

# North Tyneside Council Report to Cabinet 8 June 2015

## ITEM 7(e)

### Deferred Payments Policy

Portfolio(s): **Adult Social Care**

Cabinet Member(s): **Councillor Alison  
Waggott-Fairley**

Report from Service Area: **Adult Social Care**

Responsible Officer: **Jacqui Old, Head of Adult Social Care**      **Tel: 0191 643 7317**

Wards affected: **All**

## PART 1

### 1.1 Purpose:

The Care Act 2014, which came into force on 1 April 2015, sets out new requirements for Deferred Payments Agreements in relation to care home fees. The changes relate to the basis upon which a Deferred Payment Agreement should be offered and the content and detail of any such Agreement. As a result the Authority's approach to Deferred Payments needs to be updated to reflect this change in legislation. The purpose of this report is to seek Cabinet approval for the ratification of the new North Tyneside Deferred Payments Policy.

### 1.2 Recommendation(s):

It is recommended that Cabinet approve the implementation of the new policy, which is attached as an appendix to this report.

### 1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 9<sup>th</sup> May 2015.

### 1.4 Council Plan and Policy Framework

This report relates to the following priorities in the 2014/18 Our North Tyneside Plan:

Our People will

- Be listened to by services that respond better and faster to their needs.
- Be supported to achieve their full potential, especially our children and young people.
- Be supported to live healthier and longer lives.
- Be cared for and kept safe if they become vulnerable.

## 1.5 Information:

### 1.5.1 Background

A Deferred Payments Agreement enables an adult who meets qualifying criteria to defer or delay paying the cost of their care home fees until a later date by taking out a loan from the Authority. The Authority becomes responsible for paying care home fees on behalf of the adult and the debt is secured against the value of their home. Offering a Deferred Payments Agreement ensures that adults are not forced to sell their home during their lifetime to pay for care.

Local schemes for Deferred Payments have been in operation since 2002 and North Tyneside Council has offered Deferred Payments since that time. Currently the Authority has 46 Deferred Payments Agreements in place.

### 1.5.2 The Care Act 2014 introduces a new Universal Deferred Payments Scheme which all local authorities must introduce from 1 April 2015.

In addition to the mandatory scheme, the Care Act 2014 gives local authorities the power to offer Deferred Payments Agreements to a wider group of people on a discretionary basis. However, until the Authority has a better idea as to the extent of the impact of the Care Act 2014 and the potential take-up for Deferred Payments Agreements, the Authority's Deferred Payments Scheme and Policy have been drafted to cover Deferred Payments for residential and nursing home placements only. This decision will however be subject to review and any change to the Policy will be considered by Cabinet.

### 1.5.3 It is important to note that all new Deferred Payments from 1<sup>st</sup> April 2015 come under the new policy. The pre-existing Policy is no longer in line with legislation and can no longer be used for new agreements. However existing Deferred Payments will not be affected and will continue in line with the old scheme.

### 1.5.4 The North Tyneside Deferred Payments Policy has been drafted in line with:

- 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.

The policy will be updated in line with any subsequent changes in legislation.

The key provisions of the policy are set out in paragraphs 1.5.5 to 1.5.8 below.

### 1.5.5 The policy will only apply to adults who meet the eligibility criteria as set out in section 4 of the policy. To be eligible the adult must:

- a) have eligible needs that may be met in a care home;
- b) have less than £23,250 (this figure will be updated in line with changes to legislation) in assets, excluding the value of their home; and

- c) have a legal and beneficial interest in the property, which is their main or only home and which has not been discounted from the financial assessment process undertaken under section 17 of the Care Act 2014.

The decision of whether to offer a Deferred Payment Agreement to an individual will be taken following a complete financial assessment of the adult's financial circumstances and will be confirmed in writing. The Authority is able to refuse a Deferred Payment Agreement, even if all of the eligibility criteria are met. The circumstances where a refusal would be considered are detailed in paragraph 3.6 of the policy.

- 1.5.6 The Authority is able to secure, where it is appropriate, a first legal mortgage charge against the property on the Land Register as a form of security for payment of the adult's deferred amount. As a guide the North Tyneside policy recommends that there is a minimum of one year's worth of funding available in terms of the adult's share of the equity in the property, when entering into a Deferred Payments Agreement. The Authority may also consider other forms of security as set out in paragraph 7.9 of the policy but these will be considered on a case by case basis.
- 1.5.7 Where the adult chooses to rent out their property, the Authority will allow the adult to retain an additional sum of no more than 20% of the weekly rental income received, in line with the guidance, in addition to their weekly income allowance. The Authority will review the value of the relevant property on an annual basis specifically where the amount deferred equals or exceeds 70% of the adult's beneficial interest in the property. The Authority will allow 'Top-Up' payments to be deferred, subject to this being sustainable and in line with equity limits as set out in the policy and above.
- 1.5.8 The Authority will charge interest on any amount deferred. This will be at the gilt rate of interest as set by the Government. This rate will be subject to bi-annual review in line with the maximum interest rate changes. Interest is calculated using a compound weekly basis. The Authority will also charge a 'one-off' administrative charge for putting the Deferred Payments Agreement in place. This will include: Land Registry costs for setting up and removing the charge; the cost of administration and legal costs involved; and the ongoing monitoring required. The administrative charge can be added to the Deferred Payment Agreement, or paid separately when the Deferred Payment is arranged. For the financial year 2015/16 this charge will be £500. This charge will be subject to annual review.

Additional charges will be applied as necessary and in line with the policy to cover valuation costs, or where the adult's property has unregistered title deeds, which require voluntary registration prior to the Deferred Payment Agreement being agreed. These charges will be calculated on an individual basis and confirmed to the Adult in writing. These charges can be added to the Deferred Payment Agreement, or paid separately by the Adult when they accrue.

- 1.5.9 Appendix C of the Authority's Debt Policy, which relates to social care debt, has been amended to reflect the changes to the Deferred Payments Policy.

## **1.6 Decision options:**

The following decision options are available for consideration by Cabinet:

### Option 1

Cabinet may accept the Policy and agree its implementation.

## Option 2

Cabinet may reject the Policy and request that further work is done.

Option 1 is the recommended option.

### **1.7 Reasons for recommended option:**

Option1 is recommended for the following reasons:

- The Care Act 2014 has repealed previous guidance and therefore the previous policy is no longer fit for purpose;
- There is no longer discretion for the Authority to provide Deferred Payments to those people in care home settings, who meet the qualifying criteria and wish to defer the cost of their care home fees through a Deferred Payment. The Care Act 2014 has introduced a mandatory requirement that a Deferred Payment Agreement is offered in these circumstances. To ensure that the Authority is acting lawfully, the Authority must have a Deferred Payments Policy in place.

### **1.8 Appendices:**

Appendix: North Tyneside Council – Deferred Payments Policy

### **1.9 Contact officers:**

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Sandra Lillford, Manager Financial Services, People Based Commissioning  
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### **1.10 Background information:**

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

(1) [The Care Act 2014 - Primary Legislation](#)

(2) The Care Act 2014 – Regulations

[Final Affirmative Regulations Under Part 1 of the Care Act 2014](#)

[Final Negative Regulations Under The Care Act 2014](#)

(3) [Care and Support Statutory Guidance - Issued By the Department of HealthCare Act Book.pdf](#)

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and other resources**

The implementation of the Care Act 2014 is anticipated to increase costs for Local Authorities. Funding, in the form of a specific grant from the Department of Communities and Local Government, has been provided to offset these additional costs. The amount made available for Deferred Payments in 2015/16 is £0.351m based on Government assessment of the likely costs.

Although grants have not been announced for 2016/17 and beyond, the Government's Impact Assessment for the changes show expected additional costs rising in 2016/17 and 2017/18 before falling in 2018/19 through to 2024/25 as a result of repayments of the deferred sums.

The funding of £0.351m would cover the full care costs of an estimated 24 additional deferred payment agreements (based on an annual cost of £29,000 and assuming each agreement is in place for an average 6 months of the year). As North Tyneside already had a relatively high level of deferred payments under the discretionary scheme, the service is confident that the additional funding would cover any additional activity under the new national scheme. If costs incurred are more than the additional funding, these will be reported through the usual Financial Management report to Cabinet.

### **2.2 Legal**

Sections 34 to 36 of the Care Act 2014 provide for regulations to be made specifying the conditions requiring or permitting the Authority to enter into a Deferred Payments Agreement with an adult person in respect of sums due for the provision of care and support. The legislation came into force on 1<sup>st</sup> April 2015 and requires Authorities to offer and operate a Deferred Payments Scheme. It replaces previous schemes under section 22 of the Health and Social Services and Social Security Adjudications Act (HASSASSA) and Section 55 of the Health and Social Care Act 2001.

The Department of Health has issued detailed guidance and regulations relating to the Care and Support provisions in Part 1 of the Care Act 2014. The Authority has a duty to act under this general guidance in the exercise of its functions under the Act.

As a result the Authority is required to have a Policy and procedure for the offer and implementation of Deferred Payments Agreements to ensure compliance with the legislation.

A Deferred Payment Agreement is a consumer credit agreement which is defined in section 8 Consumer Credit Act 1974 and Article 60B Financial Services and Markets Act 2000 (Regulated Activities) Order 2001/544 as an agreement between an individual ("the debtor"), in this instance the adult and any other person ("the creditor"), in this instance the Authority, by which the creditor provides the debtor with credit of any amount.

A credit agreement is regulated under the Financial Services and Markets Act 2000 unless it falls into one of the specified exemptions.

Article 60E Financial Services and Markets Act 2000 sets out

(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

(2) Subject to article 60HA, a relevant credit agreement relating to the purchase of land is an exempt agreement if the lender is—

(a) specified, or of a description specified, in rules made by the FCA under paragraph (3),

or

(b) a local authority.

(7) In this article—

“*relevant credit agreement relating to the purchase of land*” means—

(a).....,

(b) a borrower-lender agreement secured by a legal or equitable mortgage on land,

(c).....

As a result a Deferred Payment Agreement, entered into under the Care Act 2014, secured by a legal mortgage on land is an exempt agreement and is not regulated under the Consumer Credit Act or Financial Services and Markets Act 2000.

In the event that security is offered that is not land, or where no mortgage is able to be secured, the individual circumstances will need to be considered as to whether such an agreement falls within the regulations.

## **2.3 Consultation/community engagement**

### **2.3.1 Internal Consultation**

Managers and officers within Adult Social Care and Legal Services have been involved in the development of the policy

### **2.3.2 External Consultation/Engagement**

The Authority has undertaken extensive consultation in relation to the financial charging system and the Care Act 2014. The consultation ran from 28<sup>th</sup> January 2015 to 25<sup>th</sup> March 2015.

Questionnaires were sent out to all of our current customers and there was an on-line version of the survey, which was within the Care Act section of the Council’s web site.

In addition we held 4 public engagement sessions, where proposals relating to Deferred Payments and with other implications of the Care Act 2014 were discussed. These were held in early February 2015 and the average attendance at each of the sessions was around 10 people, with a mix of LD carers, care providers and a few members of the general public.

## **2.4 Human rights**

The policy ensures that the Authority will uphold the Human Rights Act.

## **2.5 Equalities and diversity**

The policy will ensure that the Authority will uphold the Equality Act.

The Deferred Payments scheme is open to all adults resident in the Authority who meet the qualifying criteria, regardless of any protected characteristic they may have. Due to nature of residential / nursing care any impact is most likely to be upon those who are disabled or elderly.

During the first year of operation take-up of the scheme will be monitored and the EIA will be adjusted if necessary.

## **2.6 Risk management**

If the Authority does not operate a Deferred Payments scheme it will not be compliant with the requirements of the Care Act 2014.

The policy has been drafted to ensure that it seeks to mitigate risks against non-payment and seeks to undertake the appropriate checks during the financial and subsequent assessment to ensure that only those people who meet the qualifying criteria are accepted to receive a Deferred Payment Agreement. This is set out in sections 3.6 – 8.4 of the Policy.

## 2.7 Crime and disorder

There are no crime and disorder implications arising from this report

## 2.8 Environment and sustainability

There are no environment and sustainability implications arising from this report

### PART 3 - SIGN OFF

- Deputy Chief Executive  X
- Head(s) of Service  X
- Mayor/Cabinet Member(s)  X
- Chief Finance Officer  X
- Monitoring Officer  X
- Head of Corporate Strategy  X