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**North East Lincolnshire**

**Council**

**Deferred Payment Agreement Policy**

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| **Document Title:** | Deferred Payment Agreement Policy |
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## 1 Introduction

### 1.1 Policy Purpose

This policy provides the framework within which North East Lincolnshire Council (‘the Council’) makes decisions about deferred payment agreements (DPAs). It should be read in tandem with the following policies:

* Charging and Financial Assessment for Adult Care and Support Services which can be found at [Adult social care | NELC (nelincs.gov.uk)](https://www.nelincs.gov.uk/health-wellbeing-and-social-care/adult-social-care/)
* Micro-Commissioning in Adult Social Care, Continuing Healthcare and Funded Nursing Care: principles of consistent, pragmatic, and ethical decision making which can be found at <https://www.northeastlincolnshireccg.nhs.uk/publications/>

### 1.2 Policy Application

Via an agreement under s75 of the National Health Service Act 2006, the Council delegated some adult social care responsibilities to the NHS Humber and North Yorkshire Integrated Care Board (ICB), at North East Lincolnshire Place.  The ICB and/ or Council commission a number of providers to deliver social care functions on behalf of the Council. This includes:

* delivery of micro-commissioning functions by Care Plus Group (CPG), Navigo and Focus Independent Adult Social Work (Focus); and
* charging, financial assessment and collection functions by Focus.

Whilst the functions to which this policy relates are carried out primarily by the ICB and/ or Focus, as DPAs arise from the Council’s statutory duties, only the Council will be referred to throughout.

## 2 Scope and definitions

### 2.1 Scope

This policy applies to all adults with eligible needs for care and support that have, or may be considered for, a DPA. DPAs are available to adults in residential settings, where certain criteria are met (see section four below).

This policy will be referenced and applied by all staff undertaking DPA-related activity on behalf of the Council, regardless of which organisation employs them.

DPA-related activity includes (but may not be limited to):

* providing information about DPAs
* undertaking financial assessment, review or collection of financial contributions
* undertaking administrative tasks to
* put in place a DPA, such as securing house valuations and registering charges with the Land Registry
* monitor and maintain a DPA, such as applying interest to the amount loaned and preparing statements about the amount loaned
* end a DPA, such as removing charges and recovering monies owed.

### Definitions

In basic terms, a DPA is an agreement between the Council and an adult receiving care and support to delay payment of that adult’s care home costs until an agreed time in the future. There are two types of DPA:

1. A traditional type DPA: the Council pays the care home directly for the adult’s care fees, and delays receiving repayment of the fees from the adult
2. A loan type DPA: the adult pays the care home directly for the fees, using the money loaned by the Council. The Council delays receiving repayment of the loan.

The following terms are also used in this policy:

* ‘adult’ means a person aged 18 and over with eligible needs for care and support
* ‘care practitioners’ means staff directly interfacing with members of the public: individuals with needs, carers, families and representatives. It is also intended to include finance practitioners in the Focus Finance Team
* ‘care and support’ means the provision of services or other activity to adults in need of social care and support
* ‘eligible care and support needs’ means adult social care needs deemed eligible via application of criteria in the Care Act 2014
* ‘care home’ means a care home, within the meaning of s3 of the Care Standards Act 2000, in respect of which a person is registered under the Health and Social Care Act 2008 for the regulated activity of the provision of accommodation together with nursing or personal care
* Supported living is defined by the Care and Support (Deferred Payment) Regulations 2014 paragraph 3(2) as accommodation which is not a care home and is—

1. in premises which are specifically designed or adapted for occupation by adults with needs for care and support to enable them to live as independently as possible; or
2. provided—
3. in premises which are intended for occupation by adults with needs for care and support (whether or not the premises are specifically designed or adapted for that purpose); and
4. in circumstances in which personal care is available if required (whether or not provided by the provider of the accommodation).

Supported living accommodation does not include premises:

1. regarding which the adult is entitled to dispose of the fee simple, with or without the consent of other joint owners or
2. which the adult occupies other than under a licence, or a tenancy agreement which is not a long tenancy.

## 3 The Legal Context

### 3.1 The Care Act 2014 (‘the Care Act’)

The Care Act provides the framework for charging for care and support, including DPAs. The Care Act’s accompanying statutory guidance gives further details on the principles which local authorities must take into account when making decisions on charging. The principles are that the approach to charging for care and support needs should:

* ensure people are not charged more than it is reasonably practicable for them to pay
* be comprehensive, to reduce variation in the way people are assessed and charged
* be clear and transparent, so people know what they will be charged
* promote wellbeing, social inclusion, and support the vision of personalisation, independence, choice and control
* support carers to look after their own health and wellbeing and to care effectively and safely
* be person-focused, reflecting the variety of care and caring journeys and the variety of options available to meet their needs
* apply the charging rules equally so those with similar needs or services are treated the same and minimise anomalies between different care settings
* encourage and enable those who wish to stay in or take up employment, education or training or plan for the future costs of meeting their needs to do so
* be sustainable for local authorities in the long-term.

The Council has due regard for those principles when drafting and applying this policy.

### 3.2 The Mental Capacity Act 2005 (MCA)

The MCA explains what to do when a person is not able to make decisionsfor themselves. It applies to anyone 16 years old and over who has a mental impairment that might affect their ability to make decisions. The MCA sets out:

* how to support a person to make their own decision
* how to assess whether a person can make their own decision
* how to make a decision in a person’s best interests, if they can’t make it for themselves.

The MCA also provides mechanisms for others to be formally appointed to make decisions on behalf of those who cannot make them, or may not be able to make them in future. All adults considering a DPA will be strongly encouraged to consider legally appointing representatives as their decision makers should they lose relevant capacity in future, prior to entering into a DPA. A DPA is a consensually accruing debt to the Council, which will only be consensual whilst the adult retains the mental capacity to continue to consent.

#### 3.2.1 adults lacking relevant capacity, with an appointed representative

Some adults may lack capacity (as defined by the MCA) to request or enter into a DPA. The adult may have one of the following legally appointed representatives, who may request a DPA on the adult’s behalf:

* An attorney appointed via an Enduring Power of Attorney (EPA)
* An attorney appointed via a Lasting Power of Attorney (LPA) for property and affairs
* A deputy for property and affairs appointed by the Court of Protection.

Persons appointed as representatives via any of the above mechanisms will be asked to evidence it by providing a full copy of the document appointing them. Copy evidence will be lodged with the adult’s records.

#### 3.2.2 adults lacking relevant mental capacity, with no appointed representative

Where the adult lacks the relevant mental capacity and does not have one of the above types of legally appointed representative, the Council will not offer a DPA. However, in appropriate cases, the Council may work with relevant others to secure legal appointments which might allow a DPA to be entered into in the adult’s best interests.

#### 3.3.3 adults who lose relevant mental capacity during the currency of a DPA

Where an adult enters into a DPA with the Council whilst capacitous, but then loses relevant capacity during the currency of the DPA, the Council will work with relevant others to consider further action in the adult’s best interests. This may include terminating the existing DPA, entering into a new DPA with the adult’s existing appointed representative, or working with relevant others to secure legal appointments which might facilitate a new DPA.

#### 3.3.4 all adults who lack or may lack relevant mental capacity

The Council may consider the involvement of relevant others and/ or an advocate where statutory triggers apply or where this otherwise appears to be in the best interests of the adult, and with the aim of:

1. Facilitating the involvement of the adult in DPA considerations
2. Making relevant best interests decisions on behalf of the adult
3. Considering whether an application should be made to the Court of Protection to appoint a property and affairs deputy for the adult.

### 3.3 Public law principles in decision making

In addition to legislative duties, care practitioners are expected to take decisions in a way that is compliant with public law duties and principles. Care practitioners must ask themselves the following when making DPA related decisions:

* Legality – is the proposed decision reflective of legislative obligations, and within the limits of the discretion allowed by law (taking into account all relevant considerations and ignoring irrelevant ones)? This could include taking into account obligations under the Equalities Act 2010, for example
* Rationality – is the proposed decision reasonable and proportionate in all the circumstances? Does it maintain a proper balance between the interests of the individual to which the decision relates, and those of ‘the State’ (i.e. in this context, the Council)?
* Procedural propriety – has the decision making process ensured that the adult affected by the decision (or their representative) has had a fair opportunity to participate in it? Have any views expressed by the affected adult (or their representative) been properly taken into account? Have any procedural rules in relevant legislation been complied with?

The Council is aware that as a matter of public law, a policy provides a starting point, and a framework for the application of professional decision making to individual circumstances; this policy is not intended to fetter that discretion.

When making its decisions, the Council will have regard to the Local Government Ombudsman guidance on Good Administrative Practice: <https://www.lgo.org.uk/information-centre/information-for-organisations-we-investigate/guidance-notes/principles-of-good-administrative-practice>

## 4 Policy

### 4.1 When the Council will enter into a DPA

The Council will enter into a DPA with an adult who, at the point of applying for a DPA:

* is assessed as needing to be cared for in a care home, and
* is paying for some or all of the costs of their care in a care home, and
* requests a DPA amount which, in addition to the administrative costs and interest arising from the DPA, comprises no more than the cost of the care which the Council considers necessary to meet the adult’s needs, and
* has a legal or beneficial interest in a property which is their main or only home, and which is not disregarded as part of a financial assessment, and
* is able to provide adequate security which is at least equal to the DPA amount including administrative costs and interest, and
* has less than (or equal to) £23,250 in assets, not counting the value of the interest in their main or only home, and
* agrees to the Council’s terms and conditions as part of the DPA, and
* is:
* ordinarily resident in North East Lincolnshire, or
* of no settled residence, but present in North East Lincolnshire, or
* ordinarily resident in another local authority area, but North East Lincolnshire Council has decided that it will meet the person’s care needs.

Adequate security means a first legal mortgage charge registerable in favour of the Council with the Land Registry (see 4.3).

### 4.2 When the Council *may* enter into a DPA

Where the Council has discretion regarding whether or not to enter into a DPA, it will consider all of the adult’s circumstances before it makes a decision. By way of example, such considerations may include:

* whether the adult has any other way to meet the cost of their care
* whether meeting their care costs leaves the adult with very few assets to access
* how far away from meeting the DPA criteria the adult is, and how likely they might be to meet the criteria in future
* the impact on the adult’s wellbeing of having, or not having, a DPA.

The Council is responsible for public money, and it has a duty to make sure that any DPA it enters into is safe and sustainable.

#### 4.2.1 Common situations in which the Council may be asked to exercise discretion to enter into a DPA

The following non-exhaustive examples are set out on the assumption that the adult meets all of the other criteria set out at 4.1, excepting the matter on which they seek an exercise of the Council’s discretion.

**Secondary charges**

In limited circumstances, the Council may be willing to offer a DPA where a first legal mortgage charge is not available to it. A secondary charge might be acceptable where the equity in the adult’s property is sufficient to meet the first charge already registered, as well as any second charge (at least equal to the DPA amount including interest and administrative costs) subsequently registered for the benefit of the Council.

**Alternative types of security**

Where the adult is not able to offer a first legal mortgage chargeregisterable in favour of the Council with the Land Registry (as at 4.1 above), the Council may consider alternative security which it deems is adequate to secure at least the DPA amount, including interest and administrative costs. The most obvious (rather than only) example of alternative types of security is probably art, antiques or collectibles.

To facilitate its decision making, the Council may instruct independent experts to provide valuations which will confirm whether the security is sufficient. The cost of any such valuation will be chargeable to the adult and/ or form part of the administrative charges which are added to the DPA, should the proposed security be accepted. The Council may also seek expert help in ensuring that the Council’s interest in any alternative security is secured by registration or in some other way. Again, the cost of any such expert help will be chargeable to the adult and/ or form part of the administrative changes which are added to the DPA, should the proposed security be accepted.

**Top Ups**

The Council is not required to enter into DPAs for care which it does not think is necessary to meet the adult’s needs. In limited circumstances, the Council may be willing to allow payments for care beyond what is required to meet need (often referred to as ‘top-ups’) to form part of the DPA.  The Council will consider whether, in combination with the adult’s necessary care costs, the equity available in the adult’s property is likely to be adequate. The Council will also consider the impact of top-up payments on when the adult is likely to fall below the upper capital limit (currently £23,250), and the implications arising from that.

**Supported living**

The Council may consider offering a DPA where the adultis assessed as needing to be cared for in supported living, intends to retain their former home and pay their supported living care and accommodation rental costs from their DPA. DPAs cannot finance mortgage payments on supported living accommodation.

### 4.3 Obtaining security

A first legal mortgage charge against a property, registerable in favour of the Council with the Land Registry, will be accepted as adequate security.

Where relevant, any other person with a legal or beneficial interest in the property must consent in writing to registration of the first legal mortgage charge. This means that both owners will need to be signatories to the charge agreement, and the co-owner will need to agree not to object to the sale of the property for the purpose of repaying the debt due to the Council. Similar consent will be obtained where a charge is being created on a property where any other person has a beneficial interest in the property.

Security will be re-valued when the amount deferred equals or exceeds 50% of the value of the security, so as to assess any potential change in the value. This will also be done periodically so as to monitor any potential further changes in value.

The same principles will apply if the Council exercises it discretion to accept secondary charges or alternative forms of security.

### 4.4 How much can be deferred

Potentially, an adult can defer all of their necessary care costs. The amount that is actually deferred will depend on:

* The equity the adult has in the asset they use as security (usually the adult’s main or only home)
* The amount the adult contributes to their care costs from other sources, including for example from their income (such as an occupational pension) or from another person (such as a family member)
* The likely total costs of the adult’s care, including any top-ups they may desire.

The Council will not allow more to be deferred than the equity limit of the asset used as security. Deferral of care costs will cease when an adult has reached the ‘equity limit’ (see 4.4.1). Interest will still accrue beyond this point and administrative charges will still be incurred. Equity limits may be reached earlier than expected when the value of the property used as security has dropped. Deferrals will also cease where the adult is no longer receiving care and support in a care home.

#### 4.4.1 the equity limit

Establishing an equity limit is intended to ensure that the property used as security retains sufficient value to act as a ‘buffer’ to cover a) any changes in its value, and b) the interest and administration fees that continue to accrue.

Where a property is used as security, the Council will obtain a Royal Institute of Chartered Surveyors (RICS) valuation, to help establish the equity limit. The equity limit will be set at the value of the property, minus 10%, minus the amount of the lower capital limit (currently £14,250), and the amount of the encumbrance secured on it. The cost of the valuation will be chargeable to the adult. This charge will form part of the administrative charges which are added to the DPA, unless the adult asks to pay the Council separately for it.

The adult may choose to obtain an independent assessment of the property’s value (in addition to the Council’s valuation), at their own expense. If the independent assessment finds a substantially different value from the Council’s valuation, the Council and the adult will discuss and agree an appropriate valuation prior to proceeding with the agreement.

The Council will revalue the security from time to time, to make sure the DPA remains safe and sustainable. If the Council is concerned it will work with the adult to review their situation and decide what is best for the adult’s costs in future.

If the adult approaches or reaches the point at which they have deferred 70% of the value of their property, then the cost of their care will be reviewed with them, alongside whether a DPA continues to be the best way for them to meet these costs.

### 4.5 Contributing to the adult’s care cost from other sources

The share of care costs the adult defers will depend on the amount they will be paying from:

* Income, including pension income
* Savings or other assets they might have access to
* A financial product designed to pay for long term care
* A DPA which enables them to pay for their care at a later date out of assets.

Account will also be taken of the costs of property maintenance when calculating the client contribution.

### 4.6 Renting out a property

Those eligible for a DPA may choose to rent out their property to obtain additional income to help pay for care costs. Where a property is rented out, there are some additional requirements. The adult must:

* maintain their property to an appropriate standard
* enter into an Assured Shorthold Tenancy Agreement with their tenant(s) and submit a copy of the Agreement to the Council as part of the DPA process
* When the DPA comes to an end, repay the full debt accrued within the required time limits.  This could mean that the tenant will need to move out
* inform the DWP that they are renting out their property (the adult’s benefit entitlement may be affected by receipt of rental income).

Where the adult uses rental income to pay for all or part of their care costs (to reduce the amount of debt that accrues), it is expected that they will retain the £144.00 disposable income allowance (for example to maintain the property to appropriate standards). The disposable income amount of £144.00 will not be taken into account as part of the financial assessment, but will impact on the level of debt that accrues (in other words, if the £144.00 is retained, the adult cannot use it to pay for care costs, and so the debt will be larger).

### 4.7 Interest rate and administration charges

DPAs are made available on a cost-neutral basis. The Council intends to cover the risks and recoup the costs associated with deferring fees, by charging interest and administration fees.

### 4.7.1 interest

Interest will be charged at the maximum amount specified in the regulations. This rate will change every 6 months to track the market gilts rate specified in the most recently published report by the Office of Budget Responsibility (published in the Economic and Fiscal Outlook).

The interest charged and added to the deferred amount will be compounded.

Interest will accrue on the amount deferred even once the “equity limit” has been reached.

### 4.7.2 administration charges

Administration charges are calculated on the basis set out in the Care Act and include the following (by way of minimum example only):

* Registering a legal charge with the Land Registry or equivalent against the title of the property used as security for the DPA, including Land Registry search charges and any identity checks required
* Cost of RICS or other specialist valuation and revaluation of the property used as security for the DPA
* Costs of removal of charges against the property used as security for the DPA
* Overheads, may include, but are not limited to, legal fees, postage, printing, management costs.

For the year 2023/24, the total administration fee is estimated at £2130 (based on the average duration of a DPA, of four years). This estimated fee is broken down as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | **Arrangement £** | **On-going Costs p.a. £** | **End £** |  |
| Valuation |  | 350 | 75 | 0 |  |
| Visiting Officer |  | 125 | 40 | 125 |  |
| Legal Fees |  | 600 | 0 | 300 |  |
| Council costs |  | 25 | 30 | 25 |  |
| Subtotal |  | **1100** | **145** | **450** |  |
| Grand total (estimated, if over four years) |  | **1100** | **(145 x 4) 580** | **450** | **2130** |

For those renting out their property, there will be an additional charge of at least £90, to cover the Council’s solicitor’s fees in checking the required tenancy agreement.

The above is an estimate only, but is likely to be the minimum which the adult will pay. The actual fee will depend on individual circumstances.

Fees are reviewed regularly, and are therefore subject to change.

Charges will continue to be levied until the DPA is terminated, and all matters in respect of its termination are concluded.

### 4.7.3 treatment of interest and administration charges

Interest and administration charges and will be added on to the total amount deferred as they are accrued, although the adult may request to pay these separately.

When calculating progress towards the equity limit, the Council will also include any interest and/or charges to be deferred.

### 4.8 Making the DPA agreement

The Council aims to finalise and have the DPA in place by the end of the 12-week disregard period (where applicable). Where arrangements for a DPA are terminated before completion, for example because the adult’s property sells within the 12-week disregard period, the Council will seek to recover from the adult all costs incurred by it in progressing the DPA. Such are likely to include (but may not be limited to) valuation costs, legal fees, overheads and staffing costs.

The DPA must be signed as a deed. It will clearly set out all terms, conditions and information necessary to enable the adult to understand their rights and obligations under the agreement.

#### 4.9 Impact on financial assessment

Six monthly written updates of the amount of fees deferred, of interest and administrative charges accrued to date, and of the total amount due and the equity remaining in the property (the “equity” limit) will be provided. A statement on request will be provided within 28 days.

### 4.10 Contractual responsibilities for adults, arising from the DPA

The DPA sets out the various contractual requirements of the adult as well as the Council.

### 4.11 Termination of the DPA

A DPA can be terminated in three ways:

1. At any time by the adult, or someone with relevant legal authority acting on their behalf, by repaying the full amount due (this can happen during the adult’s lifetime or when the DPA is terminated through the adult’s death);
2. When the property (or form of security) is sold and the Council is repaid; or
3. When the adult dies and the amount is repaid to the Council from their estate.

Repayment includes paying the Council the deferred amount, and all interest and administration charges which arise from it.

Interest will continue to accrue on the amount owed to the Council after the adult’s death and in all other circumstances, until the amount due to the Council is repaid in full.

If terminated through an adult’s death, the amount owed to the Council under a DPA falls due 90 days after the adult has died. After this 90 day period, if the Council concludes active steps to repay the debt are not being taken the Council may enter into legal proceedings to reclaim the amount due to it.

### 4.12 The Appeal Panel

The Appeal Panel considers appeals from adults or their representatives against charges, formal complaints relating to charging, or regarding decisions of the Individual Commissioning Approval and Advice Panel (ICAAP). The Appeal Panel comprises a Council representative, a charging policy expert, and representatives of both adult social care and customer care teams. The Appeal Panel uses generic guidance from the Local Government Ombudsman and Parliamentary and Health Service Ombudsman when considering its responses to appeals, complaints and decisions. The Appeal Panel’s Terms of Reference can be found towards the end of the list of documents on the CCG’s publications page: <https://www.northeastlincolnshireccg.nhs.uk/publications/>

## 5 Summary of Publications

The following publications have been referred to in the compilation of this policy:

* The Care Act 2014
* The Care Act 2014 Regulations
* The Care Act 2014 Care and Support Statutory Guidance
* The Equality Act 2010
* The Mental Capacity Act 2005
* Micro-Commissioning in Adult Social Care, Continuing Healthcare and Funded Nursing Care: principles of consistent, pragmatic, and ethical decision making – local policy
* Mental Capacity Act 2005 and Deprivation of Liberty Policy – local policy.

## 6 Training

This policy will be drawn to the attention of all relevant individuals as part of the implementation process (see 8 below).

## 7 Impact analysis

### 7.1 Equality

This policy has been created with due regard for the Council’s public sector equality duty under the Equality Act 2010, s149. All staff connected with the implementation of this policy, in the exercise of their public functions, must also have due regard to the matters within s149(1).

An Equality Impact Assessment (EIA) has been conducted with regard to this policy.

### 7.2 Bribery Act 2010

The Bribery Act 2010 is relevant to this policy. Under that Act it is a criminal offence:

* To bribe another person by offering, promising or giving a financial or other advantage to induce them to perform improperly a relevant function or activity, or as a reward for already having done so; and
* To be bribed by another person by requesting, agreeing to receive or accepting a financial or other advantage with the intention that a relevant function or activity would then be performed improperly, or as a reward for having already done so
* To bribe a foreign public official. A person will be guilty of this offence if they promise, offer or give a financial or other advantage to a foreign public official, either directly or through a third party, where such an advantage is not legitimately due
* For commercial organisations to fail to embed preventative bribery measures.  This applies to all commercial organisations which have business in the UK. Unlike corporate manslaughter this does not only apply to the organisation itself; individuals and employees may also be guilty.

These offences can be committed directly or by and through a third person and other related policies and documentation when considering whether to offer or accept gifts and hospitality and/or other incentives.

Anyone with concerns or reasonably held suspicions about potentially fraudulent activity or practice should refer to the Local Anti-Fraud and Corruption Policy and contact the Local Counter Fraud Specialist.

## 8 Implementation

This policy will be disseminated via key individuals within the Council, the ICB, and Focus with the expectation that each will cascade the information within it amongst their relevant teams. The policy will be lodged on the Council’s website, and providers will be expected to ensure that it is available electronically to their staff. The policy will be further communicated through team briefings, and training sessions, led by each organisation’s key individuals.

Each organisation delivering DPA functions will create operational procedures to support their staff in delivering on this policy.

Breaches of this policy may be investigated and may result in the matter being treated as a disciplinary offence under the Council/ ICB’s disciplinary procedure, or that of the organisation which employs the staff member in breach.

## 9 Policy monitoring and review

This policy will be reviewed every three years. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in law/ guidance, as instructed by the senior manager responsible for this policy.