

PROCEDURE TITLE	Deferred Payment Policy
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PURPOSE	The purpose of the Deferred Payment Policy is to explain the parameters and process applied when the Council allows Adult Social Care customers the opportunity to defer charges against the value of their property.
SCOPE	<p>Commissioned long term residential or nursing care services externally provided – applied where a customer has a property interest which does not fall to be disregarded.</p> <p>This policy is followed by staff involved in dealing with the deferred payment and legal charge processes and offered to customers (or their legal representatives) in long term care supported by Cheshire East Council with appropriate property interest.</p>
POLICY SUPPORTED	Debt, Charging Policy and Write-off Procedures
RESPONSIBILITIES	<p>Care Manager</p> <p>Financial Assessment Officer</p> <p>Client Finance</p> <p>Contracts</p>
ENQUIRY POINT	Alison McCudden, Senior Manager – Support to Social Work
KEYWORDS	Deferred Debt, Deferred Agreement, Debt Recovery, Enforced Sale

PROCEDURE APPROVAL			
APPROVED BY		POSITION	Director
SIGNATURE	Version 5/amc/21.10.14	DATE APPROVED	

COMMUNICATING WITH CUSTOMERS OR CARERS

When following this policy, if you need to communicate with customers or carers, it is essential that the communication is made in a way that is understandable to them. For example, where people may be from a different ethnic origin, it is essential to find out whether or not their first language is English. If it is not, it will be appropriate and essential to enquire whether written or spoken communications need to be, or would best be, in their first language.

If the customer has a learning disability, you will need to make sure that any written communication is in an appropriate form, for example 'easy read', and consider whether it would be advisable to have an Advocate available for any discussions.

Our Communication and Information Strategy requires that we should make information accessible to all. We have, therefore, contracted with a number of organisations to provide translation and interpretation services, and to transfer information into alternative formats such as large print or Braille. If you are unsure about the conventions which are acceptable to people from other cultures or religions, guidance is available from Communications: communications@cheshireeast.gov.uk.

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Deferred Payments and Legal Charges

1. Definitions & Abbreviations

Assessed Contribution	– the amount that the customer is required to pay towards the cost of their eligible need residential accommodation.
CRAG	- Department of Health Charging for Residential Accommodation Statutory Guidance.
Deferred Payment Agreement (DPA)	<p>- DPAs are offered by Cheshire East Council and operate under Section 55 of the Health and Social Care Act 2001. DPAs are a consensual agreement between the customer and the Council that enables the customer to defer payment of that portion of their assessed charge that relates to the value of the property, i.e. they cannot defer the portion of the charge that they are deemed liable to pay due to other capital and income. The documentation consists of a DPA Application Form and a Written Agreement, which is registered as a legal charge.</p> <p>A customer may be offered the opportunity to defer some of their full cost charges against their property interest. Cheshire East Council will offer this option only in circumstances where the customer is in full agreement, is willing to pay assessed weekly contributions, accepts the Council's charge for the service, has the capacity to manage their own finances or has appointed a legal representative to act on their behalf through the Court of Protection and agrees to settle promptly at the end of the agreement and in accordance with statutory guidance. Where there is no such agreement or cooperation the Council will withdraw the offer and charge for care services at the full cost. Legal proceedings may result in debt recovery actions for non payment or in some cases may result in the Council's debt being secured through a land registry restriction and enforced sale actions being pursued.</p>
Options Form	– This is the form the Customer completes in order to apply for a Deferred Payment.
HASSASSA	– Health and Social Services and Social Security Adjudication Act 1983.
Customer	– The customer receiving the service, and where appropriate, the term 'customer' shall also include reference to any person who has power of attorney, acts as next of kin, friend or is entitled to act on behalf of the customer.
Legal Charge (LC)	– A legal charge is applied to a property subject to deferred charges. The legal charge prevents the property being sold without that deferred debt being repaid. A legal charge can be invoked without the customers consent in order to secure monies owed to the Council for residential services provided where the customer won't pay. It cannot be applied where the debt has accrued because of non-

payment of assessed charges, other than related to care home provision. The Council cannot force someone to sell their property during their lifetime, but it does mean that when the property is sold the Council have registered a financial interest in the proceeds of the sale. The Council's deferred offer requires provision to be made to settle the debt promptly.

Written Agreement

- The written agreement is the document signed by the customer and sealed on behalf of the Council and registered against the Individual's property as a legal charge. It does not come to an end until 56 (fifty six) days after the death of the customer or until the date of a termination notice from the customer to the Council. The Council cannot terminate a DPA.

Top up

- A top up is usually covered by a Third Party and not by the customer from their income or capital. Where a third party agrees to pay the care home top up, a formal agreement should be entered into between the Care Home and the Third Party. Third party top up can not be paid from the customer's capital or income.

Where a care home offers to defer the top up, then the Council would expect the Care Home to defer all charges without the need for Council support. Where there is a Council DPA in place - it is expected that all Council debt will be covered as first priority at the end of the agreement.

In some cases a customer may choose a care home with a higher weekly price than that agreed by the Council in their Standing Offer Contract.

In some cases, the customer who has opted to defer charges against the property interest may be allowed by the Council to defer the weekly top up. This would only be acceptable where:

- The property is being actively marketed and
- There is sufficient equity in the property to cover the full cost of the care home's price for a minimum of three years.
- Once the Customer's capital is exhausted and they can no longer afford to pay a top up the customer may have to move.

Form A Restriction

- In order to enter into a DPA Cheshire East Council must be able to register a legal charge on the property in order to secure its interests in relation to the deferred debt. The requirement for a legal charge to secure the debt owed to the local authority is set out in section 55 of the Health and Social Care Act 2001.

Some properties may have a Restriction registered on the Proprietorship Register part of the Title Register, for example where there are Tenants in Common. ~~In some circumstances the effect of this Restriction will be that the legal charge cannot be registered on the Title Register. In these circumstances it will be necessary for the client/representative and/or the co-owner(s) to co-operate with Cheshire East Council in order to ensure that the legal charge can be~~

~~registered on the Title Register. If the client/representative or the co-owner(s) do not co-operate with Cheshire East Council within a specific timescale requested, the Deferred Payment offer will be withdrawn.~~ In these circumstances it is necessary for all the legal owners of the property to sign the Deferred Payment Agreement in order to register a Legal Charge. If there is only one legal owner of the property then it will be necessary for the legal owner to remove the Restriction. If the legal owner(s) do not co-operate regarding this issue a Deferred Payment Agreement cannot be offered.

Administrative Charge - The Council levy's a one off charge to cover the cost of dispersals – this charge is deferred and subject to repayment along with the deferred charges and any interest that applies. The admin charge is payable on all deferred arrangements regardless of their duration as the costs of land registry checks and legal time are included.

2. Purpose

This guidance will affect those customers who are assessed as needing permanent residential/nursing care and are either:-

a). Unable to pay their full contribution because property that they own or have a legal interest in and which must be taken into account as it takes their assets over the upper capital limit as defined by Department of Health statutory charging guidance, has not been sold.

Or

b). Unwilling, or have otherwise failed to pay their assessed contribution, and have property which they own, or have a legal interest in, that the Council can register a financial claim against as part of usual debt recovery procedures. In such cases the Council would seek to secure it's debts through the placing of a Land Registry charge and debt recovery procedures.

3. Eligibility

3.1 Who the local authority may offer a DPA to:-

- The customer must have received a community care assessment which confirms their eligibility to have their needs met in a long term residential care home, with or without nursing care.
- The customer must have insufficient income and **savings or other assets** ~~other assets~~, other than the value of their property, to meet the cost of their care (see CRAG for mandatory and discretionary disregards).
- Due to the loss of capacity the customer may not have the ability to enter into a DPA nor have access to finances, if they have not appointed a Lasting Power of Attorney previously. In these circumstances the council will expect a Court of Protection Deputy to be appointed to act in the customers interests and will not offer to defer charges until the deputy is appointed.
- The customer does not wish, is unwilling, or is unable, to sell the property quickly enough to meet the full cost of their care.
- The customer must have sufficient equity in their property, together with other income and assets, after discharge of any existing mortgage; sufficient to meet the criteria for sustainable self-funding of at least three years otherwise an alternative, cheaper care home may be necessary.

- DPAs are discretionary. The Council will only offer a DPA to applicants with mortgages if they have sufficient equity. Equity in the property must be sustainable for at least three years, with sufficient funds to discharge both their commitment to the mortgage and sufficient equity or resources to also discharge their DPA liabilities. Customers must be able to establish to the Council's satisfaction that they are able to meet the commitments for both.
- The customer must disclose to the Council any equity release schemes they have entered into.
- The Council will take into account the size of any DPA. A high level of a DPA in any customer case may limit the Council's ability to enter into other DP arrangements. The Council's aim is to assist as many people as they can with DPAs, however, the Council's ability to finance DPAs cannot be permitted to have an adverse effect on its ability to discharge its other Community Care functions
- A DPA will not be offered to customer's entering residential accommodation for respite or a temporary period. Any temporary placement that becomes a permanent arrangement may be offered a DPA at the point that a decision is taken to remain on a permanent basis
- DPAs will not be used where capital or assets are disregarded as set out in section 7 of CRAG apply, please see the link at the Department of Health website for the complete CRAG which is updated annually. <https://www.wp.dh.gov.uk/publications/files/2012/10/Updated-CRAG-guidance-20121.pdf>
- DPAs will only be offered following a financial assessment by Client Finance If the customer fully co operates with the financial assessment officer in a timely manner they will be told their weekly charge within two weeks. Full cooperation will only be deemed as met if the customers responds to the initial Statement of Finance letter and responds to the Council within the two weeks stipulated. If there is no response the customer will be charged at the full cost and no DPA will be offered. It is expected that the assessed weekly charge is paid promptly on invoice; any accruing debt would cause the council to reconsider the DPA offer and raise all charges at the full cost.
- If the property is jointly owned as joint tenants, and is not disregarded, the Council will only offer a DPA if all joint tenants (owners) sign the DPA and agree to be bound by the arrangement to discharge the debt when it falls to be repaid.
- Cheshire East Council will expect prompt payment of deferred charges at contract end and will take action to enforce the sale of the property if felt appropriate and necessary.
- The customer will be expected to provide a formal valuation of the property.

As DPAs are discretionary the Council reserves the right to suspend consideration of any new applications for DPAs temporarily, to avoid getting into financial difficulties, the customer would be charged at full cost and debt recovery action will be followed. The Council's ability to finance DPAs cannot be permitted to have an adverse effect on its ability to discharge its other Community Care functions.

4 Legal Context

- The Health and Social Care Act 2001 (Section 55) enables local authorities to operate DPAs to allow customers to defer the sale of their home where that home will be needed to fund care home fees and where both parties agree to enter into a DPA
- It also allows a DPA to be offered to customers who decide to sell their home, but are unlikely to achieve a sale quickly enough to meet the full cost of the care home fees where the customer is willing to enter into a DPA
- The power of the Council to offer DPs is a discretionary one, and as the cost of funding them comes from the Individual Commissioning budget, all requests must be considered by panel.
- The power of local authorities to place a LC is under section 22 of HASSASSA and can be invoked when a debt, relating to non-payment of assessed charges for residential care, has accrued and all other debt recovery procedures have not resolved the issue. This is a

procedure that is entirely separate to the DPA because a DPA is only possible where entered into by agreement by both parties.

- CEC will charge a one off administration fee to cover dispersal and administration of £400.00
- Local authorities have the power to charge for services under various legislation.
- Residential accommodation provided under Section 21 of the National Assistance Act 1948 is subject to charging. The charging procedure is governed by the rules in the National Assistance Act 1948, the National Assistance (Assessment of resources) Regulations 1992 and the Charging for Residential Accommodation Guidance commonly referred to as CRAG. The regulations often refer to and cross reference with the Income Support (general) regulations 1987. Section 22 of the National Assistance Act 1948 states that a persons ability to pay is assessed at either the standard rate being the total cost to the Local Authority or the lower rate depending on a persons resources.

5 Procedures

5.1 Care Manager will carry out a care assessment to confirm whether the customer has needs that are appropriately met by a long term placement in residential accommodation. Where this is the case, the Care Manager will request a financial assessment. The Care Manager will inform Client Finance whether or not the customer has capacity under the Mental Capacity Act by completing an appropriate referral to Income and Charging and will identify the legal financial contact. Once it has been identified that the customer needs are to be met in permanent long term care, the twelve week property disregard starts, this is regardless of whether or not the customer is receiving services at that time.

5.2 The Client Finance Assessment Officer will aim to carry out a financial assessment within two weeks of notification from the Care Manager that a financial assessment is required, to ascertain after the 12 week disregard period has elapsed, whether:-

- The customer has sufficient capital excluding the property to be a self funder (in which case The customer would not be eligible for Local Authority support)
- The customer will not have the funds to pay for their place in long-term care without the proceeds of the sale of their property.
- What the assessed charge payable from income is and what amount can therefore be deferred.

If the options form is not signed within the twelve week period then the customer will be charged full cost.

5.3 Where the customer will not have the means to pay for their place in long term residential care without the proceeds of the sale of their property, the Financial Assessment Officer (FAO) will discuss the option of DPA with the customer, and leave the options letter with the customer, advising that the offer expires at the twelve week point. The FAO will advise the customer in writing to seek independent legal and financial advice before proceeding. Client Finance will input information into the panel decision making process to ensure joined up decision making. The Client Finance Assessment Team will complete the financial assessments up to the end date of the 12 week disregard period. Following assessments will be dependant on the return of the options letter agreeing to sign up to a DPA, the option expires at the end of the twelve week period and a full cost charge will be implemented. This will be monitored by the Client Finance Debt Team to ensure continuity. The FAO will carry out a Land registry search to establish legal ownership of property and will seek evidence of legal financial management.

5.4 Cheshire East Council applies the rules set out in the CRAG issued by the Department of Health on an annual basis.

If property is jointly owned then the value of the customer's interest in a property can be regarded as capital. It is calculated using the following procedure:

- Ascertain the market value of the whole of the property
- Divide the property value in accordance with each interest in ownership to give the value of the specific interest. For example, if there are two owners of the property, the whole value will need to be divided by two.
- Subtract the value of the specific interest by 10% of its value to account for the cost of sale
- This final amount will give the value of the interest in the property

In relation to jointly owned property Cheshire East Council will consider the requirements set out in The Trusts of Land and Appointment Act 1996 to establish if a share in the property has a value to be regarded as capital in the financial assessment. It will be necessary to ascertain whether the circumstances regarding joint ownership are such that a court would be in a position to grant an order for sale in the event of an application to court being made. ~~a creditor could apply to court and successfully obtain an Order for Sale in order to sell the property and receive their entitlement of the proceeds of sale.~~ If the circumstances are such that a court would be in a position to grant an order for sale In these circumstances the the property will be regarded as capital.

If the property is subject to a trust that precludes/prevents **circumstances regarding property ownership are such that a court would not not grant an order for sale** then the property will not be regarded as capital.

In conclusion, it will be necessary to consider this test in relation to all cases where there is joint ownership of property so it can be ascertained whether the interest should be regarded as capital. Please note that the CRAG Rules do provide that the local authority can use its discretion to disregard property as capital and so the use of discretion will be considered in each case.

5.5 When a decision is made to regard a property or interest in a property as capital in the financial assessment of a customer, it is possible that the customer or those representing the customer disagree with the decision made. If this is the case then the customer or those representing them have the opportunity to **request that the decision is reviewed by the Director of Adult Social Services and Independent Living**. ~~appeal the decision. The process is as follows:~~

- ~~1) When Cheshire East Council makes its decision to regard the property or interest in the property as capital, a letter will be written to the customer or those representing the customer to confirm this.~~
- ~~2) If the customer disagrees with the decision they must inform the Financial Assessment Officer within 14 days of receipt of the above letter. Client Finance will then write to the customer providing written reasons for Cheshire East Council's decision.~~
- ~~3) If the customer disagrees with the written reasons they can send a written appeal to the Client Finance Manager within 14 days of receipt of the written reasons. This appeal must be in the form of a letter and it must enclose any additional evidence that the customer wishes to rely on. If the customer requires an extension of time to send a written appeal they must request this extension of time in writing. A decision will then be made by the Client Finance Manager as to whether there are merits to extend time.~~
- ~~4) If a letter of appeal is received by Cheshire East Council it will be passed via the Client Finance Manager to a panel including Social Care Senior Management, to consider the merits of the appeal and make a fresh decision or confirm the original decision. This decision will be made within 28 days of receiving the letter of appeal.~~

5.6 Where a customer does not have capacity and an application to register a Deputy, an Enduring Power of Attorney (EPA) or Lasting Power of Attorney (LPA) has not been made to the

Court of Protection, or is in the process of being made, the Client Finance Debt Team will monitor progress with the EPA or LPA regularly and raise a full cost charge if no legal representative has been appointed within twelve weeks. The Financial Assessment Officer/Care manager will obtain evidence to confirm that the EPA or LPA has been registered. The Care Manager will be kept informed. The Council can, in exceptional circumstances, take steps to appoint a Deputy for a customer through a national framework.

5.7 Where a request for a DPA is refused, the Council will write to the Customer to inform them of the refusal and the reason why. Refusal could include:-

- The Council does not have sufficient funds to bear the cost.
- The equity in the customers property is insufficient to maintain them in their placement for more than three years (if not a full cost charge would therefore be raised).
- The cost of the DPA would be disproportionately excessive.
- The property is jointly owned and the co owners refuse to join into the DPA.

A customer may appeal against a refusal for a DPA by stating their case in writing to the Client Finance Manager who will make recommendations to panel. The appeal will be considered by the panel within two weeks of receiving notification of the refusal. The panel will consist of the Client Finance Manager, The Social Care Service Manager and will be escalated to the Head of Service, Business Support and Challenge and the Adult Director in exceptional cases.

5.8 Where a request for a DPA is agreed and the request has been approved, the Legal Team will send the Customer a Written Agreement for signature and return (within two weeks), along with a covering letter. The letter will advise the Customer to seek independent legal and financial advice before proceeding. The Legal Team will be responsible for contacting the Customer regularly for an update until either the Written Agreement is signed and returned, or the Customer that they will not be proceeding with the DPA in which case the full cost charge will be applied. The Council may cease their contract with the care home where the LPA is unwilling to sign the DPA and if they feel it necessary, inform the Court of Protection of any concerns where a customer's best interest do not appear to be met.

5.9 The Customer or their legally appointed financial representative will be required to provide **thorough** valuation evidence the current market value of the customer's property to the Council's satisfaction, for example a valuation from the customer's Estate Agent. **Further, the customer or their legally appointed financial representative will need to provide their consent to Cheshire East Council entering the property in order to conduct a valuation.**

5.10 Customers will be required to provide mortgage and equity information where appropriate **so that the true value of equity held in the property can be ascertained. This will include the value of mortgage including interest levels applies, the value of an equity release including interest applied and the value of any secured loan including interest applied.**

5.11 **The customer or their appointed financial representative is required to nominate a 3rd party who can help the local authority to reclaim outstanding deferred debt due in the event of their death.**

5.11 On return of the signed DPA and Written Agreement an invoice for a £400.00 charge will be applied to each DPA, payment must be received on redemption of the DPA. This is the Council's administrative charge to cover the costs of Legal dispersals which is required with all property work involved in setting up and securing legal charges for a DPA agreement regardless of the timescales involved and how long the property is on the market. This fee covers land registry charges as well as administrative and legal costs.

5.12 On receipt of a request for a DPA, the Legal Team will:

- Check that the form is fully completed and follow up any outstanding information or documentation.
- Arrange for the Written Agreement to be signed on behalf of the Council.
- Arrange for the legal charge to be placed on the property.
- Prepare and send the Written Agreement/charge to the Finance team.
- Write to the customer to inform them that a legal charge has been placed on the property enclosing a copy of the DPA and register of title.
- Store the DPA in the Legal Deeds Registry.

5.13 The Client Finance Team will:

- maintain a register of DPAs to include the value of the property subject to the agreement.
- annually review the property value each April to establish equity through:
 - A web site that gives an indication of house prices e.g. nethouseprices.com or Upmystreet.
 - From internal Council asset management valuers.

5.14 Once the level of the deferred charges reaches the value of the property or the value of the equity in the property then charges will no longer be deferred and the agreement will terminate.

- The Council will expect the debt to be paid in full as soon as possible thereafter.
- Following the termination of the Deferred Payment Agreement the client will be required to pay the debt owed to Cheshire East Council. If the debt is not repaid immediately the interest will be applied 56 (fifty six) days after the termination of the contract at 5% on base rate. From April 2015 new legislation takes effect and interest applies from day one of the DPA.

5.15 The Client Finance Team will complete and maintain a depletion schedule to estimate the time that the DPA will last and other relevant data. Cheshire East can end a deferred agreement and reassess a customers' charge once equity is exhausted.

5.16 The Council will send an annual financial statement to all customers with a DPA detailing the current level of the outstanding debt and details of their new weekly assessed contribution.

5.17 The Client Finance Team will be responsible for monitoring that the amount of debt can be covered by the remaining equity, especially where as a result of changes in property value or assessed contributions impact on the rate the debt is increasing beyond that originally calculated.

5.18 When the depletion schedule indicates that less than six months remains before the debt exceeds the value of the property above the upper capital limit for self-funding clients, the Client Finance Assessment Team will arrange a re-assessment of the client contribution, including current savings. This will be carried out under CRAG. The customer will be informed of this revised contribution. Welfare Benefits advice will be given at this point as entitlement changes.

6. Process in the absence of a DPA

6.1 Should the customer decline to accept a DPA or, having indicated their willingness to enter into a DPA, not complete and returned the DPA within the twelve week disregard period, unless there are exceptional circumstances which are explained to the Council's satisfaction, then the customer will be invoiced the full cost of the care plus any associated legal costs actually incurred. This may include the one off administration charge of £400.00. Should these invoices not be paid in accordance with the Council's normal payment terms a ~~LC Land Charge~~ under section 22 of HASSASSA, or alternative restriction will be placed on the property and debt recovery will follow

Cheshire East Council will reserve the right to commence debt recovery proceedings in order to obtain judgment for the debt and enforcement by way of a Charging Order registered against the property.

6.2 Should the Council be unable to offer a DPA then the customer will be invoiced the full cost of their care. Should these invoices not be paid in accordance with the Council's normal payment terms a ~~LC Land Charge under section 22 of HASSASSA, or alternative restriction will be placed on the property to secure the debt.~~ The Legal Team will update their register and the debt will be ~~pursued through court action if necessary.~~ Cheshire East Council will reserve the right to commence debt recovery proceedings in order to obtain judgment for the debt and enforce the judgment by way of a Charging Order registered against the property. Consideration will then be given as to whether an application for an Order for Sale will be made. The Council may levy the £400.00 legal charge for dispersal costs in these circumstances.

Alternative forms of security when entering into a Deferred Payment Agreement

If the circumstances of a customer are such that they own an asset that cannot be made subject to a Legal Charge registered at the Land Registry, Cheshire East Council has discretion to accept other forms of security. Cheshire East Council will refuse a Deferred Payment Agreement if it is not satisfied that the security offered is sufficient.

A 'second property'

In circumstances where the customer owns two properties and therefore under the CRAG rules would be required to pay the full cost of their care, Cheshire East Council has discretion to enter into a Deferred Payment Agreement in relation to the second property. The process by which the Deferred Payment Agreement is arranged is the same as that set out in the procedure in Paragraph 5.

Item of Value

If the form of security relates to a item of value the customer or their legally appointed financial representative will be required to provide thorough valuation evidence of the market value of the item to the Council's satisfaction, for example a valuation from a qualified valuer. Further, the customer or their legally appointed financial representative will need to provide their consent to Cheshire East Council examining the item in order to conduct a valuation.

It will be necessary for the customer or their legally appointed financial representative to provide annual valuations of the item so that its up to date market value can be ascertained.

STORAGE OF ITEM??

CONTRACT SETTING OUT STORAGE RESPONSIBILITIES AND INSURANCE?

AMENDED DPA?

3rd party guarantor

If the form of security relates to a 3rd party guarantor providing security for the cost of deferred charges the customer or their legally appointed financial representative will need to

Arrange a meeting with the 3rd party and Council

Undertaking from 3rd party

Contract/DPA amendments?

Annual bank statements?

Legal Charge on 3rd party property?
Credit referencing?
Threat of legal proceedings in default. (speak to contracts)

Proceeds of Life Insurance policy

If the form of security relates to agreeing to repay the amount deferred from the proceeds of a life insurance policy the customer or legal appointed financial representative will need to provide:

Life insurance policy documentation including value and conditions
DPA including contract to pay amount to Cheshire East Council.

Other forms of security can be considered by the Council but the Council will have discretion to consider the adequacy of the security offered after considering the circumstances of the customer.

Service Users receiving Community Care Services

Customers may wish to defer the cost of their community care against the value of their property, which ordinarily would be disregarded. In these circumstances Cheshire East Council will consider each individual case to ascertain whether to use its discretion to enter into a Deferred Payment Agreement in order defer part of the costs of community care.

If Cheshire East Council agrees to enter into a Deferred Payment Agreement the procedure set out in this policy must be followed.

AMEND DEFERRED AGREEMENT?
DISCUSS LIMITATIONS ON ENFORCED SALE (STILL RESIDENT IN PROPERTY)

7 Top-ups

7.1 Third party contributions are additional payments over and above the amount the Council considers appropriate to pay to the care home to meet need within the contract. Should the customer wish to choose a care home which levies additional charges (top ups) for hotel services such as en suite facilities and improved quality of accommodation these will need to be met by a third party (usually the family of the customer) and agreed directly with the care home. Top ups cannot be paid for from the customers funds and must be paid by a third party but may in certain circumstance be deferred, they are separate to the customers contribution paid to the Council. Failure to pay third party top up may risk the customer being evicted and having to move to a contract price bed in an alternative care home.

7.2 Formal Agreements/Contracts

Third party contributions are allowed provided that the person making them signs an agreement with the care home. It must be made clear to the third party, and the customer, by Council Officers (Financial Assessment Officer) that failure to pay an agreed top-up may lead to the customer having to move to alternative accommodation at the local authorities agreed rate, where one is available and debt recovery action will be followed by the care home for unpaid top up payments. Increases to third party top ups will be a matter between the third party and the care home.

7.3 Customers making Top-ups

The Council will not usually offer to defer top ups however in certain circumstances it will be considered if the top up is sustainable from the customers assets and the customer is actively marketing the property. Customers are able to make top-up contributions during the twelve week disregard period. Someone who is, in effect, self funding, has the right to exercise personal choice

by choosing to use their own resources, to pay for a place which is above the rate the Council would normally pay to meet the customer need. However, the top-up can only be made from funds, detailed below, that are disregarded under CRAG. These include the disregarded capital amount (£23,250 as at 1st April 2014). This does not affect the tariff income derived from that Capital amount. Hence the tariff income derived from capital between lower (£14,250 as at 1st April 2014) and higher rate (£23,250 as at 1st April 2014) will not be reduced even though this capital diminishes through making top-ups.

7.4 Failure to make Top-Ups

Customers making their own top-up and any person making a third-party contribution should be advised by the Care Manager that failure to maintain these additional contributions may result in the customer being required to move to residential accommodation which accepts the Council's contract rate without top up. Any Legal proceedings for unpaid top up amounts will be made by the care home if necessary.

8 Ongoing Administration

8.1 Ongoing maintenance of the property

- The Council expects property subject to a DPA to be maintained to retain equity, if not the property may be condemned and enforce sale action would follow.
- The reasonable costs associated with securing, insuring and maintaining the property must be met by the customer. In exceptional circumstances the financial assessment may be adjusted by these costs by adjusting the personal expenditure allowance.
- The customer is responsible for ensuring that there is up to date insurance on the property at all times, and provide a copy of the policy if requested by the Council.
- **An annual valuation will be required from the customer or their legally appointed financial representative from the point when the Deferred Payment Agreement commences.**

8.2 Property Updates

The council can periodically check that the property is still owned by the customer.

8.3 Deprivation of Assets

- Anyone who transfers property or savings to another person at a time when they know, or ought to have known, that they will be in need of Local Authority funded care, in order to qualify for financial help from the local authority, is likely to be the subject of the "deprivation of assets" rule.
- If any member of staff suspects that an customer has deliberately given away assets in order to reduce or avoid care home fees, they will commence investigations to establish the facts and when necessary present their findings to the Legal Team for a decision. The Council has the power to treat the customer as if they still have those assets; this is known as notional capital.
- There is no set time limit within which giving away property or savings is treated as deprivation of capital. The most significant factor is to establish the intention behind the transfer. If a "significant" reason, not necessarily the main reason was to avoid paying for care fees the Council has the right of further investigation.

These procedures can also be applied in situations where assets that would have been treated as capital have been converted into those that are not. **If the customer does not agree with Cheshire East Council's decision regarding deprivation of capital they can request that the decision is reviewed by the Director of Adult Social Services and Independent Living.**

9 Letting the Property

9.1 Where the customer does not want the property sold during their lifetime and the property would otherwise be empty they may agree with the Council to let the property under a short term lease. The rental income generated (along with any other income), less any reasonable expenses of letting the property, must be paid to the Council in the customers assessed weekly charge in order to reduce the accruing debt.

9.2 Customer's should be advised that no letting agreement should be entered into or keys given to a prospective tenant before the DPA and LC has been entered into.

9.3 A copy of any proposed tenancy agreement must, in all cases, be approved by the Council's Legal Team. The property may only be let on an assured short hold tenancy if it is to be subject to a DPA.

9.4 If the property is already let, legal advice should be sought before proceeding any further with the DPA.

9.5 A valid buildings insurance policy must remain in place throughout the duration of the DPA and tenancy, and the Council's interest should be noted on the insurance policy.

9.6 In the event that the property is mortgaged, the customer should inform the mortgagee that the property has been let to a tenant; failure to do so could result in a breach of mortgage conditions and potential action by the mortgagee which could affect the security of the Council's interest in the property.

9.7 Properties that are let to tenants must be in good repair and free from significant hazards as defined in the Housing Act 2004. Information and advice is available for customers from the Council's Strategic Housing Team, including home improvement loans which are made available by the Council and by external partners.

10 Sale of Property / Death of customer / ~~Equity exhausted~~-(see 5.14)

10.1 If the property is sold during the agreement term **or the customer dies during the agreement term this will terminate the Deferred Payment Agreement. The Client Finance Debt Team will notify the Legal Team of the completion date and value realised.** The Client Finance Debt Team will update records to calculate the accrued debt which must be re-paid in full from the sale proceeds.

10.2 Once Debt is recovered the Client Finance Debt Team will notify the Legal Team who will remove the DPA or LC from the customer's title.

10.3 In the event of non payment of outstanding debt:

- **If the debt is not repaid immediately then interest will be payable after the termination of the contract at 5% above base capped at 8%. Cheshire East Council reserves its right to commence debt recovery proceedings in circumstances where the debt has not been paid within a reasonable period.**
- Following the death of the customer if after 56 days of the termination of the agreement Probate has not been applied for the **Council will consider referring the matter** to an independent solicitor to apply for Probate and administer the estate **in order to receive payment for the outstanding debt.**

- ~~Once the~~ If an executor/personal representative has been granted Probate or **Letters of Administration** they will have a period of three months to pay the debt owed to Cheshire East Council.
- If the debt **is not paid and the** property has **not been sold** within six months of Grant of Probate, the executor/personal representative will be required ~~to place the property for auction at a price agreed with Cheshire East Council.~~ **to engage with Cheshire East Council and provide evidence of the efforts that have been made to sell the property including what efforts are to be made in the immediate future. Cheshire East Council reserves the right to commence litigation if there is a reasonable belief that insufficient efforts are being made to sell the property.**
- If the executor/personal representative does not co-operate with this process then Cheshire East Council will exercise its discretion when considering litigation.
- If litigation is considered to be appropriate then Cheshire East Council will commence debt recovery proceedings against the executor/personal representative and apply to the court to enforce the sale of the property.

10.4 If the property sale proceeds during the placement and there are sufficient funds for the Customer to become a self funder, Cheshire East Council will end its contract with the care home and the placement will be private and will seek to recover deferred charges.

10.5 The Client Finance Debt Team are responsible for calculating the amount owed and sending out relevant information.

10.6 The Termination Process

The Client Finance Debt Team should send the information to the legal representative or the Executor of the customers estate, with the following information:-

- Actual or provisional debt, broken down to show:-
 - i. amount derived from payment of fees
 - ii. other associated costs (listed by item)
 - Rate of interest to be charged and date of effect
- This should be sent after fourteen days of receiving notice of death.

10.7 If the DPA or LC has not been cleared within Four weeks of the date interest started to accrue, a reminder will be sent by the Client Finance Debt Team as per the Debt Recovery Procedures.

10.8 For those who choose to access the equity in their own property or from an estate of a deceased customer, the Council can signpost these people to appropriate independent financial services to access quality advice around investment for later life care cost planning. Information will be provided on the sale of any property.

11 Monitoring and Review

This policy will be reviewed in Twelve months unless prioritised as requiring one earlier.