SHEFFIELD CITY COUNCIL

Cabinet Report

Report of:	Laraine Manley – Executive Director – Communities
Report to:	Cabinet
Date:	18-03-2015
Subject:	Deferred Payment Scheme
Author of Report:	Ellie Fraser (07770 544729) Customer Accounts Team Manager, Communities
Key Decision:	YES
Reason Key Decision:	Expenditure/savings over £500,000 Affects 2 or more wards

Summary:
Under sections 34 – 36 of the Care Act 2014, and the Care and Support (Deferred Payments Agreements) Regulations 2014, the Council is required to offer Deferred Payment Agreements to people who meet certain criteria governing eligibility for the scheme from April 2015.

A Deferred Payment Agreement enables a person who meets the criteria to defer or delay paying the cost of their care until a later date by taking out a loan from the Council against the value of their house. Offering a Deferred Payment Scheme means that people are not forced to sell their home in their lifetime to pay for their care.

This report seeks approval to implement a Deferred Payment Scheme in Sheffield to meet the requirements of the Care Act, which provides for interest and administration costs to be charged and treated in the same way as the deferred amount, to replace the existing loan schemes on offer. It also seeks delegated authority for the Executive Director of Communities to make operational decisions to allow the scheme to run.

Reasons for Recommendations:

The reasons for these recommendations are:

1. Meets the requirements of the Care Act 2014.
2. 1st April 2015 timescales can be achieved by giving the Executive Director of Communities the delegated authority to implement the policy and systems required to run the scheme.
3. The Department of Health are issuing national information sheets and contract templates to promote national consistency in the running of the scheme. The Social Care Accounts Service has the subject matter expertise to tailor these documents to meet local requirements and to ensure that any financial or legal concerns are addressed.

Recommendations:

It is recommended that Cabinet:

1. Notes the contents of this report.
2. Approves the implementation of a Deferred Payment Scheme in Sheffield, which provides for interest and administration costs to be charged and treated in the same way as the deferred amount, to replace the existing loan schemes on offer.
3. Delegates' authority to the Executive Director of Communities to make operational decisions in order to put the Scheme in place.
4. Delegates' authority to the Interim Director of Care and Support in her capacity as the Council's Statutory Director of Social Services to instruct Legal Services to complete the necessary documentation and register charges at the Land Registry.

Background Papers:

Category of Report: OPEN

Statutory and Council Policy Checklist

Financial Implications
YES Cleared by: Hugh Sherry
Legal Implications
YES Cleared by: Andrea Simpson
Equality of Opportunity Implications
YES Cleared by: Phil Reid
Tackling Health Inequalities Implications
NO
Human Rights Implications
NO
Environmental and Sustainability implications
NO
Economic Impact
NO
Community Safety Implications
NO
Human Resources Implications
NO
Property Implications
NO
Area(s) Affected
All wards
Relevant Cabinet Portfolio Lead
Mary Lea
Relevant Scrutiny Committee
Healthier Communities and Adult Social Care
Is the item a matter which is reserved for approval by the City Council?
No
Press Release
NO

REPORT TO THE CABINET

The Care Act: Deferred Payments Scheme

1.0 SUMMARY

1.1 Under sections 34 – 36 of the Care Act 2014, and the Care and Support (Deferred Payments Agreements) Regulations 2014, the Council is required to offer Deferred Payment Agreements to people who meet certain criteria governing eligibility for the scheme from April 2015.

1.2 A Deferred Payment Agreement enables people who meet the criteria to defer or delay paying the cost of their care until a later date by taking out a loan from the Council against the value of their house or other agreed asset. Offering a Deferred Payment Scheme means that people are not forced to sell their home in their lifetime to pay for their care.

1.3 This report seeks approval to implement a Deferred Payment Scheme in Sheffield to meet the requirements of the Care Act, which provides for interest and administration costs to be charged and treated in the same way as the deferred amount, to replace the existing loan schemes on offer. It also seeks delegated authority for the Executive Director of Communities to make operational decisions to allow the scheme to run.

2.0 WHAT DOES THIS MEAN FOR SHEFFIELD PEOPLE

2.1 Deferred Payment Agreements will be universally available throughout England and are designed to prevent people from being forced to sell their home in their lifetime to pay for the cost of their care. Instead people will be able to take out a loan from the Council to enable their care costs to be paid and this loan will be repaid at a later date when the owner chooses to sell their property or from their Estate on their death. This scheme gives people flexibility, choice and time to sell their home when they feel ready and able to do so. People will also have the choice to rent out their property whilst they are in residential care, which may reduce the amount they need to borrow in order to meet their care costs.

3.0 OUTCOME AND SUSTAINABILITY

3.1 The Council must have a Deferred Payment Scheme in line with its statutory responsibilities however the scheme will also help the Council to achieve the outcomes outlined in the Corporate Plan with regards to 'better health and wellbeing'. This will be achieved by enabling the individual to live somewhere that is appropriate to meet their health and social care needs without the stress of being forced to sell their family home during the later stages of their life.

The scheme may also encourage people to rent out their properties subsequently improving the areas private rented market. As the scheme develops the Social Care Accounts Service will work with the Housing Solutions team to explore how people could be supported to do this.

4.0 MAIN BODY OF THE REPORT

4.1 **Purpose of the report:**

The relevant provisions of the Care Act 2014 come into force on 1st April 2015. The Care Act makes it compulsory for all local authorities to offer Deferred Payment Agreements to people who meet the defined eligibility criteria laid out in the regulations made under the Care Act.

The purpose of this report is to request approval to implement a Deferred Payment Scheme which meets the requirements of the Care Act, includes charging interest and administration fees, and replaces the existing schemes which are in place. It is requested that the Executive Director of Communities is given delegated authority to make operational decisions to allow the scheme to run.

4.2 **Care Act requirements**

A Deferred Payment Agreement enables people who meet the criteria to defer or delay paying the cost of their care until a later date by taking out a loan from the Council against the value of their house or other agreed asset.

A Deferred Payment Agreement will be available to people who receive care and support arranged by the local authority as well as people who arrange and pay for their own care, subject to the eligibility criteria. A Deferred Payment Agreement must be offered to eligible people who are able to provide adequate security for the loan. A First Legal Mortgage Charge against a property must be accepted as adequate security. A person is eligible for a Deferred Payment Agreement if:

1. They are assessed by the local authority as having eligible needs which the local authority agrees should be met through a care home placement
2. They have less than, or equal to, £23,250 in assets excluding the value of their home
3. They have a property which is not disregarded as part of the local authority's financial assessment process (in line with the charging regulations made under the Care Act), e.g. where a spouse or a dependant is living at the property.

Deferred Payment Agreements are optional to owners who meet the criteria, who can choose whether they want to sell their property or enter into a Deferred Payment Agreement.

The Council has a responsibility to ensure that information about the Deferred Payment Scheme is widely available, and that people who are likely to meet the eligibility criteria are actively offered a Deferred Payment Agreement.

People who accept the offer of a Deferred Payment Agreement must enter into a written agreement setting out its terms. Where a property is used as security this includes an agreement for the Local Authority to register a Legal Charge against the property with the Land Registry in order to protect the financial interest of the local authority. Owners will also be required to suitably maintain and insure the property. The Council will recover full costs of the care provided to the individual, plus interest and an administration fee, when their property is sold.

Some owners who enter into a Deferred Payment Agreement may choose to rent out their property, creating additional income which can be used to pay towards their care costs and reduce the amount they need to borrow from the local authority.

Department of Health guidance states that Deferred Payment Schemes should be cost neutral to the local authority. The legislation permits the local authority to charge (a) interest on the loan (at a rate set out in the regulations) and (b) administration costs, both of which may be treated in the same way as the deferred amount, and it is proposed to make such charges in order to achieve cost neutrality.

4.3 **Current position**

Sheffield currently operates two discretionary residential loan schemes, a Deferred Payment Scheme and a Personal Capital and Recovery Loan Scheme.

The current Deferred Payment Scheme has not been reviewed since 2006 and there are currently no Care Home residents in Sheffield with a Deferred Payment Agreement. There are however approximately 149 people with a Personal Capital and Recovery Loan.

A review of the current Deferred Payment Scheme shows that it does not meet any of the new detailed requirements set out in the regulations made under the Care Act.

The Care Act replaces powers of recovery of charges under the Health and Social Services and Social Security Adjudications Act 1983 and the discretion to enter into a deferred payment agreement under the Health and Social Care Act 2001, and this affects the financial robustness of the current Personal Capital and Recovery Loan Scheme.

It is recommended that the current Personal Capital and Recovery Loan Scheme is removed in light of these legislative changes and a new Deferred Payment Scheme that meets the legal requirements of the Care Act is introduced. It is recommended that the Executive Director of Communities is given delegated authority to make operational decisions, including the decision whether to offer people with an existing Personal Capital and Property Loan the opportunity to transfer over to the Deferred Payment Scheme.

4.4 **Financial Implications**

It is difficult to estimate how many people will choose to enter into a Deferred Payment Agreement because:

1. Eligible owners will be able to choose whether they want a Deferred Payment Agreement or not.
2. People who choose to enter into a Deferred Payment Agreement will incur interest and administration charges and it is not known how attractive this offer will be to eligible owners.
3. The requirements set out in the Care Act are very different to the terms of the existing scheme making financial forecasts more difficult.
4. The Care Act requires high quality information and advice about the scheme to be available and actively put forward to people who may benefit from the scheme, whereas the current scheme is not widely promoted.

Financial analysis has been completed for year one of the scheme using estimated take up figures, average care home costs and a fixed administration fee of £750 (at this time this is an estimated administration fee and a more specific figure will follow). The estimated cash cost to the Council is £832,250 in year one (see appendix one), which is based on an assumed total of 103 new DPA requests.

This is not a true cost as the scheme is designed to be cost neutral with the Council recovering the full cost of the care provided, plus interest and administration costs, from owners who choose to enter into a Deferred Payment Agreement when their property is eventually sold, either by the person receiving care or their Estate. This means the real financial implication for the Council is cash-flow. The Council Balance Sheet as at 31 March 2015 will include a debtor, which will represent the amount owed under these Deferred Payment Agreements.

A Deferred Payment Grant of £770,616 has been included within the 2015-16 Revenue Support Grant Settlement to alleviate cash-flow pressures. Furthermore, the grant is due to be an annual grant for ten years which is currently projected to increase for the first four years before tapering off towards year ten.

Long term financial forecasts have not been completed as volume predictions would not be robust at this stage. It is felt that the risk of volumes increasing rapidly in year two is low as there will be a natural ceiling for how many people choose to enter into a Deferred Payment Arrangement, and if take up is as forecast in year one it is estimated that this level will quickly be reached. This prediction is based on data showing that the national average length of a Deferred Payment Agreement is 1.5 years, and the estimated number of self-funded care home residents in Sheffield is 1,500.

The Care Act eligibility criteria mean that the Council has a duty to offer a Deferred Payment Agreement to eligible individuals even if they do not have the capacity to enter into a Deferred Payment Agreement. In these circumstances the Council cannot enter into an Agreement with the individual. Unless there is already a person with a relevant Enduring Power of Attorney or Lasting Power of Attorney who can sign the agreement on behalf of the individual the Council will have to make arrangements to pay the Care Home the full cost of the individual's care until a Deputy appointed by the Court of Protection is in place. This means the Council will be incurring costs which are not protected by a Deferred Payment Agreement until such time that a Deputy is appointed.

This risk already exists under the existing loan schemes and continues to be an unavoidable risk under the new Deferred Payment Scheme. The financial risk of bad debt is minimised by close management of these loan arrangements leading to prompt legal intervention where required. The result of this unavoidable risk is higher administration and legal costs to the Council to secure this income.

4.5 **Equal Opportunities Implications**

An Equalities Impact Assessment has been completed and approved by Communities Business Strategy. This assessment shows that the running of a Deferred Payment Scheme does not have a detrimental effect on people in Sheffield and does not negatively impact or exclude any minority groups. The assessment recommends that the take up of the scheme is monitored and public information about the scheme is reviewed to ensure it is accessible to all

4.6 **Legal Implications**

The relevant provisions of the Care Act 2014 come into force on 1st April 2015. The Care Act makes provision for deferred payments; the Care and Support (Deferred Payment) Regulations 2014 set out the detailed requirements. It is compulsory for all local authorities to offer Deferred Payment Agreements to people who meet the defined eligibility criteria set out in the regulations.

The Department of Health has issued detailed guidance relating to the Care and Support provisions in Part 1 of the Care Act; the local authority has a duty to act under this general guidance in the exercise of its functions under the Act.

From 1st April 2015 the statutory framework replaces powers of recovery of charges under the Health and Social Services and Social Security Adjudications Act 1983 and the discretion to enter into a deferred payment agreement under the Health and Social Care Act 2001. The Council has used these powers to set up its current Deferred Payment and Personal Capital and Recovery Loan Schemes.

There are certain legal requirements in setting up a Deferred Payment Agreement. The agreement should be in writing and must include sufficient information for the individual to be able to ascertain their rights and obligations under the agreement. In particular the agreement must include the terms specified in the regulations. If the deferred amount is to be secured by a legal charge on the property then that must be registered at the Land Registry. The Department of Health has issued a draft sample deferred payments legal agreement, which may be adapted and refined to meet local requirements, to ensure consistent application of the scheme nationally. It is intended that Sheffield City Council will use the Department of Health sample agreement with local refinements.

4.7 **Dependencies**

Further funding reforms will come into force in 2016 and there will be further changes to the financial regulations. This includes a change to the capital limit; which is the financial threshold below which a care home resident is asked to pay towards their care; and the funding cap, which is a maximum amount anyone can be asked to contribute towards their lifetime care costs. These changes are subject to national consultation and the detail of these reforms is not known at this time.

The capital limit change will affect eligibility of those who are required to pay towards the costs of their care and therefore how many people will be eligible for the Deferred Payment Scheme. Policy documents, contracts and information will need to be updated accordingly and financial forecasts will need to be revisited once the financial impact of these funding reforms has been analysed.

The cap on care costs will affect how many people in residential care are required to pay towards their care costs, for how long, and how much they will be required to pay. Policy documents, contracts, information and financial forecasts will need to be reviewed in light of these changes.

5.0 ALTERNATIVE OPTIONS CONSIDERED

5.1 The Council could continue to run its existing schemes. This would leave the Council open for legal challenge for failing to meet the requirements set out in the Care Act and failing to offer people a Deferred Payment Agreement they are entitled to under statute.

Where new Personal Capital and Recovery Loans are set up changes to legislation would leave the Council exposed to non-payers, increasing the risk of uncollectable debt.

5.2 The Council could contract a third party to run the scheme on the Council's behalf. The setting up and running of the scheme is very closely linked to the in-house services which co-ordinate individual financial assessments, payments to care homes, bad debts to care homes and assessments of clients care and support needs. It is believed that a successful Deferred Payment Scheme must be integrated with these services and the systems they use. It would not therefore be advisable for this to be outsourced to a third party organisation. The timescales involved for tendering for this activity does not make it viable for this to be in place by 1st April 2015 when the Care Act becomes law.

6.0 REASONS FOR RECOMMENDATIONS

6.1 The reasons for these recommendations are:

1. Meets the requirements of the Care Act 2014.
2. 1st April 2015 timescales can be achieved by giving the Executive Director of Communities the delegated authority to implement the policy and systems required to run the scheme.
3. The Department of Health are issuing national information sheets and contract templates to promote national consistency in the running of the scheme. The Social Care Accounts Service has the subject matter expertise to tailor these documents to meet local requirements and to ensure that any financial or legal concerns are addressed.

7.0 RECOMMENDATIONS

7.1 It is recommended that Cabinet:

1. Notes the contents of this report.
2. Approves the implementation of a Deferred Payment Scheme in Sheffield, which provides for interest and administration costs to be charged and treated in the same way as the deferred amount, to replace the existing loan schemes on offer.
3. Delegates' authority to the Executive Director of Communities to make operational decisions in order to put the Scheme in place.
4. Delegates' authority to the Interim Director of Care and Support in her capacity as the Council's Statutory Director of Social Services to instruct Legal Services to complete the necessary documentation and register charges at the Land Registry.

Ellie Fraser
Customer Accounts Manager
26-02-2015

Appendix 1

DEFERRED PAYMENT SCHEME: FINANCIAL IMPACT ANALYSIS YEAR 1

	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Total 2015/16
New DPA Requests	1	2	3	4	5	7	9	12	15	15	15	15	103
In-Month cost of DPA	£ 1,667	£ 5,000	£ 10,000	£ 16,667	£ 25,000	£ 36,667	£ 51,667	£ 71,667	£ 96,667	£121,667	£146,667	£171,667	£755,000
Administration costs	£ 750	£ 1,500	£ 2,250	£ 3,000	£ 3,750	£ 5,250	£ 6,750	£ 9,000	£ 11,250	£ 11,250	£ 11,250	£ 11,250	£ 77,250
Total monthly cost of DPA scheme	**£ 2,417**	**£ 6,500**	**£ 12,250**	**£ 19,667**	**£ 28,750**	**£ 41,917**	**£ 58,417**	**£ 80,667**	**£107,917**	**£132,917**	**£157,917**	**£182,917**	**£832,250**
Cumulative Number of DPA	1	3	6	10	15	22	31	43	58	73	88	103	103

Note - Does NOT include the implementation costs of setting up the new Deferred Payment Scheme (governance, guidance, policy, training etc).

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