Deferred Payment Agreement

Accompanying Notes

The Local Authority has carried out a financial assessment of your capital and income. Capital can include property, cash and some investments. This assessment shows that you own more than the capital limit and are therefore required to contribute to the cost of your care from your capital. It is understood that most, or all, of your capital is tied up in property or certain assets and following assessment, the Local Authority are prepared to offer you a deferred payment agreement.

A deferred payment agreement is a loan based arrangement which will usually be secured against your property. This will allow either the Local Authority to secure the recovery of care home fees that they have paid for you or recovery of a loan advance to you in relation to the cost of care.

These notes should be read alongside the agreement. They are intended to provide a summary of the agreement and its provisions. The headings in these notes match the headings you will see in the agreement.

Before entering into the agreement, the Local Authority encourages you to obtain your own independent legal and financial advice.

Background

These paragraphs set out the arrangement between you and the Local Authority. You will be required to contribute your weekly income towards the cost of care and support. You will be able to retain your disposable income allowance or such other amount agreed from time to time with the Local Authority. The disposable income allowance is currently set at £144 per week. If your income exceeds this amount in any given week you may be required to contribute the excess to the cost of your care.

The Local Authority is entitled to charge interest on any amounts provided to you and to charge you for certain administrative costs that it incurs in setting up and maintaining the agreement. The Local Authority will be able to provide you with details of these charges and current rates of interest.

Definitions

This sets out some common words or phrases that are used throughout the agreement and the meaning that is given to them.

How the loan will be made

This section sets out the way that the agreement works. For example, it explains how you enter into the agreement, what the Local Authority agrees to provide in return and specific arrangements in relation to the cost of your care and how those charges will be met. This section also contains the details of how the amount you pay may change, either as a result of an increase to your income, if you decide to pay the charges directly or your need for care ends.

This section also explains what will happen if the total costs of your care reaches the value of the part of the property you own. For example, the part of the property that you own might be worth £100,000 (after the Local Authority has applied limits or deductions such as for other mortgages over the property). Once the cost of your care (together with interest and administrative charges) approaches this amount, the Local Authority might not lend you anything further under the agreement. If this occurs, the Local Authority will discuss with you what to do next.

Interest

The Local Authority is permitted to charge interest on the amounts that it lends you under the agreement. This includes interest on the administrative charges if they are not paid separately. You can choose to pay the interest separately or it can be added to the amount secured against your property or assets.

Costs and Interest on Costs

The Local Authority is permitted to ask you to pay the legal and administrative costs that it incurs in relation to the setting up and maintenance of the Deferred Payment Agreement. These costs are referred to as Administrative Charges. The details of these charges can be obtained from the Local Authority on request. Interest can be charged on these amounts. You can choose to pay these charges separately or to add them to the amount secured against your property or assets.

Repayment

The loan becomes repayable either on the date that the property is sold (or otherwise disposed of) or 90 days after the date of your death. This section also sets out details of how or when the debt (or parts of it) can or should be repaid.

Security

This explains that the debt is secured by a form of mortgage over your property (or other assets). Taking a mortgage over your property is known as a “security”. The Local Authority will not make any payments to you until the security is in place.

Possession and use of the property

This section is about how the property may be used whilst the agreement is in place. For example, you may choose to let out the property to generate income to assist with payment of your care charges. If this is the case, you will need to take certain steps, including obtaining consent from the Local Authority and maintaining adequate insurance for the property.

Insurance and maintenance of the property

You are required to take out insurance in relation to the property over which security is to be obtained. Because the Local Authority has a duty under the Care Act 2014 to ensure that your property is adequately maintained, if you do not take out the insurance, the Local Authority may be required to do so on your behalf. If this is the case they can include the cost in the administrative charges payable by you.

If for any reason monies are paid out under insurance in relation to the property, you must ensure that these are applied to reinstating the property or compensating third parties as required by the insurance.

The Local Authority is permitted to access the property to ensure that it continues to be maintained or to establish the maintenance that is required in order to preserve its value. The Local Authority will notify you if it believes works need to be carried out. If these works are not carried out, the Local Authority may undertake the work on your behalf and recover the costs through the administrative charges payable by you.

Valuation

The Local Authority will obtain updated valuations of the property throughout the agreement to ensure that the amounts that it is lending you do not exceed the "equity limit". The equity limit is the maximum value that the Local Authority has agreed to lend based on the value of your property. The cost of obtaining the valuation can be recovered by the Local Authority in the administrative charges payable by you.

Keeping the Local Authority informed and undertakings that you give to the Local Authority

There are various circumstances in which the costs of your care may increase or vary or the responsibility for payment of charges may change. For example, if you choose to sell your property or otherwise let someone else take ownership of it. This section deals with the information that you are required to give to the Local Authority if your circumstances change.

There are also a number of obligations that you need to meet to ensure that the agreement continues to operate properly. These are listed as "undertakings" in this section of the agreement. If you do not meet these obligations, the Local Authority may not lend you any further amounts.

Ending this agreement

You can bring the agreement to an end at any time by notifying the Local Authority and paying off the debt (including interest and administrative charges) in full.

This section also sets out what will happen if you do not comply with your obligations and/or the Local Authority informs you that it will not lend anything further.

Statements

The Local Authority will provide you with regular updates on the amounts payable under the agreement.

How notices are to be given

This section sets out how the Local Authority will communicate with you in connection with this agreement.

Assignment and transfer

This agreement is personal to you. The Local Authority may at some point in the future consider transferring its rights under the agreement to a third party, such as a bank or a financial institution. This will not affect your rights to care or the obligations owed to you under the agreement.

Severance

This is a standard legal clause. It means that the agreement will still remain in place even if one term or part of it is considered not to be valid or have effect anymore.

Applicable law

This agreement is subject to the laws that apply in England and Wales. If you needed to bring a claim under the agreement, this would be brought in the courts of England and Wales.

Variation

If you and the Local Authority decide to change any terms under the agreement, you must make sure that this is in writing and the Local Authority and you (and/or your Attorney or any co-owners) must sign a document setting out the changes.

Co-Owners

If you own the property with another person, they will also be required to sign the agreement. Each person concerned should obtain their own independent legal and financial advice about what the agreement means for them.

Schedule 1 – Key Contract Information

This schedule sets out the information that is relevant to your agreement, for example, the equity limit and the amount that the Local Authority will lend you.

Schedule 2 – Administrative Charges

This schedule provides further information on the administrative charges that the Local Authority may incur and charge to you for setting up and maintaining the agreement.

Schedule 3 – Security

This schedule contains a copy of the type of security that the Local Authority will take over the property.