

Committee: Cabinet

Date: 9 November 2015

Subject: Proposed charges for the Universal Deferred Payments scheme

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Recommendations:

1. That the council introduces charges, to recoup the associated costs of arrangements made, under Sections 34-36 of the Care Act 2014 and the Care and Support (Deferred Payment Agreements) Regulations 2014, with customers for whom the council arranges support for.
 2. That the schedule of charges as detailed in the report be adopted for the rest of 2015/16 financial year.
 3. That charges be reviewed annually in line with annual reviews of the Fairer Charging Policy.
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1. Report and executive summary

- 1.1 The purpose of the report is to provide background information about the universal deferred payment scheme, to explain the introduction of charges for operating a universal deferred payments scheme, and to seek Cabinet agreement on the recommendations.

2. Details

- 2.1 The Care Act 2014 came into force on the 1st April 2015. One of the key changes from April 2015 is that all local authorities must enter into a deferred payment agreement with a customer if conditions set out in the Act and Regulations apply.
- 2.2 The establishment of the universal deferred payment scheme means that people should not be forced to sell their home in their lifetime to pay for their care. By entering into a deferred payment agreement, a person can 'defer' or delay paying the costs of their care and support until a later date, by taking out a loan from the Council (secured against their property) to pay for such care.

Deferring payment can help people to delay the need to sell their home, and provides peace of mind during a time that can be challenging (or even a crisis point) for them and their loved ones as they make the transition into care.

- 2.3 A deferred payment agreement can provide additional flexibility for when and how someone pays for their care and support. It should be stressed from the outset that the payment for care and support is deferred and not 'written off' – the costs of provision of care and support will have to be repaid by the individual (or a third party on their behalf) at a later date.
- 2.4 The scheme is universally available throughout England, and local authorities are required to offer deferred payment agreements to people who meet certain criteria governing eligibility for the scheme. Local authorities will need to ensure that adequate security is in place for the amount being deferred, so that they can be confident that the amount deferred will be repaid in the future. Local authorities are also encouraged to offer the scheme more widely to anyone they feel would benefit who does not fully meet the criteria.
- 2.5 A deferral can last until death, however many people choose to use a deferred payment agreement as a 'bridging loan' to give them time and flexibility to sell their home when they choose to do so. This is entirely up to the individual to decide.
- 2.6 Local authorities must enter into a deferred payment agreement with people who meet the criteria below and who are able to provide adequate security. They must offer them to people who have local authority-arranged care and support, and also people who arrange and pay for their own care, subject to these criteria. The regulations and statutory guidance specify that someone is eligible for and so must be offered a deferred payment agreement if they meet all three of the following criteria at the point of applying for a deferred payment agreement:
 - (a) 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 local authority decides should be met through a care home placement. This should comply with choice of accommodation regulations and care and support planning guidance and so take reasonable account of a person's preferences;
 - (b) 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
 - (c) anyone whose home is not disregarded, for example it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support (i.e. someone whose home is taken into account in the local authority financial assessment and so might need to be sold).
- 2.7 There are certain circumstances in which a local authority may refuse a request for a deferred payment agreement ('permission to refuse'), even if a person

meets the eligibility criteria and the local authority would otherwise be required to offer the person an agreement. This permission (or discretion) to refuse is intended to provide local authorities with a reasonable safeguard against default or non-repayment of debt. This is detailed in the Regulations.

- 2.8 The deferred payment agreement scheme is intended to be run on a cost-neutral basis, with local authorities able to recoup the costs associated with deferring fees by charging interest. Local authorities can also recoup the administrative costs associated with Deferred Payment Agreements, including legal and ongoing running costs, via administration charges which can be passed on to the individual. Administration charges and interest can be added on to the total amount deferred as they are accrued, although a person may request to pay these separately if they choose. The agreement must make clear that all fees deferred, alongside any interest and administrative charges incurred, must be repaid by the person in full. The local authority must also notify the individual in writing whenever they are liable for an administration charge.
- 2.9 Local authorities now have the ability to charge interest on any amount deferred, including any administration charge deferred. This is to cover the cost of lending and the risks to local authorities associated with lending, for example the risk of default. Where local authorities charge interest this must not exceed the maximum amount specified in regulations. A local authority may (but is not required to) charge the nationally-set maximum interest rate. The same interest rate must be charged on all deferred payments within a local authority.
- 2.10 Local authorities must inform people before they make the agreement if interest will be charged, what interest rates are currently set at, and when interest rates are likely to change. This is to enable people to make well-informed decisions about whether a deferred payment agreement is the best way for them to meet the costs of their care. The interest charged and added to the deferred amount will be compounded, and local authorities should ensure when making the agreement that individuals understand that interest will accrue on a compound basis. Interest can accrue on the amount deferred even once someone has reached the 'equity limit'. It can also accrue after someone has died up until the point at which the deferred amount is repaid to the local authority. If the local authority cannot recover the debt and seeks to pursue this through the County Court system, the local authority may charge the higher County Court rate of interest.
- 2.11 Local authorities must set their administration charge at a reasonable level, and this level must not be more than the actual costs incurred by the local authority in provision of the Universal Deferred Payment Scheme, as set out in regulations. Relevant costs may include (but are not limited to) the costs incurred by a local authority whilst:
- registering a legal charge with the Land Registry against the title of the property, including Land Registry search charges and any identity checks required;
 - undertaking relevant postage, printing and telecommunications;

- costs of time spent by those providing the service;
 - cost of valuation and re-valuation of the property;
 - costs for removal of charges against property;
 - overheads, including where appropriate (shares of) payroll, audit, management costs, legal service.
- 2.12 Local authorities should maintain a publicly-available list of administration charges that a person may be liable to pay. It is good practice to separate charges into a fixed set-up fee for deferred payment agreements, reflective of the costs incurred by the local authority in setting up and securing a typical deferred payment agreement, and other reasonable onetime fees during the course of the agreement (reflecting actual charges incurred in the course of the agreement).
- 2.13 Merton already has had a Deferred Payment Scheme in place since 2002 (under Section 55 of the Health and Social Care Act 2001). Under this scheme Merton has 10 deferred payments agreements in place with a total value of £477K secured against properties.
- 2.14 The existing charge to the customer is a one-off charge of £120.00 for property values under £500K. The Council currently does not recoup the associated costs for arranging the scheme

3. Schedule of Proposed Charges For 2015/16

3.1 Set up fee - £395 (one off payment)

The administration fee has been designed to recoup charges for handling the legal requirements and all associated administration duties such as staff costs, valuation fees and legal charges. The set up fee is broken down into;

- Administration fee of £289 (15 staff hours' approx. @£19.29 per hour.)
- Land Registry fee of £40.00 (for property values up to £500k)
- Overhead costs of 20%

And

3.1.1 Legal charge @ £55 per hour for preparing and registering the charge

3.2 Valuation Fee

Actual cost of property valuation will be passed on to the client (guidance stipulates that a formal property evaluation is obtained rather than a web based estimation).

3.3 Termination Fee

Any charges incurred in removing a legal charge from a property to the customer plus Legal Services charge of £55 per hour for removing the charge.

3.4 Annual Fee - £50

We have the option to charge an annual fee for running the deferred payment scheme. A flat rate fee of £50 is suggested by NAFAO (National Association of Financial Assessment Officers) to be sufficient to cover the costs associated with operating the scheme e.g. reviewing the account for any benefit / contribution / fee increases and providing regular statements to customers. This level of fee is recommended

3.5 Interest Rate on DPA

The Council will charge the nationally set maximum interest rate currently 2.25% for all deferred payment agreements
The rate is reviewed every 6 months

3.6 Additional Charges

Complex / Exceptional cases may require additional staff time or senior manager attention therefore can incur an increased charge. This will be made clear in any published information regarding the schemes charges.

4. Options

4.1 No change

The guidance states that running the universal deferred payment scheme is intended to be cost neutral to Local Authorities. No change would mean that Merton would have to continue absorb the cost of running such a scheme. This is not recommended.

4.2 That the actual costs incurred in arranging and maintaining the deferred payment scheme will be charged

This would allow the universal deferred payment scheme to run on a cost neutral basis. This is the recommended option.

5. Consultation undertaken

- 5.1 None as this is in line with the implementation of the Care Act 2014. It does not impact on customers with existing deferred payments agreements in place

6. Timetable

- 6.1 To go to Cabinet 9 November 2015. If the recommendations are agreed by Cabinet the charges would apply from 10 November 2015 .

7. Financial, resource and property implications

- 7.1 The Care Act 2014 makes it a legal requirement for local authorities in England to offer Deferred Payment Agreements (DPAs) to fund residential care fees for individuals meeting certain eligibility criteria. This was previously a discretionary arrangement. The new legal duties came into force on 1st April 2015.

The Care Act does not change the arrangements for any Deferred Payment Agreements already in place (pre – April 2015), but the eventual introduction of the cap on care costs has the potential to increase the number of agreements (i.e. they become more material in local authority accounts). That, however, is not now due to be introduced until 2020 at the earliest. In addition, from a survey undertaken by the Department of Health in 2014, it is clear that local authorities have used differing arrangements to record and provide for their DPAs with individuals.

The Department of Health have worked with CIPFA and CIPFA's Local Authority Accounting Panel to provide local authorities with guidance to help them properly reflect DPAs in their accounts.

8. Legal and statutory implications

- 8.1 The statutory framework for deferred payment arrangements between the Local Authority and adult customers is provided by sections 34-36 of the Care Act 2014, the Care and Support (Deferred Payment Agreements) Regulations 2014 and the Care and Support Statutory Guidance. The deferred payment agreement scheme is intended to be run on a costs-neutral basis with the local authority being able to recoup the costs associated with such arrangements. The Authority has the power to charge interest on any amount deferred and to recoup the administration costs associated with the scheme.

9. Human rights, equalities and community cohesion implications

- 9.1 None

10. Crime and Disorder implications

- 10.1 None

11. Risk management and health and safety implications

- 11.1 None

12. Background papers used to compile this report

- 12.1 Care and Support Statutory Guidance issued under the Care Act 2014 – Department of Health