

MAYOR AND CABINET			
Report Title	Deferred Payment Agreement Policy		
Key Decision	Yes	Item No.	
Ward	All		
Contributors	Executive Director for Community Services, Executive Director for Resources and Regeneration, Head of Law		
Class	Part 1	Date	23 March 2016

1. Summary

- 1.1 Under the Care Act 2014 all councils in England are required to have a universal deferred payments scheme in place. Universal deferred payment schemes are required to follow legislation and Department of Health guidance. This report recommends a scheme for Lewisham Council which meets legislative and statutory guidance requirements and seeks approval for proposed charges for users of the scheme.

2. Recommendations

- 2.1 It is recommended that the Mayor:
- 2.1.1 Agrees to the Council's proposed universal deferred payments scheme under the Care Act 2014 as set out in this report for new deferred payment agreements entered into by the Council.
- 2.1.2 Agrees to use the maximum interest rate allowed by the Department of Health as set out in paragraph 5.3.3.
- 2.1.3 Agrees to set charges for deferred payment agreements as set out in 5.3.6.
- 2.1.4 Agrees to delegate authority to agree annual inflationary increases to these charges to the Executive Director for Community Services.
- 2.1.5 Delegates authority to the Executive Director for Community Services, in consultation with the Executive Director for Resources and Regeneration and Head of Law, to agree the more detailed guidance and procedures for the operation of the scheme in line with this report.

3. Policy Context

3.1 Successful implementation of the Care Act 2014 will help to support and deliver the following priority outcomes as defined in the Sustainable Community Strategy 2008-2020:

- *Healthy, active and enjoyable*: support people with long term conditions to live in their communities and maintain their independence; improve health outcomes and tackle the specific conditions that affect our citizens.

3.2 In addition, this paper contributes to the following corporate priorities:

- *Caring for adults and older people*: working with health services to support older people and adults in need of care.
- *Inspiring efficiency, effectiveness and equity*: ensuring efficiency, effectiveness and equity in the delivery of excellent services to meet the needs of the community.

4. Background

4.1 Successive governments have been committed to ensuring that no-one should be forced to sell their home during their lifetime to pay for care costs. People with assessed needs for residential or nursing care, who own their home are sometimes faced with the prospect of selling it to pay for their care costs. For people receiving community based care services the value of their main home is not taken into account when assessing contributions towards care.

4.2 For some people who are assessed as needing care and move into residential/nursing care and own their home there is an automatic disregard of the value of the property where, for example, it is occupied by a spouse or partner or a close relative who has a disability. This will continue under universal deferred payments.

4.3 Where the main home is taken into account, a deferred payment is a way of deferring the costs of residential/nursing care in exchange for putting a legal charge on the property. The council agrees to pay for the costs of residential/nursing care in return for the person receiving care or their representative agreeing for these payments to be secured as debt against the property. Entering into a deferred payment agreement with the Council allows a person to retain their home and defer paying some of the costs of care and support until a later date. Under the Care Act 2014 all councils in England are required to offer a deferred payment to people who are assessed as needing residential/nursing care and when their main home has been taken into account when financially assessing a contribution. The establishment of a universal deferred payment scheme will mean that fewer people will be faced with the prospect of selling their home in order to pay for care.

4.4 The purpose of this report is to set out the Council's policy for a universal deferred payments scheme and to seek agreement for charges to users of the scheme. This policy takes into account the main changes introduced by the Care Act 2014 and statutory guidance published by the Department of Health.

4.5 Current deferred payment schemes

4.5.1 There is existing legislation which allows councils to offer deferred payments for people with a property and who are assessed as needing residential/nursing care. Section 55 of the Health and Social Care Act 2001 already allows councils to offer deferred payments for people receiving residential/nursing care. Lewisham Council has its own deferred payment scheme which meets this requirement.

4.5.2 Although councils are already required to have a deferred payments scheme, existing schemes are locally administered and will often have different rules on eligibility. To reduce anomalies across the country and to ensure consistency between councils, the Care Act 2014 has introduced a universal deferred payments scheme, with a set eligibility criteria which all councils will be required to follow.

4.5.3 The Care Act 2014 clearly sets out the responsibilities of councils to have a deferred scheme in place. The scheme will be universally available, throughout England and the Government is committed to providing councils with additional funding for the scheme. The funding arrangements are set out in section 5 of this report.

4.5.4 The Department of Health has published guidance on universal deferred payments which provides councils with the framework within which universal deferred payments should be offered. Guidance allows councils to offer deferred payments to:

- Anyone who has assessed eligible care needs that can be met by the provision of care in a residential/nursing care home;
- Anyone with assets, excluding the value of their main home, of less than £23,250 (in 2016/17 this capital limit increases to £118,000);
- Anyone whose home is not disregarded as a capital asset when assessing contributions towards residential/nursing care.

4.5.6 Department of Health guidance sets out the circumstances in which the deferred payment request can be refused and a deferred payment agreement can be terminated. The guidance also sets out how information and advice should be provided to people entering into a deferred payment agreement. Guidance is provided on:

- How councils should administer the scheme;
- Eligible charges to cover the costs of the scheme;
- The amounts that can be deferred.

5. The Proposals

5.1 The London Borough of Lewisham universal deferred payments scheme

5.1.1 The proposed universal deferred payments scheme set out in this report has been developed to take into account the relevant legislation and guidance. It is proposed that the key principles underpinning the scheme for Lewisham Council are:

- To ensure that those who have been assessed as needing care may not need to sell their main home to pay for these care costs;
- That those who can afford to pay a contribution continue to do so;
- To ensure that residents are fully informed about deferred payments and care funding options;
- That the scheme is self-financing and sustainable.

5.1.2 In addition to the key principles which underpin the scheme it is proposed that there are a number specific policy changes under the proposed scheme for Lewisham. This report sets out the main changes. The need to ensure that the scheme is financially sustainable has shaped the recommendations on administrative and interest charges. These charges are necessary to cover the costs of the scheme.

5.2 Deferring the costs of care

5.2.1 The Department of Health guidance allows councils to have discretion on the amount of residential/nursing care costs that can be deferred. Universal deferred payments allows councils to defer at the contracted rates with residential/nursing care providers or the private rate someone pays as a self-funding client or the rate paid because they choose more expensive accommodation.

5.2.2 To promote choice and ensure greater flexibility on the care and support provided, it is proposed that under Lewisham Council's universal deferred payments scheme the amounts that can be deferred will generally be the actual rate the person pays the residential/nursing care provider. This actual rate includes where applicable the private rate.

5.2.3 The rate to be deferred will be regularly reviewed under guidance and procedures.

5.3 Interest and administrative charges

5.3.1 The interest rate for deferred payment agreements (DPAs) is based on the cost of government borrowing. The regulations and statutory guidance under the Care Act 2014 set out that the maximum interest rate chargeable is derived by adding the weighted average interest rate

on conventional gilts ("the gilt rate") to a 0.15 per cent default component.

5.3.2 The gilt rate is set out by the Office for Budget Responsibility (OBR) twice a year in their Economic and Fiscal Outlook reports. The maximum interest rate changes every six months to track the gilt rate and it is fixed for six-monthly periods (1 January – 30 June and 1 July – 31 December). The relevant figure to use in calculating the interest rate for a given six monthly period is the gilt rate set out in the Economic and Fiscal Outlook report published most recently before the start of that period for the financial year in which the period is to start.

5.3.3 From 1 January to 30 June 2016 the maximum chargeable will be 2.15 per cent. This rate is derived from the [Economic and fiscal outlook – November 2015](#) which quotes a gilt rate of 2 per cent for 2015/16 (Table 4.1) to which the default component of 0.15 per cent is added. The Department of Health intends to disseminate further updates on the maximum interest rate chargeable via Local Authority Circulars after each relevant fiscal event.

5.3.4 It is proposed that the interest rate is set at the rate as set by the Department of Health.

5.3.5 In addition to interest rate charges, councils are also allowed to make a charge for:

- The costs of registering a legal charge, land property searches;
- The costs of property valuation;
- Legal costs associated with the setting up of a deferred payment agreement; administrative costs.

5.3.6 Only the actual costs incurred in arranging and maintaining the deferred payment will be charged. The proposed levels are as follows:

Set up charge	£750
Annual charge	£300
Termination charge	£325
Independent valuation	Actual cost

5.3.7 It is proposed that the administrative, legal and interest rate charges will be rolled up into the overall deferred payment agreement should the person decide they want to defer these costs.

5.4 Deferred payments for people in other care settings.

5.4.1 When consulting on the draft guidance the Department of Health initially sought feedback on the possibility of allowing deferred payments for people receiving non-residential or community based care services, for example home care. Although someone's main home is not taken into account when financially assessing contributions towards community based care, there are circumstances when a

person may want to unlock the equitable value in their home. For example, someone with assessed care needs may want to use the equity in their property to purchase additional care over and above the care they have been assessed as needing.

5.4.2 The proposed local approach is to offer deferred payments only to people receiving residential care. Should further amendments to the scheme be required a report will go forward to Mayor and Cabinet.

5.5 Universal Deferred Payments policy

5.5.1 In addition to the main changes already highlighted within this report, the introduction of universal deferred payments introduces a number of other changes and adjustments to Lewisham Council's existing deferred payments scheme.

5.6 Treatment of rental income

5.6.1 Although the person receiving care will be eligible for deferred payments they will still be responsible for paying a contribution towards their care out of their assessable income. Where someone's main home has been taken into account and the person is entitled to a deferred payment, there is a question as to how any rental income is treated when assessing a contribution towards care.

5.6.2 Under the current deferred payments scheme when assessing rental income, net rental income is fully taken into account along with other assessable income. After assessing a charge the person living in residential/nursing care is left with a personal expenses allowance of £24.90 per week (2015/16 rates). This expenses allowance is set by the Department of Health and follows statutory guidance.

5.6.3 From 1 April 2015, under the Department of Health guidance the personal expenses allowance increases from £24.90 to £144 per week for people who will be eligible for a universal deferred payment. The intention of the increase is to allow people to retain additional income to pay for any associated housing costs, such as the costs of maintaining the property.

5.6.4 The Department of Health guidance also allows councils discretion to have a further disregard on rental income, at a rate to be decided by each local authority. The purpose of this disregard is to incentivise people who qualify for a deferred payment to rent out their property.

5.6.5 It is proposed that the option of a disregard on rental income is reviewed after consulting other local authorities to establish best practice and further work with housing providers to establish the viability of a rental income disregard scheme. If a rental income disregard is viable, that this is included within the deferred payments guidance and procedures.

5.7 Other forms of security

5.7.1 Councils are required to obtain adequate security when entering into a deferred payment agreement. The primary form of security will be a legal charge registered on the person's main or only home. It is also necessary to provide for discretion on accepting other forms of security as there may be cases where refusal to do so may lead to the Council being unable to enforce debts that the resident has accrued, in accordance with section 69 (2) of the Care Act 2014

5.7.2 The requirement to have discretion to accept other forms of security will be incorporated within the finalised universal deferred payments guidance and procedures.

- A clear process to explain deferred payments agreements which takes into account a person's mental capacity.
- Advice on renting, insuring and maintaining the property.
- Facilitating access to advice on care funding options.

5.8 Advice and information

5.8.1 Under the Care Act 2014 councils will have a responsibility to provide advice and information about care and support. This responsibility extends to advice and information about deferred payments, including :

5.8.2 As a safeguard, there will be a clear deferred payment process to ensure that those entering into a deferred payment agreement or their representative are aware of the need to obtain independent advice and there will be particular safeguards for people who have mental capacity issues.

5.8.3 The advice and information pathway will be further developed as the universal deferred payments guidance and procedure is finalised.

6. Implementation

6.1 It is proposed that subject to the main recommendations in this report being agreed that authority to agree the more detailed guidance and procedures in line with this report will be delegated to the Executive Director for Community Services, in consultation with the Executive Director for Resources and Regeneration and the Head of Law.

7. Financial Implications

7.1 The Care Act 2014 will have a significant financial impact on social care as detailed in previous reports to Committee and in this report. Early indications are that Lewisham could expect between 5-10 new deferred payment entrants per year as the universal deferred payments scheme is rolled out.

- 7.2 The most immediate impact will be on cashflow. Although the debt will be secured through a deferred payment agreement and a legal charge on the property, the main impact will be on the flow of income between financial years. Maximum likely cumulative debts are as follows:

Financial Year	Estimated debt at year end £000
2015/16	146
2016/17	488
2017/18	912
2018/19	1,392
2019/20	1,909

- 7.3 The Government announced that there will be additional national funding of £85.5m to fund the scheme in 2015/16. The Department of Health's funding allocation formulae allocates an additional £311k to the London Borough of Lewisham to fund universal deferred payments. Funding for subsequent years is likely to be included in the overall Revenue Support Grant settlement. For Lewisham the overall Care Act funding for 2016/17 in the provisional settlement is £1.515m.

8. Legal Implications

- 8.1 The Care Act 2014 consolidates and replaces several different pieces of legislation into one legislative framework. There is a specific legislative requirement for local authorities to provide a universal deferred payments scheme from April 2015. The Department of Health has also issued statutory guidance on 23 October 2014, which all councils in England are required to follow.
- 8.2 Under Sections 34-36 of the Care Act 2014 and Care and Support (Deferred Payment Agreements) Regulations 2014, all councils will need to have a deferred payment scheme which:
- Complies with new national eligibility criteria on who is entitled to apply for a deferred payment.
 - Allows Councils to charge interest and administrative fees to offset the costs of the scheme and ensure it is cost neutral.
 - Allows councils to retain some local discretion on how the scheme is administered, for example the amounts of care costs that can be deferred.
- 8.3 The Care Act 2014 Section 69 (1) and (2) sets out that (1) Any sum due to a local authority [as residential charges] is recoverable by the authority as a debt due to it. But subsection (1) does not apply in a case where a deferred payment agreement could, in accordance with regulations be entered into, unless— (a) the local authority has sought to enter into such an agreement with the adult from whom the sum is due, and (b) the adult has refused.

- 8.4 The proposals set out in this report accord with the provisions in the Care Act 2014. Deferred payment agreements should take the form of a legal agreement between the local authority and the person taking out a deferred payment. A sample legal agreement has been produced by the Department of Health to support local authorities in developing their own legal agreements for deferred payments. It has been produced by the policy lead for deferred payments in the Department, the legal team who prepared the legislation, and external legal counsel engaged specifically for this purpose who has expertise in consumer contracting and mortgage law.
- 8.5 It also responds to some of the comments raised by local authorities on a previous draft version, and the Department have also engaged with the Financial Conduct Authority and the Consumer Markets Authority.
- 8.6 The agreement is provided in two versions - one for situations where the local authority is contracting with the care home on the person's behalf (and is deferring charging the person), and the other for situations where the person is contracting with the care home themselves and the local authority is effectively 'loaning' the person money to pay their care home costs. The sample agreements will be amended to reflect the policy decisions taken in this report in terms of how the Council will implement the scheme.
- 8.7 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 8.8 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 8.9 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 8.10 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have

regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

9. Equalities Implications

- 9.1 The Deferred Payment scheme is open to all residents regardless of any protected characteristics which they may have. Due to the nature of residential care following publication of the scheme any impact will most likely be upon those who are disabled and elderly. It will enable some residents to enter into agreements that will mean they are not required to sell their property. This is a positive impact upon those who may otherwise have to sell their property.

10. Environmental Implications

- 10.1 There are no environmental implications arising from this report.

Background papers

Department of Health guidance on deferred payments can be found here:

<https://www.gov.uk/guidance/care-and-support-statutory-guidance/charging-and-financial-assessment>

Regulations can be found here:

<https://s3-eu-west-1.amazonaws.com/media.dh.gov.uk/network/497/files/2014/06/DPA-Regs-28-5-14.pdf>

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