

# The Deferred Payments Scheme

Blackpool Council



# The Deferred Payments Scheme

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## 1. Introduction

- 1.1. This document is based on the Good Practice Guide produced by the National Association of Financial Assessment Officers and outlines the Council's process and procedures regarding the Deferred Payments Scheme. This document is intended to provide a point of reference for staff, care providers, service users and other members of the public.
- 1.2. The Health and Social Care Act 2001 (Section 55) enables local authorities to operate a Deferred Payments Scheme designed to help if a person is assessed as having to pay the full cost of their residential care but cannot afford to pay the full weekly charge because part of their capital is tied up in a property which they do not wish to sell in the short term.
- 1.3. It also allows the Deferred Payment Scheme to be offered to people who decide to sell their home but it is unlikely that the home will be sold quickly enough to meet the full cost from admission and temporary financial assistance is required. <sup>1</sup> The Deferred Payment Scheme is available to individuals at the discretion of the Council.

## 2. Abbreviations and Definitions

**DPA** – Deferred Payments Agreement

**Legal Charge** - A legal charge on a property is a document that is held by Land Registry and names the person who holds the first charge or right on a property when it is sold. It is a security to ensure payment of debt and prevents a property being sold without repayment of that debt.

**FACS criteria** – Fair Access to Care Services criteria are the guidelines used by Councils to decide if a person qualifies to receive care and support from Adult Social Services. These criteria are used to make sure everyone is treated fairly.

**HASSASSA** – Health and Social Services and Social Security Adjudication Act 1983.

**Upper Capital Limit** - A care home resident with capital (i.e. savings, property, investments etc.) of more than **£23,250**<sup>2</sup> in value is liable to pay the full cost of their care and accommodation.

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<sup>1</sup> Deferred Payments are distinct from the pursuit of debt through section 22 of HASSASSA 1983. Deferred payments should be offered when individuals are willing to pay their assessed contribution but do not wish to do so immediately. Section 22 of HASSASSA applies to situations where residents are unwilling to pay their assessed contribution, either now or in the future, and a debt arises.

<sup>2</sup> This figure is set annually by the Department of Health and documented in the "Charging for Residential Accommodation Guide". The figure of £23,250 is the applicable figure for 2013/14.

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**Personal Expenses Allowance** – In the process of working out how much an individual is able to pay towards the cost of their care and accommodation, the Council must ensure that a set amount per week is left available for the person to spend as they wish. The amount is set each year by the Government and in 2013/14 is £23.90 per week.

**CRAG** – The Department of Health’s “Charging for Residential Accommodation Guide”.

**SCBT** – Social Care Benefits Team

## 3. Eligibility Criteria

3.1. Legislation allows the Council to make a judgement as to whether a service user can access the deferred payments scheme. It is assumed that the individual meets the Council’s FACS criteria and that the outcome of a care assessment is that the individual has needs that can only be met on a permanent basis within a care home.

3.2. In order to qualify the applicant must meet the following criteria:

- a. To have entered permanent residential care on or after the 9th April 2001.
- b. They do not wish to sell their home or they are in a position that if it is marketed it may not sell for some time.
- c. They own or part own a property and this equates to more than the upper capital limit of £23,250 (2013/14).
- d. Any outstanding mortgage (or other charge) on the property must leave sufficient value to meet the criteria in c. above and there must be sufficient resources to meet any mortgage payments as they fall due.
- e. They have insufficient income and other assets of less than £23,250, excluding the value of their main or only home, to meet the cost of their care.
- f. They must agree to keep the house adequately insured to cover both fire and theft.
- g. They must be able to demonstrate that the property will be kept in a good state of repair and adequately secured in order to preserve the market value of the property.
- h. They must agree to the legal charge being placed on the property.
- i. They must agree to pay the legal costs associated with setting up a deferred payments agreement.
- j. They must agree that it is their responsibility to seek independent financial advice on the advisability of entering into the scheme.

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- k. They must be able to enter into such an agreement in terms of mental capacity or have an appropriately authorised representative.

## **4. Assessment of Care Needs**

- 4.1. At the point that it is agreed that the service user's assessed needs will be most appropriately met in residential care, the social worker will need to discuss with the service user the options regarding any property that they own. Local authorities are required to ensure that people considering entering residential care are made aware of the Deferred Payment Scheme. Factsheets are available for the service user.
- 4.2. The service user may decide to try and sell their property as soon as possible or they may decide:
  - Not to sell their property and enter into a DPA
  - Not to sell their property and not enter into a DPA

## **5. What happens if the service user decides to sell their property**

- 5.1. If a person decides to sell their property then consideration will still be given to placing a legal charge on it under the 1983 Act (HASSASSA). This will be done in order to protect the Council's interests as the property may take some time to sell and the Council needs to be in a position to recover any fees paid on behalf of the service user when the property is sold. The legal charge will be placed on the property 12 weeks after the permanent residential placement began. The Council will incur some additional costs in placing the charge and it is the Council's policy to recover these costs in addition to the debt when the property is sold.

## **6. What happens if a person decides not to sell their property and enter into a DPA**

- 6.1. If the service user wishes to enter into a DPA then a referral is made by the social worker to the Social Care Benefits Team who will send out further information and an application form. People wishing to take advantage of the scheme will be advised in writing to seek independent financial advice before entering into a DPA. The service user or their appointed representative will complete the application form and return to the Social Care Benefits Team who will undertake initial checks to ensure that the eligibility criteria are met. If the criteria are satisfied a referral will be made to legal services for a search against Land Registry records. See Appendix 1 Referral Flowchart, page 14-15.

## **7. What happens if a person decides not to sell their property**

- 7.1. If the service user does not want to sell their property but chooses not to take advantage of the scheme, a referral to Legal Services is required and a legal charge will be placed on the property under HASSASSA. It is the Council's policy to recover the legal costs incurred in placing the charge, in addition to the debt when the property is sold.

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7.2. If the service user does not meet the eligibility criteria for the scheme (e.g. they have other capital resources over the upper capital limit) then it will be expected that the person can meet the full cost of their care directly.

### 8. Valuation of Property

8.1. The service user will be required to provide a formal valuation of the property, carried out by a suitably qualified professional e.g. member of National Association of Estate Agents or Royal Institute of Chartered Surveyors, as part of the application process. The Social Care Benefits team will ensure that this is provided by the service user. If the service user is unable to provide a valuation at the time of the application, this can be arranged by the Council for a fee to cover the cost<sup>3</sup>. This fee will be recharged to the service user either at the time the valuation is provided or if necessary, as part of the deferred payment.

8.2. The valuation will initially be used to determine if the service user has capital over the upper capital limit and is therefore liable for the full cost of their care. Later in the process, it will be used to identify the remaining value of the equity after deducting the accruing debt from the property valuation figure.

8.3. The valuation should be reviewed periodically to ensure that it reflects any upward or downward trends in the market. The valuation will be net of any outstanding loan/mortgage on the property and of any repayment requirements of the property if it was purchased through "Right to Buy". An allowance of 10% of the estimated value should be allowed for sale costs to give a net estimated value. When eventually sold the actual costs of sale are deducted.

8.4. If there is any doubt or disagreement about the figure supplied by the service user then the valuation should be verified by an independent assessor and the cost will be recharged to the service user.

8.5. A professional valuation expert should be asked to provide a current market valuation of a leasehold property in the same way as for freehold. Leasehold properties with a long period are generally valued at the same level as freehold.

### 9. Legal Steps

9.1. Legal Services will carry out an ownership search and check for any other charges on the property and report back to the Social Care Benefits Team. If a property is unregistered, Legal Services will provide a first registration service, or the service user can instruct their own solicitor. If the Council provides this service, there will be a charge based on the prevailing cost of land registry fees plus an administration charge.

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<sup>3</sup> Refer to the Council's latest fees and charges schedule for the current figure.



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- 9.2. It is the Council's policy to recover any legal costs incurred in drawing up the agreement, including a charge for administration. These costs can be paid at the outset of the agreement or added to the accruing debt and recouped when the property is eventually sold.
- 9.3. Final checks will be undertaken by the Social Care Benefits Team, including a check to ensure that there is sufficient equity in the property after any other charges or mortgages have been taken into account. An instruction will then be sent to Legal Services to prepare the DPA and legal charge and any further information such as the commencement date of the agreement will be supplied.
- 9.4. A formal legal agreement will be drawn up and sent to the service user or their representative for signing. The recommendation to seek legal advice before the agreement is signed will be put in writing to the service user or their representative. The charge will be placed on the property when the agreement has been signed and returned to Legal Services. Legal Services will notify the service user or their representative and send them a copy of the signed agreement and also inform the Social Care Benefits team.
- 9.5. The Social Care Benefits Team will write to the service user and notify them of their assessed weekly contribution, the weekly rate that the debt will grow and any other costs that will eventually be added to the total. The service user will also be notified of the intervals at which they will be informed of the current outstanding debt. (See paragraph 10.2).

### **10. Administration of the Deferred Payments Agreement**

- 10.1. The Social Care Benefits Team will be responsible for recording the details of the DPA and the legal charge in the electronic social care information system (FWi) and the amount of debt covered by the charge on a 4 weekly or monthly basis.
- 10.2. The service user will be informed on an annual basis of the current level of the outstanding debt, reminded of the rate at which it is growing and given an estimate of the length of time their remaining assets will be sufficient to fund the full cost of their care.
- 10.3. The value of the property will be reviewed on an annual basis by reference to professional valuation advice.
- 10.4. When the remaining equity value reduces to the upper capital limit, a financial reassessment of the service user will be undertaken in accordance with Department of Health's "Charging for Residential Accommodation Guide". The service user will be advised of the revised contribution and the ongoing payment requirements.



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10.5. When the remaining equity falls to the income support/pension credit upper limit<sup>4</sup>, a claim should be made to the appropriate Benefits office by the service user or their representative with the support of the Social Care Benefits Team if required. In the event that a claim for benefit is refused then a review of the decision should be sought immediately and voluntary sector organisations should be able to provide assistance with this.

## **11. Increased Personal Expenses Allowance for Property Maintenance**

11.1. The costs involved in maintaining the property e.g. insurance and repairs must be met by the service user. In circumstances where the property needs to be maintained to avoid a loss in value, it will be appropriate to make an allowance to cover the basic costs of maintenance and insurance of the property.

## **12. Letting the property**

12.1. If rental income is generated through the letting of the property, this income must be paid to the Council to reduce the accruing debt. Service users should be advised that no letting agreement should be entered into before the DPA has been agreed and a legal charge placed on the property. Any proposed tenancy agreement must in all cases be on an assured shorthold tenancy basis. If a property is already let, legal services should be consulted before any further action is taken.

## **13. Ending the agreement before the sale of the property**

13.1. The service user has the right to bring the DPA to an end by giving notice to the Council at any time, in which case the service user must specify the date on which the agreement ends. The service user will then repay the total amount that is owed to the Council at that date. Interest will be chargeable at a rate equivalent to the Bank of England base rate plus 1% per annum for every day the debt is not repaid from the day after the agreement has ended.

## **14. Sale of property before Death**

14.1. If the service user chooses to sell the property at a subsequent date, the accrued debt will be repaid upon sale in order to remove the charge. This will terminate the DPA and the service user will become liable for the full cost of their care subject to their remaining capital. Interest will be chargeable at a rate equivalent to the Bank of England base rate plus 1% per annum for every day the debt is not repaid from the day after the sale has been completed.

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<sup>4</sup> The Income Support/Pension Credit upper capital limit is £16,000 in 2013/14.

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## 15. Sale of the Property after Death

- 15.1. The Social Care Benefits Team will be responsible for calculating the accrued amount of debt relating to payments for the cost of the care. This amount will be added to any other outstanding sums due to identify the final debt that is payable.
- 15.2. The Social Care Benefits Team will notify Legal Services of the provisional debt figure. Legal Services will then notify the acting solicitor/ Executor of the estate. The requirement to charge interest on the debt 56 days after the death of the service user will also be notified to the acting solicitor/ Executor.
- 15.3. If it has not already been notified, the final debt should be confirmed in writing by Legal Services, no later than 6 weeks after death. Failure to do so could lead to a challenge should interest be charged after 56 days.
- 15.4. If the debt has not been cleared within 4 weeks of the expiry of the 56 day period a reminder should be sent by the Social Care Benefits Team confirming the rate of growth of the debt and requesting a progress report.
- 15.5. The interest that is charged after 56 days has elapsed will be equivalent to the prevailing Bank of England base rate plus 1%.

## 16. Continuing Healthcare

- 16.1. The deferred payment cannot cease if full continuing health care is awarded and no funding is due from the local authority. It is good practice to ask for voluntary client contributions to continue, as this will reduce the amount of the accrued debt set against the value of the property.

## 17. The 12 week disregard period

- 17.1. If a service user becomes a permanent resident in a care home, the value of any property in which he/she would otherwise be living is disregarded for the first 12 weeks of a permanent stay, subject to meeting the qualifying conditions<sup>5</sup>.
- 17.2. If there are sufficient resources in excess of the upper capital limit to fund care for any period, no matter how short, access to the Deferred Payment Scheme can be given at the time that the capital reduces to the upper capital limit and it would be necessary to sell the property. If this happens during the first 12 weeks of permanent care then for the remaining balance of the 12 weeks the value of the property can be still disregarded but note that the 12 week period must not start from that date.

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<sup>5</sup> These conditions can be found in paragraph 12 of the Annex to LAC(2001)10

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## 18. Service User (First Party) top ups

18.1. When a service user chooses to move into residential accommodation that is more expensive than the Council would usually expect to pay, then the service user can make up the difference between the actual fee charged by the care home and the Council's usual fee (i.e. 'top up') only in the following circumstances :

- The 12 week property disregard period applies or
- The resident has entered into a DPA with the local authority.

18.2. The level of the top-up is limited to the funds the service user has available which are disregarded under CRAG e.g. earnings, some forms of income or capital (valued at £23,250 (2013/14) or less). It should be noted however that this does not reduce the capital tariff income calculation i.e. it is not assumed that the capital amount will diminish due to payment of the top up.

18.3. Additional top up payments can be made either by using available savings in a building society etc. and paying the top up directly to the care home or the additional amount can be added to the debt accruing against the property under the DPA.

## 19. What happens if you are not happy with the way a service is delivered

19.1. The Council aims to deliver an excellent service. However, if you are unhappy with the way a service has been delivered you can make a formal complaint by contacting the Customer Relations Team, Progress House, Clifton Road, Blackpool, FY4 4US or on telephone number (01253) 477700 or by email at [customerrelations@blackpool.gov.uk](mailto:customerrelations@blackpool.gov.uk).

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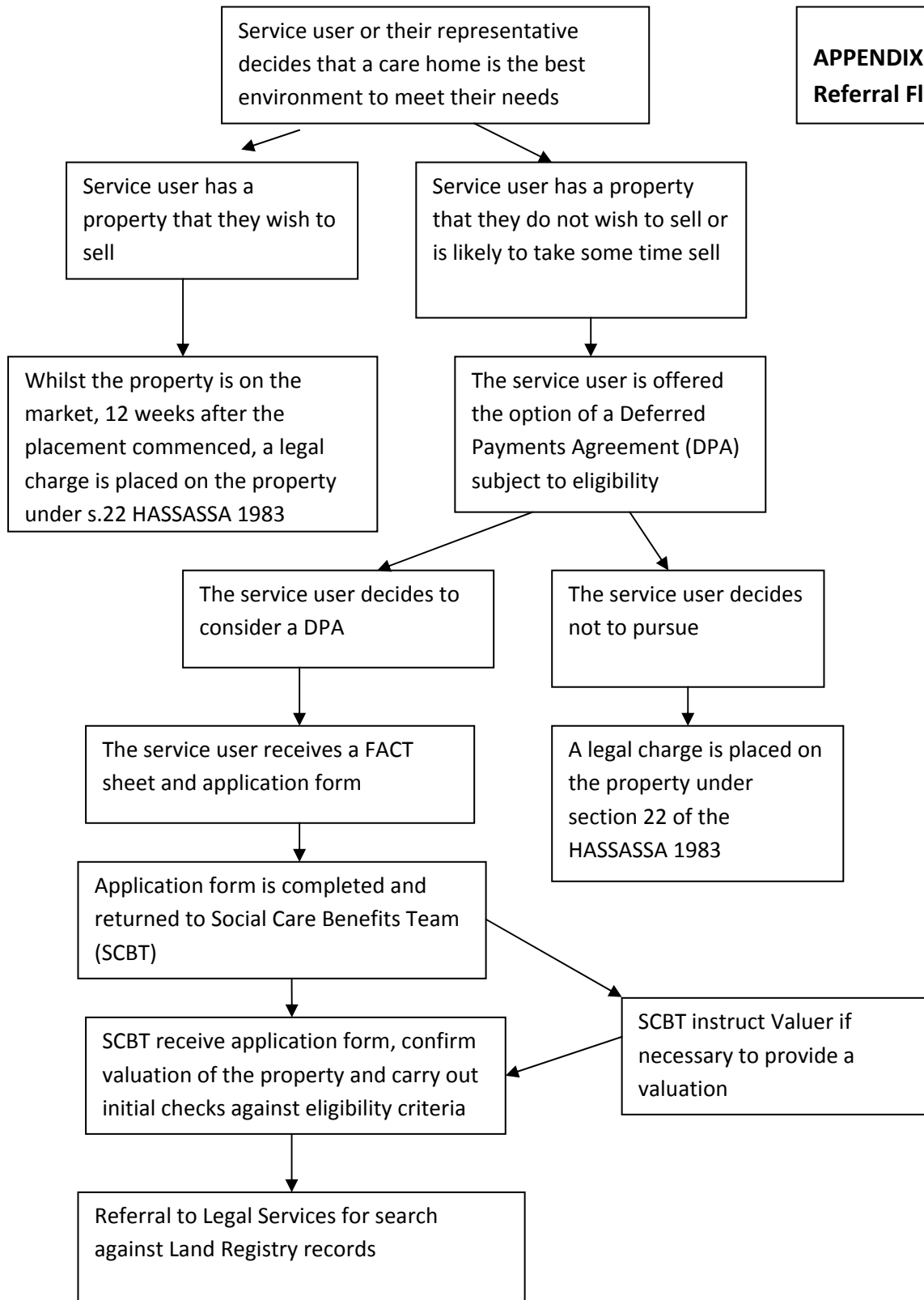
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## APPENDIX 1 Referral Flowchart



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