

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Executive Member for Adult Social Care and Public Health
Date:	11 March 2015
Title:	Single Policy for Paying for Care
Reference:	6547
Report From:	Director of Adult Services

Contact name: Nicky Millard

Tel: 01962 845204

Email: Nicky.millard@hants.gov.uk

1. Executive Summary

1.1. The purpose of this paper is to set out and seek approval for the new single policy framework for paying for care that covers both residential and non residential care charging. The paper also seeks formal approval for the backdating of care charges to the point at which a care service starts. In addition the paper seeks approval for the parameters under which a Deferred Payment Agreement will be offered.

1.2. This paper seeks to:

- Present the single draft policy framework for paying for care (Appendix C), further to the Executive Member Decision Day on 27 January 2015 where it was agreed that amendments would be made to the policy framework to reflect the new legislative changes and to seek agreement to the application of the policy to ensure compliance with the Care Act 2014.
- Outline the key changes under the new policy framework.
- Present the policy and information for Deferred Payment Agreements (Appendix D), further to the Executive Member Decision Day on 27 January 2015 where the charging of interest on a Deferred Payment Agreement and the charging of an administration fee was agreed in line with powers given to Local Authorities in the Care Act 2014.
- Outline the key principles of the policy and information and when applications for a Deferred Payment Agreement will be considered by the Local Authority.

2. Contextual information

2.1. The Care Act modernises existing social care law and asks that adult social care authorities must comply with a range of statutory obligations.

- 2.2. In the Care Act Implementation report that came to the Executive Member decision day on 27 January 2015, the Executive Member formally agreed to continue to financially assess and charge as at present for both residential and non-residential care (with the exception of some new or revised charges that were proposed in the report and agreed upon at that meeting); and that consequential amendments would be made to the policy framework.
- 2.3. The Care Act gives discretion to charge for both residential and non residential care; currently legislation only gives Local Authorities discretion on non residential charging. The policy framework has therefore been revised to a single policy framework to charge for residential and non residential care in line with the discretion given by the Care Act.
- 2.4. Following the decisions taken on the Deferred Payment Agreement Scheme at the Executive Member Decision Day on 27 January, further detailed work was carried out by Adult Services in liaison with the legal and financial assessment teams to prepare for the new scheme in Hampshire.
- 2.5. In order to produce key information for service users and their families about the new Deferred Payment Scheme additional decisions were needed on discretionary areas of the Care Act regarding the application of Deferred Payment Agreements. The Adult Services Department Management Team agreed the following recommendations:
 - a) Hampshire County Council will offer Deferred Payments where legally required to if a person is entering a care home and where it is possible to place a first legal charge as security on the property.
 - b) Hampshire County Council will not offer a Deferred Payment Agreement if there is an existing mortgage, as a second charge is not considered to be adequate security. However if the existing mortgage is very small the person could discharge it and then Hampshire County Council could offer a Deferred Payment Agreement.
 - c) Hampshire County Council does not consider third party guarantor, proceeds from life policy or valuable items such as paintings to be adequate security for a Deferred Payment.
 - d) Hampshire County Council will not, at this stage, offer a deferred payment where care is delivered in a setting other than a care home.
- 2.6 The policy information has been produced to ensure transparency and clarity for all service users, carers and their representatives, as to when Hampshire County Council will consider applications for the Deferred Payment Agreement scheme.

3. Finance

- 3.1. There are no financial implications as a result of moving to a single policy framework as the actual charging arrangements are not being amended, unless the Care Act specifically requires it.
- 3.2. The backdating of charges and the changes to the Deferred Payment Scheme are simply designed to allow the local authority to cover its costs.

4. Performance

- 4.1. There are no performance measures directly associated with these changes. However having one policy is part of the drive to ensuring more transparency around social care charging. This will link in with work under the Care Act Information and advice work stream, which aims to make all social care processes clearer and more transparent for Hampshire residents.

5. Equalities Impact Assessment

- 5.1. It is for the Executive Member as decision maker to have due regard to the need to: eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act and advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 5.2. A screening EIA has been completed and it was identified that a full EIA was not needed to evaluate the recommendations outlined in this report. The screening EIA is summarised in integral Appendix B.
- 5.3. An engagement exercise to test public views was undertaken between 21 November and 22 December 2014 and sought views and feedback both on the additional charges relating to care and support that councils can charge from April 2015, as well as taking the opportunity to ask questions about how best to get information and advice about social care and support services out to the county's residents. A variety of engagement methods were used to reach as many people as possible including: an online survey; postal survey; a stakeholder event held on 28 November; raising awareness through existing forums and groups; media releases and word of mouth. The use of a postal survey to 5,000 random households in Hampshire targeted the wider public, and those who may personally require, or whose relatives may require, adult social care services in the future. The use of an online survey has meant that the views of partner and other stakeholder organisations, elected members, staff, and the voluntary and community sector have been sought. Surveys were offered in alternative formats to ensure that those with accessibility needs were not excluded from taking part.
- 5.4. An impact, albeit low, has been identified for the protected characteristics of age and disability but this is simply because people who have care and support needs are more likely to be older people and people with a level of disability. However, people in these groups are not disadvantaged more than any other group of people would be by the proposed changes outlined in the report. The reason why 'low' impact has been identified is that people have a financial assessment to assess whether they can afford to contribute to the costs of their care, so we would not ask people to pay if they could not afford to do so. Therefore backdating charges to the point when care starts will not have a negative impact on anyone as the amount they would be asked to pay is still subject to a financial assessment. The single policy framework does not have an impact as it is a consolidation of non residential and residential

policy, and the Executive Member has already agreed to continue to financially assess and charge for both as at present.

6. Backdating of care charges

6.1. Currently, in line with the Department of Health's Fairer Access to Care Services Statutory Guidance, the council has not made a charge for any period before an assessment of charges has been communicated to the service user. This means a service user may be receiving care services for some time before they start being charged for them. This is not replicated under the Care Act. This therefore presents an opportunity to propose that after April 2015 when new customers are billed, they will be charged from the first date their care service started.

6.2. Adult Services carried out engagement with the public in November and December 2014 on some of the Care Act changes for 2015 implementation, and a question was included to seek public views about whether the council should make this change to its policy about backdating the charge. Amongst those who responded to the survey, there was a very even split, but a small majority (56.5%) thought that the council should charge from the first date a service starts. Many people did, however, say that financial assessment needed to be faster so that people knew sooner what they would be expected to pay. Many also said that people should be told what they would need to pay, or at least get an estimated cost, before commencing payment.

6.3. The proposal therefore is that from April 2015, the council will begin charging people from the first date that a care service starts, subject to the following principles:

- The council will seek to minimise the situations where it is necessary to backdate charges.
- Information for the public will communicate the message that people will be charged for care from when they start to receive it.
- The Financial Assessments and Benefits Team will endeavour to complete financial assessments as soon as possible.
- Adult Services will use discretion to vary the policy if circumstances mean that it would be inequitable to backdate the charges.

7. Policy and information on Deferred Payment Agreements

7.1. A Deferred Payment Agreement is an agreement between the service user and the Council that is designed to help service users if they have been assessed as having to pay the full cost of their care, they meet certain criteria but cannot access their money because their capital is tied up in their home.

7.2. Effectively the scheme means that Hampshire County Council offers people who are eligible a loan using their home as security. The Council pays an agreed part of the service users weekly care costs while the agreement is in place.

- 7.3. Under the Care Act, Local Authorities will be required to offer a Deferred Payment Agreement in certain circumstances and will have discretion to offer an Agreement in many more.
- 7.4. The Local Authority is required to offer a Deferred Payment Agreement where a person meets criteria, is going to live in a care home and the council can obtain adequate security for the loan. In addition if considered necessary, it can require written consent from other people who have an interest in the property that may prevent the Council from recovering the deferred amount. Consent relates to the creation of a charge against the property and that the charge takes priority to and ranks above any interest other people have in the property.
- 7.5. Appendix D sets out the Council's information for the public to cover situations when the Council is required to offer a Deferred Payment Agreement: in particular, that the Council will only accept a first legal charge on the property and will require the written consent of any other people with an interest in the property.
- 7.6. The Local Authority will have discretion to offer a Deferred Payment Agreement if a person is moving to supported living accommodation and to accept other forms of security. As set out above, Hampshire County Council does not feel it is appropriate to allow other assets as security as the risk is too great. The County Council is still considering the applicability and suitability of deferred payments in non care homesettings, for example for care delivered at home or in extra-care settings. It is proposed to bring a further report setting out proposals for the Council's policy in situations where the Council has discretion to offer Deferred Payment Agreement at a later stage.

8. Key amendments to the single policy charging framework

- 8.1. The single policy framework sets out that this covers both residential and non residential care.
- 8.2. Where appropriate in the framework, references to the Charging for Residential Accommodation Guide have been removed and replaced with either the Care Act 2014 or with a statement that the policy will continue to be applied as now.
- 8.3. The policy also ensures that it refers to carers' services and the new eligibility criteria for carers, as per the Care Act.

9. Recommendations

- 9.1. To seek approval from the Executive Member for Adult Social Care and Public Health to the use of the attached (Appendix C) policy framework under the Care Act and publication of the framework.
- 9.2. To seek approval from the Executive Member for Adult Social Care and Public Health for the backdating of care charges under the Care Act so that the service user is charged from the point at which the service begins.

- 9.3. To seek approval from the Executive Member for Adult Social Care and Public Health that, from the coming into force of Regulations on Deferred Payments under the Care Act 2014, the County Council will only offer Deferred Payment Agreements in relation to eligible people going to live in a care home and where the County Council can place a first legal charge on the property and where relevant obtain consent from other people with an interest in the property (as set out in Appendix D).
- 9.4. That a further report be brought back to the Executive Member at a later stage seeking approval for the County Council's policy in relation to offering a Deferred Payment Agreement whether the Council is not legally required to do so.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	no
Maximising well-being:	no
Enhancing our quality of place:	no

Other Significant Links

Links to previous Member decisions:		
<u>Title</u> Implementation of the Care Act in April 2015	<u>Reference</u> 6406	<u>Date</u> 27 January 2015
Direct links to specific legislation or Government Directives		
<u>Title</u> Care Act 2014 Regulations under Part 1 of the Care Act		<u>Date</u> 14 May 2014 23 October 2014

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

Equalities Impact Assessment:

1.2 An engagement exercise to test public views was undertaken between 21 November and 22 December 2014 and sought views and feedback both on the additional charges relating to care and support that councils can charge from April 2015, as well as taking the opportunity to ask questions about how best to get information and advice about social care and support services out to the county's residents. A variety of engagement methods were used to reach as many people as possible including: an online survey; postal survey; a stakeholder event held on 28 November; raising awareness through existing forums and groups; media releases and word of mouth. The use of a postal survey to 5,000 random households in Hampshire targeted the wider public, and those who may personally require, or whose relatives may require, adult social care services in the future. The use of an online survey has meant that the views of partner and other stakeholder organisations, elected members, staff, and the voluntary and community sector have been sought. Surveys were offered in alternative formats to ensure that those with accessibility needs were not excluded from taking part.

An impact, albeit low, has been identified for the protected characteristics of age and disability but this is simply because people who have care and support needs are more likely to be older people and people with a level of disability. However, people in these groups are not disadvantaged more than any other group of people would be by the proposed changes outlined in the

report. The reason why 'low' impact has been identified is that people have a financial assessment to assess whether they can afford to contribute to the costs of their care, so we would not ask people to pay if they could not afford to do so. Therefore backdating charges to the point when care starts will not have a negative impact on anyone as the amount they would be asked to pay is still subject to a financial assessment. The single policy framework does not have an impact as it is a consolidation of non residential and residential policy, and the Executive Member has already agreed to continue to financially assess and charge for both as at present.

2. Impact on Crime and Disorder:

There is no anticipated negative impact on crime and disorder.

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?
- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

The proposals will not have a bearing on climate change.

Hampshire County Council Paying for Care Policy Framework for Adult Social Care

1) Introduction

In accordance with arrangements under the Care Act 2014 the County Council has a single policy framework for paying for care, which covers both residential and non-residential care.

The County Council has the power to charge for services whether the services are delivered in a care home, a person's home or in any other setting in which care is provided by the Council under Clause 14 of the Care Act 2014.

Income from charging for services is an essential component of Hampshire County Council's financial strategy. National funding arrangements make it clear councils need to collect income locally to fund the full cost of services. This policy is concerned with contributions to be paid towards direct provision of care and Direct Payments.

2) Residential care charging

2.1 The County Council will assess and charge for residential care using the new legislation and regulations which reflect the previous Charging for Residential Accommodation Guide (CRAG), as approved by the Executive Member for Adult Social Care and Public Health, unless specific changes made by the Care Act determine otherwise.

2.2 As permitted under the Care Act 2014 Regulations on Charging and Assessment of Resources, the Council financially assesses and charges a short-term resident as if they are receiving care and support, or support under Section 18, 19 or 20 of the Act other than the provision of accommodation in a care home. This does not represent a change in policy as it continues what the Council has done since the last revision of the policy. Where a person has a temporary or short-term residence in a care home, the County Council will charge based on the charging policy outside of a care home for up to 8 weeks.

3) Non-residential care charging – The Contributions Policy

3.1 Context

3.1.1 As permitted under the Care Act 2014 under Section 14 and 18 of the Act, the Local Authority may make a charge for meeting needs if it is satisfied on the basis of the financial assessment it carried out that the adults financial resources are at or below the financial limit.

In addition under the Care Act 2014, under Section 14 and 18, the Local Authority may also make a charge in addition to this for putting in place the arrangements for meeting those needs, if it is satisfied on the basis of the financial assessment it carried out that the adults financial resources are above the financial limit, and the adults accrued costs do not exceed the cap on care costs, but the adult nonetheless asks the authority to meet the adults needs, under Section 14 and 18 of the Act.

- 3.1.2 Where the Council makes a Direct Payment as an alternative to making arrangements for direct provision of a service a contribution will be required and calculated on the same basis as when the Council commissions a service.
- 3.1.3 The Council will take into account in the financial assessment capital and income unless it is required to be disregarded under the Care Act 2014 and/or Regulations.

3.2. Policy Inclusions

- 3.2.1 All adult social care services for which the Council has discretionary powers to charge. See also Policy Exclusions.

3.2.2 Direct Payments Scheme

3.3. Policy Exclusions

- 3.3.1 Services for which the Council may not charge under legislation and/or statutory guidance. This includes aftercare services under Section 117 of the Mental Health Act, services provided to people suffering from any form of Creutzfeldt Jacob Disease, intermediate care services for up to 6 weeks and community equipment and minor adaptations.
- 3.3.2 Direct access services provided by the voluntary sector and funded by the Council – these services are generally grant funded and have a vital role in preventing or deferring the need for longer term health and social care services.

3.4. Policy Aims

This policy aims to ensure the Council requires contributions towards services on a fair and equitable basis. The policy is based on statutory guidance issued under Section 78 of the Care Act 2014, with specific reference to sections 2, 4, 5, 14, 17, 18, 19 and 20.

3.4.1 Fairness and Equity

A single policy for all services for which the Council is permitted to charge, including temporary residential stays of up to 8 weeks provided as respite, ensures people are treated fairly and equitably.

Contributions to a personal budget for social care are determined by financial assessment of an individual's means. The Care Act 2014 Section 17 may make provision as to cases and circumstances in which a local authority is to be treated as having carried out a financial assessment in an adults case, and being satisfied on the basis of the adults financial assessment, that they exceed or do not exceed the financial assessment limit. Locally this is described as a light touch financial assessment.

3.4.2 Protecting people on low incomes

The financial assessment will ensure that people on low incomes are not put in financial hardship as a result of paying towards their care costs. Advice and support to claim welfare benefit entitlements will be made available to service users and carers. A local authority may not make a charge under if the income of the adult concerned would, after deduction of the amount of the charge, fall below such amount as is specified in regulations; and the regulations may in particular (in reliance on section 125(7)) specify:

- (a) different amounts for different descriptions of care and support;
- (b) different amounts for different descriptions of support.

3.4.3 Choice and Control

This policy supports the Council's wider aims to enable greater choice and control over services that meet eligible social care needs. Service users, subject to financial means, contribute to their personal budget for social care. The Council funds the difference. This budget is used to purchase services to meet the eligible needs of the person requiring care. Service users may take this money in the form of a Direct Payment, in accordance with the Regulations, or ask the Council to arrange services on their behalf, or use a combination of both.

3.4.4 Promoting prevention and reablement

Services provided or commissioned by the Council include those that prevent or defer the need for more intensive health and social care services. The React service or discharge to assess beds can be offered to service users for free for up to 6 weeks, to encourage and enable service users independence.

3.4.5 Supporting carers' wellbeing and the caring relationship

In order to support people living at home and their carers who require services the Council provides services directly for carers free of charge.

3.4.6 Provide people with timely, clear and concise information

about the costs of their care: The Council will publish the single policy framework on Hantsweb and provide clear information to service users, carers and the general public in a variety of formats.

3.5. Service User's Financial Assessment

3.5.1 Low Income

'Low income' levels are referenced in Section 14 of the Care Act and under the Care and Support (Charging and Assessment of resources) Regulations 2014 Part 2 paragraph 7.

3.5.2 Direct Payments.

The contribution to be made when the service user receives a Direct Payment instead of services is calculated on the same basis as when a service user receives a service commissioned by the Council. Wherever possible Direct Payments will be paid net of client contribution.

3.5.3 Disability Related Expenses (DRE)

The aim is to allow for reasonable expenditure needed for independent living by the service user. The Council will take into consideration the relevant expenses of each individual service user. Disability Related Expenses that have been allowed will appear in the support plan.

3.5.4 Income, Capital and Investments

In carrying out a financial assessment, the Council will take into account all relevant income and capital that is not required to be disregarded. Examples of disregarded income include any income from earnings, Winter Fuel Allowance, mobility component of Disability Living Allowance

3.5.5 Deprivation of capital

If someone has deprived themselves of capital or an asset to reduce their contribution, this may be treated as deprivation of funds to pay for care and the contribution will be calculated as if the individual still had the capital or asset.

3.5.6 Net Assessed Income

The Council will disregard 5% of the net assessed income. This means that 95% of a service user's net assessed income will be used to calculate the most someone would contribute towards their personal budget.

3.5.7 Refusal to be assessed

A service user is required to pay the full cost of the service if they refuse to disclose their financial means. Services cannot be withdrawn because a person refuses to pay their contribution to their care costs or the full cost of care where appropriate. The Council will pursue any debt accrued.

3.5.7 Maximum Weekly Charge

Hampshire County Council no longer has a maximum weekly charge.

3.6. Carers

- 3.6.1 The Care Act 2014 requires councils to assess a carer's needs where it appears to the Council the carer may have needs for support either now or in the future and to use the eligibility criteria for carers set out in Regulations under the Care Act 2014.

Hampshire County Council does not charge for carers' services that meet carers' needs and are provided directly to the carer. This can take the form of a Direct Payment to the carer and/or through referral to local community and voluntary support groups.

There are also certain services that meet carers' needs but are provided to the cared for person. These include residential respite, home or day care, Direct Payment to the cared for person so that they can purchase services and referral to voluntary and community organisations.

However where a service is delivered to the cared for person and the carer benefits, the cared for person will contribute to the cost of the care unless they are already paying their maximum weekly contribution.

3.7. Joint arrangements with Children's Services

- 3.7.1 Social care legislation in relation to the provision of services to meet the needs of adult and children is complex and the Council is committed to ensuring Adult and Children's Services work collaboratively to achieve the best possible outcomes for individuals and family groups. Any charging for Children's services would come under the Children Act 1989. Services arranged by Adult Services are subject to this policy. The following clarification is provided:

Parents who are carers of disabled children

People with parental responsibility for a disabled child are entitled to a carer's assessment. Adult and Children's Services work together to ensure that the assessment is carried out by the most appropriate person. As set out above, adult social care services directly to the carer are free.

Disabled Parents

Disabled people who are parents are entitled to an adult social care assessment; and to have their needs met where they meet the Council's eligibility criteria for adult social care. They will be required to make a contribution to their personal budget for social care services, based upon a financial assessment.

Young Carers

Under the Children and Families Act 2014 Part 5, young people under the age of 16 who have caring responsibilities either for an adult or for another child are entitled to an assessment of their needs by Children's Services. Young people who are 16 and above, and are caring for an adult, are entitled to an assessment of their needs by Adult Services.

The cared for person is entitled to an adult social care assessment; and to have their needs met where they meet the Council's eligibility criteria for adult social care. They will be required to make a contribution to their personal budget for adult social care services, based upon a financial assessment.

This policy and accompanying guidance will be monitored and reviewed by the Adult Services Department through learning from complaints, compliments and concerns raised by service users and carers.

Policy and information on Deferred Payment Agreements
- a loan secured against your home

This policy and information relates to people who are living in or moving to a care home and whose 12 week property disregard ends/the deferred payment agreement starts on or after 1 April 2015.

If your 12 week property disregard ends / the deferred payment agreement starts on or before 31 March 2015 please speak to your Care Manager.

Introduction

Please refer to the free Hampshire County Council booklet *Paying for Residential Care* for further information about how to meet the costs of your care.

We advise you take independent legal and independent financial advice before entering into a Deferred Payment Agreement.

This leaflet sets out the Council's offer of a Deferred Payment Agreement to people who own a property and meet certain conditions. To enter into a Deferred Payment Agreement you need to have mental capacity to agree to the Agreement or have a legally appointed attorney or deputy to enter into the Agreement on your behalf.

The information in this leaflet relates to Deferred Payments Agreement if you're moving into a care home.

What is a Deferred Payment Agreement?

A Deferred Payment Agreement is an agreement between you and the Council that is designed to help you if you have been assessed as having to pay the full cost of your care, you meet certain criteria and you are going to live in a care home – but cannot access your money because your capital is tied up in your home. You will usually be able to consider your options for paying for your care in a care home during the 12 week period when the value of your property is not taken into account. It is recommended that you seek independent financial and legal advice during this period to consider all options.

Effectively the scheme means that Hampshire County Council offers people who are eligible a loan using their home as security. It doesn't work in exactly the same way as a conventional loan – the Council doesn't give you a fixed sum of money when you join the scheme, but pays an agreed part of your weekly care costs while the agreement is in place.

In addition you pay a weekly contribution to the Council towards your care that you have been assessed as being able to pay from your income and savings. The Council will charge you a fee to set up and administer the agreement (the administration charge) and interest on the amount of the loan. There is more information on this below.

How does a Deferred Payment Agreement work?

The agreed part of the costs paid by the Council together with any administration charge and interest builds up as a debt – which is usually

cleared when the money tied up in your home is released. For many people this will be done by selling their home, however you can also pay the debt back from another source if you want to. For example the repayment could be made by a third party or it could be paid back from another asset in the estate such as a life insurance policy.

The Deferred Payment Agreement is designed so you do not have to sell your home if you don't want to – you may, for example, decide to keep your home for the rest of your life and repay the money owed to the Council out of your estate, or you may want to rent out your property to generate income. If you do this, you may wish to use the rental income to reduce the amount you will need to repay to the Council under the Agreement.

Could you get a Deferred Payment Agreement?

If all the following statements relate to you and reflect your situation, the Council is required to offer you a Deferred Payment Agreement:

- Your assessed eligible care needs will be met through the provision of a permanent care home placement;
- You have been assessed as having less than (or equal to) £23,250 in assets excluding the value of your home (ie in savings and other non-housing assets);
- Your home is not disregarded for the purposes of financial assessment (for example, it is not occupied by a spouse, civil partner or dependent relative as defined in Regulations on charging for care and support);
- The Council is able to place a first legal charge in the Land Register on the property that is/was your main or only home to secure the debt. To do this, your property must be registered at the Land Registry and there must not already be an existing charge on the property;
- If there are other people who own the property with you they agree that the Council's interest will rank above their interest in the property and will sign the relevant documents to say this;
- You, and any co-owners, agree to the Terms and Conditions of the Agreement by signing both the Agreement and the Land Charge document;
- You have mental capacity to enter into a Deferred Payment Agreement or have an Attorney or Deputy able to enter into the agreement on your behalf.

When the Council will consider a Deferred Payment Agreement application

If the Council cannot ensure adequate security is in place for the amount being deferred the application will be turned down. The Council needs to be confident that the amount deferred will be repaid in the future.

Adequate security is usually when the Council secures a first legal mortgage charge against a property in the Land Register. This means that when the

property is sold, the debt you owe the Council takes priority over any other charge on the property.

In cases where a loan is to be secured on a jointly-owned property the Council must obtain the agreement of all owners to a charge being placed on the property. All owners will need to be signatories to the agreement and legal charge and agree to the Council's interest taking priority to their interest in the property.

When the Council can refuse your application

The higher the risk to the Council of being unable to recover the money due, the more likely the Council will be to refuse to offer you a Deferred Payment Agreement.

If your application for a Deferred Payment Agreement is refused by the Council, we will explain why.

How much do I pay back?

The amount you will pay back is made up of the amount the Council has paid towards your care costs plus any administration charges that you have chosen to include in the deferred amount plus interest on the deferred amount calculated as set out below.

Administration costs

The Council charges an administration fee to cover costs incurred by the Council in relation to the Deferred Payment Agreement. The Council has chosen to charge an average cost to the local authority for staff time, copying and postage, plus actual costs of such things as property valuation and Land Registry charges. Currently, for routine matters, this is set at an initial maximum charge of £1190 (including the £300 valuation fee) and £312 for most years thereafter. The annual fee will be £612 if the Council needs to carry out a further standard property valuation. However this may be adjusted to take into account any specific requirements in relation to the property being valued. The costs will be reviewed annually.

You can choose to pay the charges separately or to include these costs in the deferred amount together with your care costs. If you choose to include the charges in the deferred amount, interest will be applied to the total amount.

Standard property valuation costs

A standard property valuation cost of £300 is included in the administration charges that the Council will pass on to you.

If you have a recent (within 3 months) written professional market valuation of your property the Council will accept this which will mean you will not have to pay for a valuation by the Council.

If a more complex valuation is required, for example if the value of the property is in dispute and an independent valuation is carried out, the cost of the valuation will be charged to you and this will be considerably more than the usual charge of £300.

Interest charged under a Deferred Payment Agreement

From April 2015 we are able to charge interest on the deferred amount for the whole period that the agreement is in place. The interest will form part of the amount you owe to the Council. The Council charges the maximum interest rate as set nationally. The rate of interest is updated twice yearly in Government Office of Budgetary responsibility reports published on 1 January and 1 July. Updated rates will be applied to your debt from the following 1 April and 1 October as appropriate. The rate of interest may therefore change between starting discussions with the Council and the time when you sign the agreement. The current maximum interest rate as at 1 April 2015 is 2.65%.

How the Council calculates interest

The Council will calculate your interest on the deferred amount including any administration charges you have asked to be deferred; the interest will be compounded on a daily basis. A full list of charges relating to Deferred Payment Agreements can be found in Appendix A.

Your responsibilities if you enter into a Deferred Payment Agreement:

You will need to:

- ensure that necessary maintenance is carried out on the property at your own expense;
- insure your property at your expense;
- pay any assessed client contribution towards the cost of your care in a timely and regular manner.

How the Council will calculate the amount it will offer to include in your Deferred Payment Agreement:

- Before it offers you a Deferred Payment Agreement the Council is required to obtain a valuation of your property.
- Hampshire County Council will use your home as security for the amount owed under the Deferred Payment Agreement. The maximum we can defer against the value of your home (the 'equity limit') is 90% of its current market value, less £14,250.
- The Council will take into account the cost of care at the care home you have chosen. To ensure sustainability Local Authorities have discretion over the amount people are allowed to 'top up' over the amount the Council would usually pay.
- When the amount you have deferred reaches 50% of the equity limit, we will re-value your property to monitor the amount of equity remaining. We will provide you with at least 30 days written notice when you are about to reach your equity limit.

CHECKLIST - What are the key things I need to consider?

- The scheme gives you the choice of whether or not to sell your home to help pay care home costs

- A Deferred Payment could be used as a 'bridging loan' to give you time and flexibility to sell your home when you choose to do so
- It may provide peace of mind during a time that can be challenging for you and your loved ones
- The Council will charge a one off and then annual administration fee
- The Council will charge you interest on your Deferred Amount
- You need to consider seeking independent financial and legal advice
- You may be assessed to make a contribution towards the cost of your care from your income and savings, in addition to the amount deferred under the agreement
- You can terminate the agreement at any time but you will need to repay the full amount due, including administration costs and interest, straight away
- If the Council agrees there is enough equity in your home you can add the cost of any payments above the local authority rate, to the Deferred Payment Agreement loan amount
- You will still be responsible for necessary maintenance on the property and you are liable for any expenses
- You will still need to insure your property at your own expense
- You may wish to consider who would be responsible for your finances should you lose capacity during the period of the Deferred Payment Agreement, and to consider putting steps in place to appoint an attorney.

CHECKLIST – What are the key things I need to have in place/organise?

1. Register the property at the Land Registry if your property is currently unregistered.
2. Put in hand any arrangements for seeking independent legal and financial advice.
3. Decided whether you want to pay an administration fee up front or add it to the deferred amount on which interest will be charged.
4. Ensure that all owners of the property are prepared to sign all relevant documentation.
5. Provide evidence of any other mortgage.
6. If you are making the application as a Deputy the Council needs to see the deputyship order.
7. If you are making the application as an attorney the Council will need to see the document appointing you as Attorney.
8. Consider, using information under the Frequently Asked Questions section below, whether there is a need to appoint a second Trustee before any dealing with the property can take place.

How would I keep track of the DPA?

- You will have a copy of the original agreement you signed.
- Twice a year we will send you a full written statement detailing the amount of care costs deferred, interest and administrative charges, the total amount due and the estimated equity remaining in your property benchmarked on the initial valuation.
- You can request a written statement on the current situation of your Deferred Payment Agreement at any time and we will send it within 28 days.

When the Council will stop deferring any more care costs

The Council will not continue to defer any further costs and charges under the Agreement in the following circumstances;

- a) If your total assets – including the value of your property – fall below the level of £23,250 and you therefore become eligible for Council support in paying for your care;
- b) If you no longer have a need for care in a care home;
- c) If you breach certain predefined terms of your contract and it is not possible to resolve the issue;
- d) If the property becomes disregarded under charging regulations, including but not limited to:
 - Where a spouse or dependent relative has moved into the property after the agreement has been made and this means you become eligible for local authority support in paying for care and therefore no longer require a deferred payment agreement; and
 - where a relative who was living in the property at the time of the agreement subsequently becomes a dependent relative (as defined in charging regulations);
- e) The Council must cease deferring further amounts when a person has reached the 'equity limit' that they are allowed to defer (see 'how much can be deferred'). This also applies when the value of the security has dropped and so the 'equity limit' has been reached earlier than expected.

If the Council refuses to defer any more charges for you it will provide you with a minimum of 30 days advance notice and an indication of how your care costs will need to be met in the future. The Agreement remains in place in respect of the costs deferred prior to any of the events that result in no further amounts being deferred and interest continues to be added to the deferred amount.

Capacity – acting on someone's behalf

If the person receiving care already has an attorney for finance and property or a court appointed Deputy the Attorney or Deputy can consider whether to enter into a Deferred Payment Agreement.

If the person lacks mental capacity to manage their finances and has not already appointed an Attorney an application will need to be made to the Court of

Protection for someone to become their Deputy. Once appointed, a Deputy can consider whether entering a Deferred Payment Agreement on the person who is receiving care's behalf.

If you are intending to apply to be appointed Deputy please speak with the relevant Care Manager as to arrangements until you have been appointed. More information about applying to be appointed a deputy can be found at; www.courtsofprotection.com.

Frequently Asked Questions

Do I have to enter into a Deferred Payment Agreement?

No. A Deferred Payment Agreement is one option available for covering the cost of your care if you meet the criteria and relevant conditions. Please see the Hampshire County Council booklet *Paying for Residential Care* for further information on ways to cover the cost of your care.

Why am I being advised to seek independent legal and financial advice before entering into a Deferred Payment Agreement?

The agreement is a legally binding document and it is important that anyone signing such an agreement has the opportunity to consider whether they wish to seek such advice.

What happens if I wish to sell my property?

You can choose to sell your property at any point during the Deferred Payment Agreement but should provide the Council with reasonable written notice of your intention to do so. The full deferred amount – including any deferred administration fees and interest – is repayable on the date of sale or disposal of the property.

Do I still need to pay some money to the Council during the Deferred Payment Agreement period?

You will need to pay your assessed financial contribution towards your care costs throughout the period of your agreement. This will be assessed based on your financial circumstances other than your property and will include your income and savings.

How long will the Deferred Payment Agreement be in place?

A Deferred Payment Agreement can remain in place until you sell or dispose of your property or if someone else repays the money to the Council. The full deferred amount – including any deferred administration charges and interest – is repayable immediately on the sale of the property or within 90 days of the date of death of the service user (whichever is sooner).

What happens if I use up the equity in my property?

You will only be able to continue to defer your care costs against the property whilst the property remains within the 'equity limit'. Your twice yearly statement will ensure you are kept informed of this. Administration charges and interest will continue to be added to the full existing deferred amount once this limit has been reached although no additional amounts to cover care costs will be deferred.

I already have a mortgage in place with a charge on my property. Can I still enter into a Deferred Payment Agreement?

It is unlikely that the Council will do this. However, in some discretionary cases, we may consider offering you a Deferred Payment Agreement when there is a very small existing charge on the property. You may be able to discharge the existing mortgage which would then allow the Council to obtain adequate security by placing a first legal charge in the Land Register. The Council will make a decision on a case by case basis.

I already have an equity release scheme in place. Can I still enter into a Deferred Payment Agreement?

An equity release scheme is a form of mortgage. Please see answer above.

What costs does the Deferred Payment Agreement cover?

You can defer an agreed part of your care costs, plus administration charges and interest. It does not cover any contribution you are assessed to make towards the cost of your care from your income and savings. The Council may also agree to include an amount over and above the amount it considers is required to meet your needs to enable you to live in care home of your choice or to have a particular room. We would only agree to this if the 'equity limit' in your property would cover the extra cost. Interest charges apply to all deferred amounts.

What if I want a room in a care/residential home that is more expensive than the Council would usually pay?

The Council will consider whether payment of a higher amount is sustainable taking into account the increased level of care costs and the relevant time period.

My property is not registered at the Land Registry. Can I still enter into a Deferred Payment?

If your property is unregistered and you wish to apply for a Deferred Payment Agreement you will first need to register your property at the Land Registry.

I own the property with other people. Can I still enter into a Deferred Payment Agreement?

The Council will consider offering a Deferred Payment Agreement in relation to property in which more than one person has an interest. This will depend on the nature of the interest and all owners of the property agreeing (by signing relevant documents) to the Council registering a first legal charge against the property to secure the debt owed to the Council, in priority to their interest in the property. The Council will consider each case of co-ownership on its own facts as complications can arise depending on how the property is owned by more than one person and what is registered at the Land Registry. The Council needs to be able to obtain adequate security for the loan and be able to recover the money owed under the Deferred Payment Agreement. Please see additional information below that indicates some of the considerations. You are advised to seek

independent advice on the implications of more than one person having an interest in the property.

Joint beneficial owners – this means that the property will automatically pass to the other owner(s) if one owner dies.

Tenants in common – this means that one owner's share of a property does not pass automatically to the other owner(s) but can be left to any person.

What happens if I have an interest in a property and I am also a Deputy or Attorney for another person who has an interest in the property?

You may need to consider appointing a second trustee in this case and this may require an application to the Court of Protection.

How much will I be allowed to keep each week from my income and/or savings?

You will be allowed to keep a Disposable Income Allowance of up to £144 per week. However, by choosing to retain less than the maximum amount you will reduce the amount you are deferring and will accrue less debt overall.

What does a standard market valuation that the Council carries out entail?

The Council will carry out a drive by and desk valuation. It will not carry out an internal inspection of the property.

Appendix A**List of charges relating to Deferred Payment Agreements**

	Cost (£)
First Year Charges:	
Averaged costs of printing, postage, copying, staff time and over head apportionment:	
Legal elements of set-up	300
Processing administration	312
Financial elements of set-up	81
Adult Services elements of set-up	150
Property valuation fee	300*
Land registry charges	47*
Total	<u>1,190</u>
Charges in subsequent years:	
Averaged costs of printing, postage, copying, staff time and over head apportionment:	
Processing administration	312
Property valuation fee	300*
Total in year when no revaluation due:	<u>312</u>
Total in year when revaluation is due:	<u>612</u>

* This is an indicative fee based on an average property value in Hampshire. The main variations will be:

- the land registry fees for securing a charge on a registered property range between £20 (cheapest electronic fee) and £250, plus the cost of official documents. The £40 fee quoted is the electronic fee for an average property value in Hampshire, plus an indicative £7 fee for the official copy documents.
- the flat rate valuation fee will be applied for straight forward valuations. More complex valuations, including appeals, are likely to be referred for independent valuation and would be charged on a sliding scale for the property value. The Council will accept a recent (within 3 months) written professional market valuation from the applicant. In this case, the valuation fee would not be applied as part of administration costs. Any extra valuations, appeals or revaluations may incur additional costs, which may be charged back to the applicant.