

REPORT FOR: **CABINET**

Date of Meeting:	19 March 2015
Subject:	Deferred Payments Policy
Key Decision:	Yes
Responsible Officer:	Paul Najsarek, Corporate Director of Community Health and Wellbeing
Portfolio Holder:	Councillor Margaret Davine, Portfolio Holder for Adults and Older People
Exempt:	No
Decision subject to Call-in:	Yes
Wards affected:	All
Enclosures:	Appendix 1 – Universal (Interim) Deferred Payments Policy Appendix 2 – Consultation Document

Section 1 – Summary and Recommendations

This report sets out the proposals for a policy in respect of Deferred Payments which all Councils are required to offer to eligible service users from 1 April 2015 as part of the implementation of part 1 of the Care Act 2014.

Recommendations:

Cabinet is requested to:

1. Note the interim Deferred Payment Policy set out in Appendix 1, including the proposals around the discretionary elements of the policy, to apply pending the outcome of the ongoing consultation exercise
2. Note the Consultation Document set out in Appendix 2
3. Delegate to Portfolio Holder Adults & Older People and the Corporate Director Community Health & Wellbeing, the power to sign off the final policy subject to the outcome of consultation

Reason:

The Care Act 2014 requires the Council to offer Deferred Payment arrangements to all eligible service users to avoid them having to sell their property to pay for their care costs.

Section 2 – Report

Introductory paragraph

The Care Act 2014 introduces the requirement for all Councils to offer a Deferred Payment Scheme to people who meet the eligibility criteria for the scheme from 1 April 2015. Prior to the introduction of this Act local authorities were able to offer deferred payment agreements on a non mandatory basis.

The deferred payment scheme is designed to help a person who has been assessed to pay the full cost of their care home fees but cannot afford to pay the full amount immediately because their capital is tied up in their home. The Council pays the fees in exchange for a legal charge on the person's property. The fees are repaid to the Council when the property is sold.

The draft policy is attached at Appendix 1.

Options considered

There are a number of discretionary aspects to the scheme, which form the focus for consultation as listed below:

1. **Non Residential care charges** – the council have the discretion to extend the deferred payment agreement to people other than in residential care for example for care for people in their own homes
2. **Top ups** – the council’s proposal is to offer deferred payments set at the rate the council usually pays care providers rather than the rate a person pays because they choose more expensive accommodation.
3. **Security** – the council is required to have adequate security in place when deciding whether a person is entitled to a deferred payment agreement. Security is usually in the form of property (usually a person’s home) although the council have the discretion to accept other forms of security
4. **Interest Rate** – the council have the option of charging interest and can use the nationally set rate (currently 2.65%) or the local rate (4.3% December 2014) provided that this is not more than the national rate.
5. **Interest Charges** – the council can charge interest on the balance outstanding on a compound basis. The Care Act does not tell councils how frequently this can be added so this could be calculated monthly (increasing the amount that will be deferred), annually or somewhere in between.
6. **Administration Charges** – the council can make charges to recover the costs of scheme, including legal and valuation fees. This is particularly important given the financial changes faced by the council.

Consultation and Engagement

The main proposals within this report and draft universal deferred payments policy will be subject to public consultation. This policy is not expected to be contentious given that this responds to a legislative requirement and in this respect the consultation questions focus on the areas of discretion which councils are required to consider exercising when implementing the scheme, for example whether to charge an administrative fee to cover the costs of the scheme.

Consultation on the policy will be with residents (or their appointed representatives) who are currently going through the 12 week disregard process, engagement with the voluntary sector organisations in the borough and key residential care providers is also planned. In addition, the consultation document will be available at libraries across the borough and online. This should ensure that a wide range of views are sought to inform the final policy that is agreed.

The consultation was launched on 6th March and will close on 3rd April 2015.

Environmental Implications

None

Risk Management Implications

Whilst the overall direction is positive for people receiving care and their carers, the financial risks of implementing the Care Act 2014 have been reported on a number of occasions and are reflected on the corporate risk register.

The implementation of universal deferred payments will be monitored and risk escalated accordingly. The operational delivery of deferred payments will remain within the Community Health and Wellbeing directorate.

Legal Implications

The Care and Support (Deferred Payment) Regulations 2014 require local authorities to offer to enter into a deferred payment in respect of the costs of care where (a) the adult's needs are to be met by the provision of residential care following an assessment of needs under the Care Act 2014. (b) the adult has less than £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets); and (c) whose home 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 local authority financial assessment and so might need to be sold).

A local authority is however only required to enter into a deferred payment agreement with an adult for amounts due from the adult to the authority under the local authority's power to charge for services set out in s14 of the Act for costs of care and support, the provision of which the local authority considers to be necessary to meet the adult's needs.

A local authority is also permitted to enter into a deferred payment agreement under the Regulations in respect of placements for adults in supported living placements, but this is discretionary and not mandatory.

In terms of adequate security for the agreement, the Regulations require a legal charge for the agreements that are required by the Regulations and refers to acceptance of other adequate security for discretionary agreements.

Consultation

Case law has confirmed that effective consultation requires the following elements:

Consultation must be undertaken at a time when proposals are still at a formative stage.

The proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response.

Adequate time must be given for consideration and response

The results of the consultation must be conscientiously taken into account in finalising the decision being consulted upon.

Financial Implications

The Government announced additional national funding of £83.5m to fund the

scheme within the 2015/16 Care Act Funding of £285m. The Department of Health's funding allocation formulae allocates an additional £356,224 to the London Borough of Harrow to fund universal deferred payments in 2015/16. This is expected to be a one off non-recurring payment to cover the initial costs of setting up a universal deferred payment scheme.

In the early years of the scheme a net cash outflow is expected as debts will not start to be repaid until later years. However, this is not expected to impact the revenue budget as these amounts will be held as long term debtors on the balance sheet at the end of each year. It is possible that there may be future potential revenue impacts where debts may need to be written off, however this represents a low risk given the security and limit that can be deferred and processes will be in place to ensure that the ratio to debt valuation is reviewed regularly and that costs are secured where there is sufficient value in the property to recover such costs.

In the last financial year there were 34 service users who received funding on a 12 week disregard basis (that is the Council paid for their care until property was sold to fund this care). Whilst it is not clear if this policy will attract an increasing number of service users, this is not expected to be significant.

Given that the number of applications are not expected to be significant, it is anticipated that no additional staffing resources are needed to support the operational delivery of the scheme in 2015-16. Work is ongoing to ensure that the system requirements will capture and manage these processes accordingly. In addition there will be regular review and reporting of the policy.

The ongoing revenue costs of managing the scheme are expected to be cost neutral, by way of the charging process, although Councils can only charge to fully recover costs and cannot make a profit from these activities. In the light of the overall financial position over the term of the MTFs it will be necessary to keep these costs under review to ensure that costs are recovered as appropriate. Any underspend on the deferred payments element of the Care Act ring fenced grant, subject to grant conditions, will be used to mitigate wider Care Act pressures, as appropriate.

Equalities implications / Public Sector Equality Duty

An initial EQIA will be prepared on the implementation of the universal deferred payments policy with the overall impact expected to be positive. The implementation of the proposed policy will be monitored and reviewed to assess its impact.

Council Priorities

The Council's vision:

Working Together to Make a Difference for Harrow

This policy will make a difference to the vulnerable and families, in supporting them to support the care needs of their relatives, avoiding the urgency and challenges associated with releasing capital often tied up in family accommodation.

Section 3 - Statutory Officer Clearance

Name: Dawn Calvert	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 10 March 2015		
Name: Sharon Clarke	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 11 March 2015		

Ward Councillors notified:	NO, as it impacts on all Wards
EqIA carried out:	NO
EqIA cleared by:	EQIA to be considered after the close of the consultation period

Section 4 - Contact Details and Background Papers

Contact: Donna Edwards, Finance Business Partner Community Health & Wellbeing, 020-8420-9252, donna.edwards@harrow.gov.uk

Background Papers:

Care Act 2014 (c. 23) Part 1 — Care and support, para 35
<https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation>

**Call-In Waived by the
Chairman of Overview
and Scrutiny
Committee**

NOT APPLICABLE

[Call-in applies]

Universal Deferred Payments Policy

Background

The Care Act 2014 establishes a universal deferred payment scheme, which means that from April 2015 service users may not need to sell their home in their lifetime to pay for the costs of their care. A deferred payment enables a service user to delay paying for the cost of their care home until a later date, providing that this is supported by adequate security (most usually the service user's home)) and a full financial assessment.

From April 2015, all Councils in England must provide a deferred payment for local residents who meet the eligibility criteria and are able to provide adequate security for the deferred payment the eligibility criteria covers residents who go to live in residential or nursing care, own a property and have other assets below a certain amount. They must also have assessed care needs for residential or nursing care. Local authorities are required to follow new national guidance on the eligibility criteria for a deferred payment

The Council has the discretion whether or not to agree to a deferred payment and will require security (usually property) against which care charges can be deferred. .

Who is eligible

The universal deferred payment rules state that if a service user meets all of the three following criteria at the time of applying for a deferred payment, they must be offered a deferred payment agreement:

- 1) the service user is assessed as having eligible needs which the Council decides should be met through a care home placement;
- 2) the service user is assessed as having less than or equal to £23,250 in savings (in 2015/16, expected to increase to £118,000 from April 2016) and other capital (excluding the value of their home); and
- 3) the property would not be disregarded for charging purposes (ie; not occupied by a spouse or dependent relative)

To qualify for a deferred payment the service user living in residential or nursing care must have the mental capacity to enter into a Deferred Payment Agreement. Where the service user lacks mental capacity then the person entering into the Deferred Payment Agreement must be legally appointed to manage their finances, for example Deputyship or Lasting Power of Attorney.

The 12 week property disregard

Where a service user 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 disregarded.

After 12 weeks, unless there is statutory disregard (eg; where the property is occupied by a spouse or close relative over 60) of the property, the property is taken into account as a capital resource.

Permission to refuse

The Council may refuse a deferred payment agreement despite a service user meeting the eligibility criteria where:

- a) the Council is unable to secure a first legal charge on the property to be used as security;

- b) the service user is seeking a top-up and the amount of the top-up does not seem sustainable for the duration of the placement given the amount of equity in the property
- c) the service user does not accept the terms and conditions of the agreement
- d) the home is a shared-ownership or leasehold property, the Council will need to see a copy of the lease or shared-ownership agreement before the DPA can be considered.
- e) the deferred payment security a second home.

In these circumstances the Council will write to you explaining the reason why your application has been refused and advise you of your right to appeal. The Council cannot advise you on whether to proceed with a deferred payment agreement or how to fund your care when a deferred payment has been refused.

The Council recommends that you seek independent financial advice as you will be responsible for paying the full fee. An independent financial adviser (regulated by the Financial Conduct Authority) will have access to the full range of financial products available, though may charge for this service. The Council cannot give financial advice.

There are also local voluntary organisations that may be able to offer independent and free advice.

Circumstances in which the local authority will stop deferring care

There may be circumstances when the Council decides not to continue with a Deferred Payment Agreement:

- The person has reached the upper limit
- Where in some limited circumstances a spouse or dependent relative moves into the property after the Deferred Payment Agreement is in place.
- Where the qualifying person living in residential or nursing care becomes entitled to an automatic disregard of the property; for example, through a change of circumstances of the person living in the property.

How much can be deferred

In principle a service user should be able to defer all costs of care, however this will depend on the security available –for example the amount of equity in their home-- and the level of contribution that a service user continues to make from their income. The council must be satisfied both that there is sufficient security available and that the agreement is sustainable in light of the individual's particular circumstances

The following will largely dictate how much a service user can defer:

- a) The amount of equity a service user has in their property
- b) The amount the service user is contributing to their care costs from other sources
- c) The total care costs a service user is likely to incur, including any top-ups.

The Council will require a contribution from the service users income, savings or other assets but must leave the person with up to £151.20 per week (rate from 1st April 2015) if the person wishes to retain this sum. The council will only defer care costs reflecting the amount that would normally be paid to providers.

Where a property is used as security, the equity limit must be set at the value of the property less 10% less £14,250 (lower capital limit 2015/16). This upper limit cannot be exceeded with the exception of further administration and interest charges.

Security

The Council is required to have adequate security in place when deciding whether a person is entitled to a deferred payment. Where the service user owns a property this security will be in the form of a legal charge on the property. In cases of jointly owned properties the Council will require all of the owners' agreement to the charge being registered against the property.

The Council will arrange for a valuation of the property against which payments will be deferred. The service user applying for the deferred payment will also be entitled to request an independent valuation of the property; this would be separate to the Council's own valuation. The cost of valuation(s) will be paid for by the deferred payment applicant or their representative. If the deferred payment is approved the costs of valuation can be rolled up into the Deferred Payment Agreement.

The valuation of the property will be periodically reviewed during the lifetime of the Deferred Payment Agreement to ensure that the upper limit is not exceeded. Revaluations will be necessary when the amount deferred equals or exceeds 50% of the value of the security and the equity limit revised accordingly. The assessed value against which charges will be deferred will be reduced by 10% to reflect sale costs.

Interest rate and charges

The Care Act allows the Council to charge an administrative fee for arranging the deferred payment, although this can only be to recover costs incurred in the management of the agreement. There will also be an on-going administrative fees which becomes payable during the course of the Deferred Payment Agreement. This fee can also be deferred.

Administrative fees represent the actual costs of providing a deferred payment. Fees and charges will be set at a level to ensure that they only cover the actual cost of providing a deferred payment. A schedule of deferred payment fees and charges will be publicly available to enable service users applying for a deferred payment full transparency on the costs of the scheme and to enable the user or their carer to plan for the costs of care.

The Care Act also allows the Council to charge interest on a compound basis. This means that interest will be charged on the total balance of the deferred payment amount (including previously charged interest and any other charges applied to the account such as administration and valuation costs less any payments that may have been made to reduce the amount deferred. Harrow Council's deferred payments scheme will follow the interest rates as set by Government. These rates will be updated every six months on 1st January and 1st June to track the market gilt rates. Interest will be charged every six months.

The local authority responsibility

To provide service users with six-monthly written updates of the amount of fees deferred, of interest and administrative charges accrued to date, and of the total amount due and the equity remaining in the home

To provide service users with a statement on request within 28 days

To reassess the value of the chosen form of security once the amount deferred exceeds 50% of the security (and periodically thereafter), adjusting the equity limit if appropriate.

The service user responsibility

Where service users are required to make a contribution from income, they must make that contribution and must notify the local authority of any changes in their income.

Service users are required to notify the Council of changes in their need for care and support, if those changes are ones which will mean that the authority must or is entitled to stop making further instalments under the agreement or to alter the amount of the instalments.

Service users are required to ensure appropriate arrangements are in place to maintain their home adequately whilst they are in care and ensure their home is regularly maintained, including regular property visits to ensure that this is secure.

Service users must ensure adequate insurance for the property used as security. If the property is left empty for an extended period of time, the person will need to ensure their insurance covers this adequately and that any terms required by the insurer are met.

Service users are required to obtain the authority's consent before allowing someone to move into the property after the agreement has been made. Failure to do this may result in the agreement being terminated.

Termination of agreement

A deferred payment agreement can be terminated in three ways:

(a) at any time by the individual, or someone acting on their behalf, by repaying the full amount due (including care costs, any interest accrued and any administrative or legal fees charged). This can happen during a person's lifetime or when the agreement is terminated through the DPA holder's death;

(b) when the property (or form of security) is sold and the authority is repaid – the completion date will usually be the date on which the property is sold;

(c) when the person dies and the amount is repaid to the LA from their estate. The amount owed to the Council under a deferred payment agreement falls due 90 days after the person has died;

Review and Appeals Procedure

The decision on the outcome of the application for a deferred payment may be reviewed should the service user or appointed representative not agree the decision. The grounds for review could include:

- The decision to refuse the application failed to take into account any new information which would have led to a revision of the decision.
- There are eligible care costs which the Council have failed to take into account

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.

If the service user 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.

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

Information and advice

The Council has a responsibility to provide information and advice and information about a service users care and support, and this extends to deferred payments.