

London Borough Of Havering

# Deferred Payment Scheme Policy

April 2020 (Version 2 – Reviewed May 2024)

5/29/2024

## Document Control

### Sign off and ownership details

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### Revision history

<b>Version</b>	<b>Change</b>	<b>Date</b>	<b>Dissemination</b>
<b>V0.1</b>	Formatting only	14/1/21	Internal only
<b>V0.2</b>	Formatting only	28/1/21	For sign off and publication on LBH website

## Equality & Health Impact Assessment record

1	Title of activity	Charging for Deferred Payment Services		
2	Type of activity	Policy		
3	Scope of activity	This outlines how the London Borough of Havering conducts financial assessments where property is a capital asset, and how we apply the Deferred Payment scheme in accordance with the Care Act 2014.		
4a	Are you changing, introducing a new, or removing a service, policy, strategy or function?	No	If the answer to <u>any</u> of these questions is 'YES', please continue to question 5.	If the answer to <u>all</u> of the questions (4a, 4b & 4c) is 'NO', please go to question 6.
4b	Does this activity have the potential to impact (either positively or negatively) upon people (9 protected characteristics)?	Yes		
4c	Does the activity have the potential to impact (either positively or negatively) upon any factors which determine people's health and wellbeing?	No		
5	If you answered YES:	<b>Please complete the EqHIA in Section 2 of this document.</b> Please see Appendix 1 for completed analysis.		
6	If you answered NO: (Please provide a clear and robust explanation on why your activity does not require an EqHIA. This is essential in case the activity is challenged under the Equality Act 2010.)  Please keep this checklist for your audit trail.			

Date	Completed by	Review date
15/2/2021	Adam Ferrand	April 2025

**Contents**

- Document Control ..... 1
  - Sign off and ownership details ..... 1
  - Revision history ..... 1
  - Equality & Health Impact Assessment record ..... 2
- Introduction ..... 4
  - Purpose** ..... 4
  - Policy summary** ..... 4
  - Scope** ..... 4
  - Timescales** ..... 4
  - Aims, objectives and outcomes** ..... 4
- Policy ..... 5
  - Detail** ..... 5
  - Applicability** ..... 18
  - Ownership and authorisation** ..... 19
- Related documents** ..... 19
- Dissemination and communication** ..... 20
- Implementation** ..... 20
- Monitoring and review** ..... 20
- Further information** ..... 20
- Appendix 1: Equality Analysis ..... 22

## Introduction

### Purpose

The purpose of this policy is to set out the framework for the Council's Deferred Payment Scheme from April 2020. This framework takes into account the main changes introduced by the Care Act 2014 ("the Care Act").

### Policy summary

Sections 34 and 35 of the Care Act introduce a Universal Deferred Payment Scheme, which came into force from 1<sup>st</sup> April 2015. From April 2015 service users who have entered a care home setting would not have been required to sell their home in their lifetime to pay for their care and support costs. Instead they will have been mandatorily required to enter into a Deferred Payment Agreement. This continues to apply to all new individuals enter a care home setting where a property will be considered a capital asset for financial assessment purposes.

A deferred payment agreement is a consensual agreement between a service user and the Council that enables the service user to defer payment of their assessed residential charge that relates to the value of their property.

The Care and Support (Deferred Payments) Regulations 2014 ("the Regulations") set out the legal framework and detail local authorities' responsibilities having regard to the Care and Support Statutory Guidance 2014 ("the Guidance") which the Council must follow.

The Regulations require the Council to offer deferred payment agreements to service users meeting the eligibility criteria outlined in paragraph 8 for a deferred payment. There is some local discretion on how the scheme will be implemented.

The Care Act and Regulations also allow the deferred payment scheme to be offered to service users who have incurred a debt in relation to their care fees.

For further information about the Care Act and deferred payment agreements please refer to:

<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

### Scope

This policy covers why Deferred Payments are required, when they are to be applied and how they are calculated and administered.

### Timescales

This policy will apply from 1<sup>st</sup> April 2020 onwards. It will be subject to review periodically to reflect any changes in legislation or Council practice.

### Aims, objectives and outcomes

The main aim of the deferred payment scheme is to ensure that service users have a viable alternative to selling their properties to fund their care needs. This promotes Adult Social Care Deferred Payment Scheme Policy

greater choice for individuals when assessing how to address their care needs and extends their level of independence for as long as possible.

The deferred payment scheme ensures that the any care home fees deferred by the Council are secured and that reimbursement will occur at the appropriate time. It also promotes fairness in that service users that have their capital invested in property are treated equitably with those that have savings in cash or other investments.

## Policy

### Detail

#### **Universal Deferred Payment Scheme (from April 2015)**

The Care Act (sections 34 and 35) requires all local authorities to have in place a deferred payment scheme that can be offered to service users entering a care home setting which:

- (a) requires Councils to apply the national eligibility criteria on entitlement to a deferred payment agreement;
- (b) allows Councils to charge interest and administrative fees;
- (c) requires both the service user and the Council to enter into a legal agreement; and
- (d) provides Councils with some discretion regarding the offering of and the amounts that can be deferred against the property.

#### **Havering Council's Deferred Payment Scheme (from April 2015)**

Havering Council's Deferred Payment Scheme is consistent with relevant legislation and statutory guidance, applying discretion where the Care Act allows.

The Council's principles underpinning the scheme are:

- (a) to ensure that service users who have been assessed as needing care and who are eligible for the scheme may not need to sell their property to pay for their care;
- (b) that those who can afford to pay a contribution towards the cost of their care should do so;
- (c) to ensure that service users and family members are fully informed about the deferred payment scheme and the eligibility criteria to help them both plan for now and their future care and support needs; and
- (d) ensure that the deferred payment scheme is self-financing and sustainable both to the service user and the Council.

#### **Services covered by the Deferred Payment Scheme**

Adult Social Care Deferred Payment Scheme Policy

The Council's deferred payment scheme will be offered to service users who meet the eligibility criteria and have care and support needs, which will be met by a permanent placement in residential or nursing care.

At the moment the Council has taken the decision not to extend the deferred payment schemes to service users receiving other care services in the Borough or whose stay in residential or nursing home is either for respite or of a temporary nature.

The only exception to this decision is that the Council's deferred payment scheme will be offered to service users as a means to addressing a care fee debt issue.

### **Information and advice**

The Council is required to provide information and advice to service users entering a care home and their family regarding the deferred payment scheme and their ability to defer charges against their property in relation to their care fees.

The information is to include:

- the eligibility criteria to be offered a deferred payment agreement;
- that interest will be payable from the start of the deferred payment agreement (the 12 week property disregard must be allowed where appropriate); and
- that the Council shall charge administration costs.

Information and advice also includes financial advice under the Care Act and the Council will ensure that service users and/or their representatives have access to independent financial advice.

### **Mental Capacity (See the Havering MCA & DoLS Policy and Procedure)**

<https://www.havering.gov.uk/dols>

### **Definition**

The Mental Capacity Act 2005 ("MCA") applies to care, treatment and support of people aged 16 years and over, in England and Wales, who are unable to make some or all decisions for themselves. Staff working with people who lack capacity must have regard to the MCA.

The Act is accompanied by a statutory Code of Practice which explains how the MCA will work on a day to day basis and provides guidance to all those working with, or caring for, people who lack capacity. As the Code has statutory force, **all staff who are employed in health and social care are legally required to 'have regard' to the MCA Code of Practice.**

A service user must have capacity to enter into a deferred payment agreement. Where the service user has capacity they can give consent for someone else to represent them. The Council will need to see written proof that consent has been given. However, it will be the service user in the care home who will sign the deferred payment agreement.

### **Where the person lacks the ability to enter into a deferred payment agreement**

Adult Social Care Deferred Payment Scheme Policy

Where a mental capacity assessment has been undertaken and concluded that the service user lacks capacity. The service user, due to lack of capacity; is unable to enter into a deferred payment agreement.

If there is a person legally appointed to manage the service users financial affairs, for example a deputy or attorney, that person may enter into the deferred payment agreement on behalf of the service user. As set out below the Council should obtain proof that the person is legally appointed to act on behalf of the service user before proceeding with the deferred payment agreement.

Where there is no one legal representative to support the service user, it is expected that a family member or a representative, or as a last resort the Council, should make an application to obtain a deputyship order to support the service user's best interests being observed.

Whilst this is being obtained the Council should pay the provider and send regular invoices detailing the charges to be paid to the person applying for deputyship. If the deputyship is obtained and the responsible party has not paid the invoices raised, the Council will need to seek to resolve the debt through a deferred payment agreement.

Where this applies a letter of undertaking to pay the care fees is required to be signed by the person applying for the deputyship order.

### **Enduring Powers of Attorney (“EPA”)**

These only cover property and affairs, and remain valid as long as they were drawn up before 1st October 2007. No new EPAs can be created since October 2007 when Lasting Powers of Attorney were introduced.

### **Lasting Powers of Attorney (“LPAs”)**

People over the age of 18 can formally appoint one or more people as Lasting Powers of Attorney (LPAs) to look after their personal welfare, and/or their property affairs. This allows service users to plan ahead for a time when they may not have capacity to make certain decisions.

The person making the LPA is known in legal terms as the donor, and the power they are giving to another person is the Lasting Power of Attorney. The person appointed is then called an attorney. The LPA gives the attorney the authority to make decisions on the donor's behalf. Attorneys acting under an LPA have a legal duty to have regard to the guidance in the Mental Health Act Code of Practice and act in the person's best interests.

An LPA must be registered with the Office of the Public Guardian (“OPG”) before it can be used. An unregistered LPA does not give the attorney any legal powers to make a decision for the donor. The donor can register the LPA while they still have capacity, or the attorney can apply to register the LPA at any time. The Council will check the register if they are unsure about the validity of an LPA.

## **Deputyship**



A Deputy may be appointed by the Court of Protection when there is no one else who could act on behalf of the person lacking capacity to manage their financial affairs and/ or personal welfare decisions.

A deputy can be a representative for the person or the local authority or a solicitor. The local authority will need to satisfy itself that there is no conflict of interest in exercising the duties of deputy.

### **The 12-week property disregard**

Where a service user has been assessed as having eligible needs for residential or nursing care and owns a property, during the first 12 weeks stay in residential accommodation, the Council must disregard the service user's main home where they have assets less than the upper capital limit (excluding their main home).

After the first 12 weeks, unless there is a statutory disregard of property, the property is taken into account as a capital resource. A statutory disregard will apply where, for example, the property is occupied by a spouse, partner, or close relative who is incapacitated or aged 60 or over.

Service users already in residential care who may need to access local authority funding are not entitled to the 12-week property disregard period. However, if the request to access local authority funding is made due to a sudden and unexpected change the Council has the discretion to allow a 12 week property disregard. An example where the Council might consider exercising this discretion might be a person's partner dying suddenly.

The 12-week property disregard period is to be used to put in place all the arrangements to set up the deferred payment agreement. The Council will endeavour to ensure that all deferred payment agreements are in place before the 13<sup>th</sup> week of the service user's residential care placement. However, where that is not possible, for example where a Deputyship application is pending, they will be concluded as promptly as possible.

### **Eligibility criteria for the Deferred Payment Scheme**

The Council must apply the national eligibility criteria for the deferred payment scheme.

The Council shall offer a deferred payment agreement to all service users who can provide adequate security for the debt and meet the following criteria:

- A. the service user has eligible care and support needs that the Council determines will be met through a permanent care home placement;
- B. the service user has less than (or equal to) £23,250.00 in capital excluding the value of their home. Capital includes savings and other non-housing assets, excluding the value of their home; and
- C. the service user's home does not meet one of the qualifying disregard criteria and is therefore taken into account as part of the financial assessment. For example it is not occupied by a spouse or dependent relative as defined in the Regulations (i.e. someone whose home is taken into account in the local authority financial assessment and so might need to be sold).

## **Applying discretion to the eligibility criteria (Discretionary Scheme)**

The Care Act allows the Council to exercise its discretion to offer a deferred payment agreement where the service user may not meet all the eligibility criteria set out in paragraph 11.2 above and where a deferred payment agreement is the most sensible approach in all the circumstances.

The Council has the discretion to extend the deferred payment scheme to service users whose care and support is provided in supported living accommodation rather than a permanent care home placement. At the moment the Council has taken the decision not to extend the Council's deferred payment scheme to service users living in supported living accommodation. The Council reserves the right to consider broadening the scope of the policy to include supported living accommodation when it reviews this policy as set out in paragraph 29.

The Council recognises that there may be service users caught in the transition between the old and new legislation regimes who may suffer detrimentally as a result. The Council has taken the decision that the Head of Adult Social Care shall consider these cases and shall be allowed to exercise discretion in relation to these cases.

### **Circumstances in which a deferred payment agreement will be refused**

Where the Council determines that it is unable to obtain a legal charge by way of mortgage on the service user's property a deferred payment agreement will be refused.

Where a service user is eligible for a deferred payment agreement the Council may exercise discretion to refuse to offer a deferred payment agreement where:

- a. the service user does not agree with or is unable to adhere to the terms and conditions of the deferred payment agreement, for example a requirement to insure and maintain the property; or
- b. where a service user wants to defer more than they can provide adequate security for.

There may also be circumstances when the Council decides not to continue with a deferred payment agreement, as set out below:

- (a) the service user has reached their equity limit;
- (b) where a spouse or dependent relative moves into the property after the deferred payment agreement is in place, the Council shall review eligibility for the deferred payment agreement;
- (c) where the service user living in residential or nursing care becomes entitled to an automatic disregard of the property, for example, through a change of circumstances of the person living in the property.

### **How much can be deferred**

The level of debt that can be deferred is determined by:

Adult Social Care Deferred Payment Scheme Policy

- (a) the amount of equity the service user has available in the property to
- i. be used as security;
- (b) the amount the service user is contributing from their care costs from
- i. other sources, such as third parties or their savings; and
- (c) the total care costs, including any fees in excess of the Council's maximum contribution rates, that have been agreed as part of the care costs.
- (d) If a top-up has been requested by an individual to enable them to secure a placement in a home that is more expensive than they can afford using their personal budget then, in accordance with section 2.5 of the London Borough of Havering's Residential Care Charging policy, the sum can be paid in the following ways;
- By a third party direct to the Care Home (the Council's preferred position).
  - By a third party to the Council (when circumstances or preference require it).
  - By the service user themselves ("a first party top-up"), and where this applies the weekly sum can be added to the deferred fees only where there is sufficient equity in the property to enable payment of both the deferred fees and the top-up for a minimum of 24 months.
- (e) A deferred payment that has been requested to fund a 1<sup>st</sup> party top-up may be refused following a light touch assessment of the person's ability to pay the top-up that has concluded there is insufficient capital in the individual's property (or other available capital) to fund the required top-up fee through the use of a deferred payment for at least 24 months, or where the additional cost of a top-up undermines the deferred payment agreement.

The actual amount deferred should be the individual's residential/ nursing costs including a top-up where applicable **less** any financially assessed contribution.

A service user must be left with a prescribed personal expenditure allowance ("PEA"). The general PEA received by a service user placed in residential care by the Council may not be enough to cover the service user's maintenance of the property.

A service user entering into a DPA with the Council is allowed to retain up to £144.00 per week of their net disposable income. The increase of the PEA to £144.00 per week takes into account that the person will have to maintain their property i.e. insurance costs, general maintenance and utility bills.

A service user can retain less than the £144.00 per week and increase the contribution towards their care costs; thus reducing the deferred charge against the property. They will be financially assessed as appropriate.

On termination of the deferred payment agreement, if the person is still in the care home their PEA will reduce to the normal figure as prescribed by the Guidance.

## **Determining Equity Limits**

The Care Act introduces an equity limit as to the maximum amount that service users can defer as a loan against the property they own. This is called the loan to value ("LTV ratio") In 2015/16 the Guidance and the Regulations sets the equity limit as the value of the property minus 10% of the property value in order to defray any costs incurred with the sale or settlement of the estate, minus the lower capital threshold which is currently set at £14,250.00.

The value of the property is the value of the service user's share less an outstanding loans or mortgages on the property.

Once the service user has received their equity limit the Council is unable to accrue any further care costs against the property. Only interest and administrative fees can still be accrued until the debt is paid in full.

The Council shall notify the service user and/or their representative 6 months in advance of when the deferred debt is reaching the equity limit.

## **Obtaining security**

The Council is required to have adequate security in place when deciding whether a service user is entitled to the deferred payment scheme. The onus is on the service user applying for a deferred payment agreement and/or their representatives to provide evidence that they are able to give the Council adequate security.

The Council requires that a property contains sufficient equity to cover a years' worth deferred fees before agreeing to a deferred payment agreement.

Before accepting a property as security, the Council will check to ensure that it is able to place a Land Registry charge on the property. Where the Council is able to secure a first charge against the property at the Land Registry, the Council will always consider this as adequate security.

The Council will always aim to obtain a first charge against the property. In some circumstances the Council acknowledges that it may not be able to obtain a first charge, where the Council can still assure itself there is sufficient value in the property to meet the service user's care costs, the Council has taken the decision to offer a deferred payment agreement to a service user.

## **Types of property ownership**

### **Sole ownership**

This situation arises where a person owns their property outright, with no other owners. This is the most straight-forward case to handle and requires no special treatment.

### **Jointly owned property**

This situation arises where all co-owners effectively own 100% of the property while they are alive and 0% of it if they die leaving a survivor. This means that if two people own a property as Joint Tenants and one of them dies, the survivor automatically becomes the sole 100% owner of the property and the deceased (and the deceased's estate) owns 0%. This means that the deceased cannot leave the property in his/her Will – as he/she no longer owns any interest in it.

To access the deferred payment scheme all owners of the property will have to agree to the charge being placed on the property.

Refusal of a deferred payment agreement does not mean the property cannot be taken into account, it just means the deferred payment scheme cannot be accessed. It is crucial that the service user or their representative is made aware of the implications - i.e. that they will still be charged the full cost of their care (if assessed as being able to do so). They should be referred to Independent Financial Advisors as to what is the best option for them going forward as set out in paragraph 8.

To support the future claim if non-payment occurs, the Council shall send regular invoices to the service user or their representative for the care they have received.

### **Tenants in Common**

This situation can arise where a property falls under tenants in common - an increasingly frequent situation where each party owns a defined share, this can be two or more persons, but the total shares will add up to 100%. Each person can dispose of their share however they choose.

To access the deferred payment scheme this will require the original charge (tenants in common) to be deferred and all parties having to agree to the Council having a charge on the property.

Refusal does not mean the property cannot be taken into account, it just means the deferred payment scheme cannot be accessed. It is crucial that the service user or their representative is made aware of the implications - i.e. that they will still be charged the full cost of their care (if assessed as being able to do so). They should be referred to Independent Financial Advisors as to what is the best option for them going forward as set out in paragraph 8.

To support the future claim if non-payment occurs, the Council shall send regular invoices to the service user or their representative for the care they have received.

### **Property valuations**

To ensure that the Council's equity limits are robust, the Council will be required to obtain a property valuation.

The purpose of the valuation is initially to establish whether the available equity is greater than the upper capital limit which will make the resident self-funding; however the value of the property will also inform the limit on the amount of equity the person can draw as set out in paragraph 10 above.

There are various methods that can be adopted. The Council will initially use internet sites such as Zoopla, as well as any input from the service user or their representative to establish the value of the property for the purposes of the financial assessment.

The Council will seek to confirm the approximate valuation with the service user or their representative before the financial assessment is completed.

## **Disputes**

Where an initial valuation is disputed and the service user or their representative feels that the proposed valuation does not reflect the market value of the property, the Council will arrange a formal valuation from an external organisation such as the District Valuer Service. The cost of this valuation will be split between the Council and the service user.

## **Revaluation of the property**

On an annual basis the Council will seek to review the valuation during the lifetime of the deferred payment agreement to ensure that the equity limit is not exceeded and in any other circumstance where the value of the property will affect the sustainability of the deferred payment agreement. If there is any change in the value of the property the service user, or their representative will be notified of the impact of this on any financial assessment.

## **Administration fees and interest charges**

### **Administration fees**

The Care Act allows the Council to charge an administration fee for arranging the deferred payment agreement and on-going expenses associated with managing the deferred payment agreement.

The Council will be charging an administration fee for arranging the deferred payment agreement from April 2015.

From April 2015 the Council will charge an initial set up fee of £658.00 for preparing the deferred payment agreement plus an additional fee for Land Registry and any searches.

The administration fee and costs of any disbursements are non-refundable and the service user will be required to pay the administration fee even if they change their mind at a later date regarding the deferred payment agreement.

The Council can also charge for additional costs incurred during or at the end of the agreement including costs associated with the revaluation of the property, costs of providing statements, and other costs associated with the deferred payment agreement.

The Council will charge an additional fee of £89.00 annually to cover the on-going cost of monitoring the deferred payment agreement.

In relation to the administration fees associated with the deferred payment agreement, service users will be offered the option of either paying the administration fee at the start or adding this amount to the loan covered by the deferred payment agreement.

The fees will be subject to annual review and adjusted appropriately in line with general financial planning and budget setting.

## **Interest**

The Care Act also allows the Council to charge interest on the deferred payment amount. Interest rate charges can go up to but not exceed the amount as set by the Government. This maximum rate is fixed for periods of six months, and changes on 1 January and 1 July.

As the Regulations and Guidance set out, the maximum interest rate for deferred payments is based on the cost of government borrowing – more formally, the 15-year average gilt yield, as set out by the Office for Budget Responsibility twice a year in their Economic and Fiscal Outlook report.

The Council will also be applying interest to the deferred fees throughout the duration of the deferred payment agreement. Interest will continue to accrue until the deferred fees plus administration costs if applicable and accumulated interest are paid in full.

The Council's interest rate shall be 1.45% and will be applicable from the 1 January 2020 until 30 June 2020. Interest will apply from the date upon which the service user enters into the deferred payment agreement.

Compound interest will be applied on a daily rate.

### **Renting the property**

Best practice would be for the Council to encourage service users to rent their property (though ultimately any decision on rental must be their own). The Council Social Service Department will be working with the Housing Department to offer service users the opportunity to rent their property out.

Where a service user or their legal representative is interested in renting the property out, with their permission then the details of the service user and the property address will be sent to the Housing Department who will work to identify a tenant for the property in accordance with the allocations policy.

Where a service user or their legal representative has arranged to rent the property privately, the Council shall request a copy of the tenancy agreement. Good practice would suggest that they should enter a six-month short term assured tenancy.

### **Effective date of the deferred payment agreement**

The deferred payment agreement will take effect once:

- a. the applicant or their legally appointed representative has signed the deferred payment agreement
- b. where the property is jointly owned, all co-owners or other persons with a beneficial interest in the property as agree to, and has signed the deferred payment agreement.

### **Terms and conditions of the deferred payment agreement**

The Guidance sets out the terms and conditions that are to be included within the Council's deferred payment agreements. The Council will be using the Guidance to define the terms and conditions of the deferred payment agreement.

The service user entering in to the deferred payment agreement will be required to abide by a number of terms and conditions:

- a. that the property is maintained in reasonable standard of repair and condition.
- b. all outgoings associated with the property (e.g. Council tax, service charges and ground rent) are paid.
- c. the property is fully insured for the full cost of rebuilding. If the property is to be left empty for any period of time, the service user will need to ensure that this is disclosed to the insurance company and that any terms required by the insurer are met.
- d. that any net rental income derived from letting the property during the period of the deferred payment agreement will be assessed in accordance with the Guidance.
- e. That the service user receiving care and/or their representative acknowledges that they have received the Council's advice that they should seek independent financial advice before entering into the deferred payment agreement.
- f. where the property is jointly owned, the co-owners as well as the service user must agree to the Council's form of charge.
- g. That the service user or representative notifies the Council of any change in circumstances, which would affect the value of the property or the sustainability of the deferred payment agreement.

### **First Party top-up's**

First party top ups are where an individual will use their own capital assets, whether that is savings or equity held in their property, to pay any additional fees in excess of the agreed weekly rate based on the individual's personal budget. They can only be agreed as part of a deferred payment agreement. Top-up's are only applied where an individual's preferred placement costs in excess of individual's weekly rate as set by their personal budget. If a person's needs can be met in a placement whose costs do not exceed the rate set by the personal budget but they choose to be placed elsewhere then a top-up will apply. If the preferred placement is the only available placement that can meet an individual's needs then the Council will cover the cost of any top-up.

The Council will allow a resident to pay a top-up themselves where there is sufficient equity in the property to enable payment of both the deferred fees and the top-up for a minimum of 24 months. This will be established via a light touch financial assessment which takes into account;

- the value of the property at the time of admission to the care home,



- the amount of equity held in the property by the service user, and
- the weekly cost of the placement and for the purposes of the assessment it will be assumed that the weekly cost of the placement will increase annually by 1.5%.

If the outcome of the light touch assessment is that the individual doesn't have sufficient equity to meet the first party top-up for a minimum of 24 months then the Financial Assessment & Benefits Team will notify the involved social work team so the appropriate steps can be taken to enable the individual to be placed in a home which is affordable within their allocated personal budget.

As per the Council's Individual Placement Agreement with care homes, the top up fee can't be changed without the agreement of the Council. If this is agreed then the Council's records will be updated appropriately. However, a new Deferred Payment Agreement will not be required as the document will set out the financial situation at the start of the agreement.

No additional payments should be made by the individual, or third party if such an arrangement applies, to the Care provider outside of what is specified in the Individual Placement Agreement, Deferred Payment Agreement and Third Party top-up agreement.

Where any top-up is to be paid by a third party a Top-Up agreement will be required (see Appendix 2). Where the top-up will be a first party arrangement then this will be reflected in the Deferred Payment Agreement.

If a third party top-up agreement is required then this should be agreed and in place prior to the individual's admission to the care home. It is however recognised that where there are exceptional circumstances that this may not be possible, so in these instances the Third Party top-up agreement should be completed at the earliest possible time.

### **Annual reviews and deferred payment statements**

The Council shall review all deferred payment agreements annually to assess the value of the properties and ensure that there is adequate security to protect the Council's charge on the property as set out in paragraph 12.5 of this policy.

The Council shall ensure that the service user or their legal representative receive timely written statements detailing the amount deferred against the property, including interest and administration charges and the available level of equity still available. Giving them an estimate of the length of time their property will be sufficient to fund the full costs of their care.

A written statement shall be provided to the service user or their representative annually on the anniversary of the date of the deferred payment agreement.

### **Termination of the deferred payment agreement**

A deferred payment agreement can be terminated by:

(a) the service user whilst still in the care home or their representative acting on their behalf paying the full amount that is due to the Council.

(b) when the property is sold and the debt repaid.

- (c) when the service user receiving care dies and the amount is repaid from their estate.

### **Voluntary termination by the service user or their representative**

If the service user or their representative voluntarily terminates the deferred payment agreement, the Council shall require 30 days written notice of termination of the agreement. Upon termination of the agreement, the service user will become self-funding.

On termination of the deferred payment agreement the full amount due, including care charges, interest accrued, administrative fees if applicable, will be paid to the Council.

Where the service user or their representative decide to sell the property, actual sale price of the property will be used for the final calculation of the deferred debt, and if appropriate, to identify when self-funding status starts. The service user will be required to pay the Council from the proceeds of sale.

### **Termination of the deferred payment agreement after the death of the service user**

The deferred payment agreement will automatically terminate on the death of the service user.

The deferred debt should be added to any other outstanding amount due to identify the final amount that is payable to the Council from the service user.

The deferred debt can either be paid from the service user's estate or by a third party, for example a family member may choose to settle the debt rather than sell the property.

The Executor of the late service user's estate should be notified 14 days after the death of the service user, with the actual or provisional debt amount. At this stage it would be reasonable for the Council to seek information on the approximate value of the estate to confirm previous financial assessment declarations.

Where the agreement is terminated following the service user's death, the total amount due to the Council becomes payable 90 days after the service user's death.

Debt Collection – If the deferred debt has not been paid within 4 weeks of the expiry of the 90-day period a reminder should be sent confirming the rate of growth of the debt and requesting a progress report. If no response is received the Council will take appropriate action consistent with its debt recovery practices.

### **Change in financial circumstances**

The service user or their representative must notify the Council where there is a change to the service user's financial circumstance, which may change the amount that can continue to be deferred against the property. This can include:

- (a) receipt of a new benefit or changes to current benefits;
- (b) changes to income and expenditure;
- (c) if the service user's capital or saving crosses one of the capital thresholds; and
- (d) changes to living arrangements and the property.

## **Continuing Healthcare Funding**

The deferred payment agreement will not terminate when full continuing health care funding is awarded and no funding is due from the Council. Although there is no obligation for the payments to be made, the Council will ask for voluntary payments to continue, wherever possible, on the basis that this will reduce the amount of the accrued debt set against the value of the property.

The Council will continue to charge interest on the deferred fees until they are paid in full.

### **Appeals and complaints**

If a service user is dissatisfied with the way in which they have been treated during the financial assessment process, or the service received, they have the right to make a complainant to the complaints officer.

Service users can also request the decision on the outcome of the application for a deferred payment agreement is reviewed. The grounds for review could include:

- a. the decision of the Council to refuse to offer a deferred payment agreement failed to take into account any new information which would have led to a revision of the decision; or
- b. there are eligible care costs which the Council failed to take into account.

Requests for a review should be submitted in writing and sent to the Council's Financial Assessment & Benefits Team Manager.

If the service user remains dissatisfied with the outcome of the review then they can request that this matter is dealt with under the Council's Adults Social Care Complaints procedure.

### **Use of financial information and privacy**

Information will be collected by the Council to enable the set-up of the deferred payment agreement. In accordance with the General Data Protection Regulations, this information will only be shared with other relevant agencies in accordance with the data protection principles and exemptions or with the written consent of the service user or their legal representative.

### **Applicability**

This policy applies to individuals who have been placed permanently in a residential care setting who have savings below £23,350 but interest in a property in excess of that sum. The only instances where this will not be the case is if the property is considered a capital asset for the purposes of financial assessment. The only circumstances under which this would apply are if the service user's spouse, or civil partner, continues to reside in the property as a primary residence.

## **Refusing a deferred payment agreement**

### **Council**

As already set out in this policy the Council will refuse to offer a deferred payment agreement where:

- a. the Council has concluded that it is unable to obtain a legal charge by way of mortgage on the property which would secure the deferred fees;
- b. the service user or the representative does not agree with or is unable to adhere to the terms and conditions of the deferred payment agreement, for example the requirement to insure and maintain the property; or
- c. where a service user wants to defer more than they can provide adequate security for.

Where the Council refuses to enter into a deferred payment agreement, the decision will be notified in writing to the service user and/or their legal representative. The decision will set out the grounds for the refusal and provide for appeal rights.

### **Service User**

If the service user does not want to sell their property and also chooses not to take advantage of the deferred payment scheme, they will be deemed to be able to pay the full cost of their care and shall be invoiced as such.

The Council should, where possible, request that the service user or their legal representative confirm in writing that they refuse to enter into a deferred payment agreement with the Council.

If the service user fails to pay the invoices raised by the Council, the case shall be dealt under the Council's debt recover process.

The service user and/or their representative should again be directed to an independent financial advisor upon indicating that they refuse to enter into a deferred payment agreement.

### **Ownership and authorisation**

The Policy Lead for this, and all policies related to charging, is the Head of Business Management. The responsibility for maintaining, reviewing and updating the policy in line with changes in legislation is the Financial Assessment & Benefits Team Manager.

The policy is to be signed off and agreed by the Director of Adult Services.

## **Related documents**

Please see appendices for details of relevant related documents.

## **Dissemination and communication**

Prior to approval this policy in April 2020 was passed to follow stakeholders for comment;

- Stephen Doye, Legal Manager
- Sima Khroya, Finance Strategic Business Partner
- Eve Anderson, Strategic HR Business Partner
- Vernal Scott, Corporate Diversity Advisor

Following approval, this policy has been published on the London Borough of Havering's website.

## **Implementation**

This policy will be implemented via changes to the Financial Assessment & Benefits Team's procedures for residential care financial assessment completion and debt recovery.

The ICT elements required to support this policy are being provided in updated versions of the Swift system provided by the Council's ICT supplier. These upgrades have been tested and are compliant with the policy.

The Deferred Payment policy does not have a mandatory training requirement or any other training needs. The Financial Assessment & Benefits Team staff will be briefed as appropriate regarding procedural changes and are involved in all ICT system testing relating to the deferred payment scheme.

## **Monitoring and review**

This policy will apply from 1<sup>st</sup> April 2020 onwards. This policy will be reviewed at least annually thereafter. This policy may also be subject to review at other times in response to case law, statutory amendment and guidance from the Department of Health or other statutory organisations.

## **Further information**

Further information can be obtained in relation to this deferred payment scheme and other services offered by the Council on the Havering Council website, which can be accessed via the Havering website.

Link to the Havering website is below;

<https://www.havering.gov.uk/>



## Appendix 1: Equality Analysis

Title: Charging for Deferred Payment Services

### i-Decision

#### Introduction

Type of request	EQHIA
Title	Charging for Deferred Payment Services
Directorate	Adults
Project Manager/Responsible Officer	Pamela Dumuje
Conducted on	06/01/2021
Name	Pamela Dumuje
Email	pamela.dumuje@haverling.gov.uk

#### EQHIA

Type of Activity	Policy
Manager Name	Adam Ferrand
Manager Job Title	Financial Assessment & Benefits Team
Manager	
Manager Service/Directorate	Adults Services
Have you sought advice from the Corporate Policy & Diversity team and/or Public Health team	No
Who have you spoken to	
Reason for EQHIA	EQHIA required as no existing EQHIA.

#### There is an impact on age

Negative – The main group of individuals that enter into deferred payment agreements with us are those over 65 years of age. These are the group of individuals who will be impacted by deferred payment charges.

The deferred payment scheme policy and the principles which guide it, treat all protective groups fairly and equally.

#### There is an impact on disability

Negative – A large proportion of service users in Residential and Nursing Care will have a disability and are therefore more likely to be impacted by deferred payment charges.

The deferred payment scheme policy and the principles which guide it, treat all protective groups fairly and equally.

#### There is an impact on sex

Adult Social Care Deferred Payment Scheme Policy

Neutral - It is unlikely that there will be an impact on any individual due to their sex/gender. The legislation/statutory guidance applies equally and fairly to all sexes/genders.

### **There is an impact on ethnicity**

Neutral - It is unlikely that there will be an impact on any individual due to their ethnicity/race. The legislation/statutory guidance applies equally and fairly to all ethnicities/races.

### **There is an impact on Religion/Faith**

Neutral - It is unlikely that there will be an impact on any individual due to their religion/faith. The legislation/statutory guidance applies equally and fairly to all religions/faith.

### **There is an impact on sexual orientation**

Neutral - It is unlikely that there will be an impact on any individual due to their sexual orientation. The legislation/statutory guidance applies equally and fairly to all sexual orientation.

### **There is an impact on marriage/civil partnership**

Positive – This scheme positively impacts relevant service users that are married whose spouse resides in the owned property, as they will not be required to enter into a deferred payment agreement and are only subject to pay a contribution based on their income.

The Council financially assesses and charges clients under the deferred payment scheme policy in accordance with the charging structures set out in the Care Act 2014, and the Care and Statutory Support Guidance.

### **There is an impact on pregnancy, maternity and paternity**

Neutral - It is unlikely that there will be an impact on any individual due to their status of pregnancy, maternity and paternity. The legislation/statutory guidance applies equally and fairly to all regardless of an individual's status of pregnancy, maternity and paternity.

### **There is an impact on socioeconomic**

Negative – The Deferred Payment Scheme is mandatory for those receiving residential care who own property, have a capital threshold below £23,250 and are therefore required to pay the full cost of their care.

The scheme promotes fairness in that service users that have their capital invested in property are treated equitably with those that have savings in cash or other investments.



The deferred payment scheme policy and the principles which guide it, treat all protective groups fairly and equally.

**There is an impact on gender**

Neutral - It is unlikely that there will be an impact on any individual due to gender reassignment. The legislation/statutory guidance applies equally and fairly to all regardless of whether an individual has undergone gender reassignment.

**There is an impact on health**

Neutral - It is unlikely that there will be an impact on any individual due to the state of their health or wellbeing. The legislation/statutory guidance applies equally and fairly to all regardless of their health and wellbeing.

**There is an impact on social cohesion**

Neutral - It is unlikely that there will be an impact on any individual due to social cohesion. The legislation/statutory guidance applies equally and fairly to all regardless of social cohesion.

How frequently will the EQHIA be reviewed - Every 2-3 Years

Scheduled date of review – 06/01/2024

Lead officer conducting the review - Adam Ferrand

**APPENDIX 2**

**CARE ACT 2014  
DEFERRED PAYMENT AGREEMENT**

**THE LONDON BOROUGH OF HAVERING**

**AND**

**[INSERT NAME OF ADULT RECIPIENT OF CARE]**

**PROPERTY: INSERT ADDRESS AND REGISTERED TITLE NUMBER OF PROPERTY  
ON WHICH AGREEMENT IS TO BE SECURED**

This Agreement is made on \_\_\_\_\_ day of \_\_\_\_\_ 2017

**Parties**

- (1) **THE LONDON BOROUGH OF HAVERING** of Town Hall, Main Road, Romford, RM1 3BD (the “Council”); and
- (2) **[insert name of adult recipient of care]** of **[insert address of adult recipient of care]** (“you”, “the Resident”).

**1. Interpretation**

1.1 In this agreement, the following words have the following meanings:

- Accommodation:** the care home identified in Schedule 1, as it may be amended in accordance with Clause 2.5 below;
- Agreement:** the terms set out in this document and numbered 1 to 14, and Schedule 1;
- Care Charges:** those charges for care and/or support which are specified by description and monthly amount in Schedule 1, as they may be amended in accordance with Clauses 2.5, 2.6 or 2.8 below;
- Costs:** the Council’s reasonable administrative costs reasonably incurred in respect of this Agreement, which are payable under Clause 4 below, estimates for some of which are given in Schedule 1 on page 36;
- Debt:** the balance from time to time of the Loan which has not yet been repaid, together with any interest and Costs already charged and not yet paid;
- Loan:** the total amount of Care Charges which have been deferred, and the words “lend”, “lending” and “lent” are used in this Agreement to describe the act of deferring a Care Charge or Care Charges payable to the Council.
- Lending Limit:** the limit on lending as set out in Schedule 1 (see also Clause 2.2);
- Property:** **INSERT ADDRESS AND REGISTERED TITLE NUMBER OF PROPERTY ON WHICH AGREEMENT IS TO BE SECURED**
- Rate of Interest:** the rate of interest stated in Schedule 1, as it may be varied under Clause 3.33.

- 1.2 Where a reference is made in this Agreement to any legislation or legislative provision, it includes reference to that provision as it may from time to time be amended, extended or re-enacted.
- 1.3 Where the context allows or requires, words in the singular include the plural and words in the plural include the singular.
- 1.4 Where a reference is made in this Agreement to your income, it means your income as calculated in accordance with regulations made under section 17 of the Care Act 2014.

## **2. How the Loan will be made**

- 2.1 The Council agrees, subject to the Lending Limit and to the limits related to income, as set out in Clauses 2.6 to 2.8 below, to lend amounts to you, the Resident. Each amount will be subject to a maximum of the weekly Care Charge specified in Schedule 1 or, if less, the weekly Care Charge which is actually payable and which meets the Description of Care Charges in Schedule 1. The Loan will be made by deferring your obligation to pay Care Charges which are payable to the Council. The details of the Accommodation and the Care Charges are set out in Schedule 1 at the end of this Agreement, together with the Lending Limit.
- 2.2 If the Debt would exceed the Lending Limit as a result of the Council lending an amount that it would otherwise be due to lend for Care Charges, the Council will not lend that amount. This means, for example, that if 90% of your share of the value of the Property, less the amount of any indebtedness secured over the Property by a charge with priority over the Council's security and less £14,250, is £70,000, and your Debt is already a total of £70,000, you will not be lent any more unless or until the value of the Property increases. However, where, due to a fall in the value of the Property, the Debt comes to exceed the Lending Limit on a date which falls after the date on which the Council last lent an amount in respect of Care Charges and on or before the date on which it is next due to lend an amount in respect of Care Charges, the Council will lend on that next occasion even though lending on that occasion will result in the Debt further exceeding the Lending Limit. After that, the Council will not lend any further amount unless or until the value of the Property increases.
- 2.3 You may, at any time, pay the Care Charges, or part of the Care Charges, yourself, when they become payable, in which case you must give advance notice to the Council of the amount you are going to pay separately ("your contribution"), specifying whether your

contribution is to be made on only one occasion or on a specified number of occasions or on each occasion when a Care Charge becomes payable until further notice.

- 2.4 The Council will not be required to change the frequency with which, or the amounts in which, it lends under this Agreement any sooner than the fourteenth day after the Council receives notice of any change in the frequency with which or the amounts which, as applicable, you are charged, or which you require the Council to lend under this Agreement.
- 2.5 If you move from the Accommodation into another care home, that new accommodation will be substituted as the Accommodation, and the care charges payable in respect of the new Accommodation (or if less that part of those new care charges which are equal to the existing Care Charges) will be substituted as the Care Charges provided that the care charges in respect of the new Accommodation meet the description which is given of the Care Charges in the Schedule 1 or, where they do not meet that description, the Council is either required under the Care Act 2014 to agree to lend in respect of those care charges or permitted to do so under the Care Act 2014 and willing to do so.
- 2.6 The amount of the weekly Care Charge for which the Council is to lend, as set out in Schedule 1, takes into account the fact that your income exceeds £144 per week and the fact that the Council requires you to contribute to the payment of each weekly Care Charge, as it falls due, the amount by which your income exceeds £144 in each week within that month or such other period as has been agreed. The weekly Care Charge for which the Council will lend will be increased by an amount which is equivalent to any reduction in your income up to the maximum of the weekly Care Charge which is actually payable and which meets the Description of Care Charges in Schedule 1, and subject to the Lending Limit.
- 2.7 The Council may, upon giving you at least 30 days' written notice within 30 days after:
- (a) it comes to the attention of the Council that your income has exceeded £144 in any week while this Agreement is subsisting, or
  - (b) where, at or since the date of this Agreement, your income has already exceeded £144 per week, it comes to the attention of the Council that your income has further exceeded £144 in any week while this Agreement is subsisting,

require you to repay the amount, if any, by which that part of the Loan already provided under this Agreement for Care Charges in respect of that week exceeded the Adult Social Care Deferred Payment Scheme Policy

difference between the care charges actually payable and the amount by which your income exceeded £144 in that week.

- 2.8 The Council may, upon giving you at least 30 days' written notice within 30 days after it comes to the attention of the Council that your income is to exceed, or further exceed, £144 in any week while this Agreement is subsisting, reduce the amount that it will lend in respect of the care charges for each subsequent week that your income is so to exceed £144 by the amount by which your income is so to exceed £144 in that week and the amount of the Care Charge specified in Schedule 1 will be amended accordingly.
- 2.9 The Council will not lend any further amount under this Agreement, even where the total amount of the Debt already provided is less than the Lending Limit, at any time when:
- 2.9.1 you are no longer receiving care and support in a care home;
  - 2.9.2 in the reasonable view of the Council your needs should no longer be met by the provision of care and support in a care home;
  - 2.9.3 the Property can no longer be insured against all usual risks, unless there are reasonable grounds for concluding that the site value of the Property, disregarding any building on the property, is adequate security for the Debt, together with such further lending as is to be provided;
  - 2.9.4 If your financial resources in terms of capital and as calculated for the purposes of the financial assessment carried out under section 17 of the Care Act 2014 are not more than the sum specified in regulation 12 of the Care and Support (Charging and Assessment of Resources) Regulations 2014 (currently £23,250) and since the date of this Agreement the Property has become occupied by your partner or by your child who is under 18, or by another member of your family who is aged over 60 or who is incapacitated or by a relative of yours who is aged over 60 or who is incapacitated and for the purposes of assessing your financial resources in terms of capital the Council has decided to disregard the value of the Property.
- 2.10 The Council will give you at least 30 days' written notice of the date on which the Lending Limit will be reached unless it is not reasonably practicable to do so because, for example, the Lending Limit is reached by reason of a fall in the value of the Property.

### **3. Interest**

- 3.1 Interest will be charged daily at the daily equivalent of the Rate of Interest.

- 3.2 Interest will be added to the Debt each month, on the date when an amount is lent to you for Care Charges, unless the interest is paid before that date.
- 3.3 The Council may vary the Rate of Interest so as to reflect, in a proportionate and reasonable way any change in the cost of funding the Loan (or so much of such a change as the Council may choose should be reflected in a variation to the Rate of Interest), upon giving you at least 14 days' written notice if the Rate of Interest is to be increased or without notice if the Rate of Interest is to be reduced, provided that:
- 3.3.1 the Rate of Interest may never exceed the maximum rate which the Council is permitted to charge by regulations made under the Care Act 2014; and
- 3.3.2 if the Council exercises its power to increase the Rate of Interest, it will also subsequently exercise its power so as to reduce the Rate of Interest so as to reflect, in a proportionate and reasonable way, any reduction in the cost of funding the Loan which occurs after such increase or increases in the Rate of Interest.

#### **4. Costs and Interest on Costs**

- 4.1 You must pay the Costs, estimates for some of which are set out in Schedule 1 of this Agreement.
- 4.2 The Costs you have to pay in relation to ascertaining the value of the Property, registration of the legal charge, perfection of the security, discharging the security and for the purpose of ensuring compliance with the Agreement will be the actual reasonable costs incurred, and any other Costs you have to pay will be the average cost, or average costs, to the Council incurred in relation to deferred payment agreements generally.
- 4.3 A copy of the Council's current tariff of charges will be provided to you with this Agreement. The Council will give you notice of any changes to the tariff of charges by sending you a copy of the tariff whenever it is changed, and you may obtain a copy of the current tariff of charges on request at any time.
- 4.4 The Council will give you notice of any Costs incurred by the Council and if you do not reimburse the amount of those costs to the Council within 28 days after such notice is given, the amount of those costs will be added to the Debt and interest will be charged on the amount of those costs in accordance with Clause 3 above in respect of the period

starting on the 29th day after notice of the costs was given to you until payment to the Council.

## **5. Repayment**

5.1 The Debt is to be repaid to the Council on the earliest of the following dates:

5.1.1 the date of any sale or other disposal of the Property; or

5.1.2 90 days after your date of death.

5.2 If the Council provides any part of the Loan under this Agreement upon the mistaken assumption that it is required to provide that part of the Loan when in fact it is not and when you ought reasonably to realise that the Council is not required to provide that part of the Loan (because, for example, you are no longer living in the Accommodation) that part of the Loan will be immediately repayable to the Council, together with interest calculated in accordance with Clause 3 above.

5.3 If the Council provides any part of the Loan under this Agreement upon the mistaken assumption that it is required to provide that part of the Loan when in fact it is not and when it is not the case that you ought reasonably to realise that the Council is not required to provide that part of the Loan, that part of the Loan will be repayable to the Council, together with interest calculated in accordance with Clause 3 above, upon the Council giving you not less than three months' notice to repay it.

## **6. Security**

6.1 The Council's rights to repayment and to be paid interest and Costs under this Agreement are to be secured by a legal charge over the Property.

## **7. Possession and use of the Property**

7.1 The Property may be let or occupied by any person upon an assured shorthold tenancy which enables an order for possession to be obtained, after the expiry of an initial term of no more than 6 months, upon one month's written notice.

7.2 You must notify the Council as soon as reasonably practicable if the Property is let and inform the Council of the weekly rent of the Property.

## **8. Valuations**



- 8.1 If at any time the Council has reasonable grounds for concluding that the Debt exceeds 70% of the value of the Property, the Council may take reasonable steps to ascertain the value of the property and in particular instruct a suitably qualified valuer to inspect the Property and to provide a report to the Council on the market value of the Property.
- 8.2 The Council will give you notice of any reasonable Costs reasonably incurred by the Council in obtaining a valuation report or otherwise ascertaining the value of the Property and if you do not reimburse the amount of those Costs to the Council within 28 days after such notice is given, the amount of those Costs will be added to the Debt and interest will be charged on the amount of those Costs in accordance with Clause 3 above in respect of the period starting on the 29th day after notice of the Costs was given to you until payment to the Council.

## **9. Keeping the Council informed**

- 9.1 You must inform the Council as soon as reasonably practicable if any of the following events happen:
- 9.1.1 your income exceeds, or is expected to exceed, £144 in any week or, where your income has already exceeded £144 per week, it further exceeds, or is expected to further exceed, £144 in any week;
  - 9.1.2 there is any change to the amount or frequency of your Care Charges;
  - 9.1.3 you have not paid any Care Charge in full when it has become due (other than any which is payable to the Council or which the Council is to pay on your behalf under this Agreement);
  - 9.1.4 you cease to live in a care home;
  - 9.1.5 there is a change to your needs for care and support the effect of which is that you may no longer require your needs to be met by the provision of the Accommodation;
  - 9.1.6 a decision is taken to sell or otherwise dispose of the Property.
- 9.2 You must, whenever asked to do so by the Council, provide evidence to the Council, as soon as reasonably practicable, that the Property is adequately insured against all usual risks. The Council will not request the provision of such evidence during a period in respect of which evidence has already been provided to the Council that the Property is adequately covered by an insurance policy, provided that evidence has also been provided

to the Council that the premium and insurance premium tax payable for that policy have been paid.

## **10. Ending this Agreement**

10.1 This Agreement has no fixed duration.

10.2 The Resident may bring the Agreement to an end at any time by giving not less than 6 weeks' notice in writing to the Council and paying the whole of the Debt.

10.3 If the Resident does not bring the Agreement to an end early under Clause 10.2 above, the Agreement will come to an end when the Debt is paid in accordance with Clause 5 above.

## **11. Statements**

11.1 The Council will provide you with a written statement, informing you of the amount which you would have to pay to the Council if you were to bring the Agreement to an end on the date on which the statement is sent or such later date as has been requested by you, and the amount of interest and Costs which have accrued since the Agreement was made:

11.1.1 at the end of the period of six months beginning with the date of this Agreement;

11.1.2 every six months after the date of the first statement; and

11.1.3 within 28 days of a request to the Council for such a statement made by you or on your behalf.

## **12. How notices or statements are to be given**

12.1 Any notice or statement which the Council is to give, or may give, to you under this Agreement is to be given by sending the notice by first class prepaid post to you at the Accommodation or to such other person and at such address as has been agreed between the Council and you from time to time.

12.2 Any notice which you give to the Council under this Agreement is to be given by contacting Financial Assessment & Benefits Team on 01708434380 or by sending the notice by first class prepaid post to Financial Assessment & Benefits Team, Mercury House 8<sup>th</sup> Floor North, Mercury Gardens, Romford, Essex, RM1 3SL.

12.3 Any notice or statement which is sent by first class prepaid post is to be treated as having been served on the second day after it is posted.

**13. Applicable law**

13.1 The interpretation, validity and performance of this Agreement shall be governed by the law of England and Wales.

**14. Variation**

14.1 Any variation to this Agreement must be in writing and signed by both the Resident and on behalf of the Council.

**SIGNED** by the Resident [acting by his/her attorney [ ]]

Signature: .....

Name: .....

Date of Signature .....

**SIGNED** on behalf of the Council

Signature: .....

Name: .....

Date of Signature .....

Authorised Officer of the Council

## SCHEDULE 1

**Accommodation:** *[Insert name and address of care home accommodation]*

**Description of Care Charges:** charges which the Council considers to be necessary to meet the Resident's needs while the Resident is living in the Accommodation.

**Weekly Care Charge:** £[ ]

The Care Charges specified above are those Care Charges for which the Loan is to be provided by the Council under this Agreement. The total payable for your care and support while the Resident is living in the Accommodation may be more than the Care Charges shown above.

**Date when first Care Charge to which this Agreement relates will be incurred:** *[To be completed]*

### **Lending Limit:**

- (1) 90% of the market or surrender value of the Property less:
  - (a) the total amount of any indebtedness secured on that asset, or those assets, by security which has priority over the Council's security, and
  - (b) £14,250

**Rate of Interest:** [ ]% per annum compounded daily subject to variation under Clause 3.

**Estimated Costs:** Entering into this Agreement will incur an administration fee of £658, which is either due to be paid at the commencement of the Agreement or can be deferred against the Property along with the on-going fees. This fee is set to cover all costs incurred by the Council in implementing the Agreement and registering the legal charge with the Land Registry. A further charge of £89 per annum will be charged annually after the first 12 months have passed to cover the on-going costs of monitoring the Agreement

## LEGAL CHARGE

**Date of this Legal Charge:**

Administration Area: [Local Authority serving the Property]

Title Number: [Land Registry Title Number]

The Property: [Address of Property]

The Lender: **THE LONDON BOROUGH OF HAVERING** of Town Hall,  
Main Road, Romford, RM1 3BD;

The Chargor: [Name(s) and address of all owner(s) of the Property]

The Borrower: [Name and address of the service user]

1. The Chargor [and the Co-Owner(s)] with full title guarantee charges the Property by way of legal mortgage with payment of all moneys, obligations and liabilities whatsoever whether for principal interest or otherwise which may now or at any time in the future be due owing or incurred by the Borrower to the Lender under a Deferred Payment Agreement between the Lender and the Borrower dated .
2. This Charge secures further advances.
3. The Lender and the Chargor [and the Co-Owner(s)] apply to the Chief Land Registrar for a restriction to be entered on the register that no disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the Charge dated ..... in favour of The London Borough of Havering referred to in the Charges Register.
4. The Chargor [and the Co-Owner(s)] have been advised by the lender to seek independent legal and financial advice before signing the legal charge and in this context 'independent advice' means advice from an advisor who is neither relative to or acting for another party to the charge.

**SIGNED as a DEED** by the Chargor, who has a beneficial interest in the Property at the date of this charge [acting by his/her attorney [                    ]]

Signature: ..... in the presence of .....

Name: **...Service user (as LR record)** Name of witness: .....

Address of witness: .....

**SIGNED as a DEED** by the Co-Owner, who has a beneficial interest in the Property at the date of this charge

Signature: ..... in the presence of .....

Name: ..... Name of witness: .....

Co-Owner

Address of witness: .....

(NOTE: The witness must be someone totally unconnected with the transaction and not related to any party).

**THE COMMON SEAL of THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAVERING** was hereunto affixed

In the presence of:-

Authorised Signatory

## APPENDIX B

**LONDON BOROUGH OF HAVERING,  
6<sup>th</sup> Floor, Mercury House, Mercury Gardens, Romford, Essex RM1  
3SL**

**THIRD PARTY TOP UP FEE AGREEMENT**

This agreement is made on **DATE** between the London Borough of Havering and **Name of top up person** on behalf of **Name of Client** of **Address**

1. **Name of client** (herein after called the Resident) wishes to reside at the care home **Name and address of home** (herein after called the Home).
2. The cost of this Home is more than the Resident can afford within **his/her** personal budget (as herein defined). The Home has been chosen by the Resident and a top up payment is needed to meet the additional cost.
3. **Name of top up person** has agreed to act as a 3<sup>rd</sup> Party to pay a top up contribution (as herein after defined) to pay the difference between the Resident's personal budget and the cost of the Home.
4. In the light of the agreement of the 3<sup>rd</sup> Party of the Resident herein contained, the London Borough of Havering is willing to nominate the Resident for occupation of the Home.

**IT IS HEREBY AGREED AND BETWEEN THE PARTIES HERETO as follows:**

1. Definitions

In this agreement the expression already defined shall have the meanings assigned thereto and the following expression shall unless the subject or context otherwise require have the following meanings.

**“Third-Party”** A person who has entered into this agreement to pay the top up contribution.

**“Resident”** The person living in or moving into the Home

**“Care Home rate”** The amount the care home provider charges.

**“Client Contribution”** The amount the Resident will pay towards their personal budget to help pay for the cost of the Home (which is determined by an individual financial assessment).-

**“Personal budget”** The cost agreed by the Local Authority of meeting the Residents assessed needs to live in the type of accommodation provided by the Home as identified in the Residents Adult Support Plan. The personal budget is made up of the assessed client contribution and the local authority contribution.

**“Top Up Contribution”** The difference between the Residents personal budget and the cost of the Home that has been chosen by the client.. The sum to be paid by the Third Party to the provider that covers the shortfall between the Personal Budget and the service Provider Rate. The top up contribution needs to



be paid in addition to the amount the Resident has been assessed to contribute toward their personal budget.

**“Funded Nursing Care (FNC)”** The sum paid by the NHS for the nursing element of a nursing home placement (if relevant).

## **Agreement**

The Third Party making the top up contribution agrees to make a third party payment, where the Resident is unable for any reason to make a first/own party top up payment.

The Third Party agrees to pay the Sum of £XXXX per week being the difference between the Residents personal budget (which at the date hereof is £XXXX per week inclusive of the Resident’s contribution) and the cost of the Care Home (which at the date hereof is £XXXX per week).

**In addition Funded Nursing Care is applicable at £158.16 per week, funded by CCG**

This should be paid on a weekly basis unless alternative arrangements are agreed in writing.

The London Borough of Havering is responsible for notifying the Third Party of any changes to the charges outlined in this agreement. Charges do increase from time to time.

1. The Third Party hereby agrees to pay the third party top up contribution/payment -in accordance with this agreement.
2. For the avoidance of doubt it is hereby declared and agreed between the parties hereto as follows:

- **Payments to be made to:**

Payments can be made to the Council or directly to the Care Home Provider. In Havering most top ups are paid directly to the Care Home provider and the London Borough Of Havering’s expects top up payments to be made directly to the Care Home Provider unless anyone disagrees with this. The 3<sup>rd</sup> Party has agreed to pay the top up for resident name directly to the Care Home Provider/London Borough of Havering. Name of Care Home will therefore also hold the responsibility of collecting such contributions going forward.

- **No other additional payments to the Care Home provider**

The Council’s contract with the Care Home Provider prohibits the payment of any additional fees outside of the Council’s contract for care with the Provider and this top up agreement. Additional fees (notwithstanding potential increases in charges as set out herein) can only be paid to the Care Home Provider if this has been agreed with the Council and this top up agreement updated accordingly (or a separate top up fee agreed with the Council).

- **Reviewing the top up arrangement:**

There will be times when it will be necessary to review this agreement and any future top up arrangements. The London Borough of Havering acknowledges that a review of these arrangements should be undertaken at the following times:

- Arrangements will be reviewed in line with arrangements for reviewing the Resident's personal budget, financial assessment/finances or health and care needs. These are reviewed following a change in circumstances or on an annual basis.
- Change of circumstances in relation to the Third Party not being able to fund the full cost of the top up agreement; or,
- Other changes in circumstances that will require the arrangement to be considered.

This list is not exhaustive and other circumstances/issues may present the need for this agreement to be revisited and considered further.

The Third Party shall notify the London Borough of Havering immediately of any changes in their circumstances which could affect their ability to make the third party top up contributions/payments. This may trigger a review of arrangements. Any delay in doing so could amount to the Resident and the Third Party being responsible for charges/sums that would otherwise have been payable by the London Borough of Havering.

- **Consequences if top up payments cease:**

If the Third Party is unable to make the necessary top up payments for placement at the Home, then the London Borough of Havering could make a decision, based on the relevant circumstances at that time, to offer and move the Resident to another care home which is affordable within **his/her** personal budget.

In the event of failure by the Resident or the Third Party to pay the top up contributions/payments in full at any time, the London Borough of Havering will have the right with 4 weeks' notice to withdraw the Resident from occupation of the accommodation (dependent on individual circumstances and following an assessment of the impact of a move on the residents welfare) and place them in alternative accommodation that is affordable within the amount identified in the Resident's personal budget.

In addition, the London Borough of Havering will have the right to start debt recovery processes for any monies that it has had to incur, where the Resident or the Third Party fails to pay the top up contributions/payments at any time.

- **Increases in charges:**

The London Borough of Havering will only be responsible for increases in charges/costs of this placement relating to the agreed usual costs between themselves and **Name of Care Home:** where it has chosen to accept them as part of negotiations with ; **Name of Care Home** or, where it agrees to provide for an inflationary uplift as per current contract arrangements.

All other increases in charges/costs will be the responsibility of the Resident and the Family to agree and pay via a top up agreement.

**Name:**

**Address:**

**Signed:**

**(Signature of Third Party making the  
top up payment)**

**Date:**

***WHEN COMPLETED, PLEASE RETURN TO***

***LONDON BOROUGH OF HAVERING  
PLACEMENTS TEAM,  
6<sup>TH</sup> FLOOR, MERCURY HOUSE  
MERCURY GARDENS, ROMFORD, ESSEX, RM1 3SL  
THANK YOU***