

# Report to Cabinet

**16 November 2022**

<b>Subject:</b>	Adult Social Care Deferred Payment Agreements Policy
<b>Cabinet Member:</b>	Finance and Resources - Cllr Piper Adults, Social Care and Health - Cllr Hartwell
<b>Director:</b>	Director of Finance – Simone Hines Director of Adult Social Care - Rashpal Bishop
<b>Key Decision:</b>	Yes
<b>Contact Officer:</b>	Service Manager (Business Management) - Kay Murphy, Kay_Murphy@sandwell.gov.uk

## 1 Recommendations



- 1.1 Approve the proposed Deferred Payments Agreements Policy, as set out in Appendix A, for implementation following Cabinet agreement.
- 1.2 Agree to charging of interest at the rate specified in government regulation, which from 1<sup>st</sup> July 2022 is 1.55% with rates reviewed every six months by the government.
- 1.3 Agree to the charging of administration fees based on actual costs on the deferred payments amounts, and authorise the Director of Finance to update the fees each year to reflect the actual cost to the council of providing the service. For the financial year 2022/23, the existing charges are £590 legal costs and valuation fees; from 1<sup>st</sup> December(subject to Cabinet approval), and a new administration fee of **£125** is proposed which takes the total charge to **£715**.
- 1.4 Delegate authority to the Director of Finance to amend the scheme in line with changes made by statutory provisions (such as, for example, the change in the upper capital threshold limit proposed in the government's Care Cap proposals).



## 2 Reasons for Recommendations

- 2.1 The Director of Adult Social Care and the Director of Finance have commissioned work to check the compliance of the council's current Deferred Payment Agreements (DPA) practice against the Care Act (2014).
- 2.2 Although much of our existing Deferred Payment practice is governed by legislation, there are areas of local discretion and clarification, and this paper proposes establishing a policy which sets out the council's decisions on such areas, as well as taking account of any recent case law and Local Government Ombudsman findings.
- 2.3 This paper proposes adopting the draft Deferred Payment Agreements policy, which includes arrangements to streamline some underlying practices and to implement fees to cover the costs incurred in operating the scheme. Currently, interest and the one-off administration fee are not charged, so the policy has some financial impacts on those who request a Deferred Payment in the future, but does mean some of the council's costs will be recovered.

## 3 How does this deliver objectives of the Corporate Plan?

	People live well and age well - clarifying some elements of current policy makes it easier for users of service and residents to understand how we make decisions regarding our provision of Deferred Payment Agreements and associated governance
	Strong resilient communities - ensuring residents understand our policy and principles will contribute towards creating stronger and more resilient communities

## 4 Context and Key Issues

- 4.1 This report explains the proposed changes to the current Deferred Payments practice brought about by the Care Act 2014, and requests approval of the proposed Deferred Payment Agreements Policy. Setting out a policy provides clarity about the council's expectations in providing such services and includes proposals to charge interest and administration costs so that the scheme is no longer subsidised.



- 4.2 Under sections 34 to 36 of the Care Act 2014, and the Care and Support (Deferred Payments) Regulations of 2014, the Council is required to offer deferred payment agreements to people who meet certain criteria governing eligibility. These agreements allow people to avoid selling their home to pay for their residential care – in effect, the council is loaning them the funds to meet their care costs.
- 4.3 The regulations provide that interest may be charged on sums due for a deferred payment agreement, and that the interest rate must not exceed the maximum amount specified in regulations. This national maximum interest rate changes every six months to track the market gilts rate specified by the Office of Budget Responsibility in the Economic and Fiscal Outlook.
- 4.4 The regulations also provide for administration costs to be charged by councils. As with other Care Act fees, these must not exceed the total costs actually incurred in relation to the deferred payment agreement. These fees can, at the applicant's request, be added to the debt rather than being paid up front.
- 4.5 The agreement to give the Director of Finance delegated authority to set Care Act fees for services was given in response to the Cabinet Report Adult Social Care Contributions Policy considered on 18<sup>th</sup> May 2022. The Deferred Payment fee is one of those that cannot be set at a level that is higher than the actual cost to the council of providing the service. Consequently, the cost of the service will need to be reviewed each year, and the fees for administration, legal and valuation set ahead of each financial year by the Director of Finance under delegated authority.
- 4.6 The proposals to introduce both fees and interest will impact on future applicants for a deferred payment agreement as currently, no interest is charged, and the only fee raised is for Legal Services and property valuations. Other changes proposed are more technical to clarify and update the council's scheme.
- 4.7 The government's recent announcement of proposals for Adult Social Care Act funding reform have no specific impact on Deferred Payment Agreements. However, the proposal to significantly increase the capital limits currently in place could mean that there is a one-off increase in the number of people eligible for council assistance, who may therefore



approach us for a Deferred Payment. There is no obvious way of forecasting this demand, as they are not currently known to the council.

- 4.8 If approved by Cabinet, the policy will be implemented through both public information and internal practice guidance, provisionally on 1<sup>st</sup> December 2022.
- 4.9 The changes proposed are summarised below, with the revised policy attached as **Appendix A**.

## 5 Summary of main proposals

- 5.1 Short-term DPA: the availability of a simpler short-term Deferred Payment Agreement based on a solicitor's undertaking rather than a charge on a property.
- 5.2 Independent financial advice: the importance of people seeking such advice before proceeding with a DPA.
- 5.3 Who we have to offer a DPA to: the Care Act criteria to be met for a person to be offered a DPA, plus; who we choose to offer a DPA to: the proposed council policy in areas of discretion.
- 5.4 When we can refuse a DPA application: when we must, or may choose to, refuse a person's application.
- 5.5 Security for a DPA: the proposed council policy as to what we may accept as security to underwrite a DPA.
- 5.6 When a property has more than one owner or interested party: how we deal with situations where other parties have, or claim to have, an interest in a property, plus; other issues in agreeing to a DPA: how we deal with situations where there are issues with the nature of the property or its legal title.
- 5.7 How much can be deferred: the council's proposed policy on the maximum deferred payment we will consider, plus; valuing security: how we will value the asset being offered as security for the DPA.



- 5.8 Failure to complete a DPA application: what happens if a person does not complete a DPA application.
- 5.9 Interest and administrative fees: what we have decided to charge for to recover our costs.
- 5.10 Renting out the property: the implications of deciding to rent out the property.
- 5.11 When we may stop deferring funds: when we must, or may, stop allowing any additional costs to be deferred.
- 5.12 Other aspects of deferred payment agreements: this summarises the legal aspects of a DPA, which are not detailed in the policy.
- 5.13 Reviews and Appeals: the improved Review and Appeals process set out in the new Contribution Policy approved by Cabinet in May 2022 offers a rational, considered process whereby decisions on policy and exceptions are made and recorded, and this will also apply to Deferred Payment Agreements to ensure that any decision is evidence-based and is reflected in future revisions.

## 6 Alternative Options

- 6.1 The Care Act 2014 established a universal deferred payments scheme and therefore the Council is legally required to offer a scheme. The policy underpins that scheme.
- 6.2 The Council has discretion whether to charge interest and administration fees for operating a deferred payments scheme, but if it did not charge, we would have to meet the cost of the scheme.
- 6.3 By using the interest rate specified in the regulations, the DPA scheme would still be considered financially attractive by our clients, whilst still allowing us to recover the basic costs.

## 7. Implications

<b>Resources:</b>	The Director of Finance confirms that the costs associated with implementing the deferred payment
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	policy will be recovered via charging of interest on the loan amount and charging fees for administration.
<b>Legal and Governance:</b>	The discretionary elements of the Care Act 2014 and subsequent regulation provides the basis for this policy
<b>Risk:</b>	<p>The financial risks associated with the Deferred Payment Scheme are relatively low, since in accordance with regulations, the council places a legal mortgage on the property to provide adequate security for the debt.</p> <p>There may be a small risk of challenge from affected persons in that no public consultation has taken place on the fee and interest charges being proposed. However, there are only in the region of 40 people who have a Deferred Payment Agreement at any one time, and only an average of 10 of those continue with an arrangement into the next year. Furthermore, the existing Deferred Payment Agreement document allows for fees and interest (even though it has not been charged), and there is no precedent for consulting on this issue – or any council fees - before. Hence it is not considered that a lack of public consultation is a significant risk.</p> <p>Administration of the scheme will include review, at least annually, of the loan to equity position for each client to ensure the legal mortgage continues to provide adequate security for the Council.</p>
<b>Equality:</b>	<p>The deferred payment scheme is open to all Sandwell residents in residential care, regardless of any potential characteristics which they may have. An Equalities Impact Assessment has been completed which identifies that, due to the nature of residential care, the financial effects from implementing this paper will most likely impact on those who are disabled and elderly. Within that group, proposals are likely to affect women disproportionately to men mirroring the gender disparity in the over-65s in residential care.</p> <p>The adverse effects arise solely from the proposal to charge an arrangement fee and interest, as provided for by the Care Act. Although this has a negative impact</p>



	on those that have a deferred payment agreement, this impacts only a small proportion of ASC clients, and it ensures that the costs incurred on the scheme do not fall on ASC care budgets.
<b>Health and Wellbeing:</b>	A positive impact on clients' mental health and wellbeing, as entering into a deferred payment agreement means that they are not forced to sell their property.
<b>Social Value:</b>	There are no specific social value implications arising from this report
<b>Climate Change:</b>	There are no specific climate change implications arising from this report

## 8. Appendices

**Appendix A** – the proposed Deferred Payment Agreements Policy

## 9. Background Papers

- The Care Act 2014
- The Care and Support Statutory (CASS) Guidance October 2014
- The Care and Support (Deferred Payment) Regulations 2014

