the deferred fees. The person or their representative must be given 30 days' notice in writing of any such termination.
- 23.2. The proceeds of the property sale as detailed on the completion statement (which includes the actual sale price) will be used for a final calculation of the debt and to determine the persons funding status, that is their eligibility for council funding or ability to self-fund.

24. Terminating the deferred payment - sale of property after Death

- 24.1. Subject to the council receiving timely notification of the death the timescales noted below for the council to act will be adhered to.
- 24.2. Calculating the Debt – the accrued debt should be added to any other outstanding amount due to identify the final debt that is payable.
- 24.3. Lodging a Claim – the Executor/ Administrator of the estate will be notified 14 days after the death, with the actual or provisional debt and informed that the debt is due from 90 days after death. The council will seek information on the approximate value of the estate to confirm previous financial assessment declarations.
- 24.4. Notifying Final Debt – The final debt will be confirmed in writing no later than 4 weeks after death.
- 24.5. Debt Collection – The council will aim to discuss with the Executor/ Administrator of the estate the likelihood of the debt being cleared within the 90-day period. A reminder of the final debt will be sent towards the end of the 90-day period confirming the rate of growth of the debt and requesting a progress report. If the council does not consider the Executor/ Administrator of the estate to be engaging the councils Income Collection and Debt Resolution Policy will be followed. If the debt is not recovered the council will seek to pursue this through the County Court system.
- 24.6. The council will apply the maximum interest rate that is permitted under the Care and Support (Assessment) Regulations 2014. If the debt is pursued through the County Court procedure, the court may apply a higher rate of interest.

25. Removing the Charge

- 25.1. A charge may take between 7 and 10 days to remove. In order for a property to be sold it may be necessary for the person's Solicitor to give the council a written undertaking that they will discharge the debt. The council can then give the Solicitor an undertaking that the charge will be removed. This will ensure that the sale can go ahead.
- 25.2. Once the amount due has been repaid, the council will confirm to the person or their representative that the agreement has been concluded, and that the charge against the property has been removed.

- 25.3. The charge is removed by completing form K11 to the Land Registry. The fee at April 2015 is £1.00.
- 25.4. The Land Registry will send form K22 notifying the council that the charge has been removed.

26. Continuing Healthcare

- 26.1. When a person is assessed by the NHS as eligible for Continuing Healthcare funding (either full or partial) their care fees become the responsibility of the NHS rather than the council. The Deferred Payment Agreement remains to cover the fees previously deferred for any period prior to the start of the NHS funding.
- 26.2. The council will recommend that the person or their representative seeks independent financial advice and takes independent legal advice
- 26.3. The council will seek to negotiate ongoing payments with the person or their representative to reduce the accrued debt set against the value of the property.
- 26.4. The council will continue to charge interest until the accrued debt is cleared.

27. Appealing against a decision

- 27.1. Anyone who is dissatisfied with the outcome of their Deferred Payment Scheme application, or the operation of their Deferred Payment Agreement should approach the Financial Support Team to ask for their concerns to be addressed.
- 27.2. If after every attempt has been made to resolve any disagreement, the person does not agree with the decision made under this policy they should be referred to the Complaints procedure.

28. Complaints

- 28.1. A person may wish to make a complaint about any aspect of the way the council uses its powers and discretion under the Care Act. The council will make clear its complaints procedure and provide information and advice on how to lodge a complaint and set out details of how to contact the Local Government Ombudsman.
- 28.2. Any customer who has concerns about this Policy, its application or any aspect of the Deferred Payment Scheme can, at any time, make use of the council's complaints policy.
- 28.3. Their complaint can be made

Using the online form on the council's website

Or to the Complaints and Representations Manager.

In writing to: Customer Service, Church Square House, 30-40 High Street, Scunthorpe, North Lincolnshire, DN15 6NL

By phone to: Customer Services on 01724 297000.