

London Borough of Tower Hamlets

Adult Social Care Charging Policy (Includes deferred payments)

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1. Purpose

- 1.1 This policy sets out the framework for charging for adult social care services. The scope of the policy covers both residential care and community-based adult social care services.
- 1.2 This policy also sets out the approach in Tower Hamlets to residents deferring payments for residential or nursing care. This part of the policy is applicable to adults in Tower Hamlets who need residential or nursing care.
- 1.3 The London Borough of Tower Hamlets has a strong commitment to promoting the wellbeing and independence of all people eligible for care and support. We recognise that at the point of needing care and support, families should not have the added stress of selling their home to pay for care. By using the Tower Hamlets Deferred Payments Scheme, a person can defer or delay paying the costs of their care and support until a later date.

2. Definitions

- 2.1 Service user
For the purposes of this policy, a service user is defined as someone who meets the eligibility threshold for adult social care services.
- 2.2 Carer
For the purposes of this policy, a carer is defined as “someone who helps another person, usually a relative or friend, in their day-to-day life”. This definition is taken from Care Act statutory guidance.
- 2.3 Care package
This is defined as the support someone receives as a result of meeting the 2014 Care Act national eligibility threshold.
- 2.4 Capital
This broadly refers to the amount of savings someone has, plus the value of any valuable items (“assets”).
- 2.5 Income
This broadly refers to money received on a regular basis, such as income through employment earnings, pensions or benefits.
- 2.6 Deferred payment
This is defined as a temporary postponement of a payment of an outstanding bill or debt.

3. Scope

3.1 Staff

The Charging Policy will be applied by all staff providing support under the provisions of the Care Act 2014 on behalf of the London Borough of Tower Hamlets. This includes staff working in the Community Learning Disability Service and Community Mental Health Teams (jointly managed by the local authority and East London NHS Foundation Trust).

3.2 Social care services

This policy sets out our approach to charging (including our approach to services that are free) across all adult social care services. This includes:

- Information and advice services
- Preventative services
- Carer services
- Residential and nursing care for those who meet the national eligibility threshold as defined in the 2014 Care Act
- Community-based services for those who meet the national eligibility threshold as defined in the 2014 Care Act

It should be noted that different charging rules apply to different services. These are explained more fully in the policy.

3.3 Housing-related support

“Housing-related support” refers to what was formerly known as the Supporting People programme. This Charging Policy does not include our approach to charging for housing-related support, as this does not fall under 2014 Care Act statutory guidance.

3.4 Service users and carers

- 3.4.1 This policy applies to service users and carers who are considered to be ‘ordinarily resident’ in Tower Hamlets¹.
- 3.4.2 Service users who are considered to be ‘ordinarily resident’ in another council area and are being supported by that Council will be subject to the Charging Policy of that council.
- 3.4.3 The deferred payments elements of this policy apply to Tower Hamlets service users who are eligible for residential or nursing care. The policy will also have implications for the carers of people eligible for residential or nursing care.

4. **The legal context**

- 4.1 Much of this policy is determined by the 2014 Care Act and accompanying statutory guidance. Details on this guidance can be found [here](https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#Chapter19).

¹ Statutory guidance arising from the 2014 Care Act on how ordinary residence is determined, can be found here: <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#Chapter19>

- 4.2 The Care Act permits a local authority to recover a reasonable charge for social care from service users who satisfy the authority that they have sufficient means for them to pay for the service.

5. Key principles

5.1 Charging for residential care:

- 5.1.1 The financial contribution a service user will be required to pay towards their care package will be determined through a financial assessment.
- 5.1.2 Service users will only be required to pay what they can afford.
- 5.1.3 We will not charge service users more than the full cost of providing their services. This is reviewed on an annual basis.
- 5.1.4 We will provide clear, timely and transparent information so that people can easily understand our approach to charging.
- 5.1.5 If a service user receives more than one charged-for service, charges will not be made for any one service in isolation.
- 5.1.6 We recognise that it is important that people are not deterred from seeking help due to this policy. We will endeavor to communicate this policy in accessible ways to ensure that people have a good understanding of our position in relation to charging.

5.2 Deferred payments:

- 5.2.1 We will follow the entitlement and eligibility criteria which is set nationally;
- 5.2.2 The scheme is offered to all those that are eligible so that they are not forced to sell their home to pay for care at the point of entering into care;
- 5.2.3 The scheme is offered to people who have local authority-arranged care and support, and to people who arrange and pay for their own care, subject to criteria stated in this policy;
- 5.2.4 We will provide information on the Deferred Payments Scheme so that all individuals can make an informed decision about whether the Scheme is right for them;
- 5.2.5 Our decisions are guided by appropriate statutory guidance and regulations to ensure fairness and consistency;
- 5.2.6 That those who can, make a contribution towards their care costs;
- 5.2.7 The Deferred Payments Scheme will be self-financing and sustainable.

6. Services provided free of charge

6.1 Assessments

Assessments in adult social care are provided free of charge.

6.2 Information and advice

Information and advice services that are provided or commissioned by adult social care are free for residents to use.

6.3 Preventative services

Preventative services that are provided or commissioned by adult social care are free for residents to use. This includes:

- Reablement
- Telecare and assistive technology
- “Universal” services that are commissioned by adult social care, such as visiting LinkAge Plus Centres or employment-related support.

6.4 Community equipment

Community equipment (aids and minor adaptations) provided as a result of an Occupational Therapy assessment is free for residents. An adaptation is minor if the cost of making the adaptation is £1,000 or less.

6.5 Aftercare provided under the Mental Health Act

After-care services provided under section 117 of the Mental Health Act 1983 are provided free of charge.

6.6 Other services provided free of charge

In line with the requirements of the 2014 Care Act, the other care and support services that are provided free of charge are:

- Care and support provided to people with Creutzfeldt-Jacob Disease
- Any service of part of service that the NHS is under a duty to provide.

6.7 Carer services

6.7.1 Support services for carers that are provided or commissioned by adult social care are free. This includes information, advice and preventative services that all carers can access, as well as care packages for carers who meet the national eligibility threshold.

6.7.2 In line with statutory guidance, it should be noted that “replacement care” (which is often in the form of respite care) is part of the cared-for person’s care package, even if it is put in place primarily to support the carer². We charge for replacement care in the form of replacement respite care or replacement home care

² Please see Section 11 of Care Act statutory guidance for more details on this:
<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

- 6.7.3 There may be instances where the carer meets the eligibility threshold for support from adult social care, but the person they care for does not. In these instances, “replacement care” would have to be part of the carers’ care package. As such, replacement care in these circumstances will be free of charge.

7. Overview of charged-for adult social care services

7.1 Residential and nursing care

We charge for care and support delivered in a care home on a temporary or permanent basis.

7.2 Community-based services

We charge for the following community based services:

- Care and support delivered in Extra Care Sheltered Housing on a temporary or permanent basis.
- Internal and commissioned home care (also known as ‘domiciliary care’) provided to service users
- Internal and commissioned day care
- Transport provided by the local authority to and from day care
- Residential respite care
- Services purchased by a service user using a personal budget or direct payment

7.3 Actual costs

When calculating the cost of care, we use the actual cost of services (rather than a “usual” cost to represent the maximum amount of funding we will usually be prepared to pay for a particular service). Service users who would like a more expensive option can usually pay the difference from their own funds. More details on this are provided in the “Adult Social Care Top-Ups, Usual Cost and Preferred Accommodation” policy and the “Adult Social Care Personal Budget and Direct Payment policy”.

8. Charging for long-term residential care

- 8.1 Service users who are assessed as being eligible for long-term residential care will receive a financial assessment. This financial assessment will determine what (if any) financial contribution a service user has to make towards the cost of care. This financial assessment is repeated each year, or sooner if there is a change in circumstances.
- 8.2 We charge service users their assessed contribution. If there is a delay in organizing a full financial assessment, we will charge service users an amount of money that mirrors Care Act 2014 national guidance. This is to ensure that service users do not receive a large bill once a financial assessment has been carried out. Details on current rates are included in Appendix II. We are able to backdate a charge for clients who are already in receipt of appropriate benefits. However, we are limited to only backdating for a period of three months following a new benefit claim required for those entering residential or nursing care.

- 8.3 The financial assessment will take into account income and capital. It will take into consideration any mandatory disregards of income, capital and property as defined in the 2014 Care Act.
- 8.4 Where a person has been assessed as having eligible needs for residential or nursing care and owns a property, during the first 12 weeks stay in residential care, the capital value of the property is disregarded. After this time, the capital value of the property is included as capital in a financial assessment.
- 8.5 If a service user has savings or capital assets in excess of the upper capital limit, they will be charged the full cost for their care. The upper capital limit is set by the government and is subject to change. Details on rates at the time of writing (August 2016) are included in [Appendix II](#).
- 8.6 If a service user has capital of less than the “lower capital limit” (details on rates at the time of writing (August 2016) are included in [Appendix II](#)), we will:
- Disregard this capital in calculations
 - Still consider income in calculations
 - Not take savings into account.

Anyone receiving full funding will have to contribute all of their income (including benefits) to the local authority, except for the “personal expenses allowance”. The “personal expenses allowance” is set by the government and is subject to change. Service users may have an additional amount added to their “personal expenses allowance” based on the level of their occupational or private pension. This is called the “Savings Credit Disregard”. Details on rates at the time of writing (August 2016) are included in [Appendix II](#).

- 8.7 If a service user has capital between the “lower capital limit” and “upper capital limit” they will have to contribute towards care home fees. They will have to:
- Contribute a certain amount of their savings, which is called “tariff income”. Tariff income rates are determined by national guidance. Details on rates at the time of writing (August 2016) are included in [Appendix II](#).
 - Contribute all of their income (including benefits) to the local authority, except for the “personal expenses allowance”, explained in section 8.6 above.
- 8.8 The value of a service user’s property will not be taken into account if it is occupied by:
- A partner, civil partner or a lone parent who is the service user’s estranged or divorced partner
 - Someone that is aged 60 or over
 - A child aged under 16 of the resident
 - Someone who is incapacitated
- 8.9 There are also a number of ‘statutory income disregards’ that we must ignore in financial assessments, and a number of income sources that must be taken into

account. These are set out in statutory guidance and are summarised in [Appendix III](#).

- 8.10 A service user with a deferred payment may wish to rent their property whilst in long-term residential care. If the property is to be rented, rental income net of relevant charges (such as management fees) will be included in the financial assessment. Service users will be able to keep 10 per cent of their rental income to pay for things like insurance and repairs. The remainder will be included as investment income for financial assessment and charging. Investment income will be viewed as a potential contribution towards the cost of care.
- 8.11 Service users have the option of deferring payments for residential or nursing care until a later date. More details on this are provided in the “Deferred Payments” section of this policy.
- 8.12 Any charges are applied from the date care commences.

9. Charging for community-based services

- 9.1 Service users who have community-based services included in their care package will receive a financial assessment. This financial assessment will determine what (if any) financial contribution a service user has to make towards the cost of care. This financial assessment is repeated each year, or sooner if there is a change in circumstances.
- 9.2 Community-based services refer to:
- Home care (also known as ‘domiciliary care’) Home care includes replacement care provided at home which is intended to act as a form of respite.
 - Day care (also known as ‘day centres’)
 - Transport to and from day care
 - Personal care element of Extra-care sheltered housing
 - Services or items purchased with a direct payment or factored into a managed personal budget amount³,
 - A temporary stay in residential care⁴. A temporary resident is defined as a person whose need to stay in a care home is intended to last for a limited period of time, and where there is a plan to return home. The person’s stay should be unlikely to exceed 8 weeks at a time, or in exceptional circumstances, unlikely to substantially exceed 8 weeks.
- 9.3 As noted previously, respite or replacement care is part of the service users care package, even if the primary purpose of this respite care is to provide relief and respite to a carer. If respite is in the carer’s care package (due to a service user being ineligible for support), it will be provided free of charge to the carer.

³ Items that are provided free of charge (e.g. preventative services) could be part of a service user’s support package, but would not be in their direct payment amount due to being freely available

⁴ Please see 8.34 of Care Act statutory guidance: <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

- 9.4 The financial assessment will take into account income and capital.
- 9.5 However, there are also a number of ‘statutory income disregards’ that we must ignore in financial assessments, and a number of income sources that must be taken into account. These are set out in statutory guidance and are summarised in Appendix III. The main sources of income that we will ignore include:
- Any earnings a service user receives from a job
 - The mobility component of Disability Living Allowance or Personal Independence Payments
 - The first £10 per week of War Widows or War Widowers pensions
 - Housing Benefit
 - Council Tax Benefit
 - Child Benefit
 - Christmas bonus payments
 - Social fund payments
 - Winter fuel payments
- 9.6 Disability-related expenditure is deducted from income in a financial assessment.
- 9.7 Housing-related expenditure is deducted from incomes in a financial assessment. This is made up of:
- Mortgage payments
 - Rent
 - Ground rent
 - Council tax
 - Service charges
- 9.8 We then deduct the minimum amount of income service users need to live on. This is called the “minimum income guarantee”. These amounts are listed in Appendix II. They are set nationally each year with a local policy to uprate the amounts for some users (see paragraph 9.10).
- 9.9 Likewise, some types of capital are disregarded in financial assessments. These are set out in statutory guidance and are summarised in [Appendix III](#). The main sources of capital that we will ignore include:
- The value of a service user’s home (although the value of a second home may be considered)
 - The value of a service user’s possessions
- 9.10 The council has discretion to apply additional allowances in order to ensure that a person who receives care and support outside a care home will have sufficient income remaining to meet their daily living costs such as rent, food and utilities. The following local discretions will be applied:
- A £15 weekly allowance for utilities
 - A basic Minimum Income Guarantee for all those below pension age, equivalent to the rate for a single person over 25 including disability and

enhanced disability premiums. The Minimum Income Guarantee applied to all service users will be either the relevant statutory rate or the locally enhanced rate, whichever is the highest.

- A £250 maximum weekly care charge

10. Charging for meals

Hot and frozen meals delivered to the home of the service user (“meals on wheels”) and meals provided in day care services are all charged at a standard flat rate, and are not subject to a financial assessment. These standard charges are subject to revision from time to time. These changes will be communicated by the service to the service user with as much notice as possible.

11. Carrying out financial assessments

11.1 Service users can expect financial assessments to take place swiftly and without delay.

11.2 Financial reassessments will take place annually unless there is a change of circumstances. A service user can request a financial reassessment at any time.

11.3 Financial assessments will be carried out in accordance with our Mental Capacity Policy and Procedures.

11.4 We will carry out a ‘light-touch’ financial assessment⁵ if we have seen clear evidence that a service user can afford, and will continue to afford, any charges due. This applies to when:

- A service user has significant financial resources, and does not wish to undergo a full financial assessment for personal reasons, but wishes nonetheless to access local authority support in meeting their needs. In these situations the local authority may accept other evidence in lieu of carrying out the financial assessment and consider the person to have financial resources above the upper limit.
- Where we charge a small or nominal amount for a particular service (e.g. for subsidised services) which a service user is clearly able to meet and would clearly have the relevant minimum income left, and carrying out a financial assessment would be disproportionate.
- When a service user is in receipt of benefits which demonstrate that they would not be able to contribute towards their care and support costs.

11.5 As part of the financial assessment process, advice will be provided to service users regarding benefit entitlement. This is to support service users to maximise their income and mitigate as far as possible any adverse impacts of having to pay a financial contribution. This may include assistance to complete applications or signposting to relevant agencies and services.

⁵ Whereby we treat a person as if a financial assessment has been carried out

- 11.6 As part of the financial assessment process we will identify where a service user is potentially entitled to benefits that they are not claiming, and provide reasonable advice and assistance to support a claim. We will refer service users to specialist financial advice if a need for this is identified during the assessment process.
- 11.7 We will encourage service users to disclose financial information. In situations where this is refused, we will assume that the service user is eligible to pay the full cost of services.
- 11.8 A written record of the financial assessment will be given to the service user to explain how the assessment has been carried out.

12. Couples

12.1 The definition of a couple for the purposes of this policy is:

- Married or in a civil partnership and living in the same household; or
- Living together as a couple in the same household

12.2 When carrying out a financial assessment, we will only look at the income, capital and expenses of the person receiving care. To do this when assessing one member of a couple as a single person, the following will apply in line with statutory guidance:

- 100% of solely owned and 50% of all jointly owned capital will be taken into account, unless evidence can be produced to show the exact allocation of funds.
- All assessable income appropriate to the individual will be taken into account. Where benefits are paid at the couple rate, the benefit will be apportioned
- 50% of the couple's total joint household expenditure will be allowed for
- The minimum income guarantee will be as set out in statutory guidance.

13. Change in circumstances

13.1 Service users will be informed that they must notify the local authority of any changes to their financial circumstances. Upon notification, we will arrange for a financial reassessment as appropriate.

13.2 Changes to contributions can be backdated. If there has been a change in circumstances that results in a service user being eligible to pay more towards the cost of care, payments will be adjusted and/or backdated to the date the change came into effect. If there has been a change in circumstances that results in a service user being eligible to pay less towards the cost of care, we would expect the service user to notify of us this change and provide evidence to this effect. In this scenario if we are not informed, the maximum we will backdate payments to is three months (unless there are exceptional circumstances).

13.3 The Council reserves the right to carry out a financial reassessment at any point relating to current or historical services provided. This may require service users to provide new or additional information and evidence where necessary.

13.4 Where appropriate, we may automatically carry out a financial reassessment based on changes that we become aware of through things like regulation changes or national policy changes. These may include annual increases to standard benefits payments such as the State Retirement Pension, occupational or other private pensions (except fixed rate annuities) or service cost increases.

13.5 Service users will be notified promptly of any changes that might affect the amount they pay towards the cost of care. No increased charge will apply before written notification of the new charge and its effective date has been issued to the service user, unless there has been a change that the service user has not notified us of in a reasonable timeframe.

14. Deprivation of assets

14.1 If someone has deliberately deprived themselves of capital or an asset to reduce their financial contribution to care costs, this may be treated as deprivation of funds.

14.2 In reaching a decision about deprivation of assets, the Council will follow the Care Act 2014 statutory guidance.

14.3 In the event that a service user is found to have deprived themselves of assets for the purpose of avoiding care costs, the Council will complete the financial assessment assuming a notional level of assets equivalent to the value of assets prior to the deprivation taking place. This will be applied for a period that is considered reasonable with regard to the level of assets and the level of contribution to care costs required.

14.4 In all cases where it has been decided that a service user has deprived themselves of assets, this will be confirmed in writing to the service user and/ or their representative, including the reason for the decision and how this will affect the assessed charge. There will be a right to review/ appeal as set out in section 33 of this policy.

15. Access to care and assessment of ability to pay charges

15.1 Once someone has been assessed as needing a service, that service will not be withdrawn solely if the service user refuses to pay the charge. The service will continue to be provided, but any debt outstanding will be pursued - if necessary through the civil courts – in line with our Debt Recovery Policy which details our approach to recovering debts from vulnerable adults.

16. Services not provided as planned

16.1 For services where we are given less than 24 hours' notice of a cancellation, charges will typically still apply (with the exception of unavoidable emergencies, such as emergency hospital admissions). When we are given more than 24 hours' notice or if there is an emergency, we will not charge for this element of the service. However, because we charge against the agreed weekly rate, cancellations will not necessarily result in a reduced overall charge (please see case studies below, which demonstrate this point). There may be a number of reasons why

services are cancelled in advance, such as hospital admissions, holidays or health appointments. Any queries in relation to cancelled appointments should be discussed with the relevant Team or Service Manager.

Example case studies:

*Case study 1: Mr A receives two hours of care per day (14 per week). The cost of care is £182 per week (14 hours x £13 per hour). Mr A's assessed contribution towards the cost of his care is **£100** per week and he is charged this amount. Mr A's care provider inform the local authority that the following week, Mr A does not need care for one of the seven days. This reduces the cost of care to £156 (12 hours x £13 per hour). However, Mr A's charge remains at **£100** as his assessed contribution is still less than the cost of care.*

*Case study 2: Mr B receives two hours of care per day (14 per week). The cost of care is £182 per week (14 hours x £13 per hour). Mr A's assessed contribution towards the cost of his care is £200 per week so he is charged the full cost of care (£182). Mr A's care provider inform the local authority that the following week, Mr A does not need care for one of the seven days. This reduces the cost of care to £156 (12 hours x £13 per hour). Mr A's charge is adjusted to **£156** for that week.*

17. How payments will be collected

- 17.1 Where the local authority is arranging care for a service user, their financial contribution will be paid to the local authority.
- 17.2 Where a service user is receiving a direct payment, their financial contribution will typically be automatically deducted from that amount unless there are clear reasons why this approach should not be taken.

18. Debt recovery

- 18.1 Services to meet assessed needs will not be refused or withdrawn if a person does not pay their assessed charge, or lodges an appeal against their assessed charge, this will ensure that vulnerable adults remain safe in the community and are not left without the care they have been assessed as needing Debt recovery will be pursued for any outstanding verified charges.
- 18.2 We will take all appropriate and necessary steps to recover non-payments, in line with our Debt Recovery Policy.

19. Deferred payments- eligibility

- 19.1 London Borough of Tower Hamlets (LBTH) will offer a deferred payment to people who meet the eligibility criteria set out below:

19.1.1 Anyone who is eligible to have their care needs met by the provision of residential or nursing care⁶;

⁶ This is determined when someone is assessed as having eligible needs which the Council decides should be met through a care home placement. This should comply with choice of accommodation

19.1.2 Anyone who has savings less than (or equal to) the upper capital limit of £23,250⁷, excluding the value of their home (i.e. in savings and other non-housing assets); and that there is sufficient value in their home to meet the criteria for self-funding;

19.1.3 Anyone whose home is not 'disregarded' in a financial assessment. For example, a home that is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support would be taken into account as part of a financial assessment on paying for residential or nursing care;

19.1.4 Anyone who meets the eligibility criteria must also have the mental capacity to enter into a Deferred Payments Scheme or have a person legally appointed to manage their finances such as through a Deputyship or a Lasting Power of Attorney. They will be responsible for the Deferred Payment Scheme and reporting any changes of circumstances.

19.2 Discretion

In some circumstances we may be more generous than the criteria set out above. If an individual does not meet the above criteria we will take into account the following discretionary areas⁸:

19.2.1 Whether someone has other accessible means to help them meet the cost of their care and support;

19.2.2 If a person is narrowly not entitled to a deferred payment agreement because they have slightly more than the asset threshold, including individuals who are likely to meet the eligibility criteria;

19.2.3 If in meeting care costs, someone is likely to have very few accessible assets such as assets which cannot quickly/easily be liquidated or converted to cash.

19.2.4 Financial Assessment Officers who determine that a deferred payment should be offered to a service user who does not meet the criteria outlined in section 19.1 will need to gain authorisation from the appropriate Divisional Director.

20. **Under what circumstances would we refuse deferred payments?**

regulations and care and support planning guidance and so take reasonable account of a person's preferences

⁷ As of August 2016 - This figure is subject to national guidance and is not determined by the Council

⁸ In these situations we will seek to offer a deferred payment agreement but will be guided by 'how much can be deferred' (see section 12) to determine the amount that is sustainable and that it reflects their core care costs without any top-ups and agree a deferral. The individual can then choose whether they wish to agree to the DPA.

20.1 Circumstances leading to a refusal of a deferred payment

We will always offer a deferred payment to anyone who is eligible and where the Council is able to secure the debt against the property. However, there are circumstances where we may refuse a request to safeguard the local authority against default or non-repayment of a debt. We may refuse to enter into a deferred payment agreement even if someone meets the eligibility criteria under the following circumstances:

- 20.1.1 If we are unable to financially secure the property by placing a first charge on the property. We would have to be satisfied that we could gain ownership of the property or assets at the point of termination and be satisfied that there is at least one years' worth of funding in the property. The property would also have to be insurable;
- 20.1.2 Where someone is seeking a top up and does not agree to the terms and conditions of the agreement;
- 20.1.3 We may refuse offer of a deferred payment if the person lacks capacity and there is no appointed deputy to make a decision. All staff involved will be guided by the Mental Capacity Act 2005 (MCA) in these circumstances. If someone lacks mental capacity and does not have a representative to act on their behalf, there is an option for the local authority to manage their finances under a "Court of Protection" deputyship arrangement.

20.2 Refusing any further deferred charges

Once a deferred payment been agreed there are circumstances in which we may refuse to defer any further charges. This includes:

- 20.2.1 When the individual's total assets fall below the level of the means-test and they become eligible for local authority support in paying for their care;
- 20.2.2 Where an individual no longer has need for care in a care home (or supported living accommodation in the future);
- 20.2.3 If terms of the contract set out in the legally binding Deferred Payment Agreement is breached and our attempts to resolve the breach is unsuccessful and the contract specifies this;
- 20.2.4 If, under the charging regulations, the property becomes disregarded for any reason and the individual consequently qualifies for local authority support in paying for their care, including but not limited to:
 - Where a spouse or dependent relative (as defined in charging regulations) has moved into the property after the agreement has been made, where this means the person is eligible for local authority support in paying for care and no longer requires a Deferred Payment Agreement; and
 - Where a relative who was living in the property at the time of the Agreement subsequently becomes a dependent relative (as defined in charging regulations). The local authority may cease further deferrals at this point.

20.2.5 We will cease deferring further amounts when the 'equity limit' allowed to be deferred has been reached (see Section 18 of this policy); or when a person is no longer receiving care and support in either a care home setting or in supported living accommodation. This also applies when the value of the security has reduced and so the equity limit has been reached earlier than expected.

20.2.6 In cases where we refuse to defer any further changes, we will not demand repayment of future instalments in these circumstances. However, the repayments will be subject to the terms of termination as set out in Section 18 of this policy.

20.3 Discretion in refusing a deferred payment

20.3.1 In any of the above circumstances, we will consider whether to exercise discretion to offer a deferred payment (for example, if a person's property is uninsurable but has a high land value we may choose to accept charges against this land as security instead). In all cases we will have to financially secure the recovery of the debt.

20.3.2 We will not exercise the discretionary powers set out in this section if a person would, as a result, be unable to pay off any income due to the local authority from their non-housing assets.

20.4 Notice of ceasing future deferred payments

20.4.1 We will provide a minimum of 30 days' notice that further deferrals will cease and will provide the individual with an indication of how their care costs will need to be met in future. It will be based on the individual's circumstances and our duties under the 'well-being' principle as set out under the Care Act and can be funded by us or from the individuals' income and assets.

21. What information will residents be provided with on deferred payments?

21.1 We recognise that moving to a residential or nursing home can be a challenging time for service users and their loved ones. The Financial Assessment Officer will provide all the necessary information available to service users and carers to enable them to make an informed decision about entering into a deferred payment agreement. The information we provide will be clear and easy to read, in line with our Accessible Information Policy.

21.1 The Financial Assessment Officer will ensure that service users entering residential or nursing care are made aware of the ability to enter into a Deferred Payment Scheme; the eligibility criteria; that this involves using their home as a security so that the costs of paying for care can be paid at a later date such as when the home is sold to repay the full amount; and the implications of entering into the agreement on the income and benefits entitlement of the individual.

- 21.2 The Financial Assessment Officer will make service users aware that they have the right to seek independent financial advice, and will provide an overview of the advantages and disadvantages of the Deferred Payments Scheme and other options for paying for care for their consideration.
- 21.3 The Financial Assessment Officer will ensure that service users are aware of the 12 week disregard to enable service users to have time to consider their options for care.
- 21.4 The Financial Assessment Officer will inform individuals of the administration charge in Tower Hamlets when entering into a Deferred Payment Agreement.
- 21.5 The Financial Assessment Officer will explain the security we will be willing to accept.
- 21.6 The Financial Assessment Officer will be clear about the amount that can be deferred and the circumstances in which we will stop deferring further amounts.
- 21.7 The Financial Assessment Officer will explain what needs to happen so that individuals are not in breach of the Deferred Payments Agreement, and the consequences if they do not repay the amount/s due. The Financial Assessment Officer will also explain what will happen when the agreement is terminated and the options for repayment.
- 21.8 Information on the Deferred Payments Scheme is published on the Council's website for service users and carers. The website includes information about Financial Services Authority regulated financial advisors who can provide independent financial advice.

22. Calculating payments for the first 12 weeks someone is in residential care

- 22.1 Where a person has been assessed as having eligible needs for residential or nursing care and owns a property, during the first 12 weeks stay in residential care, the capital value of the property (i.e. the value of the house) is disregarded. This will allow time for the service user to decide whether they will choose to sell, rent or enter into a Deferred Payment Agreement with the local authority.
- 22.2 After 12 weeks, unless there is statutory disregard of the property, the property is taken into account as a capital resource. This means its value will be taken into account when assessing how much someone needs to pay towards the cost of their residential care. By the 13th week of residential or nursing care we will ensure a smooth transition to the Deferred Payments Scheme.
- 22.3 If it is necessary to sell the property immediately to fund the care, i.e. where any other available resources are below the upper capital limit (currently £23,250), then a 12 week property disregard will be automatic and the Deferred Payment Scheme will be available subject to the appropriate eligibility criteria.
- 22.4 Persons already in residential care who may need to access local authority funding are not entitled to the 12 week property disregard. However, if the request to access

local authority support is made due to a sudden and unexpected change, we have the discretion to allow a 12 week property disregard. An example where we might consider exercising this discretion might be a person's partner dying suddenly. Staff seeking to exercise this discretion will need to gain prior approval from a relevant Divisional Director.

23. Deciding not to sell a home and refusing a deferred payment

23.1 An individual may wish not to sell their property and choose not to defer payments for nursing or residential care. If this decision is made, the full cost of their care would still be payable and we will invoice as such. If there is failure to make payments on the invoices, we will pursue the payments through our debt recovery process. Practitioners will encourage all individuals to seek independent financial advice if they are unsure about deferring payments.

24. Getting security against a deferred payment

24.1 As part of agreeing to a deferred payment, the Council is required to have adequate security against the deferred amount. The individual or their representative is responsible for providing the evidence that they are able to give the Council adequate security.

24.2 For homeowners, security is in the form of a legal "charge" against the property whether the property is sole, joint or a Tenancy in Common in place. The "charge" is the security that supports the local authority in recovering the accrued debt, and is registered on the property title deeds held by the Land Registry Office. In all cases we will need written agreement to have a first charge against the property and will be required to have this in place so that the Council is able to recover the accrued amount before we can agree to a deferred payment.

24.3 The Council has the discretion to accept other forms of security on a discretionary case by case basis if it is unable to obtain security against the property. Staff seeking to exercise this discretion will need to obtain prior approval from a relevant Service Head. We will only accept this if there is adequate security against the chosen form of security and the Council is clear that it will be able to recover the accrued amount. Other forms of security we may consider include:

- Third party guarantor;
- A solicitors undertaking provided in writing ;
- A valuable object;
- An agreement to repay the amount deferred from the proceeds of a life assurance policy.

25. How much can be deferred

25.1 The Council will only defer the amount that the statutory guidance allows to be deferred. This is usually the actual cost of care and support, minus the assessed financial contribution. It is considered by looking at the equity available in the security chosen, contributions from other sources and the total costs a person will face.

25.2 Where a property is used as security to offer a deferred payment agreement, the total amount that can be deferred is:

- The value of the property
- Minus 10%
- Minus the lower capital limit (£14,250 at the time of writing)
- Minus the amount of any encumbrance secured on it. "Encumbrance" refers to any outstanding mortgage or debt secured on the property⁹.

For example:

Market value of property	£600,000
Less 10%	- £60,000
Less lower capital limit	- £14,250
Less outstanding mortgage	- £2,500
Maximum that can be deferred	£523,250

25.3 When an individual is reaching the point at which they have deferred 70% of the value of their chosen security, we will work with the individual to review the cost of care. This will include a view of any means-tested care and support they receive and review whether a deferred payment is the best option for them.

26. Other options to pay for care and support

26.1 The Deferred Payments Policy is one option available to pay for the cost of care and support. The other options might include sources of income, savings or other assets or a financial product (such as insurance) designed to pay for long term care. Individuals may choose to use a mix of these options. We will clearly set out the full range of financial information for all individuals based on their assessment and financial position.

26.2 Individuals entitled to a Deferred Payment Agreement will have a financial assessment to make contributions towards the cost of care and support. This will be based on their assessable income and any capital such as savings as set out in this policy.

26.3 An individual who has a deferred payment can retain a Disposable Income Allowance. This amount is designed to be used to meet housing-related costs, such as utility bills and maintenance costs. From this, an individual can decide (if they

⁹ If there is a mortgage, the mortgage lender gets precedent in terms of securing first charge. As such, the local authority will be ranked as second charge. The local authority therefore cannot offer deferred payment on the full amount but only on the part not covered by mortgage, if any.

choose) to keep less of this amount in order to reduce the debt accrued through the Deferred Payment Scheme.

26.4 Individuals and family members may wish to top-up the cost of their care to buy care and support services in addition to that provided by the local authority. However, it is not possible for individuals to take a deferred payment on the top-up element of their care package.

26.5 Renting the property

- An individual may wish to rent their property. This can be through the private market. We would expect to see a tenancy agreement as evidence of this as part of securing the property.
- We can support individuals or their representatives to rent their properties by providing them with information and advice on how to go about doing this.
- If the property is to be rented, rental income net of relevant charges (such as management fees) is to be notified to the Financial Assessment and Benefits team. Service users will be able to keep 10 per cent of their rental income to pay for things like insurance and repairs. This amount is in addition to the Disposable Income Allowance described in Section 26.3. This amount will be excluded in the financial assessment calculation to see how much an individual needs to pay towards the cost of residential or nursing care. The remainder of rental income will be included as investment income for financial assessment and charging. Investment income will be viewed as a potential contribution towards the cost of care. Rental income should be used to pay for care home charges in preference to accruing further deferred charges.

27. Interest, charges and fees

27.1 The Council will not charge interest on deferred payments, until the death of a service user as set out in paragraph 31.1.4.

27.2 An administration charge is applied to all Deferred Payments Agreements that are accepted. This is based on a number of costs which we incur in setting up the deferred payment. This will only reflect the actual costs. This includes but is not limited to the following:

- Registering a legal charge against the property with the Land Registry;
- Cost of removing the legal charge;
- Land registry search;
- Postage, printing and telecommunication charges;
- Cost of staffing time;
- Cost of valuation and re-valuation of property

[Appendix IV](#) provides guidelines for calculating administration fees and the current amount applied (as of August 2016). These amounts will be reviewed every December and July, or more frequently if required.

28. Valuing a property

28.1 The Council will undertake a valuation of the property being used in the deferred payment. The value of the property will inform how much equity is available in order to decide how much money can be deferred. The person or their representative entering into the deferred payment agreement can undertake an independent valuation at their own cost if they wish. If the valuation differs significantly, a joint decision between the individual and the Council will be made on the valuation to apply. Any disputes about property valuations will be dealt with under the review and appeals procedure as outlined in Section 20 of this policy.

28.2 For the duration of the deferred payment agreement, the Council will undertake a re-valuation of the property annually and as required. This is to ensure the upper limit of 70% is not exceeded or to ensure the sustainability of the deferred payment is not in question. Re-valuations will take place at least when the accrued debt has reached 50% of the agreed deferred amount or when there is a significant market correction of the property values. The costs of this can be tied into the deferred amount. Any disputes about property valuations will be dealt with under the review and appeals procedure as outlined in Section 20 in this policy.

29. Statements detailing deferred payments and outstanding debt

29.1 Every six months, service users will be sent a statement of their deferred payment. This will detail the deferred amount, the rate at which it is growing and an estimate of the length of time the remaining assets will be sufficient to fund the full cost of care.

29.2 Statements can also be sent out at any time if requested by the service user or their representative. A statement will be sent out within 28 days of any request.

30. The Deferred Payment Agreements

30.1 A formal legal Deferred Payments Agreement will be provided to the service user. The agreement confirms that the service user or their legal representative wishes to enter into a Deferred Payment Scheme and that all the implications have been explained. We will provide details of what will happen in taking out a Deferred Payment Agreement, the timescales involved and the policy in writing.

30.2 The Financial Assessment Officer completes a Charging Authority form, which is sent to the local authority's legal team. They then draw up the Deferred Payment Agreement and send this to the service user or their representative.

31. Ending or terminating a deferred payment

31.1 The deferred payment will end or can be terminated under the following circumstances:

31.1.1 The deferred payment will end when a person no longer has the need for care and support in a care home.

31.1.2 The Council will stop deferring further amounts when a person has reached the 'equity limit' that they are allowed to defer (see Section 12.2). This also applies when the value of the security has dropped and so the equity limit has

been reached earlier than expected. In these circumstances we will write to the service user giving 30 days' notice of this. This aims to give the service user time to discuss and make plans for the continuation of care and support needs.

31.1.3 If a service user sells their property, the accrued debt must be repaid upon the sale. The sale of the property effectively terminates the deferred payment agreement.

31.1.4 On the death of the service user, the deferred payment arrangement ends. Care Act guidance expects that the debt becomes payable 90 days after death. We will provide a statement of the final debt within two weeks of the death of the service user to the relevant party. We will apply interest to the deferred payment amount from day 91 onwards if the amount is not repaid. The interest rate will be in line with the national maximum rate that local authorities can apply over the life of the deferred payment.

31.1.5 A service user can cancel their Deferred Payment Agreement at any time. A 30 day notice period applies and any outstanding balance must be repaid. If the balance is not repaid within an agreed timeframe, we will apply interest to the deferred payment amount from the first day the repayment is late. The interest rate will be in line with the national maximum rate that local authorities can apply over the life of the deferred payment.

32. Continuing Healthcare funding

32.1 If a service user enters into a Deferred Payment Agreement prior to health services agreeing to provide Continuing Care funding: Once the Continuing Care funding comes into effect, we would expect the service user to continue to make payments towards the deferred amounts. It is good practice to ask for voluntary payments to continue, wherever possible, as this will reduce the amount of the accrued debt set against the value of the property.

33. Reviews, appeals and complaints

33.1 People will be informed of their right to ask the Council for a review of financial assessment, if he or she considers that they cannot afford to pay it and/or if he or she considers that the assessment has been carried out incorrectly.

33.2 People will be made aware of their right to an appeal if, following the outcome of a review he or she still considers they cannot afford to pay. Please see the "Appeals Policy" in adult social care for more details on this.

33.3 People will be made aware of their right to make a formal complaint using the Adult Social Care Complaints procedure. Contact details are as follows:

- Telephone: 0800 374 176
- Address:
Freepost Plus
RRBZ-UCYT-ZLRX
The Complaints Officer, Tower Hamlets

Mulberry Place, 5 Clove Crescent
London
E14 2BG

- Email: complaints@towerhamlets.gov.uk

33.4 The decision made on an application for a deferred payment can be reviewed. The grounds for reviewing a decision include:

- The decision failed to take into account new information
- There are eligible care costs which the Council has failed to take into account.

33.5 Service users will be advised that they can ask for the decision on a deferred payment application to be reviewed. The decision on a review can be appealed within 20 working days of being notified of the review decision. If the individual finds the appeal decision to be unsatisfactory, they can request that the Council deal with the matter under the Council's complaints procedure.

34. Monitoring and review

34.1 This policy will be reviewed annually, or more frequently if needed.

34.2 The implementation of the policy will be reviewed as needed.

Appendix I - Glossary

	Term	Meaning
1	12 week disregard	For the first 12 weeks funded by the Council of a service user's permanent stay in care, the value of their main property is not taken in to account in care home fee calculations. They are not eligible for a deferred payment during this time.
2	Accrued debt	The total amount of money owed
3	Capital or capital resource	The combination of valuable items ('assets') and savings that a person has
4	Capital value	The amount of money someone has in savings plus the value of any valuable items ('assets').
5	Equity	The value of something once any outgoings have been considered
6	Equity limit	The total amount that can be deferred
7	Legal charge	This is a legal agreement stating that the Council can receive the value of a property to cover outstanding debt when it is sold. It is registered on the property title deeds held by the Land Registry Office.
8	Lower capital limit	A financial "limit". Any capital below this limit will be ignored when calculating how much a person may need to pay towards the cost of care.
9	Non-housing assets	Something with financial value that is not a house.
10	Security	Reassurance that a debt can be repaid
11	Statement of Accrued Debt	A document that sets out how much has been paid and how much is still owed
12	Tariff income	Tariff income rules apply to the portion of a client's 'Capital, Savings and Investment' i.e. between £14,250 and £23,250 that is considered in assessing how much they need to contribute/pay towards the cost of their care. Clients with over £23,250 are required to pay the full cost of their care. The current tariff income rule on non-residential charging is based on the assumption that for every £250 of capital or part thereof, the client is

		able to afford to contribute £1 per week towards the cost of their care. This amount will be added to the weekly income when assessing the weekly charge payable by eligible clients. Note that The Care and Support (Charging and Assessment of Resources) regulations 2014, provides flexibility for local authorities to apply discretion on using the minimum requirement of £1 for every £250.
13	Upper capital limit	A financial “limit”. Any capital above the ‘upper capital limit’ must be put towards the cost of residential care.

Appendix II: Current rates set out in statutory guidance

Key rates set out in national statutory guidance for 2016-17 are as follows:

1. The minimum amount service users can expect to pay towards care home fees is £130.70 per week if they are over pension age or £80.45 if under pension age.
2. The lower capital limit is £14,250.00.
3. The upper capital limit is £23,250.00.
4. If a service user has capital between the “lower capital limit” and “upper capital limit” they will have to pay £1 for every £250 of their savings between these amounts (“tariff income”).
5. The personal expenses allowance is £24.90 per week.
6. The Savings Credit Disregard is £5.75 per week.
7. The statutory “minimum income guarantee” is set by Government each year. The weekly amounts for 2016-17 are:
 - £72.40 for adults under 25 years old
 - £91.40 for adults over 25 but less than pension age
 - £189 for people over pension age

There are also additional amounts for some people. These include:

- An additional amount for people with children. The 2016-17 weekly rate is £83.65.
- An additional amount for people receiving disability benefits. The 2016-17 weekly rate is £40.35.
- An additional amount for carers entitled to a carer premium. The 2016-17 weekly rate is £43.25.

Appendix III: Statutory disregards and inclusions

Statutory income disregards

Regulations specific that the income sources listed below must be ignored in the financial assessment. The Council *may* ignore (disregard) other sources of income as well, with exceptions listed at the end of this appendix.

- Employed and self- employed earnings
- Direct Payments
- Guaranteed Income Payments made to veterans under the Armed Forces Compensation Scheme
- The mobility component of Disability Living Allowance and Mobility Supplement
- The mobility component of Personal Independence Payments and Mobility Supplement
- Armed forces Independence Payments and Mobility Supplement
- Child Support Maintenance Payments and Child Benefit
- Child Tax Credit
- Council Tax Reduction Schemes where this involves payment to the person
- Christmas bonus
- Dependency increases paid with certain benefits
- Discretionary Trust
- Gallantry awards
- Guardian's Allowance
- Income frozen abroad
- Income in kind
- Pensioners Christmas payments
- Personal injury trust, including those administered by a Court
- Resettlement benefit
- Savings credit disregard
- Social Fund payments (including winter fuel payments)
- War widows and widowers special payments
- Any payments received as a holder of the Victoria Cross, George Cross or equivalent
- Any grants or loans paid for the purposes of education
- Payments made in relation to training for employment
- Any payment from:
 - o Macfarlane Trust
 - o Macfarlane (Special Payments) Trust
 - o Macfarlane (Special Payment) (No 2) Trust
 - o Caxton Foundation
 - o The Fund (payments to non-homophiliacs infected with HIV)
 - o Eileen Trust
 - o MFET Limited
 - o Independent Living Fund (2006)
 - o Skipton Fund
 - o London Bombings Relief charitable Fund
- Charitable and voluntary payments that are made regularly

- The first £10 per week of War Widows and War Widowers pension, survivors Guaranteed Income Payments from the Armed Forces Compensation Scheme, Civilian War Injury pension, War Disablement pension and payments to victims of National Socialist persecution (paid under German or Austrian law.)
- Part of savings credits under certain circumstances.
- Working tax credit if the service user is not resident in a care home.

Income that must be taken into account

The following income sources *must* be taken into account- the Council cannot decide to ignore them in financial assessments:

- Attendance allowance, including Constant Attendance Allowance and Exceptionally Severe Disablement Allowance
- Bereavement Allowance
- Carers Allowance
- Disability Living Allowance (Care Component)
- Employment and Support Allowance or the benefits this replaces such as Severe Disablement Allowance and Incapacity Benefit
- Income Support
- Industrial Injuries Disablement Benefit or equivalent benefits
- Jobseeker's Allowance
- Maternity Allowance
- Pension Credit
- Personal Independence Payment (Daily Living Component)
- State Pension
- Universal Credit
- Working Tax Credit if the person is resident in a care home.

Appendix IV: Administration Fee Breakdown

Deferred Payments	Administration fee amount £
Setting up the Deferred Payment Agreement (DPA) - One off set up fee	
Land registry search*	3
Legal fees: this covers the cost of placing the charge on a property and may change as this is set by the solicitor not LBTH*	250
Staff costs: 15 hours' work for an officer to initiate, set up and complete all the tasks required*	260
Property valuation: this charge may vary as it is set by the district valuers office*	570
In year cost of maintaining the DPA - charged annually	
Legal fees: no costs are anticipated in a standard DPA case but may arise in unforeseen circumstances*	
Staff costs: 2 hours staff time, every quarter to monitor, re-evaluate and carry out necessary sustainability tasks *	150
Property valuation: only when debt reaches 50% of equity or the unforeseen need for an in-depth review of the DPA's sustainability*	
Land registry search*	3
Closing down of the DPA - charged annually	
Legal fees: this covers the cost of placing the charge on a property and may change as this is set by the solicitor not LBTH*	150
Staff costs: 2 hours' work for an officer to initiate, set up and complete all the tasks required*	40