

Appendix B: Details of changes to the Deferred Payment Agreements Policy included in the ASC Policy Statement document

1. The Council's existing Deferred Payment Agreements (DPA) Policy will be amended to reflect the following:
 - a. The financial risks to people and the Council when a DPA is proposed are such that it is a **mandatory** condition of the SCC DPA scheme that clients obtain independent legal and financial advice, and SCC will not complete a DPA application without evidence that such advice has been received by the client or their representative.
 - b. Short-term DPA – as an alternative to a full DPA, if the client's property is for sale, the Council can provide a short-term arrangement for meeting fees based on an undertaking signed by a solicitor guaranteeing to pay the amount owed to the council when the sale is completed.
 - c. Failure to complete a DPA leads to action detailed in the Council's Charging Policy, i.e. SCC will not continue to pay for care and the client will need to enter into a self-funding arrangement directly with the home provider. If, exceptionally, SCC continue to pay care home fees pending completion of a DPA, that will be for a maximum of 3 months, and based on a written agreement. If no DPA has been entered into after those 3 months, SCC will, subject to the completion of an urgent risk assessment, terminate payments and any arrangement it has entered into with the care home and take legal action to recover from the client any charges it has paid, including by way of a charge against their property.
 - d. The Council may offer a DPA (full or short-term as appropriate) to people who do not meet the Care Act eligibility criteria. Each case will be looked at on its own merits, taking account of:
 - i. whether paying residential care costs leaves them with very few accessible assets;
 - ii. if they want to use the wealth tied up in their home to fund more than just their core care costs i.e. affordable top ups;
 - iii. whether someone has any other accessible means to help them meet the cost of their care and support;
 - iv. if a client is narrowly not entitled to a DPA on the criteria above, for example because they have slightly more than the current upper capital limit. This might include people who are likely to meet the criteria soon
 - v. whether the client is excluded because they have a second property but are unable to realise that asset quickly
 - e. The Council may at its discretion enter into a DPA with people who are going to rent supported accommodation (supported housing, extra care housing schemes or shared lives schemes), rather than residential care, where the client's options are restricted;

- i. They intend to retain their former home and pay the supported accommodation care and rental costs from their deferred payment – a DPA will not be considered to finance the mortgage payments on buying supported living accommodation.
 - ii. They have good reason why they are unable to sell or let their property at the current time and have no entitlement to Housing Benefit, and their income, savings and investments do not cover the costs of supported accommodation;
 - iii. Their former home is occupied by a person who is dependent on the client but who is not actually classed as “dependent” under the Care Act regulations, so that the home cannot be disregarded from the financial assessment
 - iv. Where the Council is prepared to offer a DPA offer to clients entering rented supported accommodation, the Council is likely to need specialist legal advice on each case - an estimate of the costs of such advice will provided and if agreed will be recharged to the client
- f. The Council is permitted to refuse an application for a DPA even if the client meets the eligibility criteria, if there is a risk of default or non-repayment of debt arising from;
 - i. it being unable to secure a first charge on the person’s property;
 - ii. the client’s property being uninsurable or not insured;
 - iii. the property is leasehold, and the freeholder does not agree to the charge;
 - iv. the client wants to defer more than they can provide adequate security for;
 - v. the client seeking a top up;
 - vi. the client not agreeing to the terms and conditions of the DPA.
- g. In any of the circumstances in f) above, the Council may offer a DPA anyway, e.g.
 - i. In the top-up situation, the Council will seek to offer a DPA limited by the principles the Care Act to ensure the amount is sustainable. The person can then choose whether they wish to agree
 - ii. if a client’s property is uninsurable but has a high land value, SCC may choose to accept charges against this land as security instead.
- h. Where a person wishes to use as security for a DPA a property which is jointly owned, or in which someone else has a beneficial interest (including mortgages or equity release products secured on the property), or which has other occupiers, the Council must protect itself against future claims from these other parties. This could be a claim that they have greater rights in the property than the Council was led to believe, or that their consent to the legal charge was not on an informed basis and they were subject to undue influence. In order to prevent this, SCC requires all of the owners’ or interested parties’ agreement to the charge being registered; they will all (including occupiers who do not suggest they have a beneficial interest of any kind) need to be signatories to the charge agreement and accept that this means that the

property will be sold when the debt is due to be repaid to SCC. To achieve this, SCC will;

- i. Take all reasonable steps to ensure it is aware of the identities of all those occupying the property – including writing a letter to “all occupiers”;
 - ii. require all occupiers to obtain independent legal advice at their own cost;
 - iii. ensure a letter is sent direct to the Council signed by reputable solicitors as well as the occupiers, confirming:
 - what the occupiers say their interest (if any) in the dwelling is;
 - that the solicitors have explained (and the occupiers have understood) the effect of the legal charge and how it will work
 - iv. require proof of residual equity together with written consent of any third party/parties where applicable where part of the value of the property has been realised by way of a mortgage or equity release.
- i. The following are Council policies as to the additional restrictions it applies;
- i. where the title of the property is registered but one or more registered party is unable to give a legal agreement, e.g. they have died, the DPA can only proceed subject to the necessary amendments to the Land Registry entries
 - ii. in instances where the title of the property is based on tenants in common it will be necessary that all parties enter into the DPA and legal charge for it to be an acceptable form of security
 - iii. if the property is a leasehold property an application can be made for a DPA, however sometimes restrictions are placed on the title (registered at the Land Registry) and the agreement of the head landlord/ultimate freehold owner to the charge on the property must be obtained and paid for by the applicant before the property can be used as security for the DPA.
 - iv. Where part of the value of the property has been realised by way of a mortgage or equity release, proof of residual equity in the property will be needed together with written consent of any third party/parties where applicable.
 - v. if the property is a mobile home, where it is the land that is registered and not the mobile home, the Council will not be able to accept the mobile home as security
- j. Aside from a first charge and the short-term DPA, the Council will consider a range of security for a DPA and associated interest; this list is provided to provide clarification but is not exhaustive:
- i. Third Party Guarantor
 - ii. Second Legal Charge
 - iii. Life Assurance Policy
 - iv. Leasehold Properties
- k. Alternative security which will not be accepted by the Council for a DPA;
- i. Mobile home

- ii. Equity Release Scheme/Lifetime Mortgages
- iii. Property Abroad

- l. Where the Council agrees that the client may rent out the property it will treat the net rental income, (i.e. allowing for management fees and estimates of income tax) as additional income in the client's financial assessment.
- m. Property Valuation: the Council will obtain a valuation for the property (from internet sources if low risk, or from the council's own valuers if the DPA is for 50% or more of the property's value) and agree this with the client or representatives. If not agreed, the lower of the proposed values will be used. Should the valuation be obtained by way of the Council's internal valuer, the charges (which are passed onto the client but can be rolled up into the DPA) are those set by the council. The client may get an independent valuation in addition to the council's, and if the two vary significantly, both parties must agree a valuation, if necessary by means of the Council's appeals process.
- n. The Council will revalue or require a revaluation of any security it is holding every two years to ensure that the deferral may continue