

RECORD OF OFFICER DECISION

APPROVAL FOR DEFERRED PAYMENT AGREEMENTS

Decision made

To approve the interim arrangements for Deferred Payment Agreements

Made by: Andy Brown, Director of Finance and Procurement

Background

1. Pursuant to paragraph 4 of Part 3 Section D, the Directors of Wiltshire Council are empowered to take all necessary decisions in cases of emergency. This decision is being taken by Andy Brown using these powers in circumstances where the Director concerned believes that there is a risk of damage to property, a threat to the health or wellbeing of an individual and/or that the interests of the Council may be compromised if this decision is not otherwise taken.

Reason for decision

2. This decision would in other circumstances be taken by Cabinet. However, in circumstances where Cabinet is unable to meet to expedite its functions in a timely manner during the COVID-19 pandemic, this decision is being taken in accordance with the power referred to in paragraph 1 above. This decision will be reported to the next meeting of the Cabinet.
3. See appendix for the rationale for this decision
4. I confirm that in making this decision I have considered the following in line with Wiltshire Council's Constitution:

Key decision requirements	Yes
Views of relevant cabinet member(s), committee chairman, area board(s)	Yes
Consideration of the area boards and delegated decision checklist for officers on the issue of when and how to involve local councillors and area boards in decisions about local services	N/A
Implication of any council policy, initiative, strategy or procedure	Yes; this ensures that care costs are covered for clients and that providers receive payments whilst mitigating any potential loss of income due to the council

Consultation in accordance with requirements and expectations of consultation with the public	N/A
Range of options available	Yes – see appendix
Staffing, financial and legal implications	Yes – legal advice taken into account in determining the interim arrangement
Risk assessment	Yes
Equality implications	Yes
Involvement of statutory officers and/or directors	Yes
Regional or national guidance from other bodies	Yes
The council's constitution	Yes
Procurement process	N/A

Conflict of Interest

5. Not applicable

Other options considered

6. The option to withhold payments to care providers until the charges can be secured puts care placements at risk and is not in line with the guidance with regard to the council's obligations under the Care Act.

Made by: Andy Brown
 Director of Finance and Procurement

Date: 24 June 2020

Appendix 1 – Rationale for the decision

During the restrictions because of COVID 19, it has not been possible to get all the relevant documentation returned for identification purposes as this needs to be witnessed. It is also not possible for representatives to visit the client to gain all the relevant details for a FAB assessment.

The key outcomes that we need to achieve are to ensure that the client receives the care that they require, the provider is paid for the care provided, the council discharges its duties under the Care Act and is protected from a financial perspective.

In the absence of being able to register the charge at the Land Registry because of the reduced ability to secure all the documentation and the is delay in getting the registrations returned. The council has 2 cases pending return to confirm that the charge has been registered.

Currently the council has not paid the care providers for several cases where there has been a DPA pack requested and, in some cases, partially completed. These have not been prioritised while changes we made to the payment of care packages however now they need to be addressed with some interim arrangements.

Property valuations have been conducted as desktop reviews at a reduced fee to the council and these will be reviewed once the social distancing requirements are reduced and surveyors can gain access to properties.

Initial Legal Advice

Appendix 1 sets out the email with the legal advice that was given in early April 2020 just after lockdown commenced. Mike Dooley's advice concluded with the following

Reading the Guidance and Schedule 12 the answer must be that in the emergency period the Council cannot complete a DPA. The effect of this will be that if a DPA is requested the cost of care provided will need to be funded by the Council until such time as the financial assessment is completed and the DPA completed retrospectively.

New Requests for DPAs

Following initial advice from Mike Dooley in Legal Service, an interim arrangement is proposed until all the paperwork can be formally complete. This will require the following steps

1. A DPA application must be completed as far as is possible
2. A desktop valuation must be completed by the surveyors to give best indication of the value of the property

3. The client or their representative must be written to advising that the payments have been made until the DPA process including the FAB assessment can be finalised and the charge registered. (See Appendix 2 for letter)
4. Retrospective adjustments will be made to any client contributions etc following the full FAB assessment
5. Statements giving estimate of debt to be issued on a six monthly basis as if the DPA was fully in place.
6. Revised Officer Decision Form to be signed off by service director (Emma Legg) for the interim arrangement
7. New service level to be set up on LAS/ ControCC to allow the identification of these cases for control and reconciliation. Each case to be converted to a full DPA at a later date when all checks and registration complete.

Conclusion

Whilst not giving the full protection to the council that a secured DPA would have, this approach makes it clear to all parties of the intent and there could be a liability that needs to be paid back to the council once the application and the financial assessment can be concluded.