

Classification: UNCLASSIFIED

Internal Audit Report

DEFERRED PAYMENTS

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From: Robert Dunford, Senior Auditor

**Limited
Assurance**

Date: 2/8/2022

EXECUTIVE SUMMARY

1. BACKGROUND

- 1.1 A deferred payment agreement (DPA) is an arrangement with the local authority that enables people to use the value of their homes to help pay for care home costs. If eligible, the local authority will help to pay a client's care home bills on their behalf. The client can delay repaying the local authority until they choose to sell their home, or until after their death.
- 1.2 DPAs don't work in the same way as a conventional loan. Instead of loaning a fixed sum of money, the council pays the care costs on the person's behalf and allows the agreed care costs to accrue (with interest) under a legal Deferred Payment Agreement (secured against the property). This loan must be repaid in full (plus interest and administration costs) when their property is sold or from their estate.
- 1.3 Since April 2015, DPAs have been available from all local authorities across England. In context, the government's national review of DPAs as at the 31/3/2021, published in October 2021 highlights the South-East Region accounts for 17% (1,090) of the total number of outstanding deferred payment agreements (DPAs), 2020-21 (6,435). As a comparison, Reading reported it had 5 DPAs.

2. OBJECTIVES & SCOPE OF THE AUDIT

- 2.1 The purpose of the audit was to verify how the deferred payments are recovered when due, from the proceeds of the sale of property or other means, and to verify the systems and controls for managing this process.
- 2.2 The review assessed whether:
- Existing strategies and tools are in place to promote awareness to ensure recovery.
 - The deferred payment scheme and procedure(s) are regularly reviewed.
 - Legal contract agreements between the Council and the individual(s) exist.
 - The Council has obtained adequate financial security when entering into a deferred payment agreement and this is monitored against the occurring costs.
 - An accurate record of deferred payment is recorded. All allowable costs have been charged and added to the deferred payment or settled independently.
 - The Council initiates the recovery process promptly, if appropriate, and all monies due are included in the recovery process.
 - Records are updated to reflect the process including once the debt has been paid.
- 2.3 This audit (and report) was undertaken in accordance with the Public Sector Internal Audit Standards ([PSIAS](#)).

3.0 CONCLUSIONS

- 3.1 It is our opinion that the Council is at risk of carrying higher levels of unsecured debt than potentially necessary because deferred payment applications are not being processed on a timely basis. Application complexities that could have been identified at the start of the process have meant that some loans are potentially not fully secured, albeit solicitor undertakings are being used to help minimize the risk of this. Given this, there is good risk awareness and an initiative to improve the procedures and workflow processes across services which will help both the customer and protect the public purse.
- 3.2 Guidance is provided by both the government and the Council to help inform applicants of the financial implications of the deferred payment scheme. However, better internal training, communication, and coordination between departments are required to ensure application complexities are highlighted and understood before the Eligibility Risk Review Group's review and agreement.
- 3.3 Although low DPA numbers in RBC and poor systems make the scheme difficult to fully evaluate, it is our opinion that the deferred payment scheme is not working as intended because most deferred payment applications are being either progressed as a solicitor's undertaking or remain as an unsecured interim funding arrangement. It is estimated that this accounts for debt totalling £1.3m.

- 3.4 There are good processes in place to measure each stage of the deferred payment application process, but a DPA register is required to help reconcile the completeness of records, legal agreements, and supplementary documents, as systems are currently too reliant upon officers' knowledge.
- 3.5 Due to a lack of documented estate agent valuations on file to substantiate the properties valued and used as the basis for security for the care loan, and procedures to ensure annual re-valuations are carried out to ensure the latest market values are considered, there is a risk that the equities which form the basis for calculating the level of debt, declared on the annual statement for the customer, could be incorrect.
- 3.6 We are satisfied that there are arrangements in place to monitor the recovery status of these debts on a regular basis by the Social Care Debt Monitoring Group, albeit we understand further emphasis to include interim funding arrangements and solicitor undertaking cases may be required to enable a fuller analysis of the DPA system so that it can be determined if the scheme is a success or not.
- 3.7 A total of 9 recommendations have been made in respect of this review, of which 1 is considered a high priority. The recommendations and corresponding management action plan are attached in Appendix 1.

Management Action Plan					
Ref	Recommendation	Rec	Management Response	Responsible Officer(s)	Target Date
STRATEGY AND RECOVERY AWARENESS					
<i>RISK: There's a risk that the Council's deferred payment policy is not being applied to protect the public purse and ensure funding choices are known and understood.</i>					
1	The success and failure of the deferred payment scheme, policy, and procedures operated by the Council should be benchmarked and evaluated.	Priority 1	<p>Agree.</p> <ol style="list-style-type: none"> 1. There is current work to improve internal procedures and subject knowledge around RBC's DPA scheme and to set-up monitoring of the scheme. 2. As a member of NAFAO, RBC will provide benchmarking information and receive feedback on DPA fees and numbers for 21/22 for all NAFAO members later in 2022. 3. It is anticipated the national DPA scheme will be amended by Regulations and statutory guidance through Care funding reform 2023 (DHSC have stated at NAFAO meetings they are keen to widen the availability and take up of DPAs nationally). It is suggested that benchmarking and evaluation will need revisiting at that stage. 	Sarah Stockle	<p>Monitoring procedures in place by 1 August 2022</p> <p>Benchmarking against NAFAO members (tbc 2022)</p> <p>Report back to DACHS DMT by March 2023</p>
2	Feedback should be sought from the Eligibility Risk Review Group and used to identify those restricting factors which delay or complicate the approval of the deferred payment agreement and more widespread adoption of deferred payments as an option e.g., are social workers identifying and engaging on issues?	Priority 2	An Eligibility, Risk and Review Group meeting will be arranged to discuss restricting factors, the overall adoption of deferred payments and agree any next steps.	Steve Saunders	August 2022

Management Action Plan					
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DEFERRED PAYMENT AGREEMENTS & ACCOUNTING RECORDS					
<i>RISK: Poor audit trails and a lack of substantiating records undermines the Councils ability to account for the deferred payment debt.</i>					
3	The operational performance of services supporting the deferred payment scheme should be evaluated through a service level agreement e.g., Social Workers, FAB team, and Legal Services.	Priority 2	<p>Agree in principle. Work is taking place to set out service requirements to share with senior management teams involved in supporting the DPA scheme.</p> <p>On agreement of the service requirements to support DPA scheme, a decision will be requested from senior management/corporate management on resourcing (and consideration within context of anticipated increase in DPA numbers from October 2023 due to Care Funding reform)</p>	<p>Sarah Stockle (draft DPA service requirements)</p> <p>DACHS DMT / CMT decision</p>	<p>Sept 2022</p> <p>Dec 2022</p>
4	<p>To confirm the completeness of records and confirm the assurance status of the assets to be used as security for a loan, a single master register should be established to clarify those people with existing DPAs and the status of their interim funding arrangements, deferred payments, or solicitors undertaking.</p> <p>This information should be used to help identify DPA debt and status of security, and visa-versa.</p>	Priority 2	<p>Agree.</p> <p>Propose reports from Mosaic¹ form the register. We would suggest separate registers (reports) for Deferred Payment Agreements and Interim Funding Arrangements. This is due to the nature of Interim Funding Arrangements (unsecured, higher financial risk) and more frequent monitoring of ongoing Interim Funding Arrangements.</p>	Sarah Stockle	Sept 2022
5	More care needs to be taken to ensure accurate and up to date supporting records are kept as part of any DPA case, including better documentary evidence and filing of solicitor arrangements.	Priority 2	<p>Agree.</p> <p>This will be achieved by extending the prefixing on Mosaic attached documents by FAB team to identify DPAs: 'FAB CH DPA ...', uploading property valuations including web searches to attached documents on Mosaic and use of Mosaic case notes to indicate dates security obtained.</p>	Tracey Maskell	August 2022

¹ Mosaic workload reports on incoming 'Deferred Payments Statement/Review' and 'Interim Funding Statement/Review' worksteps identify all current DPAs and Interim funding arrangements in place at any time. The date of legal charge is reportable from a field within the Deferred Payment Agreement recording form within those worksteps and could be pulled into a report, along with debtor reference (to act as a register).

Management Action Plan					
Ref	Recommendation	Rec	Management Response	Responsible Officer(s)	Target Date
DEBT SECURITY & RECOVERY					
<i>RISK: There is a risk that if loans to support residential care are being issued without proper security having been agreed upon the recovery of these debts may not be assured at a potential cost to the Council.</i>					
6	As confirmation, a signed copy of the deferred payment agreements, HM Land Registry charge evidence, and/or solicitor's undertaking should be required and documented as a key control /field on Mosaic.	Priority 2	Agree. We will look to establish a specific document type on Mosaic to file the legal documents accompanying a DPA	Sarah Stockle	Sept 2022
7	Interim funding arrangements deferred payment agreements, and solicitor undertakings debts should be appropriately referenced as 'secured' or 'unsecured' on the ASC Aged Debt report to permit focus on the unsecured risk. These DPAs labels should be regularly reconciled against the DPA register or other Mosaic references to confirm completeness.	Priority 2	FAB and Financial Management currently keep a spreadsheet of all known DPA/IFA cases that are held by FAB, this is updated on a monthly basis between the 2 teams i.e of the current outstanding balance & what has happened in the last month on each case. The spreadsheet provides details of what debt is secured & unsecured along with how the debt is secured i.e solicitors undertaking or legal charge. This spreadsheet is also used at the weekly debt meetings that FAB & Financial Management attend. This spreadsheet is reconciled against each case & any new cases added to the spreadsheet. This spreadsheet is used by higher management within Financial Management of DPA/ID debts outstanding. Financial Management are now able to run reports from Fusion with invoice types ie SP3/SDF so reporting from Fusion seems to be much easier & these cases easily defined from the remaining other cases, however, the report does not show the difference between DPA/IF. In the latest debt monthly meeting, it has been suggested that there is a separate debt meeting to discuss these cases in greater detail with the help/support from legal services. The spreadsheets/reports will need to be led by Financial Management for FAB to update.	Tracey Maskell	No Further Action

8	A copy of the estate agent's property valuation should be held on Mosaic for each DPA, and a revaluation should be completed annually to ensure the equity available is appropriate so that the level of debt is correctly accounted for.	Priority 2	Annual re-evaluations will be secured for all life-time DPAs.	Tracey Maskell	August 2022
9	Greater emphasis needs to be placed on monitoring the security status and debt risk of those deferred payment agreements which remain as an interim funding arrangement.	Priority 2	Interim Funding arrangements: FAB officers will contact the representative of the arrangement at least every three months for update on progress towards more permanent funding arrangement and feed that into the FAB team member attending monthly debt monitoring meetings.	Tracy Maskell	August 2022

4 FINDINGS

4.1 STRATEGY & RECOVERY AWARENESS

4.1.1 Given the low number of deferred payments reported as active by the Council, and the lack of comparator information released by the NHS, it is difficult to measure the effectiveness and balance of the DPA scheme in Reading and of any associated risk(s) (See Rec 1): -

4.1.2 In particular:

- Annual statistics published by the NHS, records the average number and value of outstanding deferred payments per local authority in England on 31/3/2021 is 42.6² and £1,569,205 respectively.
- No information is collected by the NHS specifically for care organised under an interim funding arrangement or where a property has been secured using a solicitor's undertaking³.
- Compared to the average number of DPAs in Berkshire of 17.5, Reading only recorded 5, although Reading's FAB Team report this figure excludes those arrangements organised under a solicitor's undertaking (See table 1).

Table 1: NHS (ONS) DPA Data for 2020/21

The below table compares the number of reported DPAs in Berkshire as of 31/3/2021.

Local Authority	Number of DPA 2020-21	Value of DPA 2020-21	Ended DPAs where recovery was attempted, and a partial value was recovered during the year	Ended DPAs where the Local Authority did not attempt recovery during the year	Ended DPAs that were fully recovered during the year
Reading	5	£470,000	0	0	3
Bracknell Forest	20	£910,000	0	0	10
West Berkshire	35	£2,360,000	0	0	25
Slough	0	£370,000	0	0	5
Windsor & Maidenhead	10	£510,000	0	0	0
Wokingham	35	£1,570,000	0	0	20
Total	105	£6,190,000	0	0	63
Average	17.5	£1,031,666	0	0	10.5

4.1.2 In addition to the guidance provided by the government, further public information of the Council's approach for deferred payments is documented in its Deferred Payment Policy and Deferred Payment Agreement Scheme published on its website to ensure awareness: -

² NHS (ONS) data published October 2021 for 21/22 records for England records a) 151 local authorities, b) number of deferred payment agreements is 6,435, c) value of deferred payment agreements is £236,950,000.

³ Legal Services have commented "The Care Act lists a "solicitors undertaking" as security that a local authority would accept for DPA cases" ... "A solicitors undertaking is a binding promise and for this reason solicitors only ever give undertakings if they know they can be fulfilled as failure to do so can result in the solicitor being struck off. With regards to sale of a property a solicitor usually will give an undertaking at the stage they know the property is about to sell - sometimes you do get this in advance in DPA cases but very rarely is this the case."

- The Council's deferred payment scheme, which is due to be reviewed this April 2022, was last approved by the Adult Social Care, Children's and Education committee on 20/3/2017.
- We can confirm guidance has been made available to applicants to help them appraise the potential risk(s) of the deferred payment scheme, which includes obtaining advice from an independent financial advisor. However, we have been informed that social workers are sometimes reluctant to discuss matters DPA with the family which can delay or create difficulties with proceeding with a DPA (See Rec 2).

4.2 DEFERRED PAYMENT AGREEMENTS

- 4.2.1 It is agreed process that a copy of the signed agreement should be held on file to support the charge placed with HM Land Registry so that the care loan can be recovered against the property used as security when sold.
- 4.2.2 Despite the government producing a deferred payment agreement template, agreements are bespoke⁴ by solicitors and local authorities. Due to the lack of a Service Level Agreement to ensure capacity within Legal Services, Adult Social Care has highlighted applications are delayed due to both legal debate⁵ and staff coverage (See Rec 3).
- 4.2.3 The Senior Legal Assistant (SLA) confirmed Legal Services only hold copies of those agreements which are produced by the service. We noted that two of these are excluded from the list of deferred payment records provided by Finance (See Rec 4 & 6); Legal Services have confirmed charges are held for 2 persons at the HM Land Registry.
- 4.2.4 Although Legal Services have advised that a solicitor's undertaking⁶ can be used as an alternative to the deferred payment agreement, we found there was a lack of documented confirmations from the clients' solicitors on Mosaic to support what this meant or how this would be instigated, which is important where the property intended to be used as security is put out to rent. Our testing found the Council currently has 4 DPAs managed as a 'solicitors undertaking' with a potential risk value of £164k (See Rec 5 & 6).

⁴ Legal Services comment "A bespoke RBC agreement was created for RBC as the government made it clear that Local Authorities had to adapt their model version based on each areas policy following implementation. We have not had changes as such to our standard agreement except in the one instance where someone wanted to either pay the interest upfront or defer - this is allowed in the Act and has to be accommodated within the DPA - the amendments were agreed following consultation and instructions from the FAB Team officers. On his particular case the rep had an issue with the interest charge generally these issues cannot be avoided as you will always have someone wanting to make changes some may be reasonable where others will not be agreeable to RBC - the default position is always amendments are not allowed unless there is an error or the interest payment mechanism as mentioned above needs to be reflected based on the rep/service users preference for payment of the interest."

⁵ Legal Services comment "Majority of the cases the family did not have a solicitor instructed which can be an issue as it is important that the service user/rep understand what they are entering into."

⁶ Legal Services comment "The Council's policy allows for a "Solicitors Undertaking" to be accepted as a form of security in accordance with the Care Act. I have previously advised the Fab Team that we would continue to deal with any undertaking cases so we can keep a record of the undertakings and release them - these should be managed by legal in conjunction with the Fab Team. I note the Fab Team have been dealing with these direct since Covid and I understand that these are cases that have not been referred to Legal - it is good practice that FAB Team now instruct legal Services on all DPA cases including Solicitors Undertaking for us to assist and support them Team in dealing with these case(s)."

4.3 ACCOUNTING RECORDS

- 4.3.1 Due to known interface problems which should be resolved in October 2022, Fusion cannot be used to specifically confirm the completeness of Deferred Payments records without the cooperative scrutiny of the FAB, Finance, and Legal teams. This means that other than the list of persons filtered on the ASC debtor report as a deferred payment, there are no alternative databases that allow the effective and timely substantiation of the completeness of deferred payment records (**See Rec 4 & 7**).
- 4.3.2 Although the method of property valuation is recorded on Mosaic, we found there was a lack of documentary evidence to substantiate the property valuations supplied by estate agents. The FAB team has highlighted emails are held to confirm those valuations are checked with the Valuations Team but the checks against Rightmove for reasonability are not (**See Rec 8**).

3.4 DEBT SECURITY & RECOVERY

- 3.4.1 Adult Social Care has confirmed deferred payment debt is monitored monthly as part of the general ASC debt review, but Legal Services have highlighted more emphasis focus is required on deferred payments. The ASC Debt Monitoring Group has agreed to focus on deferred payments in May 2022.
- 3.4.2 Deferred payment debt is administered via the Corporate Debtor system on Fusion. Our examination of the 'Aged Debt Report' (ADR) for February 2022 found there are 25 customers with an outstanding total debt of £1.3m. We noted: -
- The ADR records there are 8 deceased customers who account for £495k (37%) of the total debt. We note that 87% of this debt is between 1 and 5 years old (£430k). Managerial focus is required to establish the reasons why these debts have not been recovered given that an agreement or solicitor's undertaking should have been in place e.g., is the secured property still in possession of the family due to rental? (**See Rec 9**).
 - Deferred payments debts on the ADR are filtered for monitoring by ASC Finance and the FAB Team using personal knowledge due to a lack of labelling within the Accounts Received system (**See Rec 4, 6 & 7**).
 - As an observation, the Council is unable to use its council tax system to substantiate the usage status of those properties used as security outside of the borough.
- 3.4.2 Mosaic records there are 22 people with a DPA in April 2022, albeit only 13 records record any DPA information. The remaining 9 are recorded as an interim funding arrangement (**See Rec 9**). A comparison of the ADR status against these Mosaic records found: -
- An agreement statement record is held for 11 out of 13 DPAs.. The ADR debt for these 13 DPAs totals £663k.

- 6 out of 11 DPAs were progressed using a solicitor's undertaking. As of April 2022, 5 DPAs were found to be current. We noted the use of data fields for recording solicitor information on Mosaic varied making it difficult to ascertain an accurate overview. In addition, we were unable to find any confirmation notices from the solicitors that a relevant charge notice had been placed on Land Registry records. The ADR debt for these 5 DPAs totals £164k.
- 2 out of 11 DPAs had been progressed using Legal Services. The ADR debt for these 2 DPAs totals £371k, albeit Legal Services record 2 more DPAs with an outstanding debt of £256k, which if correct would make this £627k in total.
- We found there were 3 accounts for deceased people with an outstanding debt totalling £249k. Of these, 1 (DPA) property is under shared ownership and occupied, the remaining 2 were found to be under the interim funding arrangement (See Rec 9).

4.3.3 An annual statement of the deferred payment agreement status is produced at the end of the financial year for the customer. In addition:

- Although the deferred payment statement confirms the accrued care debt, interest fees and administration fees, we were unable to reconcile the statement balance of the outstanding care debt against the outstanding debt total recorded on the ADR (See Recs 4 & 7).
 - It should be noted the statements for 2021/22 were still in the process of being produced at the time of this review and had not yet been sent to service users/families due to the 2022/23 Implementation Project.
- 5 The annual deferred payment/interim funding statements record the initial property valuation. We note that because properties are not regularly revalued to consider the revised market rates there is a risk the property equities which form the basis for calculating the level of debt, declared on the annual statement for the customer could be incorrect, albeit the equity levels are monitored when the DPA statement is produced (See Rec 8).
- No settlement notice is held on Mosaic to confirm all outstanding debts are being fully paid, albeit this will be summarised on the annual deferred payment statement. The FAB Team have advised the solicitors should be advised once the Bank Reconciliation and Accounts Receivable Teams confirm payments have been fully received.