SUNDERLAND CITY COUNCIL

DEFERRED PAYMENTS SCHEME

1. INTRODUCTION

1.1 Sections 34 and 35 of the Care Act, requires Councils to offer Deferred Payment Agreements that allow customers to defer the sale of their property when it is needed to fund their care fees.

1.2 This scheme is compliant with the legal framework laid out in the Care and Support Statutory Guidance issued under the Care Act 2014.

1.3 This updated scheme is effective from **8 April 2024**.

2. SERVICES COVERED BY THE POLICY

2.1 Customers can defer charges against their property for residential or nursing care, extra care and supported living.

2.2 The scheme can also be offered to customers receiving a personal budget for non-residential services where they own a second property in which they are not residing that is included within their financial assessment for charging purposes.

3. ELIGIBILITY CRITERIA

3.1 The Council will offer a deferred payment to customers who meet the following:

- anyone whose needs are to be met by the provision of care in a care home;
- anyone who has less than (or equal to) £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets); and
- anyone whose home is not disregarded within their financial assessment.

3.2 In order to qualify for a deferred payment:

- the person must have a beneficial interest in the property;
- there should either be no outstanding mortgage on the property OR the remaining equity after the mortgage must be sufficient for the person to be assessed as self-funding;
- the person themselves or their legal representative must consent to the agreement;
- the agreement itself must be signed by a person with capacity or their legal representative.

3.3 Consideration will be given to those who have assets in excess of £23,250, excluding the value of their home, but whose assets are not accessible – i.e. they cannot be easily or quickly liquidated or converted to cash to enable them to pay their care home fees.

3.4 Consideration will also be given to those who are narrowly not entitled to a deferred payment – i.e. they have slightly over £23,250 and are likely to meet the criteria in the near future.

3.5 Consideration to offer deferred payments to anyone not meeting the eligibility criteria described above will be made on a case-by-case basis.

4. COMMENCEMENT OF THE DEFERRED PAYMENT

4.1 The Deferred Payment Agreement will commence from the date the property is included in the financial assessment to calculate the person's contribution towards their residential care – i.e. the date from which they would become self-funding.

4.2 This is normally 12 weeks from their date of admission, however it will depend on individual circumstances (for example, where the person has previously been self-funding, the 12-week period does not apply).

5. REQUIREMENTS ON THE PERSON RECEIVING THE DEFERRED PAYMENT

5.1 The person should provide the Council with an estate agent's valuation of the property. Where they are unable to do so, the Council can supply this, however the full cost of doing so will be added to the amount deferred.

5.2 The person is required to adequately insure the property and must supply evidence to the Council. The insurance must cover the property being empty long term.

5.3 The person must maintain the property to such a standard that there is no reduction in value as a result of deterioration.

5.4 Any person refusing to sign up to the Deferred Payment Scheme will be deemed to be able to pay the full cost of their care to the provider. Any non-payment of fees brought to the attention of the Council by the provider will be dealt with through the Council's debt recovery procedure.

6. RENTING OUT THE PROPERTY

6.1 It is recommended that the person considers renting out the property.

6.2 The rental income will then be included in the person's financial assessment, meaning that they are able to pay more towards their care fees upfront, thereby reducing the debt they are accruing against their property.

7. FEES AND INTEREST

7.1 There will be a set-up fee for the administering of a Deferred Payment Agreement.

7.2 This fee will be added to the deferred amount and recovered from the value of the property.

7.3 The set-up fee is currently **£807** and is calculated as follows:
- Staffing costs (including management) - £345
- Legal costs - £415
- Postage / printing etc. costs - £19

• Disbursements - £28

7.4 An annual fee of **£82** will be charged to the account on the anniversary of the Deferred Payment Agreement to cover administration costs linked to the maintenance of the agreement.

7.5 Interest will be charged from the date the debt begins to accrue (this is usually 12 weeks from date of admission but depends on individual circumstances and will be confirmed in the Deferred Payment Agreement).

7.5 The interest rate applied is set out by the Care Act and is based on the cost of government borrowing. It will be reviewed 6 monthly in January and July.

7.6 Compound interest will be applied.

8. SIGNING UP TO THE DEFERRED PAYMENTS AGREEMENT

8.1 The person signing the Deferred Payments Agreement must have mental capacity to do so.

8.2 Where the person themselves does not have mental capacity, a third party with legal authority must sign on their behalf. The legal authority must either be Deputyship via the Court of Protection or a registered Lasting Power of Attorney.

8.3 The Deferred Payments Agreement must be signed within the first 12 weeks of the person's placement in the care home – i.e. within the 12-week disregard period, prior to the commencement of the Deferred Payment.

8.4 Where there is no third party with legal authority, this must be put in place in order for the person to obtain a Deferred Payments Agreement. Where a third party is to apply for Deputyship, the Deferred Payments Agreement will be signed once this is awarded. The third party must sign an undertaking to sign up to the Deferred Payment Agreement once this is through.

8.5 Where there is no third party willing or able to apply for Deputyship on behalf of the person, the Council will make the application and handle the person's affairs to enable them to benefit from the Deferred Payment Scheme.

9. SECURITY

9.1 In order to offer a Deferred Payments Agreement, the Council will obtain security against the property in question.

9.2 The security will be in the form of a first legal mortgage charge against the property – this can be applied where the person owns the property outright without a mortgage or other charge on it.

9.3 The Council will accept a second charge as security only where the person has a mortgage owing on the property and the remaining equity means they will be assessed as a self-funding resident.

9.4 Where the person is unable to provide the security described above, alternative security will be considered on an individual basis.

9.5 The Council reserves the right to refuse to offer a deferred payment where it is not satisfied that its interest is secure.

10. PROPERTY VALUATION

10.1 The purpose of obtaining a valuation of the property is to establish whether the available equity is greater than the upper capital limit and will therefore make the person self-funding.

10.2 The calculation to determine the available equity (after any outstanding mortgage has been disregarded) will be as follows:

- Property valuation minus 10% of the value minus £14,250
- The 10% deduction is to allow for future sale costs (please note, when the property is sold, the actual sale costs will replace this figure)
- £14,250 is the lower capital limit and is the amount of capital each person must be left with when they are assessed for residential care.

10.3 Where the person is able to provide an estate agent's valuation on the property that is dated within the last 3 months, this valuation will be used.

10.4 Where an estate agent's valuation is not supplied, the Council will obtain a valuation, the cost of which will be added to the set-up fees detailed in section 6.

10.5 The valuation will be updated annually (as described above) on the anniversary of the person's admission to care. This is to ensure that sufficient equity remains for the person to continue to be classed as self-funding.

11. PERIODIC STATEMENT OF ACCRUED DEBT

11.1 The Council will send a six-monthly statement of the deferred amount that has accrued against the property.

11.2 This will be provided on the 6 month and annual anniversary of the person's admission to care.

11.3 The impact of any revised valuation on the property will be taken into account in the amount owing.

12. BENEFIT ENTITLEMENT DURING THE DEFERRED PERIOD

12.1 As a self-funder, the person is likely to be entitled to, and should apply for, Disability Living Allowance (DLA) Care Component, Attendance Allowance (AA) or Personal Independence Payments (PIP).

12.2 These benefits will be included in their financial assessment, meaning that the amount accruing against the property will reduce.

12.3 The person themselves or their legal representative is responsible for notifying the Disability Benefits Unit (DBU) or Department for Work and Pensions (DWP) of any change in circumstances.

13. INCREASED PERSONAL EXPENSES ALLOWANCE

13.1 A person in residential care normally receives a personal expenses allowance (PEA) of **£30.15**. Those in receipt of a deferred payment can increase this up to the amount of **£144.00** per week, should they wish to do so. This is called your Disposable Income Allowance (DIA).

13.2 The increased PEA is to allow the person to maintain and insure their property whilst it is under the deferred payment agreement. This allowance may be less than the £144.00 if you are deferring only tariff income (Between £14,250 and £23,250) rather than the full cost, however this will be explained during the financial assessment process.

13.3 The person can choose the amount of PEA they take from between £30.15 up to £144.00 – any reduction in their PEA from the full amount of £144 will reduce the amount accruing against the property.

13.4 On leaving the deferred payment scheme, the PEA will revert to the normal figure of £30.15.

14. WHEN THE DEFERRED PAYMENT ENDS

14.1 The Deferred Payment will end under one of the following circumstances:

- The sale of the property; or
- The death of the person; or
- The equity remaining in the property is depleted due to the amount accrued on the deferred payments agreement, meaning that the person is no longer assessed as self-funding.

14.2 <u>Sale of the Property</u>
On the sale of the property, the deferred amount, which includes interest and fees, must be paid in order for the legal mortgage charge to be lifted from the property. The solicitor handling the sale of the property will usually contact the Council prior to completion in order to obtain a settlement figure and arrange payment. The sale cannot progress until payment is made.

14.3 <u>The Death of the Person</u>
On the death of the person receiving the care, the deferred amount, which includes interest and fees, becomes due. Interest will continue to accrue until payment is made.
Payment can either be made by the estate or can be paid following the sale of the property.
Where payment is to wait until the sale of the property, the estate is required to ensure that the following is carried out:

- Within 3 months of the death of the person receiving care, the estate must submit a valuation of the property to the Council and ensure that the property is on the market for sale;
- Where the property has not sold within 6 months of the death of the person, the estate will review the current position – this will include reviewing the estate agent and the asking price;
- Where the property remains unsold within 1 year of the death, the estate is required to pay the amount owing in full, the estate can do this either by putting

the property up for auction or by the beneficiaries of the estate paying the amount due.

Once the debt becomes payable the Council will follow their corporate debt management process until any amounts owed are repaid. If the Council conclude that active steps are not being taken to repay the debt, they may enter into legal proceedings to reclaim any amount due to them.

14.4 The Equity Remaining in the Property is Depleted

Where the equity remaining in the property after any outstanding mortgage and the deferred amount owing is depleted, the deferred payments will end as the person will no longer be assessed as self-funding.

The Deferred Payment Agreement itself will remain in place for the period up to the end of the person's self-funding status until such time as the amount owing is settled in full.