



North Tyneside Council

DEFERRED PAYMENTS POLICY

ADULT SOCIAL CARE

Effective from 1/4/15

Index

Content	Item No.
Purpose	1
Background	2
Principles	3
Refusing a Deferred Payment	3.6
Jointly owned properties	3.7
Eligibility Criteria	4
The amount of deferral	5
Sustainability of the Deferred Payment	6
Equity limit	6.4
Security	7
Interest rate and administration costs	8
Interest	8.1
Administration costs	8.2
Valuation Costs and Application for First Registration	8.3
Recovery	8.4
The Agreement	9
Termination of agreement	10
Disputes and Appeals	11

Throughout this policy the term “the adult” refers to an adult with care and support needs.

1	Purpose
1.1	<p>The aim of this policy is to support the introduction of a Universal Deferred Payment Agreement (for adults who meet the eligibility criteria as set out below) from 01 April 2015, and in accordance with the requirements of the Care Act 2014.</p> <p>A Deferred Payment Agreement is a legally binding agreement under which the Authority will lend money to allow eligible adults to defer or delay paying some or all of the cost of their care and support until a later date.</p> <p>A Deferred Payment Agreement can also provide additional flexibility for when and how someone pays for their care and support.</p> <p>It is anticipated that through the establishment of a Deferred Payment Agreement people will not be forced to sell their home within their life time to fund their care and support needs.</p> <p>If an adult is assessed to be financially liable to meet their care and support costs and decides not to enter into a Deferred Payment Agreement, the adult will need to make alternative arrangements for payment directly with the Care Home.</p>
2	Background
2.1	<p>Local Schemes for Deferred Payments have been in operation for some time and North Tyneside Council has offered a Deferred Payments Scheme prior to the requirement contained within the Care Act 2014. The Care Act now provides a legal duty for the establishment of a Universal Deferred Payment Agreement where the eligibility requirements are met.</p> <p>This policy will come into effect from 1st April 2015. Any new applications received after this date will be considered under the terms of this policy.</p> <p>For service users with an existing Deferred Payment Agreement entered into prior to the implementation of this policy, there will be no change to the terms of their agreement.</p>
3	Principles
3.1	<p>The policy is in line with:</p> <ul style="list-style-type: none"> • Sections 34 and 35 of the Care Act 2014; • The Care and Support (Deferred Payment) Regulations 2014; • Chapter 9 of the Care and Support Statutory Guidance issued by the Department of Health; and • North Tyneside Council’s Charging for Care and Support Policy.

3.2	The policy will be updated in line with any subsequent changes to the legislation.
3.3	The policy will only apply to people who meet the eligibility criteria (see section 4 below) and who are able to provide adequate security for the debt.
3.4	An adult must have capacity to enter into a Deferred Payment Agreement personally, or alternatively the agreement can be signed by a Deputy or Attorney (a person with a relevant Enduring Power of Attorney or Lasting Power of Attorney) to act on their behalf, or have someone who is their Deputy appointed by the Court of Protection.
3.5	In addition the adult (Deputy / Attorney as appropriate) confirms their agreement to all the terms and conditions in the Deferred Payment Agreement.
3.6	<p><u>Refusing a Deferred Payment</u></p> <p>North Tyneside Council is able to refuse a Deferred Payment Agreement even if all of the eligibility criteria are met in circumstances where:</p> <ul style="list-style-type: none"> a) North Tyneside Council would be unable to secure a charge on the adult's property to recover the amount deferred. This would normally be secured with a first charge on the property. However, a second charge may be considered where there is sufficient equity in the property to secure the deferred amount; b) The adult lacks capacity and there is no appointed Deputy to make the decision; c) a Deferred Payment Agreement would be in respect of a 'top up'; and d) the adult does not agree to the terms of the agreement.
3.7	<p><u>Jointly owned properties</u></p> <p>In cases where a Deferred Payment Agreement is to be secured with a jointly owned property, a Deferred Payment Agreement can only be progressed with the signatory of all beneficial & legal owners providing agreement to the terms of the Deferred Payment Agreement as set out below:</p> <ul style="list-style-type: none"> - that they have had the opportunity to seek independent legal / financial advice; - to a charge being placed on the property; and - that no objection will be raised to the sale of the property in the future to repay North Tyneside Council (following the same procedure as in the case where an individual is the sole owner of a property).
3.8	North Tyneside Council has determined that the Deferred Payments Agreements offered in line with this policy, where the agreement is to be secured by a charge upon a property / land are not regulated credit

	<p>agreements in line with the Consumer Credit Act 1974 and Financial Services and Markets Act 2000.</p> <p>In the event security is offered other than land / property, North Tyneside Council will consider on a case by case basis as to whether such an agreement falls to be a regulated agreement within the Consumer Credit Act 1974 and Financial Services and Markets Act 2000, and ensure compliance where appropriate.</p>
4	Eligibility Criteria
4.1	<p>North Tyneside Council will offer a Deferred Payment Agreement to any adult who:</p> <ul style="list-style-type: none"> a. Has their eligible needs met by provision of care in a Care Home (as defined in the Care and Support (Deferred Payment) Regulations 2014); b. Has less than (or equal to) £23,250.00 (this figure will be updated in line with changes to legislation) in assets excluding the value of their home; and c. Has a legal and beneficial interest in the property which is the adult's main or only home and the adult has not had their home disregarded within the financial assessment carried out under section 17 Care Act 2014.
4.2	<p>As a guide North Tyneside Council would recommend that there is a minimum of one year's worth of funding available in terms of the adults' share of the equity in the property, when entering into a Deferred Payment Agreement.</p>
4.3	<p>When a person enters a Care Home the value of any property that they normally occupy as their main or only residence will be disregarded for the first 12 weeks from the date of admission. This may follow a temporary stay. The disregard is mandatory if the person does not have income or other assets sufficient to cover the costs of care.</p>
4.4	<p>North Tyneside Council will aim to complete a financial assessment following confirmation of assessed need for a Care Home placement. In the event an adult or their representatives wishes a Deferred Payment to be considered they will need to complete the Deferred Payments Application form to provide relevant information.</p> <p>A decision will then be made by North Tyneside Council as to whether a Deferred Payments Agreement is to be offered, and copy of the proposed Agreement will be provided at this time (subject of course to the adult providing financial information to enable the assessment to be undertaken by completing the relevant application form).</p> <p>Sufficient time for the adult to seek independent legal advice (if required)</p>

	prior to implementation of the Deferred Payment Agreement will be allowed. It is anticipated that a Deferred Payment Agreement will come into effect from the start of the 13 th week from the date of confirmation of assessed need for a Care Home placement.
4.5	In the event an adult is arranging their own care and support and North Tyneside Council has not undertaken an assessment, condition 4.1a above, will be satisfied, if the adult would have been assessed as having eligible needs, if North Tyneside Council had carried out such an assessment.
4.6	At this point, although the Care Act permits, North Tyneside Council does not intend to extend Deferred Payment Agreements to adults in supported living accommodation and independent living schemes. This decision will be kept under review by Adult Social Care Financial Services Team annually.
5	The amount of deferral
5.1	<p>The amount North Tyneside Council will agree to defer is defined in the Care and Support (Deferred Payment) Regulations 2014 and will be based on three elements:</p> <ul style="list-style-type: none"> a. The amount of equity an adult has available in their chosen form of security (usually their property); b. The amount an adult is contributing to their care costs from other sources, including income and (where they choose to) any contribution from savings, a financial product or a third party; and c. The total care costs an adult will face: the Authority has decided that this may include any top ups (a top up is defined in the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014). This will be based on individual equity limits and sustainability of the amount the person may be seeking.
5.2	Every adult will be allowed to retain a general personal expense allowance (PEA) as determined in regulations each year. This amount is £24.90 per week as at April 2015.
5.3	<p>The Authority accepts that there are costs involved in maintaining a property. The adult will be allowed to retain an amount of no more than £144 per week from income received (“Disposable Income Allowance”) towards the upkeep of the property.</p> <p>An adult may choose to retain a lower weekly figure to reduce the amount deferred.</p> <p>The actual amount the Adult is able to retain from income will be determined on an individual basis in line with the equity limits and will be confirmed with the Adult in writing. This figure will depend upon income, property value and sustainability.</p>
5.4	In the event the adult chooses to rent out their property, subject to

	paragraph 9.6 below, the Authority will allow the adult to retain a further sum equivalent to no more than 20% of the weekly rental income received if they so choose.
5.5	Where the Deferred Payment Agreement is ended or frozen, the PEA will revert back to the statutory amount.
6	Sustainability of the Deferred Payment
6.1	When deciding on the amount to be deferred, North Tyneside Council will work with the adult concerned (or their Deputy / Attorney as appropriate) to ensure the arrangement is sustainable.
6.2	Factors to consider include, but are not limited to: <ul style="list-style-type: none"> • the likely period the adult would want a Deferred Payment Agreement (if they intend to use it as a “bridging loan”); • the equity available; • the sustainability of an adult’s contributions from their savings if they are making one; • the flexibility to meet future care needs; and • the period of time an adult would be able to defer their care costs for
6.3	The amount being deferred will be reviewed on at least an annual basis to ensure the deferred amount does not exceed the equity limit.
6.4	<u>Equity Limit</u> The Care Act 2014 specifies how much Local Authorities must defer against the value of the property or assets. In all cases the following calculation will determine the ‘upper limit’ – Capital + (Property/Asset Value – 10%) - £14,250 (lower capital threshold for 2015/16) = Upper limit The equity limit is 90% of the value of the property (its current market value or surrender value at the relevant time) less £14,250 and less any encumbrance secured on it which ranks in priority in the Authority’s charge.
7	Security
7.1	North Tyneside Council will secure (where appropriate) a first legal mortgage charge against a property on the Land Register as a form of “adequate security” for the payment of the adult’s deferred amount.
7.2	North Tyneside Council will consider securing a second legal mortgage charge against a property where there is considered sufficient equity to secure the deferred payment, however this is also subject to the agreement of the holder of the first legal charge.

7.3	Additionally, any interest or administration costs associated with the Deferred Payment will be taken into account when determining whether appropriate equity is held.
7.4	North Tyneside Council will revalue the property at any point where it considers that the amount deferred equals or exceeds 70% of the adult's beneficial interest in the property, to assess any potential change in the value, and to reassess the adult's equity limit. Thereafter, North Tyneside Council will revalue the property annually to monitor any potential further changes in value.
7.5	If the revaluation of the property shows there has been a substantial change in its value, North Tyneside Council will review the amount being deferred under the Deferred Payment Agreement.
7.6	The costs to obtain the revaluations will be charged to the adult who has entered into the Deferred Payment Agreement, in accordance with the terms of the Deferred Payment Agreement.
7.7	An adult who has entered into a Deferred Payment Agreement may seek their own independent reassessment of their property's value, at any time, but this will be at their own cost and will be in addition to, not instead of North Tyneside Council's revaluation.
7.8	In the event an independent reassessment finds a substantially differing value to that detailed in North Tyneside Council's revaluation, the Authority will refer to the Government's Valuation Office Agency's for independent valuation.
7.9	North Tyneside Council may consider other forms of security (for example a valuable object such as a painting; agreement to repay from proceeds of a life assurance policy) but each would be considered on an individual basis.
8	Interest rate and administration costs
8.1	<p><u>Interest</u></p> <p>North Tyneside Council will charge interest on any amount deferred. North Tyneside Council will charge the gilt rate of interest as set by the government. This rate will be subject to bi-annual review in line with the national maximum interest rate changes. Interest is calculated at a compound weekly basis.</p> <p>Interest can be added to the Deferred Payment Agreement or paid separately by the adult if they prefer.</p> <p>Interest will continue to accrue on the amount deferred once an adult has reached their equity limit. It will also accrue after the adult has died until the point at which the deferred amount is repaid to North Tyneside Council in full.</p>

<p>8.2</p>	<p><u>Administration Costs</u></p> <p>North Tyneside Council will charge an adult for the administration costs incurred in relation to their Deferred Payment Agreement. It is envisaged that this would include a one off charge for the set up, administration and monitoring of the Deferred Payments Agreement. This includes Land Registry costs for setting up the charge as well as the costs of removal of the charge. This figure will be reviewed annually and amended as appropriate. The administration charge can be added to the Deferred Payment Agreement or paid separately by the adult if they prefer. The charge for the financial year April 2015 to March 2016 is £500. This amount will be reviewed annually. (See Appendix 1A)</p> <p>Any change to the rate of interest and / or administration fees will be notified to the adult in writing.</p> <p>Where the adult or their representative withdraws from the Deferred Payments Agreement before it is completed or the charge registered, the Authority reserves the right to charge administration costs associated with the actual costs carried out prior to this withdrawal.</p> <p>North Tyneside Council will maintain a publicly available list of administration charges that a person may be liable to pay.</p>
<p>8.3</p>	<p><u>Valuation Costs and Application for First Registration</u></p> <p>Any valuation costs incurred will also be charged and the adult will be able to elect either to add these costs to the Deferred Payment Agreement or to pay them separately.</p> <p>Where an adult's property has un-registered title deeds, an Application will be required to apply for the voluntary registration of these title deeds prior to the Deferred Payment being granted. The Land Registry fees due in relation to this application, (which will be depend upon the value of the property and the nature of the title (freehold or leasehold), will be confirmed in writing to the adult / representative prior to the application being progressed. These fees can either be added to the costs of the Deferred Payment Agreement or paid for separately, whichever the adult or their representative elects.</p> <p>All fees deferred, including any interest and administrative charges incurred must be repaid in full by the adult and will be calculated in line with legislation.</p>
<p>8.4</p>	<p><u>Recovery</u></p> <p>The Care Act 2014 provides equal protection to both the Local Authority and the person and provides the Local Authority with the power to recover charges from a third party where a person has transferred assets to them in order to avoid paying charges for care and support.</p> <p>If North Tyneside Council cannot recover the debt it will pursue the recovery</p>

	<p>through the County Court.</p> <p>In the first instance North Tyneside Council will offer the adult the option of a Deferred Payment Agreement, where appropriate, in order to recover the debt wherever possible. Where this is refused, the Authority will endeavour to resolve the issue in one of the following ways, before making application to the County Court. These include:</p> <ul style="list-style-type: none"> • Making contact with the adult or their representative in writing, to establish why the contribution to care and support costs has not been met and for payment arrangements to be made • Where mental capacity is not established North Tyneside Council will support the representative to gain Deputyship as appropriate; • Where mental capacity is not established and there is no appropriate representative to gain Deputyship North Tyneside Council will consider applying to be a Deputy; and • Use of independent mediation through an independent third party such as a voluntary organisation where appropriate
9	The Agreement
9.1	The terms of the agreement will be discussed and agreed with the adult or their Deputy / Attorney and will take the form of a legal contract between North Tyneside Council and the adult or their Deputy / Attorney.
9.2	The agreement will set out all the terms, conditions and information necessary to enable the adult or their Deputy / Attorney to ascertain their rights and obligations under the agreement.
9.3	The decision to award a deferred payment will be authorised by the Director of Adult Social Services or her appointed representative.
9.4	Where an adult chooses to enter into a Deferred Payment Agreement -
9.5	<p>North Tyneside Council will:</p> <ul style="list-style-type: none"> • aim to have the agreement finalised and in place by the end of the 12th week disregard period, or within 12 weeks of the adult or their Deputy / Attorney approaching the council regarding a Deferred Payment Agreement in other circumstances. • include in the agreement that the adult or their Deputy / Attorney confirms they have had opportunity to seek and received adequate information and advice on options for paying for care. It will also include that they understand how the Deferred Payment Agreement works and the implications of the agreement they are entering into. • ensure that appropriate documentation in relation to any legal representative is received prior to entering into the agreement e.g. Power of Attorney or Deputy Order • provide signposting in relation to an adult securing legal

	<p>representation where there is no legal representative in place. There will be no recommendation in relation to legal advisors</p> <ul style="list-style-type: none"> • provide signposting in relation to an adult securing financial representation where there is no financial representative in place. There will be no recommendation in relation to financial advisors • provide a hard copy of the Deferred Payment Agreement to the adult or their Deputy / Attorney and they will be provided with reasonable time to read and consider the agreement. • provide the adult or their Deputy / Attorney with six monthly written updates of the amount of fees deferred, of interest and administrative charges accrued to date, and the total amount due and the equity remaining in the home (the equity limit). The update will set out the amount deferred during the previous period, alongside the total amount deferred to date. It will also include a projection of how quickly the person will deplete all equity remaining in their property. • provide the Adult or their Deputy / Attorney with a statement on request within 28 days. • Provide the Adult or their Deputy / Attorney with 30 days notice of the date the equity limit is likely to be reached. • In the event the property is subsequently disregarded for any reason and / or the adult reaches their equity limit, the Deferred Payment will be frozen, however interest will continue to accrue until payment is made in full
9.6	<p><i>The Adult or their Deputy / Attorney must:</i></p> <ul style="list-style-type: none"> • notify North Tyneside Council of any changes in their income; • ensure that appropriate arrangements are in place to maintain their home whilst in care, that it is maintained adequately and regularly and that they have adequate insurance for their property. • obtain North Tyneside Council's consent before allowing someone (this includes family members, tenants, etc) to move into the property after the deferred payments agreement has been made. • Notify the Authority of any changes in need of the adult in relation to care and support which will mean that the Authority must or is entitled to stop or alter the amount of the instalment in relation to the Deferred Payment Agreement. • Notify the Authority of any changes which may lead to their property being disregarded for the purposes of the financial assessment.
10	Termination of agreement

10.1	<p>The agreement can be terminated in four ways:</p> <ul style="list-style-type: none"> • at any time by the adult or their Attorney / Deputy repaying the full amount due including any interest and administration costs; • when the property is sold and North Tyneside Council is repaid. If an adult or their Deputy / Attorney decides to sell their home they must notify North Tyneside Council during the sale process. They will be required to pay the amount due to North Tyneside Council from the proceeds of the sale. At this point, North Tyneside Council will relinquish the charge on their property and confirm that it has done so in writing; and • when the adult dies and the amount is repaid to North Tyneside Council from their estate. North Tyneside Council will approach the executor with a full breakdown of the total amount deferred no sooner than two weeks after the adult's death. If terminated through the adult's death, the amount owed to North Tyneside Council under the deferred payments agreement falls due no later than 90 days after the adult has died. If, after this 90 day period, North Tyneside Council concludes active steps to repay the debt are not being taken, it will enter into legal proceedings to reclaim the amount due. • The agreement can be terminated by the adult or their Deputy / Attorney at any time with one week's notice to North Tyneside Council, but they would be liable to repay the monies that the Authority has been paying on their behalf within 90 days. They will also need to make alternative arrangements to meet the ongoing costs of their care and support. If the agreement is not terminated, the agreement will remain in place until death of the adult.
10.2	<p>If, after this 90 day period, North Tyneside Council concludes active steps to repay the debt are not being taken, it will enter into legal proceedings to reclaim the amount due.</p>
10.3	<p>On termination, the full amount due, including care costs, any interest accrued and any administrative or legal fees charged must be paid to North Tyneside Council.</p>
11	Disputes and appeals
11.1	<p>Where the valuation of a property or asset is disputed, the Adult or their Deputy / Attorney should make representation in writing to the Authority's Financial Assessment Team.</p>
11.2	<p>The Authority may ask for further evidence and information to support the adult's dispute and will advise the Adult or their Deputy / Attorney in writing</p>

	of the Council's decision.
11.3	Where the parties continue to fail to agree to a value, the Authority and the Adult or their Deputy / Attorney will agree to an independent valuation and whose valuation will be accepted for the purpose of the Deferred Payment Agreement.
11.4	Under these circumstances, the Adult or their Deputy / Attorney will be responsible for paying the valuation costs.