

5 January 2015**Agenda Item: 6****REPORT OF THE SERVICE DIRECTOR FOR ACCESS AND PUBLIC
PROTECTION****UNIVERSAL DEFERRED PAYMENT SCHEME****Purpose of the Report**

1. To highlight discretionary areas within the imminent Universal Deferred Payment Scheme and provide options for the criteria to be applied by Nottinghamshire County Council and seek approval to consult on these areas.
2. To seek approval to consult on the recommendations of the Committee Paper "Charging Options Report" to include the potential option to extend the scheme to service users who receive care and support in their own homes.

Information and Advice

3. Section 34–36 of the Care Act 2014 and the Care and Support (Deferred Payment) Regulations stipulate the requirement for local authorities to operate a Deferred Payment Scheme, provides guidance on the eligibility criteria for joining the scheme, and highlights areas where local authorities have discretion on the operation of the scheme.
4. The scheme allows people to defer the sale of their house to pay for care and support costs until a later date. Nottinghamshire County Council has been operating a scheme since 2001 but the new Universal Deferred Payment Scheme allows local authorities to charge interest on the deferred amount and administrative fees to cover costs incurred by operating the scheme.
5. Choices are discussed in turn below.

Eligibility Criteria

6. The regulations specify that someone is eligible for and must be offered a deferred payment if all three of the following criteria are met at the point of applying:
 - a) their eligible care needs are to be met by the provision of care in a care home or in supported living. This should comply with choice of accommodation regulations and care and support planning guidance and taking reasonable account of a person's preferences
 - b) they have less than (or equal to) £23,250 in assets excluding the value of their home

- c) their home is not disregarded, for example it is not occupied by a spouse or dependant relative as defined in regulations on charging for care and support.
7. The statutory regulations make clear that a person does not need to have arranged their care and support through the local authority in order to be eligible for a Deferred Payment Agreement. The details of what Nottinghamshire's offer might be in this case are still being worked through at the moment.
8. Local authorities have the discretion to offer deferred payments to people who do not meet all of the above criteria. In deciding whether or not to offer a deferred payment agreement, the guidance states that the local authority may wish to take into account (but are not limited to considering) the following:
- a) whether meeting care costs would leave someone with very few accessible assets (this might include assets which cannot be quickly or easily converted into cash or the conversion to cash may incur costs or penalties such as loss of interest or bonuses)
 - b) if someone would like to use wealth tied up in their home to fund more than just their core care costs and purchase affordable top ups
 - c) where someone is narrowly ineligible to join the scheme, for example they may have slightly more than the £23,250 asset threshold
 - d) the person receives care and support in supported living accommodation
 - e) a property is uninsurable but the land value may be sufficiently high to secure the local authority interest and avoid a debt being written off.
9. It is important to consider whether or not the Local Authority's interest in the property is secure, and that any discretionary criteria are clear and transparent and can be applied consistently and fairly. It is also a requirement of the statutory guidance that these be documented in a formal policy.

Refusing a deferred payment agreement

10. Local authorities have discretion to refuse to enter into a deferred payment agreement in the following circumstances:
- a) where a local authority is unable to secure a first charge on the property
 - b) where someone is seeking a top up
 - c) where a person does not agree to the terms and conditions of the agreement, for example requirement to insure and maintain the property adequately and/or
 - d) in the case of jointly owned property, where any one or more of the owners refuses to sign the deferred payment agreement.

Discretionary charges

11. The local authority has the option to charge interest on the accruing debt and a fee to cover the administrative costs associated with running the scheme. The guidance states that this is

to enable the scheme to be administered on a cost neutral basis to the local authority. However the local authority can apply discretion not to pass on the full cost of administering the scheme to the service user and either not to charge interest or to charge a lower interest rate than the maximum level set by the Department of Health.

Delegation of Deferred Payment Agreements

12. Local authorities are permitted to delegate responsibility for deferred payment agreements to another body. The statutory guidance makes reference to joint schemes between more than one local authority, but does not exclude sub-contracting them to other (private, public or third sector) bodies.
13. Options for the Council to consider therefore include:
 - a. delegating responsibility to another local authority
 - b. offering to host schemes on behalf of other local authorities
 - c. engaging with non-local-authority organisations to take on the scheme on the Council's behalf.
14. The statutory guidance makes clear that any local authority delegating the scheme remains ultimately liable for the scheme and for its continued compliance with regulations and guidance. It also requires such authorities to seek feedback from its residents who enter into the scheme, to ensure it meets expected standards. The cost of developing and carrying out this additional monitoring requirement will at least partially offset any efficiency gains that delegation would provide.
15. As Nottinghamshire have been running a Deferred Payment scheme for a number of years, there is already the skill and experience within the Council to run it. As a result, continuing to run it in-house will not require any major changes to the currently available skill-set (although it will require resource to deal with the additional demand).
16. There are no economies of scale to be gained by pooled borrowing to fund the scheme, as interest rates available to the Council are not tiered. There could be efficiency gains in sharing the costs of any new compliant software required for the scheme, but Nottinghamshire are already well advanced in having this available.
17. Allowing a third-party to run the Deferred Payment scheme would potentially allow the Council to transfer some of the cash-flow risk to that third party; if the Council introduces an administration charge, it would also give more certainty about what level to set this at.

Alternative security

18. Local authorities are permitted to deem an asset other than a first charge on a property as adequate security on which to make a Deferred Payment Agreement. They are required to maintain an explicit and publically-accessible policy of what other types of security (if any) they are willing to accept.
19. Examples given in the guidance are:
 - a. a third party guarantor with appropriate security

- b. a solicitor's undertaking letter
 - c. a valuable object such as a piece of art
 - d. an agreement to repay the amount deferred from the proceeds of a life assurance policy.
20. Each of the above examples can bring a higher risk of non-payment than a first charge on a property, so the Council must decide whether to accept this risk as a service to the public.

Deferred payments for supported living:

21. The Care Act gives local authorities the option to offer a Deferred Payment Agreement to a person who is living (or is planning to live) in supported living accommodation. This should only be used where a person intends to retain their former home and pay their associated care and accommodation rental costs from their deferred payment, and are explicitly not to be used to finance mortgage payments.
22. If the Council were to offer a Deferred Payment Agreement under these circumstances, it would potentially increase the total size of the scheme, although demand has not been estimated yet. As the scheme is intended to be cost neutral it would not have a significant cost impact on the Council, although it would increase the cash flow risk if beneficiaries of the scheme failed to repay when required.
23. Offering an agreement to a person in supported living accommodation would bring parity with people in care homes, and facilitate a wider choice of accommodation for people considering their care needs; it would seem to support the promoting independence principle.
24. It is anticipated that the Department of Health will extend the scheme to include service users receiving care in their own homes. It is likely that this will be at the discretion of the local authority on whether or not to enter into Deferred Payment Agreements in these cases.

Debt recovery

25. If a person falls into arrears with payments, prior to Court proceedings being issued the Care Act requires a Deferred Payment Scheme to be offered if they are eligible for one. Should they not agree to taking up the agreement, the person will then be liable for being taken to Court. A separate report and policy are being taken to the Policy Committee on this subject.

Application to join the Deferred Payment Scheme

26. The local authority may ask the individual to complete an application form for the scheme. This will enable an early indication of both a genuine intention to join the scheme and that they satisfy the eligibility criteria. It is proposed that this is essential.

Equity limit

27. In order to offer a deferred payment the amount of equity in the property must be set at the value of the property less 10% to cover the cost of sale and less a further £14,250 (in 2015/16) which is in line with the lower capital limit.
28. The statutory guidance explicitly forbids local authorities from deferring any amount above this equity level, although interest charges can still be added beyond this amount.

Current Deferred Payment Agreements

29. Legal advice has been sought on whether service users who already have a deferred payment agreement can be charged interest once the new scheme comes into effect. The Care Act expressly forbids any transfer to a new scheme and from charging interest when the new scheme comes into effect.

Other Options Considered

30. Other options that have been considered are:

- exercising no discretion at all in offering a deferred payment agreement.
- allowing discretion to offer a Deferred Payment Agreement to fund top-ups.
- not extending the Deferred Payment Scheme to people in supported living accommodation.
- not refusing to make deferred payment agreements where specifically permitted to refuse.
- delegating the Deferred Payment Scheme to a third party organisation or other local authority
- accepting alternative forms of security with a higher risk of non-payment than property, as a service to the public.

Reasons for Recommendations

31. The recommendations are being made due to implications of the Care Act.

Statutory and Policy Implications

32. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Financial Implications

33. The Care Act will increase the amount of money the Council lends to users and therefore the risk of non-payment, but the potential to charge interest and administration fees reduce the cost of the scheme overall. It is likely that the Council will need to borrow additional money to fund the scheme once it is established.

Implications for Service Users

32. Service users who already have a Deferred Payment Agreement will not be affected by the introduction of the new Universal Deferred Payment Scheme. Service users taking up an agreement after the introduction of the new scheme will be liable to pay an administration fee and interest on the proportion of their care charges which will accrue against the value of their property.

RECOMMENDATION/S

1) It is recommended that Committee agree that:

- discretion **is** offered where a person has few accessible assets, as the person will be at a high risk of not being able to pay for their care and a Deferred Payment Agreement will reduce the risk of the authority having unsecured debtor as a result
- the Council does not enter into a Deferred Payment Agreement where a person is seeking a top-up, which would increase the amount loaned out unnecessarily and would be a financial risk to the council. Top-ups can continue to be paid by a third party payee, so choice of accommodation is not restricted
- a Deferred Payment Agreement **is** offered to a person with eligible needs who is in supported living accommodation, as this will help them (if they wish) to avoid the need to go into a care home
- discretion **is** offered where a property does not have sufficient value but the land does, as the value of land is unlikely to be more volatile than the value of houses so the risk profile would be similar. A first charge would, of course, be required on the land
- the Council does not seek to delegate its Deferred Payment Scheme, since it already has the skills and experience of running such a scheme over a number of years. However, consideration will be given to hosting the Deferred Payment Scheme for other councils if approached
- the Council does not accept any alternative form of security, other than a first charge on a property or a piece of land, as other assets are seen to bring a higher risk of non-payment
- approval is given to consult on the recommendations of the Committee Paper "Charging Options Report", and those contained within this report is granted. The consultation should also include the potential option to extend the scheme to service users who receive care and support in their own homes.

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Constitutional Comments (KK 18/12/14)

34. The proposals in this report are within the remit of the Adult Social Care and Health Committee.

Financial Comments (AGW 17/12/14)

35. The financial implications are contained in the body of the body of the report in paragraph 32.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- ASCH Committee Report - Charging Provisions of the Care Act
- ASCH Committee Report – Care Act 2014 – Update on Local Implementation

Electoral Division(s) and Member(s) Affected

- 'All'.

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