

PROCEDURE TITLE	Deferred Payment Scheme Policy (Appendix B)
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PURPOSE	The purpose of the Deferred Payment Policy is to explain the parameters 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 the Council is able to treat as part of the financial assessment.</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, Top-Up, Charging Policy, and Write-off Procedures
RESPONSIBILITIES	<p>Care Manager</p> <p>Financial Coordinator</p> <p>Social Care Business Support and Finance</p> <p>Contracts</p>
ENQUIRY POINT	Alison McCudden, Senior Manager – Business Support and Finance
KEYWORDS	Deferred Debt, Deferred Agreement, Debt Recovery, Enforced Sale

PROCEDURE APPROVAL			
APPROVED BY		POSITION	
SIGNATURE	Version 4/amc/6.2.15	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.

Definitions & Abbreviations

Assessed Contribution	The amount that the customer is required to pay towards the cost of their care and support services.
CRAG	Department of Health Charging for Residential Accommodation Guidance – replaced by Schedule 1 and Schedule 2 of The Care and Support (Charging and Assessment of Resources) Regulations 2014.
Deferred Payment Agreement (DPA)	DPAs are offered by Cheshire East Council under The Care Act 2014. DPAs are a consensual agreement between the customer and the Council that enable the customer to defer payment of the difference between the full cost charge and the assessed contribution against 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 known as the Assessed Contribution. The documentation consists of a DPA Application Form and a Written Agreement, which is registered as a legal charge.
Options Form	This is the form the Customer completes in order to apply for a Deferred Payment.
Customer	The customer receiving the service, and where appropriate the term 'customer' shall also include reference to any person who has power of attorney next of kin, or who is legally entitled to act on behalf of the customer.

Legal Charge (LC)	<p>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. Legal charge may also refer to "Charging Order" or Judgement against a debt.</p>
Written Agreement	<p>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. The agreement ends once equity has been exhausted in the property, if the customer dies or if the customer is no longer supported by the Council for their care or if the property is sold. The Council may in some circumstances terminate a DPA by giving notice.</p>
Top up	<ul style="list-style-type: none"> • 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, the Third Party and the Council. 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 these 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.
Form A Restriction	<p>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</p>

	<p>debt. The requirement for a legal charge to secure the debt owed to the local authority is set out in section 34 of the Care Act 2014. 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 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.</p>
Administrative Charge	<p>The Council levy's a one off charge to cover the cost of dispersals and administration of the deferred scheme – this charge is deferred and is subject to repayment along with the deferred charges and any interest that applies at the end of the agreement. 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. This fee is expected to be paid from disregarded capital below the lower capital threshold. The administrative fee will attract interest charges.</p>
Interest	<p>Interest applies to Deferred Payments under The Care Act legislation. The rate is set at the Market Interest Rate as defined by The Care Act and is reviewed every 6 months. Where a Deferred debt falls to be settled but the customer does not do so, the Council applies interest at 1% above base capped at 8% to the debt.</p>
Equity Statement	<p>The Council has a duty to provide the customer with a statement every 6 months detailing the equity remaining in the property. Where equity is exhausted, the deferred agreement will come to an end and it is expected that the debt will be repaid at that point.</p> <p>The Council will allow deferred payments up to the lower capital limit and less 10% of the property value. This limit is described as the 'equity limit'.</p>

Cheshire East Council - Deferred Payment Scheme

1. Background

- 1.1 The Care Act 2014 comes into effect from April 2015. One of the new requirements of the Care Act is that Local Authority Adult Social Care services must offer the option of deferred payments in certain circumstances. A deferred payment is a way of postponing some of the costs of care by effectively offering a loan against the value of a service user's house or other property that they might wholly or partially own. To be eligible, service users' individual circumstances are assessed by the local authority against a set of national criteria. This means that from 1 April 2015 people may not need to sell their home in their lifetime to pay for the costs of care. The loan will be subject to interest charges from the start at the market rate.
- 1.2 From April 2015, all councils in England are required to provide a deferred payment for local residents who go to live in residential or nursing care, have an legal interest in a property, or who own a significant asset in their own right and have other assets below the upper capital limit set by the Department of Health. The customer must also have been deemed to have eligible care and support needs for permanent residential or nursing care as determined by a professional care manager
- 1.3 This Policy sets out Cheshire East Council's Deferred Payments Scheme from 1st April 2015.
- 1.4 For further information about the Care Act and deferred payments please see:

www.careandsupportregs.dh.gov.uk

www.gov.uk/government/publications/care-act-2014-part-1-factsheets

2. Deferred Payment Scheme in Cheshire East Council

- 2.1 Cheshire East Council's deferred payments scheme is consistent with the Care Act 2014 and supporting Regulations and statutory guidance The legal context to this Policy is set out below at section 24. The principles underpinning the scheme are:
 - To ensure that those who have been assessed as needing care may not need to sell their property to pay for care whilst they are within a Deferred Payment Agreement with the Council.
 - That those who can afford to pay a contribution towards care would be required to do so.

- To ensure that residents are fully informed about deferred payments and eligibility.
- That the scheme is self-financing and sustainable.

2.2 A DPA must be offered to those who meet all of the following criteria -:

- Anyone whose eligible care needs are to be met by the provision of Local Authority supported care in a care home. This is determined when someone is assessed as having eligible needs. This should comply with choice of accommodation regulations and care and support planning guidance and so take reasonable account of a person's preferences.
- Anyone who has less than (or equal to) £23,250 (£118,000 from April 2016) in assets excluding the value of their home (i.e. in savings and other non-housing assets); and
- Anyone whose property or asset interest is not disregarded, for example their previous home is not occupied by a spouse or dependant relative as defined in regulations on charging and support (please see 4.3). The disregards are set out in Schedules 1 and 2 of the Care Act Regulations.

3. Services covered by this scheme

- 3.1 This scheme covers residential and nursing care services. Cheshire East Council may also consider extending the deferred payment scheme to people receiving other care services at its discretion. A decision on extending eligibility to the scheme will be subject to approval at Director level.

4. The 12 week property disregard

- 4.1 Where a person 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 capital value of the property is not taken into account. The 12 week property disregard starts from the point that the customer/relatives and professional care manager agree permanent care is needed. This may pre-date a permanent placement (where a placement is still being sourced, or where panel approval is awaited).
- 4.2 After 12 weeks, unless the property is subject to a statutory disregard, the property is taken into account as a capital resource.
- 4.3 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. There are also circumstances where a carer resides in a property and the circumstances are such that the Council can apply its discretion to disregard

the property. However, there are circumstances where occupation of the property will not lead to the property being disregarded where the Council has investigated the case and established that the occupation is a 'deprivation of capital' (please see section 21).

- 4.4 During this 12 week period the Council will provide advice and information about deferred payments through the Financial Coordinator who will; guide the person or their Power of Attorney for independent financial advice, provide detailed information about Cheshire East Council's deferred payment scheme such as administrative charges, terms and conditions, interest applicable and equity statements. Detailed specific Information will be provided in communications between the service user and the council including by letter.

5 Eligibility for a Deferred Payment Agreement

- 5.1 Cheshire East Council must offer a DPA where the person receiving care (residential or nursing) meets the eligibility criteria and is able to provide adequate security for the deferred payment.

Under the Care Act and supporting Regulations a DPA will be offered to anyone who meets the following eligibility criteria, from April 2015:

- Where the person has eligible care needs which should be met through residential or nursing care.
 - Has capital of less than £23,250 (in 2015/16, increasing to £118,000 2016/17). Capital includes savings and other non-housing assets, excluding the value of the person's main home.
 - Where the main home is taken into account as part of the financial assessment (those people not entitled to an automatic property disregard as explained in previously at 4.3)
- 5.2 To qualify for a DPA the person living in residential or nursing care must have the mental capacity to enter into a DPA. Where the person lacks mental capacity then the person entering into the DPA must be legally appointed to manage their finances, for example Deputyship or Lasting Power of Attorney.
- 5.3 Where the individual is eligible for a DPA the local authority may exercise discretion to refuse a DPA where for example:
- The Customer or representative does not cooperate with the requirements of the scheme offer.
 - The Council is unable to secure its debt using an appropriate method such as property charge.
 - The property is uninsurable
 - Where someone wants to defer more than they can provide adequate security for.

- Where there is insufficient equity in the property.

5.4 There may also be circumstances when the Council decides not to continue with a DPA and in these cases a financial assessment review would be conducted to determine the customers contribution, for example:

- The person has exhausted their equity in the property.
- Where a spouse/dependent relative or other moves into the property after the Deferred Payment Agreement is in place without agreement with the Council.
- Where a review of the customers circumstances demonstrate the Deferred Arrangement can end such as entitlement to Continuing Health Care or where the customer dies.
- Where a person does not comply with the terms and conditions of the agreement.

This is not an exhaustive list.

6. How much can be deferred

6.1 The Council will defer weekly the actual cost to the Council of residential or nursing care less any financially assessed contribution from the customer.

6.2 The Council will allow deferred payments to accrue against the property value up to the lower capital limit (currently £14,250 rising to £17,000 in 2016) plus 10% of the property value to cover sale costs (sale costs will be shared across the interested parties if a property is jointly owned). The maximum amount that can be deferred against a property is the 'equity limit'.

For Example: A property is valued at £200,000

The Council would deduct:

10% of the property value for sale costs £20,000

And the lower capital limit of £14,250

In this scenario the "equity limit" which can be deferred is £165,750

6.3 In some cases a customer may choose a care home with a higher weekly price than that agreed by the Council. In these cases the customer who has opted to defer charges against their property may be allowed by the Council to defer the weekly top up. This will only be acceptable where:

- The property is actively marketed;
- 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 has been exhausted and they can no longer afford to pay a top up the customer may have to move to an alternative care home.

7. Assessment of Applications

- 7.1 All applicants for a DPA must complete Cheshire East Council's options form. When assessing whether the Council is able to offer a DPA the Council will have regard to the following:
- The likely duration of the DPA and sustainability.
 - Equity available in the property
 - Contributions which may be made from a person's savings
 - The period of time a person would be able to defer weekly care costs
 - Rental of empty property options
 - How the customer intends to maintain the property and keep it safe to retain value.
- 7.2 All applicants for a DPA must cooperate fully with the Financial Assessment and complete the property questionnaire form in full, disclosing full and accurate information about the customers' circumstances and finances.

8. Obtaining Security

- 8.1 The Council is required to have adequate security in place when deciding whether a person is entitled to a DPA. The onus is on the person applying for a deferred payment, that they or their representative provides evidence that they are able to give the Council adequate security. Where the person owns a property this security will usually be in the form of a legal charge on the property. In cases of jointly owned properties the Council will require all of the owners' full agreement and cooperation to the charge being registered against the property.
- 8.2 The Council has discretion to accept other forms of security on a case by case basis, for example from a third party guarantor. This discretion will not be offered universally. The Council will need to be satisfied that there is adequate security to protect the interests of the Council and that the debt is secure.

9. Charges

- 9.1 Interest is mandated and set nationally under The Care Act 2014. Interest will apply to a DPA from the beginning until the close of the agreement. The 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 final interest rate is derived by adding this gilt yield rate to the default component (0.15%).
- 9.2 For example: Based on gilt rates of 3.1%, the interest rate would be 3.25% once the default component is added in.

- 9.3 The Council applies a subsidised administrative fee for arranging the deferred payment to cover some of the costs of providing the deferred scheme – this is currently set at £400.
- 9.4 The Administrative fee is deferred and subject to interest but would be paid from the lower capital threshold (currently £14,250 and £17,000 from April 2016).
- 9.5 Administrative fees covers some of the costs of providing a DPA, including:
- The cost of registering and lifting a charge with the Land Registry
 - Legal dispersals, including any Land Registry searches.
 - Costs of valuing and re-valuation of the property.
 - Staffing, management and legal costs
- 9.6 All charges and fees will be clearly set out within the Deferred Payment Agreement and correspondence.

10. Property valuation

- 10.1 Under the deferred payment scheme the customer will be expected to provide a valuation of the property or asset against which payments will be deferred. This should be an estate agent valuation or a specialist independent valuation. The Council may in some cases seek to value the property to confirm value. The cost of valuation(s) will be paid for by the deferred payment applicant or their representative.
- 10.2 The Council may re-value the property periodically during the lifetime of the DPA to ensure the agreement is valid and that the equity limit is not exceeded or where the value of the property will affect the sustainability of the Deferred Payment Agreement.
- 10.3 The Council will provide equity statements at least annually and will notify the customer/representative in advance of the equity being exhausted. It is expected that the customer/representative notifies the Council of any change in the property – such as transfer, sale, building works, damage etc.
- 10.4 Disputes about property valuation will be dealt with under the Complaints procedure. The Director of Adult Social Care has the ultimate decision.

11. Deferred Payment Agreement

- 11.1 Successful applicants will be required to enter into a Deferred Payment Agreement (DPA) with the Council. The Council can enter into an Agreement with residents, who are the owner(s) of a property or their representative who holds a Power of Attorney or a Deputy appointed by the Court of Protection, providing the application conditions are fulfilled, as described in this scheme.

11.2 The Deferred Payment Agreement will set out the following terms:

- Interest rates and how interest will be worked out against the deferred payment
- How the agreement can be terminated
- Circumstances on which the Council can refuse to pay any more care fees
- Details of the property charge or any other form of security
- Information on the effects of taking out a Deferred Payment Agreement
- Restrictions on what the deferred amount can be spent on
- How problems should be resolved if either party feels the terms of the agreement have been broken

12. Conditions of entering into a Deferred Payment Agreement

12.1 The Deferred Payment Agreement takes effect upon the applicant's or duly appointed representative signing the Deferred Payment Agreement. A certified copy of the appointment of a Power of Attorney or order from the Court of Protection appointing a Deputy will be accepted as evidence of authorisation to sign on behalf of the applicant.

12.2 The person entering into the DPA will also be required to abide by a number of conditions:

- That the property is maintained in reasonable standard of repair and condition. The Council expects property subject to a DPA to be maintained to retain value, if not the property may be condemned and enforce sale action would follow.
- All outgoings associated with the property (e.g. Council tax, service charges, ground rent, insurance) are paid.
- That any net rental income derived from letting the property during the period of the scheme will be assessed in accordance with Department of Health statutory guidance.
- That the person receiving care and/or their representative acknowledges that they have received the Council's advice that they should seek independent financial advice before committing themselves to this agreement.
- That the client makes a full application for assistance on the Council's designated application form, and provides any evidence required by the Council in support of the application.

- Where the property is jointly owned, the co-owners as well as the applicant must agree to the Council's form of charge.
- That the applicant or representative notifies the Council of any change in circumstances which would affect the value of property or the sustainability of the deferred payment. This includes informing the Council of when someone intends to move into the property.
- 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 to allow necessary expenditure up to £144 per week 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.

13. Financial assessment of contributions

- 13.1 Applicants entitled to a deferred payment will be assessed to make a weekly financial contribution towards the costs of care from their assessable income and capital (for example, savings and investments).

14 Letting the Property

- 14.1 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.
- 14.2 Customer's should be advised that no letting agreement should be entered into or keys given to a prospective tenant before the DPA and legal charge has been entered into.
- 14.3 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.
- 14.4 If the property is already let, legal advice should be sought before proceeding any further with the DPA.
- 14.5 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.

- 14.6 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.
- 14.7 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.

15. Bi Annual Reviews and Deferred Payment statements

- 15.1 The Deferred Payment arrangements will be reviewed 6 monthly to assess the value of the property and ensure that there is adequate security to protect the Council's legal charge on the property and/or any other asset accepted as security.
- 15.2 In addition to reviewing the deferred payment a 6 monthly statement will be sent to the person entitled to the deferred payment and/or their representative. This statement will set out: the amount of fees deferred; interest and administrative charges to date; total amount due and equity available in the property. The statement will record the amounts deferred and progress towards the deferred payment upper limit.

16. Terminating the Deferred Payment Agreement

- 16.1 The Deferred Payment Agreement can be terminated in a number of ways:
- Voluntarily by the person receiving care or someone acting on their behalf paying the full amount that is due
 - When the property (or other form of security) is sold
 - When the equity in the property is exhausted.
 - When the person receiving care dies.
 - When the person receiving care is no longer financially supported by the Council.
- 16.2 Where the agreement is voluntarily terminated the Council will require written notice of termination (the full terms under which the agreement can be terminated will be set out in the Deferred Payment Agreement)
- 16.3 On termination the full amount due (care charges, interest accrued, administrative and legal fees) will be paid to the Council.
- 16.4 If the person decides to sell the property they must notify the Council. They will be required to pay the Council immediately from the proceeds of the sale.

- 16.5 The Social Care Business Support and Finance Team will send the following information to the legal representative or the Executor of the customers' estate when notified of the intention to sell or on termination of the DPA:

Actual or provisional debt, broken down to show:-

- Amount derived from payment of fees
- Other associated costs (listed by item)
- Interest charged and date of effect

This should be sent after fourteen days of receiving notice of death.

- 16.6 The deferred payment will automatically come to an end on a person's death. The debt can either be paid from a person's estate or by a third party, for example a family member may choose to settle the debt rather than sell the deceased's property. If the agreement is terminated through a person's death the total amount due becomes payable within 90 days after the person dies.
- 16.7 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 accrued debt which must be re-paid in full from the sale proceeds.
- 16.8 Once Debt is recovered the Social Care Business Support and Finance Team will notify the Legal Team who will remove the DPA or LC from the customer's title.

17. Reassessments following repayment to the Council

- 17.1 If a Deferred Payment Agreement is terminated, because for example the deferred payment is repaid, the Council shall undertake a reassessment of the persons social care needs and finances. The purpose of the reassessment would be to ensure, for example; that the person receiving care continues to have eligible care needs and identify where the Council has a continuing responsibility to fund or arrange care.
- 17.2 If the property sale proceeds during the placement and there are sufficient funds for the Customer to become a self funder, Cheshire East Council may end its contract with the care home and the placement may be private. The Council will seek to recover deferred charges.

18. Refusing an application

- 18.1 The Council can refuse a request for deferred payment. In such circumstances the decision will be notified in writing to the applicant and/or their personal representative. The decision will set out the grounds for refusal and provide for appeal rights. 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 Councils normal payment terms, 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 appropriate legal charges for dispersal costs in these circumstances. Reasons for refusing a deferred payment can include:

- There is insufficient equity in the property to fund the deferred payment
- The applicant or their representative has failed to provide all of the relevant information to process the application
- There is no-one with capacity or legal authority to enter into a deferred agreement.
- The Council is unable to place a legal charge on the property which would secure the deferred payment
- The customer does not cooperate with the requirements of the DPA.
- The customer is seeking a top up that does not meet the criteria set out at section 6.3

18.2 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, the customer will be invoiced the full cost of the care plus any associated legal costs actually incurred. 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. The Council will then consider making an application to enforce the sale of the property in order to pay the debt from the proceeds of sale.

19. Review and Appeals

19.1 The decision on the outcome of the application for a DPA can be reviewed. The grounds for review could include:

- The decision to refuse the application failed to take into account any new information which would have led to a revision of the decision.
- There are eligible care costs which the Council have failed to take into account

19.2 Requests for a review should be made within 20 working days of being notified of the outcome of the application for a Deferred Payment Agreement. This period can be extended if there are exceptional circumstances.

19.3 If the person is dissatisfied with the outcome of the review, they can then appeal within 20 working days of being notified of the outcome of the review. This period can be extended for exceptional reasons.

19.4 If the person remains dissatisfied with the outcome of the appeal then they can request that this matter is dealt with under Cheshire East Council's Adults Social Care Complaints procedure.

20. Information and advice

- 20.1 The Council will provide advice and information in person to those who wish to enter into a deferred arrangement with the Council – this will be done through a Financial Coordinator. General information and advice about deferred payments will be made available through a variety of channels; for example, web, leaflets. Information and advice will be provided during the 12 week property disregard period and at other stages during the care and financial assessment process.
- 20.2 Advice and information also includes financial advice and under the Care Act all local authorities are required to ensure that people have access to independent financial advice.
- 20.3 The Council can signpost 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 subject to deferred charges.

21. Deprivation of Assets

- 21.1 In circumstances where a property is transferred to another person at a time when the transferor knows, or ought to have known, that they will be in need of Local Authority funded care, and transfers the property in order to qualify for financial help from the local authority, is likely to be the subject of the “deprivation of assets” rule.
- 21.2 If any member of staff suspects that a 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. The Council can periodically check that the property is still owned by the customer. 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 and to treat the property according to their findings as a result of that investigation.
- 21.3 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.

22. Non Payment of Deferred Debt

- 22.1 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%. The 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.
- 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 the 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 engage with the 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. The 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 the Council will exercise its discretion when considering litigation.
- If litigation is considered to be appropriate then the Council will commence debt recovery proceedings against the executor/personal representative and apply to the court to enforce the sale of the property.

23. Monitoring and Review

23.1 This policy will be reviewed in twelve months unless an earlier review is indicated due to changing circumstances.

24. Legal Context

- The statutory regime for deferred payment agreements is set out at section 34 to 36 of the Care Act 2014. This provides the definition for a deferred payment agreement at section 34(2) and also explains that the Regulations provide conditions as to when the local authority is required to offer a deferred payment agreement and when it is permitted to.
- The Care and Support (Deferred Payment) Regulations 2014 provide the specific conditions required in relation to deferred payment agreements.

- The Department of Health has provided Statutory Guidance dated October 2014 in support of both the Care Act and the supporting Regulations.
- Section 2 of the Regulations sets out the circumstances when a local authority is required to offer a deferred payment agreement. This includes the specific eligibility criteria that a resident must satisfy in order to be offered a deferred payment agreement.
- Section 3 of the Regulations sets out the circumstances when the local authority is permitted to enter into a deferred payment agreement without there being a specific requirement to do so.
- Section 4 of the Regulations sets what form of security amounts to 'adequate security' sufficient to enable a deferred payment agreement to be entered into. Further, it explains that the local authority can accept other forms of security at its discretion.
- Section 5 of the Regulations Loan to Value.
- Section 6 of the Regulations sets out the rules governing the resident's contribution.
- Section 7 of the Regulations sets out the rules regarding repayment of the deferred amount.
- Section 8 of the Regulations sets out the rules regarding termination of the deferred payment agreement.
- Section 9 of the Regulations sets out the rules regarding what interest a local authority may charge in addition to the deferred amount.
- Section 10 of the Regulations provides that the local authority may charge the adult its administration costs incurred in entering into the deferred payment agreement.
- Statutory Guidance October 2014 at Chapter 9 provides specific guidance in relation to deferred payment agreements.
- The Deferred Payment Agreement signed by both the local authority and the resident or their representative must satisfy the requirements set out in Regulation 11 of the Care and Support (Deferred Payment) Regulations 2014. The Statutory Guidance October 2014 at Chapter 9 provides additional guidance on what local authorities should include in the deferred payment agreement.
- In addition to Cheshire East Council's to-up policy and the Statutory Guidance October 2014 at Chapter 9, Annex A: Choice of Accommodation and additional payments deals with the circumstances when a resident is required to pay a top up how this can be facilitated.
- There are circumstances where a property may be disregarded in the financial assessment of a resident. The circumstances where the property is disregarded can be found in the Statutory Guidance October 2014 Annex B: Treatment of Capital, at point 34 to 44.
- Guidance in relation to the debt recovery process for unpaid charges is set out in the Statutory Guidance October 2014 Appendix D: Recovery of Debts.

- Statutory Guidance Annex E: Deprivation of Assets provides guidance to local authority on how to approach a case where a deprivation of capital may have taken place.
- The Council's policy in relation to Top Up's is in accordance with the Care and Support and Aftercare (choice of Accommodation) Regulations 2014.