Deferred Payments Policy

London Borough of Croydon

Care Act April 2014

Effective from 8 April 2024

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London Borough of Croydon
Adult Social Care
Deferred Payments Policy

Reviewed April 24 effective from 8 April 2024

1.0 Legal Context

1.1 The London Borough of Croydon (LBC) has written this Deferred Payments Policy (DPP) in accordance with the Care and Support (Deferred Payment) Regulations 2014 and the Care Act 2014.

1.2 This DPA policy is effective from 1 April 2015. Any DPP in place prior to this date is obsolete from 1 April 2015.

1.3 LBC will issue clients with a Deferred Payments Agreement (DPA) in accordance with this Deferred Payments Policy (DPP).

1.4 Any new DPA signed and entered into after 31 March 2015 will use the provisions in the Care Act to make all future agreements.

1.5 In accordance with Croydon's Charging Policy, where Croydon has entered into a Deferred Payment Agreement (DPA) with a person prior to 1 April 2015 that DPA will remain in place until such time as it would expire under the existing agreement.

1.6 Consequently, existing DPA's set up prior to 1 April 2015 will continue subject to the same terms and conditions as have been agreed between Croydon and the client concerned. LBC will not remake an old DPA into a new one via the new regulations.

Policy Context

2.0 Key Features

2.1 This DPP details rules and practise that will be followed by LBC should clients wish to be considered for a DPA as a payment option to pay for care fee's.

2.2 The DPA allows clients, who own their own home, to make an arrangement whereby they do not have to sell their home during their lifetime to pay their care costs. Instead, LBC will pay the cost and recover the money owed by the client, plus interest and administration fees at a later date, as specified within the DPA.

2.3 LBC will offer a DPA to people who meet the criteria governing eligibility and who are able to provide adequate security for the debt. The Criteria for eligibility is covered in 11.0 of this document.

2.4 LBC will not enter into a DPA with a person lacking mental capacity unless the proper arrangements are in place as detailed within LBC Charging Policy and CSSG paragraph 9.24 & 9.24.

2.5 The care fees (accruing debt) will be secured against the client's nominated asset. This will mainly be property and a legal charge is placed, which is removed upon repayment of monies owed.

2.6 Following a financial assessment, as detailed in LBC charging Policy, the client is financially assessed based on income and assets including property owned. The difference between the assessed charge and the amount he/she would be assessed as being able to contribute if his/her home were not taken into account is then deferred.

2.7 Individuals seeking a DPA should be advised to take independent financial advice. Public information surrounding where this can be sort will help signpost clients for further information.

2.8 People in receipt of a DPA will not be entitled to claim Income Support or Minimum Income Guarantee. However, they will be entitled to Attendance Allowance or Personal Independence Payment. They may already be in receipt of the Care Component of the Disability Living Allowance. The client / legal representative of the client is responsible for notifying the Department of Work and Pensions of any changes in circumstances.

2.9 A formal written DPA will be issued to the client, into which all parties involved will need to consent. LBC will ensure that residents understand what they are committing themselves to, meeting all the requirements of the SCCG 2014 Chapter 9, paragraph 9.19 – 9.31, Information and Advice.

2.9 LBC will aim to provide all relevant information and have a smooth transition into a DPA agreement within the 12 week property disregard period.

3.0 Termination of the Deferred Payment Agreement

3.1 In general, the DPA can be terminated in three ways;

a. at any time by the individual by paying the full amount due
b. when the property is sold and LBC has received any outstanding fees
c. when the client dies and the amount owed is repaid to the LBC

3.2 Where a DPA is terminated due to the client's death, the amount owed to LBC is expected within 90 days of the date of death. After this date LBC may enter into legal proceedings to recoup monies owed.

3.3 DPA's will last for the duration of the qualifying period, that is until:

a. The date on which the agreement is terminated by the resident
b. If either party breaks the terms of the agreement
c. when a person's total assets fall below the level of the means-test and the person becomes eligible for local authority support in paying for their care;
d. Where a client has reached the equity limit that they are allowed to defer (this also applies when the value of the security has dropped and so the equity limit has been reached earlier than expected)
e. where a person no longer has need for care in a care home (or where appropriate supported living accommodation);
f. if a person breaches certain predefined terms of their contract (which must be clearly set out in the contract) and the local authority's attempts to resolve the breach are unsuccessful and the contract has specified that the authority will stop making further payments in such a case; or

g. if, under the charging regulations (see also chapter 8), the property becomes disregarded for any reason and the person consequently qualifies for local authority support in paying for their care, including but not limited to:

- where a spouse or dependent relative (as defined in charging regulations) has moved into the property after the agreement has been made, where this means the person is eligible for local authority support in paying for care and no longer requires 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). The local authority may cease further deferrals at this point.

3.4 LBC will give a 30 day notice period if we decide to cease the DPA.

4.0 LBC discretion around offering a Deferred Payments Agreement

4.1 There are certain circumstances that LBC may refuse a request for a DPA even if a client meets the eligibility criteria, at our discretion. Such circumstances are:

(a) where LBC is unable to secure a first charge on the person's property;
(b) where someone is seeking a top up; and/or
(c) where a person does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property.

4.2 LBC may decide not to defer further care costs where a DPA is already in place.

5.0 The amount of money deferred

5.1 In principle, LBC will allow the deferral of the total care costs, subject to any client contribution. Decisions will be based on the level of security available and will be set out in the DPA.

5.2 LBC will consider top up's, again, decisions will be based on the sustainability and affordability based on the security offered by the client.

5.3 The three key elements LBC will consider when deciding how much can be deferred are;

a. The amount of *equity* a person has available in their chosen form of security (usually their property);
b. The amount a person is *contributing to their care costs from other sources*, including income and (where they choose to) any contribution from savings, a financial product or a third-party; and
c. The total (based on current available figures) *care costs* a person will face, including any top-ups the person might be seeking.

6.0 Equity Limit

6.1 LBC has set an equity limit up to the asset value minus 10% to cover costs of sale minus the lower capital limit.

6.2 When calculating progress towards the equity limit, LBC will include any interest or fees to be deferred.

6.3 LBC will seek to obtain a valuation of the asset being used for security. The client is able to obtain their own valuation. Any discrepancy between the valuations will be discussed before agreeing on the final value to be used in the DPA. Any valuation costs will be added to the administration charge paid by the client and subject to interest if the charge is not paid up front.

6.4 LBC will seek to review any DPA that reaches 70% of the value of the clients chosen security.

6.5 Interest can accrue on the amount deferred even where the client has reached the agreed equity limit and administrative charges can still be deferred.

6.6 LBC will not allow additional deferrals beyond the agreed equity limit. In such circumstances, the clients will be financially re-assessed to determine the financial contributions and funding going forward.

7.0 Other sources of security

7.1 A person may meet the costs of their care and support from a combination of any of the following four primary sources:

a. Income (including pension income);
b. savings or other assets they might have access to, this might include any contributions from a third party;
c. a financial product designed to pay for long-term care; or
d. a Deferred Payment Agreement which enables them to pay for their care at a later date out of assets (usually their home).

7.2 LBC will enable clients to retain up to the maximum weekly personal expenditure allowance (PEA) set annually by the Department of Health (DoH). However, clients are able to reduce this level of PEA if they wish, to the minimum PEA allowance defined annually by the Department of Work and Pensions (DWP).

7.3 If the client chooses to rent out their property during a DPA, income can be used to contribute toward the payment of deferred fees. LBC agree to allow up to 10% of the rental income to be retained by the client. This is in addition to 7.2 above.

7.4 LBC may offer advice and guidance around maintaining a home, renting and income.

8.0 Sustainability

8.1 When deciding on the amount to be deferred both LBC and the client (and their advocate where applicable) should consider a range of factors to satisfy themselves that the arrangement is *sustainable*:

a. the likely period the person would want a DPA for (if they intend to use it as a 'bridging loan');
b. the equity available;
c. the sustainability of a person's contributions from their savings (if they are making one);
d. the flexibility to meet future care needs; and
e. the period of time a person would be able to defer their care costs for.

8.2 LBC will refer to any sustainability tool offered by the Department of Health when considering this factor within the DPA decision making process.

8.3 The asset must be insured and maintained at all times throughout the duration of the DPA agreement. Failure to do this could result in termination of the contract, if an alternative solution is not sought.

8.4 LBC will review the DPA either on request of the client or quarterly.

8.5 LBC will provide a position statement to the client within 28 days of receiving a request, and every last day of January or July, in line with changes to the published interest rate.

9.0 Security for the deferred loan

9.1 LBC will seek to obtain a first legal charge on the agreed asset.

9.2 Failing the ability to secure a first legal charge, LBC may choose to consider a third party guarantor or a solicitors undertaking letter. This will form part of a witnessed legally binding agreement.

9.3 LBC will seek legally binding agreement from all parties if the asset is jointly owned.

9.4 LBC will refuse individual cases if there is unsatisfactory security in place.

9.5 LBC reserves the right to revalue assets used as security against a DPA at any time.

10.0 Interest rate and administration charge

10.1 Interest rates will be set twice a year on the 1 January and the 1 July of each year. This will be set based on the market gilt rate specified in the most recently published report by the Office of Budget Responsibility (OBR) plus a 0.15% default component (for example, gilt rate 1% plus 0.15% equals a maximum interest rate of 1.15%). The market gilt rate is currently published in the Economic and Fiscal Outlook, which is usually published twice-yearly alongside the Budget and Autumn Statement on the OBR website. The web page shows the latest statement but past statements can be found by clicking on 'choose' under the 'previous forecasts' heading on the page. The market gilt rate figures are near the bottom of the table: Determinants of the fiscal forecast.

10.2 LBC will apply the maximum interest fee as defined in 10.1 above. The interest rate will be calculated on a compound basis, daily, applied from day one of the DPA.

10.3 The administration charge will be set locally, annually and will form part of the fees and charges schedule that is agreed by Full Council Cabinet before implementation at the beginning of each financial year.

10.4 The administration charge will be a flat rate annual fee that will not exceed the average cost of administering the DPA.

10.5 Both the interest charge and the administration charge will be added to the care fee's debt.

The national maximum interest rate will change every 6 months on the first of January and July respectively, to track the market gilts rate specified in the most recently published report by the

11.0 Basic Principles of Eligibility

11.1 LBC will offer a DPA to people who have local authority-arranged care and support, and also people who arrange and pay for their own care, subject to these criteria. As specified in the regulations, if someone is eligible for a DPA LBC will offer a DPA if the client meets all three of the following criteria at the point of applying for a Deferred Payment Agreement:

(a) anyone whose needs are to be met by the provision of care in a care home.
(b) anyone who has less than (or equal to) the upper capital threshold limit, reviewed annually, in assets excluding the value of their home (i.e. in savings and other non-housing assets); and
(c) anyone whose home is not disregarded as defined in regulations on charging for care and support

11.2 LBC may exercise discretion and offer a Deferred Payment Agreement to a client who does not meet the above criteria. In making such decisions, LBC will consider *(not exhaustive)*:

(a) whether meeting care costs would leave someone with very few accessible assets
(b) if someone would like to use wealth tied up in their home to fund more than just their core care costs and purchase affordable top-ups
(c) whether someone has any other accessible means to help them meet the cost of their care and support; and/or
(d) if a person is narrowly not entitled to a Deferred Payment Agreement given the criteria above, for example because they have slightly more than the upper capital threshold asset limit.

12.0 Evidence which will be required, *not exhaustive*

- Income from pensions/ benefits or any other source
- Proof of asset ownership (Land Registry or deeds)
- If property purchased under right to buy scheme are there any penalties for selling property within a given time scale?
- Valuation of property
- Insurance on building-value of building insured and renewal date
- For nursing home placement – level of free nursing care

13.0 Coporate Debt Recovery

13.1 In accordance with The Care Act 2014, where necessary, LBC will implementation its Corporate Debt Recovery policy to recoup monies owed as a result of LBC meeting a person’s eligible care and support needs.