

The Deferred Payment Scheme

Policy

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People Directorate

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1. Legal status

- 1.1 The Care Act 2014 (sections 34 and 35) requires local authorities to offer Deferred Payment Agreements to allow persons to defer the sale of their home where it is needed to fund care fees. The Care and Support (Deferred Payment) Regulations 2014 set out the legal framework and local authorities' responsibilities in greater detail. The new legal duties come into force on 1 April 2015 for new eligible clients and will replace the existing scheme. Clients already on the existing scheme will retain the benefits of that scheme.
- 1.2 The regulations require local authorities to offer deferred payments to people meeting certain eligibility criteria (see section 2 below). These agreements can be retained until the person dies, with the amount repayable from their estate, but can also be offered to persons who decide to sell their home whilst still alive (the deferred payment providing 'bridging finance').
- 1.3 The Care Act and regulations also allow the Deferred Payment Scheme to be offered to persons who have incurred debt in relation to their care fees.
- 1.4 The regulations also allow local authorities to offer the Deferred Payment Scheme for extra care housing and supported living, but not for people receiving care in their own home.
- 1.5 Local authorities are also allowed further discretion to offer the Deferred Payment Scheme where otherwise a person might be required to sell their home to pay for care.

2. Eligibility criteria

- 2.1 Dudley Council will offer a deferred payment to people who meet the eligibility criteria set out below:
 - 2.1.1 anyone whose needs are to be met by the provision of permanent care in a care home¹;
 - 2.1.2 anyone who has less than (or equal to) £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets); and

2.1.3 anyone whose home is not disregarded; for example, it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support (i.e. someone whose home is taken into account in the council's financial assessment and so might need to be sold).

2.2 Additionally:

2.2.1 The person must have a beneficial interest in the property.

2.2.2 There should be no outstanding mortgage on the property (or if accepting a mortgaged property, the outstanding amount must leave sufficient value to meet the criteria for self-funding).

2.2.3 The adult or their legal representative must consent to the agreement.

2.2.4 The deferred payment must be signed by a person with capacity to make the decision or their legal representative. See section 9 for more information on mental capacity and deputyship.

2.3 If accepting a property as security, the council will ensure it is able to place a Land Registry charge on the property.

2.4 The council will need to be satisfied that there is at least a years' worth of funding in the property in order to accept a deferred payment.

2.5 The council may exercise its discretion to take other forms of security rather than the person's property.

2.6 The council has discretion to refuse a Deferred Payment Agreement if it is not satisfied that its interest is secure (aside from where it is able to secure a first legal mortgage charge which it will accept as adequate security). Whatever security is provided the council would have to be satisfied that they could gain ownership of this asset upon death or upon sale of the object.

2.7 If a spouse or dependent relative moves into the property following entry into the Deferred Payment Scheme the council will review eligibility.

2.8 If the property is subsequently disregarded (and the person qualifies for council support as a consequence) then the deferred payment is frozen and interest will continue to accrue.

2.9 The council may choose to ask the person to complete an application for the scheme (though this is not a requirement of the scheme).

¹ This is determined when someone is assessed as having eligible needs which the council decides should be met through a care home placement.

3. Permission to refuse a Deferred Payment Agreement

3.1 The council can refuse a deferred payment if they cannot obtain a legal charge by way of mortgage on the property.

3.2 The council can refuse a deferred payment if the person lacks capacity and there is no appointed deputy to make such a decision.

3.3 The council may also refuse a deferred payment where someone is seeking a top up and/or where a person does not agree to the terms and conditions of the agreement; for example, a requirement to insure and maintain the property.

4. Information for cared-for persons

4.1 The council will ensure that persons considering entering residential care are made aware of the ability to defer charges against their property for their care.

4.2 The council will advise the person or their representative that there is an administration charge when entering into a Deferred Payment Agreement. See section 7 below for further details.

4.3 Interest will be applied from day one of the agreement. The 12 week property disregard will be allowed where appropriate. See section 12 below.

4.4 People wishing to take advantage of the scheme may wish to seek independent financial advice.

5. Deciding not to sell and refusing a Deferred Payment Agreement

- 5.1 If the person does not want to sell their property and also chooses not to take advantage of the scheme they will be deemed to be able to pay the full cost of their care and will be invoiced as such.
- 5.2 Failure to pay subsequent invoices will be dealt with via the council's debt recovery processes.

6. Renting the property out

- 6.1 If a person decides to rent out their property, an allowance of up to £144 can be made for fees and insurance payments (see 15.2). A further 20% of net rental income can also be disregarded for charging purposes.
- 6.2 The council will require sight of the tenancy agreement if arranged privately.
- 6.3 The council will require confirmation of relevant landlord insurance via sight of appropriate documentation.

7. Interest charges, calculations and fees

- 7.1 The Deferred Payments Regulations set the maximum interest rate that can be charged on deferred payments. This maximum rate is fixed for periods of six months, and changes every 1 January and 1 July.
- 7.2 As the guidance and regulations set out, the maximum interest rate for deferred payments is based on the cost of government borrowing – more formally, the 15-year average gilt yield, as set out by the Office for Budget Responsibility twice a year in their Economic and Fiscal Outlook report. The one that accompanied the previous Autumn Statement (2014) is at: **http://cdn.budgetresponsibility.independent.gov.uk/December_2014_EFO-web513.pdf**
- 7.4 The penultimate row of table 4.1 sets out the gilt yield rate and the final interest rate is derived by adding the gilt yield rate for the year in which the period starts to the default component (0.15%).

7.5 On the basis of the current gilt rates at the time of publishing (as set out in the document linked to above, for financial year 2014/15, this is 2.5%), the interest rate will be 2.65% (when the default component is added in). This rate will be applicable from the scheme's launch on 1 April until 30 June 2015.

7.6 Subsequent rates will be dictated by the next fiscal events:

- From 1 July - 31 December 2015 the rate will match the figures published with the 2015 Budget (likely to be published March 2015).
- From 1 January - 30 June 2016 the rate will match the figures published with the 2015 Autumn Statement.

7.7 Compound interest will be applied and calculated on a daily basis.

7.8 The costs included in the administration charge are:

- costs of postage, printing and photocopying in relation to the agreement;
- staffing costs;
- Land Registry fees;
- legal costs;
- valuation fees and land search fees.

7.9 The administration fee will be an average of the above costs.

7.10 Costs incurred during and at the end of the agreement, including any costs associated with revaluing the property, the cost of providing statements, and any charges incurred in removing a legal charge from a property, will also be passed on.

8. Types of property ownership

8.1 Sole ownership

8.1.1 This situation arises where a person owns their property outright, with no other owners. This is the most straight-forward case to handle and requires no special treatment.

8.2 Jointly owned property

8.2.1 This situation arises where all co-owners effectively own 100% of the property while they are alive and 0% of it if they die leaving a survivor. This means that if two people own a property as Joint Tenants and one of them dies, the survivor automatically becomes the sole 100% owner of the property and the deceased (and the deceased's estate) owns 0%. This means that the deceased cannot leave the property in his/her Will – as he/she no longer owns any interest in it.

8.2.2 To access the Deferred Payment Scheme all parties will have to agree to the charge being placed on the property.

8.2.3 Refusal of a Deferred Payment Agreement does not mean the property cannot be taken into account; it just means the Deferred Payment Scheme cannot be accessed. The person will still be charged the full cost of their care (if assessed as being able to do so).

8.2.4 To support the future claim if non-payment occurs, regular invoices will be sent to the person or their representative for the care they have received.

8.3 Tenants in common

8.3.1 This situation can arise where a property falls under tenants in common - an increasingly frequent situation where each party owns a defined share. This can be two or more persons but the total shares will add up to 100%. Each person can dispose of their share however they choose.

8.3.2 To access the Deferred Payment Scheme this will require the original charge (tenants in common) to be deferred and all parties having to agree to the council having a charge on the property.

8.3.3 Refusal does not mean the property cannot be taken into account, it just means the Deferred Payment Scheme cannot be accessed. The person will still be charged the full cost of their care (if assessed as being able to do so).

8.3.4 To support the future claim if non-payment occurs, regular invoices will be sent to the person or their representative for the care they have received.

8.4 Unregistered land

8.4.1 If a property is not registered with the Land Registry the council will arrange for this to be done before entering into a Deferred Payment Agreement. Any cost incurred in doing so will be passed on.

9. Mental Capacity Act

9.1 Definition

9.1.1 The Mental Capacity Act 2005 (MCA) applies to care, treatment and support of people aged 16 years and over, in England and Wales, who are unable to make some or all decisions for themselves. Staff working with people who lack capacity will have regard to the Mental Capacity Act.

9.1.2 The Act is accompanied by a statutory Code of Practice which explains how the MCA will work on a day to day basis and provides guidance to all those working with, or caring for, people who lack capacity. As the Code has statutory force, all staff who are employed in health and social care are legally required to 'have regard' to the MCA Code of Practice.

9.2 Where the person lacks the ability to enter into a Deferred Payment Agreement

9.2.1 This situation might arise where a person is unable to enter into a Deferred Payment Agreement due to lack of capacity and there is no-one empowered to support them. The good practice recommendation is that their family or a representative or, as a last resort, the council, should make application to obtain a Deputyship order to support their best interests being observed.

9.2.2 Whilst this is being obtained the council will pay the provider and send regular invoices detailing the charges to be paid to the person applying for Deputyship. If the Deputyship is obtained and the responsible party has not paid, a court order will be obtained for the debt outstanding (or seek to resolve the debt through a deferred payment).

9.2.3 A letter of undertaking to pay the care fees is required to be signed by the person applying for the Deputyship order.

9.3 Enduring Powers of Attorney (EPA)

9.3.1 These only cover property and affairs and remain valid as long as they were drawn up before 1st October 2007. No new EPAs can be created since October 2007 when Lasting Powers of Attorney were introduced. Details of the law and policies covering EPAs can be found via the Office of the Public Guardian (OPG).

9.4 Lasting Powers of Attorney

9.4.1 People over the age of 18 can formally appoint one or more people as Lasting Powers of Attorney (LPA) to look after their personal welfare and/or their property affairs. This allows persons to plan ahead for a time when they may not have capacity to make certain decisions.

9.4.2 The person making the LPA is known in legal terms as the donor and the power they are giving to another person is the Lasting Power of Attorney. The person appointed is then called an attorney. The LPA gives the attorney the authority to make decisions on the donor's behalf. Attorneys acting under an LPA have a legal duty to have regard to the guidance in the Mental Health Act Code of Practice and act in the person's best interests.

9.4.3 An LPA must be registered with the Office of the Public Guardian (OPG) before it can be used. An unregistered LPA does not give the attorney any legal powers to make a decision for the donor. The donor can register the LPA while they still have capacity or the attorney can apply to register the LPA at any time.

9.5 Deputyship

9.5.1 A Deputy may be appointed by the Court of Protection when there is no one else who could act on behalf of the person lacking capacity to manage their financial affairs and/ or personal welfare decisions.

9.5.2 A Deputy can be a representative for the person or the council or a solicitor.

9.5.3 The council will need to satisfy itself that there is no conflict of interest in exercising the duties of Deputy.

10. Valuation of property/securing the Deferred Payment Agreement

- 10.1 The council will accept a first legal mortgage charge as adequate security. That is to say, if the person owns the property outright without a mortgage or another charge on it the council will accept it as adequate security.
- 10.2 The purpose of the valuation is initially to establish whether the available equity is greater than the upper capital limit which will make the resident self-funding; however, the value of the property will also inform the limit on the amount of equity the person can draw. This will be set at:
- Value of the person's share in property – 10% - £14,250
- 10.3 When assessing whether the property is greater than the upper capital limit an allowance of 10% of the estimated value will be allowed for sale costs to give a net estimated value (this has already been taken into account in the above calculation of the equity limit). N.B. when eventually sold the actual costs of sale will be deducted when assessing capital.
- 10.4 Where appropriate, the valuation will be net of any outstanding loan/mortgage on the property and of any repayment requirements of the property if it was purchased through Right to Buy.
- 10.5 The discount is the minimum percentage of ownership attributed to the person. The value is at current market value and not that of the original purchase.
- 10.6 The council will always obtain a first legal mortgage charge to maintain adequate security.
- 10.7 There are a variety of methods to determine the valuation which can be summarised as follows:
- asking the person and/or family
 - local knowledge/newspapers
 - Internet sites

- in-house valuers
- estate agents
- Land Registry for previous sale price
- Department for Work and Pensions, who may have valued a property for benefit purposes.

10.8 The council will confirm the approximate value that is being taken into account in the financial assessment with the person.

10.9 An updated valuation will be required annually in line with the person's entry into care.

10.10 In cases of dispute

10.11 A professional valuer will be asked to provide a current market valuation of the property in all cases of dispute. Any cost involved in the valuation will be passed on to the person.

11. The Legal Agreement

11.1 It is necessary for the person or a legal representative to sign an agreement confirming that they wish to take advantage of the Deferred Payment Scheme and that all implications have been explained.

11.2 The complete process, timescales and policy of the council will be provided to the person in writing.

12. Deferred payments and the 12 Week Disregard

12.1 For a person entering a care home on a permanent basis (not temporary), if it would be necessary to sell the property immediately to fund the care, i.e. any other available resources are below the upper capital limit (£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.

12.2 If there are sufficient resources in excess of the upper capital limit (£23,250) to fund care for any period, no matter how short, access to

the Deferred Payment Scheme can be given at the time that capital reduces to the upper capital limit and it would be necessary to sell the property. However, the council retains discretionary powers to offer a deferred payment to people with more than the upper capital limit.

- 12.3 Persons already in residential care who may need to access council funding are not entitled to the 12 week property disregard.
- 12.4 However, if the request to access council support is made due to a sudden and unexpected change the council has the discretion to allow a 12 week property disregard. An example where a council might consider exercising this discretion might be a person's partner dying suddenly.
- 12.5 The council will ensure that there is a smooth transition where possible to the Deferred Payment Scheme by the 13th week of residential care.

13. Periodic statement of accrued debt

- 13.1 The person will be informed at regular intervals of the current level of the outstanding debt, reminded of the rate at which it is growing and given an estimate of the length of time their remaining assets will be sufficient to fund the full cost of their care. Statements will be sent as a minimum every six months.

14. When the deferred payment ends (due to depletion of equity)

- 14.1 When the remaining equity value reduces to the lower capital limit a re-evaluation of the property is required (see previously).
- 14.2 An account or letter detailing the amount of debt currently accrued against the property will be produced.

15. Increased personal expenses allowance for property maintenance/insurance

- 15.1 A person is required to pay a contribution from income to meet the costs of their care (the remaining care fees being the amount deferred); but the person will be left with a prescribed minimum Personal Expenses Allowance (PEA) - currently £24.40 per week.
- 15.2 The costs involved in maintaining a property, e.g. insurance and repairs, must be met by the person. The Department of Health guidelines and regulations state that an amount of £144 per week should be allowed to be retained by the person towards the upkeep of their property, if they want it. This is called the Disposable Income Allowance; a person can choose to keep less than this per week. The person's needs will be discussed when arranging the deferred payment.
- 15.3 Where an increased Personal Expenses Allowance (PEA) is granted for household insurance the council will require confirmation of the annual insurance renewal via sight of relevant documentation.
- 15.4 On leaving the Deferred Payment Scheme (or if the deferred payment becomes frozen) the PEA reverts back to the normal figure, currently £24.40 per week.

16. Calculation of equity limit

- 16.1 When identifying what equity the person should have left in their property the council will leave the lower capital threshold, currently £14,250, together with 10% of the property value intact in order to defray any costs incurred with the sale or settlement of the estate.

17. Notification on reaching the maximum deferred amount

- 17.1 When the deferred debt is reaching the maximum amount that can be deferred the council will give at least 30 days notice.

18. Terminating the deferred payment - sale of property before death

- 18.1 If the person has placed the property for sale from admission, or chooses to sell at a subsequent date, the accrued debt must be repaid upon the sale in order to remove the charge.
- 18.2 Sale of the property is one of the agreed reasons for termination of the agreement. This will terminate the Deferred Payment Agreement and the service user will become self-funding. The person must give 30 days notice in writing of any such decision.
- 18.3 The actual sale price will be used for a final calculation of the debt and, if appropriate, to identify when self-funding status ended.

19. Terminating the deferred payment - sale of property after death

- 19.1 Calculating the debt – the accrued debt will be added to any other outstanding amount due to identify the final debt that is payable.
- 19.2 Lodging a claim - the council will aim to notify the Executor of the estate 14 days after the death with the actual or provisional debt. The debt is due from 90 days after death.
- 19.3 Notifying final debt - If it has not already been notified the final debt will be confirmed in writing no later than four weeks after death.
- 19.4 Debt collection - if the debt has not been cleared within four weeks of the expiry of the 90 day period a reminder will be sent confirming the rate of growth of the debt and requesting a progress report. If no response is received the council will follow its debt recovery process.
- 19.5 Interest will continue to accrue (see section 7).
Note that if the council pursues the amount owed as a debt through the County Court procedure, this may attract a higher rate of interest.

20. Removing the charge

20.1 A charge will take between 7 and 10 days to remove. In order for a property to be sold it may be necessary for the person's solicitor to give the council a written undertaking that they will discharge the debt. The council can then give the solicitor an undertaking that the charge will be removed. This will ensure that the sale can go ahead.

21. Continuing healthcare

21.1 The Deferred Payment Agreement cannot cease just because full continuing health care funding is awarded and no funding is due from the council. Voluntary payments will be requested to continue, wherever possible, as this will reduce the amount of the accrued debt set against the value of the property.

21.2 The council will continue to charge interest until the debt is cleared.

Further information

**For further information please contact our
access to adult social care helpline**



Telephone

0300 555 0055 (Monday to Friday - 9am to 5pm)

An emergency duty team is available on **0300 555 8574**, at all other times

Web

www.dudley.gov.uk/asc

Email

acessteam.dachs@dudley.gov.uk

Post

**Brierley Hill Health & Social Care Centre
Venture Way, Brierley Hill DY5 1RU**

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