North East Lincolnshire Clinical Commissioning Group

NORTH EAST LINCOLNSHIRE COUNCIL
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Deferred Payment Policy

1st April 2016

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1. INTRODUCTION & PURPOSE

The purpose of the Deferred Payment Policy is to explain the parameters and process applied when North East Lincolnshire Council ("The Council") allows Adult Social Care customers the opportunity to defer charges against the value of their property.

2. SCOPE

The policy relates to residential care services only.

This policy applies to staff involved in dealing with the deferred payment and legal charge processes.

The policy is of relevance to service users or their legal representatives where the service user wishes to be considered for a deferred payment agreement (DPA).

3. WHEN A DEFERRED PAYMENT CAN BE OFFERED

Deferred Payments *will* be offered to customers if they meet all three of the following criteria at the point of applying for a deferred payment agreement:

- anyone whose needs are to be met by the provision of care in a care home. This is determined when someone is assessed as having eligible needs which the Council decides should be met through a care home placement.
- anyone who has less than (or equal to) £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets); and
- anyone whose home is not disregarded.

A deferred payment ***will*** be offered to someone meeting the criteria governing eligibility for deferred payment agreements (DPAs) detailed above who is able to provide adequate security for the debt.

However, the Council may refuse a deferred payment agreement despite someone meeting the eligibility criteria, where:

a) NELC is unable to secure a first charge on the person's property;
b) someone is seeking a top up; and/or
c) a person does not agree to the terms and conditions of the agreement

Deferring further amounts will cease when a person has reached the "equity limit" (see section 4.1) that they are allowed to defer; or when a person is no longer receiving care and support in a care home. This will also apply when the value of the security has dropped and so the equity limit has been reached earlier than expected.

4. HOW MUCH CAN BE DEFERRED

Three elements will dictate how much a person will defer;

a) The amount of ***equity*** a person has available in their property;
b) The amount a person is ***contributing to their care costs from other sources***, including income and any contribution from savings, a financial product or a third party; and
c) The total ***care costs*** a person will face.

4.1 Equity Limit

The equity limit will leave some equity remaining in the security used for the DPA, this is so as to act as both a buffer to cover any subsequent interest which continues to accrue, and to provide a small cushion in case of small variations in value of the security. Only a property will be allowed to be used as security, so the equity limit will provide a cushion against changes in house prices.

The Council will obtain a Royal Institute of Chartered Surveyors (RICS) valuation of the property. People may request an independent assessment of the property's value (in addition to the Council's valuation). If the independent assessment finds a substantially differing value to the Council valuation, the Council and the person will discuss and agree an appropriate valuation prior to proceeding with the agreement.

The equity limit will be set at the value of the property minus ten percent, minus £14,250 (2015/16 lower capital limit) and the amount of encumbrance secured on it.

When someone is approaching or reaches the point at which they have deferred 70% of the value of their property, then the cost of their care will be reviewed with them, alongside whether a deferred payment agreement continues to be the best way for them to meet these costs.

4.2 Contributing to their care costs from other sources

The share of care costs that someone defers will depend on the amount they will be paying from:

- Income, including pension income
- Savings or other assets they might have access to
- A financial product designed to pay for long term care
- A deferred payment agreement which enables them to pay for their care at a later date out of assets

Account will also be taken of the costs of property maintenance when calculating the client contribution.

4.3 Care costs

The costs of their "core" care costs will be eligible to be deferred.

The Council has discretion as to whether "top up" costs can be included as part of the DPA, in considering whether or not to allow this the total value of the property & the estimated "core costs" will be taken into account.

5 OBTAINING SECURITY

A first legal mortgage charge against a property on the Land Register will be accepted by the Council as adequate security

Where an agreement is to be secured on a jointly owned property, the Council will seek both owners consent (and agreement) to a charge being placed on the property. Both owners will need to be signatories to the charge agreement, and the co-owner will need to agree not to object to the sale of the property for the purpose of repaying the debt due to the local authority. Similar consent will be obtained where a charge is being created on a property where any other person has a beneficial interest in the property.

The security will be re-valued when the amount deferred equals or exceeds 50% of the value of the security, so as to assess any potential change in the value. This will also be done periodically so as to monitor any potential further changes in value.

6 RENTING OUT A PROPERTY

Those eligible for a Deferred Payment Agreement may choose to rent out their property to obtain additional income to help pay residential care charges. Where a property is rented out, there are some additional requirements:

- The customer must enter into an Assured Shorthold Tenancy with their tenant(s).
- The customer will be required to submit a copy of the Assured Shorthold Tenancy agreement as part of the Deferred Payment Agreement process.
- The customer has a responsibility to maintain their property to an appropriate standard.
- When the Deferred Payment Agreement comes to an end, the full debt accrued will need to be repaid within the required time limits. This could mean that the tenant will need to move out.
- The customer's benefit entitlement may be affected by receipt of rental income and they will need to inform the DWP that they are renting out their property.

Where a customer uses rental income to pay for all or part of their care costs (to reduce the amount of debt that accrued), it is expected that they will retain the £144.00 disposable income allowance (for example to maintain the property to appropriate standards). The disposable income amount of £144.00 will not be taken into account as part of the financial assessment but it will impact on the level of debt that accrues (in other words, if the £144.00 is retained, customers will not be able to use it to pay for care costs, and so the debt will be larger).

7 INTEREST RATE AND ADMINISTRATION CHARGE

The deferred payment agreement scheme will be run on a cost-neutral basis, with the Council recouping the costs associated with deferring fees by recouping the administrative costs associated with DPA's and charging interest.

The administration charge will be calculated on the basis set out within the Care Act and will include the following costs:

- Registering a legal charge with the Land Registry against the title of the property, including Land Registry search charges and any identity checks required;
- Cost of RICS valuation and revaluation of the property;
- Costs of removal of charges against the property;
- Overheads, may include, but are not limited to, legal fees, postage, printing, management costs.

For 2015/ 16 the total administration fee is estimated at £2000 (based on the average duration of a DPA, of 4 years). This fee is broken down as follows:

	Arrangement £	On-going Costs p.a. £	End £
Valuation	420	100	0
Visiting Officer	110	40	50
Legal Fees	449		123
CCG costs	21	60	27
	1000	**200**	**200**

For those renting out their property, there will be an additional £90 charge, to cover the Council's solicitor's fees in checking the required tenancy agreement.

The fee will be reviewed annually, and is therefore subject to change.

Interest will be charged at the maximum amount specified in the regulations. This rate will change every 6 months to track the market gilts rate specified in the most recently published report by the Office of Budget Responsibility (published in the Economic and Fiscal Outlook).

Administration charges and interest will be added on to the total amount deferred as they are accrued, although a person may request to pay these separately. The interest charged and added to the deferred amount will be compounded.

Interest will accrue on the amount deferred even once the "equity limit" has been reached. When calculating progress towards the equity limit, the Council will also include any interest and/or fees to be deferred.

8 MAKING THE AGREEMENT

The agreement will look to be finalised and in place by the end of the 12-week disregard period (where applicable)

The deferred payment agreement must be signed as a deed. The agreement clearly sets out all terms, conditions and information necessary to enable the person to ascertain his or her rights and obligations under the agreement.

Where a person may lack capacity to request a deferred payment, a Deputy or Attorney (a person with a relevant Enduring Power of Attorney of Lasting Power of Attorney) may request a deferred payment on their behalf. If a family member requests a deferred payment and they do not have the legal power to act on behalf of the person, then the person and the family member will receive information and advice on how to obtain this through Deputyships. If the legal route is not undertaken, a DPA will not be granted and invoices, for the full cost of care, will be issued.

9 IMPACT ON FINANCIAL ASSESSMENT

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 (the “equity” limit) will be provided.

A statement on request will be provided within 28 days.

10 CONTRACTUAL RESPONSIBILITIES ON THE INDIVIDUAL WHILST THE AGREEMENT IS IN PLACE

The deferred payment agreement sets out the various contractual requirements on the individual as well as the Council.

11 TERMINATION OF THE 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 (this can happen during a person’s lifetime or when the agreement is terminated through the DPA holder’s death);
b) When the property (of form of security) is sold and the Council is repaid; or
c) When the person dies and the amount is repaid to the Council from their estate

Interest will continue to accrue on the amount owed to the Council after the individual’s death and until the amount due to the Council is repaid in full.

If terminated through a person’s death, the amount owed to the Council under a deferred payment agreement falls due 90 days after the person has died. After this 90 day period, if the Council concludes active steps to repay the debt are not being taken the Council may enter into legal proceedings to reclaim the amount due to it.