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## **DEFERRED PAYMENT AGREEMENTS POLICY**

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## 1. Introduction and statement of purpose

- 1.1 The purpose of this policy is to make clear when, and how, deferred payments can be made for residential and nursing care for older people.
- 1.2 The Care Act 2014 (sections 34 and 35) requires local authorities to offer Deferred Payments 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 will come into force on 1st April 2015.
- 1.3 If a service user going into a care home needs to sell their property to pay for the care home fees, but they either cannot or do not wish to sell their property immediately, payment can be deferred. The council pays the care home fees and then recovers the payment from the proceeds of the sale of the property once it is sold.

## 2. Legislative framework

- 2.1 Sections 34-36 of the Care Act 2014 requires the council to offer Deferred Payments Agreements to allow persons to defer the sale of their home where it is needed to fund care fees.
- 2.2 The Care and Support (Deferred Payment) Regulations 2014 set out the legal framework and the councils' responsibilities in greater detail.
- 2.3 The Care and Support Statutory Guidance (October 2014) issued by the Department of Health, provides councils with guidance on the application of the law.
- 2.4 The regulations require the council to offer deferred payments to people meeting certain eligibility criteria (see section 4 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").
- 2.5 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.
- 2.6 The council can also offer the deferred payment scheme for people living in extra care housing and supported living, but not for people receiving care in their own home.
- 2.7 The council is also allowed further discretion to offer the deferred payment scheme in other circumstances, where otherwise a person might be required to sell their home.

### 3. Information & Advice

- 3.1 The council is required through its general responsibility for information and advice to ensure that persons considering entering residential care are made aware of the deferred payment scheme.
- 3.2 There is a further requirement to advise people wishing to take advantage of the scheme that they may wish to seek independent financial advice to help them decide which course of action will be financially better for them. This will be provided before taking out the agreement and throughout the course of the agreement.
- 3.3 The council must also advise the person or their representative, that interest will be applied from day one of the agreement and it will continue to accrue until the debt is repaid.
- 3.4 The general information and advice provided will ensure applicants are made aware that;
- The fees are being deferred or delayed and must still be paid back at a later date (for example through the sale of the home (potentially after the applicant's death))
  - A legal charge will be secured against their property, giving the council the right to reclaim the deferred payment against the eventual sale
  - They will be responsible for paying for costs to ensure the property remains in good repair (e.g. insurance, maintenance, heating bills)
  - If they have a mortgage on the property, they will be responsible for ensuring they keep up with their repayments
  - The council will charge an administration fee to cover the costs of arranging the Deferred Payment Agreement
  - If the service user chooses to rent the property, the rental income will be included in the financial assessment to establish their client contribution to their care
  - Their benefit entitlements may be affected if they opt into the scheme.

### 4. Eligibility for a Deferred Payment Agreement

- 4.1 The council **must** offer a deferred payment to people who meet all three of the eligibility criteria set out below.
- 4.1.1 anyone whose eligible needs determined by a professional assessment are to be met by the provision of care in a care home<sup>1</sup>;

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<sup>1</sup> This is determined when someone is assessed as having eligible needs in accordance with council's eligibility criteria which the council decides should be met through a care home placement. This should comply with choice of accommodation regulations and care and support planning guidance and so take reasonable account of a person's preferences.

- 4.1.2 anyone who has less than ( or equal to) £23,250 in assets excluding the value of their home (i.e. savings and other non-housing assets); and
- 4.1.3 anyone whose home is not disregarded, for example it is not occupied by a spouse or dependant relative as defined in regulations on charging care and support (i.e. someone whose home is taken into account in the local authority financial assessment and so might need to be sold).
- 4.2 Additionally:
- 4.2.1 The person must have a legal/beneficial<sup>2</sup> interest in the property which is the adult's only or main home;
- 4.2.2 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).
- 4.2.3 The person or their legal representative<sup>3</sup> must consent to the agreement.
- 4.2.4 The deferred payment must be signed by a person with capacity to make the decision or their legal representative.
- 4.3 If accepting a property as security, the council needs to ensure it is able to place a Land Registry charge on the property.
- 4.4 As a guide the council would expect that there is one years' worth of funding, including administration and interest charges in the property when accepting a deferred payment.
- 4.5 The council may exercise its discretion to take other forms of security rather than the person's property.
- 4.6 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 **must** accept as adequate security). Whatever security is provided, the council has to be satisfied that it could gain ownership of the asset.
- 4.7 If a spouse or dependent relative moves into the property following entry into the deferred payment scheme, the council should review eligibility as the person may no longer be eligible due to a property disregard being applied.

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<sup>2</sup> A legal owner is a person in whose name the property is held. A beneficial owner is one who is entitled to receive the profits or proceeds of property. In most cases the legal and beneficial owners will be the same person, but they can be different.

<sup>3</sup> A legal representative is someone who has authority to act for the person, such as someone who holds power of attorney.

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

## **5. The Application Process**

- 5.1 During the first 12 week's stay in a care home a person's main home is not taken into account when assessing liability to pay for care home accommodation. This gives the person time to decide options and get advice. A Deferred Payment Leaflet will be provided when a person first approaches the council for financial support with their care, ensuring that information about where to get independent financial advice is available at the earliest opportunity.
- 5.2 If after getting information and advice, the person decides to request a deferred payment, they must complete an application form and provide supporting documentation.
- 5.3 Before the council can consider whether the applicant is eligible for a Deferred Payment Agreement, it will need to satisfy itself that the applicant meets the criteria outlined in section 4 above, and that there is sufficient equity in the property to cover the care costs during the period of the agreement. This will include conducting land registry checks. The council will also obtain a valuation of the property, but the applicant will be invited to obtain a valuation, if required, as part of the application process.
- 5.4 If the application is successful the applicant will be required to sign a legal agreement.

## **6. Refusal of an application**

- 6.1 The council can refuse a deferred payment if it cannot obtain a legal charge by way of mortgage on the property.
- 6.2 The council can refuse a deferred payment if the person lacks capacity and there is no appointed deputy to make such a decision. It can also apply to the Court of Protection for a deputy to be appointed.
- 6.3 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.
- 6.4 If a deferred payment is refused by the council, the person who made the application will be notified in writing, and given reasons for the decision.

- 6.5 There may be other grounds upon which the Council will refuse an application for a Deferred Payment Agreement. These include, but are not limited to the following:
- 6.5.1 The applicant does not meet the criteria in section 4 above.
  - 6.5.2 The applicant or joint owner has not agreed to accept the conditions of the agreement.
  - 6.5.3 The property valuation indicates that there is insufficient equity for the council to enter into a Deferred Payment Agreement.
  - 6.5.4 The applicant fails to provide the council with all relevant information relating to his/her finances and assets.
  - 6.5.5 The applicant does not pay the administration fees requested in relation to the Deferred Payment Agreement.
  - 6.5.6 The applicant is seeking to fraudulently obtain public money to fund his/her care.
- 6.6 The applicant may use the council complaints procedure to challenge a refusal.

## **7. Who can enter into a deferred payment agreement?**

- 7.1 The council can enter into a deferred payment agreement with either:
- The service user, and other registered owners, or
  - a representative of the service user that holds Power of Attorney, or
  - a Deputy appointed by the Court of Protection

## **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. It is crucial that the person or their representative is made aware of the implications - i.e. that they will still be charged the full cost of their care (if assessed as being able to do so). They should be referred to Independent Financial Advisors (IFAs) as to what is the best option for them going forward.

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. It is crucial that the person or their representative is made aware of the implications - i.e. that they will still be charged the full cost of their care (if assessed as being able to do so). They should be referred to IFAs as to what is the best option for them going forward.

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 require the person, or their representative to ensure that it is registered before entering into a deferred payment agreement.

## 9. **Deciding not to sell and refusing a DPA**

9.1 If the person does not want to sell their property and also chooses not to take advantage of the scheme, they should be deemed to be able to pay the full cost of their care and should be invoiced as such.

9.2 If they then fail to pay their invoices this will be dealt through the council's debt recovery process.

- 9.3 The person should again be directed to an independent financial advisor upon indicating that this is their decision.

## 10. Calculating the equity limit (max deferred amount)

- 10.1 When identifying what equity the person should have left in their property, the council must leave the lower capital threshold (currently £14,250) together with 10% of the property value intact in order to meet any costs incurred with the sale or settlement of the estate. The council will obtain a valuation of the property

## 11. Where a Person is seeking a Top-up

- 11.1 If a person would like to use wealth tied up in their home to fund more than just their core care costs and purchase affordable top-ups through the deferred payment agreement, the council will consider whether the amount or size of the deferral requested is sustainable given the equity available from their security.
- 11.2 A discussion about how much a person can defer will include:
- (a) The amount of equity a person has available from their security (usually their property)
  - (b) The amount a person is contributing towards their care costs from other sources.

## 12. Interest Charges and Fees

### 12.1 *Interest charges*

- 12.1.1 The Deferred Payments regulations set the maximum interest rate that can be charged on deferred payments. The council has discretion to charge less than the maximum or to charge no interest at all; but cannot exceed the maximum. This maximum rate is fixed for periods of six months, and changes every 1 January and 1 July.
- 12.1.2 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, which can be found here. [Office for Budget Responsibility Economic and fiscal outlook](#)
- 12.1.3 The current rate to be applied can be found in the council's schedule of fees and charges. [click here for current rates](#)
- 12.1.4 Compound interest will be calculated and applied on a daily basis.

## 12.2 **Administration Fee**

12.2.1 The council will charge a fee to cover the administrative costs of arranging the deferred payment. The current fee can be found in the council's schedule of fees and charges. [click here for current rates](#)

12.2.2 The administration charge covers the following costs:

- Preparing the agreement, including cost of postage; printing and photocopying in relation to the agreement;
- Land Registry fees
- Legal costs, including placing a legal charge on the property and removing the charge.
- Valuation fees and land search fees
- Staff costs, including arranging for completion and authorisation of the agreement
- Costs associated with providing statements of accruing debt and collection of final payment.

12.2.3 The administration charge will be requested with the Deferred Payment Application form.

12.2.4 If the application is refused the administration charge will be reduced to cover only those costs associated with receiving and processing the application. The current fee can be found in the council's schedule of fees and charges. [click here for current rates](#)

## 13. **Increased Personal Expenses Allowance (PEA) for Property Maintenance/ Insurance**

13.1 The council will require a contribution from income to meet the costs of the person's care (the remaining care fees being the amount deferred); but the person must be left with a prescribed minimum allowance.

13.2 The general personal expenses allowance (PEA) received by every person placed in residential care by the local authority may not be enough to cover the maintenance of the property.

13.3 The costs involved in maintaining the property e.g. insurance and repairs must be met by the person. The Department of Health guidelines and regulations state that a person should be allowed to retain sufficient funds towards the upkeep of their property. This is called the Disposable Income Allowance. A person could choose to keep less than this per week; and the person's needs will be discussed with them when arranging the deferred payment.

13.4 On leaving the deferred payment scheme (or if the deferred payment becomes frozen) the PEA reverts back to the general figure.

13.5 The current Personal Expenses Allowance and Disposable Income Allowance can be found on the council's website [click here](#)

#### **14. Ending the agreement and repaying the council**

##### **14.1 *Terminating the deferred payment - sale of property before Death***

14.1.1 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.

14.1.2 Upon the sale of the property, the Deferred Payment Agreement will terminate and the service user will become self-funding. The person must give 30 days' notice in writing of any such decision.

14.1.3 The actual sale price should be used for a final calculation of the debt and if appropriate, to identify when self-funding status ended.

##### **14.2 *Terminating the deferred payment - sale of property after Death***

14.2.1 Calculating the Debt – the accrued debt will be added to any other outstanding amount due to identify the final debt that is payable.

14.2.2 Lodging a Claim – the Executor of the estate should be notified 14 days after the death, with the actual or provisional debt. At this stage the council will seek information on the approximate value of the estate to confirm previous financial assessment declarations. The debt will be due for repayment 90 days after death.

14.2.3 Notifying Final Debt – If it has not already been notified the final debt will be confirmed in writing no later than 4 weeks after death.

14.2.4 Debt Collection – If the debt has not been cleared within 4 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's debt recovery process will be followed.

14.2.5 Calculating the Interest – The interest rate able to be charged is that as detailed in the Care and Support (Assessment) Regulations 2014) However, if the council is pursuing the amount owed as a debt through the County Court procedure, this may attract a higher rate of interest. Refer to the debt recovery policy for more information.

**15. When the Deferred Payment ends (due to depletion of equity)**

15.1 When the remaining equity value reduces to the lower capital limit the following process will be followed;

- A re-valuation of the property will be required and the council may obtain a professional valuation to arrive at the asset value if not done previously.
- A copy of the charging order, or a letter from the council's legal department acknowledging the authorities interest in the property is also required.

15.2 A letter detailing the amount of debt currently accrued against the property will be produced and supporting documents will be submitted to the Department for Work and Pensions along with an Income Support/Pension Credit claim form.

**16. Continuing Healthcare**

16.1 The deferred payment cannot cease just because full continuing health care funding is awarded and no funding is due from the local authority. The council will ask the person if they wish voluntary payments to continue, wherever possible, pointing out that this will reduce the amount of the accrued debt set against the value of the property.

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

**17. Periodic Statement of Accrued Debt**

17.1 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.

17.2 In times of an economic downturn it is possible that property values will go down, possibly significantly, and this could impact on the self-funding period. Regular valuations of the property should be undertaken.

17.3 Following the implementation of the Care Act 2014 and its impact on charging a regular check of the current value in calculating self- funding status and the estimated remaining equity becomes even more important.

**18. Notification on reaching the maximum deferred amount**

18.1 When the deferred debt is reaching the maximum amount that can be deferred, the council will write to the person. The regulations state that the council

must give 30 days' notice. However, the council aims to do this sooner and considers that 6 months is a more appropriate length of time.

18.2 At this time the council will discuss the cost of care with the person, in particular what might happen to any top ups or the need to consider movement to another care home/room if they are unable to make other arrangements.

18.3 The council's powers to collect debts when a service user is unwilling to pay their assessed contribution for residential or nursing care can be found in the debt recovery policy.

## **19. Monitoring and review**

19.2 This policy will be periodically reviewed in line with any changes to national guidance, particularly with respect to any changes within the Care and Support (Deferred Payment Agreements) Regulations 2014.

19.3 Non-compliance with this policy may result in service user choice being unfairly restricted, service users being forced to sell their homes to fund their care when they do not wish to and may result in the council being in breach of national regulations.

19.4 The effectiveness of this policy will be determined by the level of consistency in which deferred payment agreements are applied and arranged. The main channels through which this will be ascertained are feedback form complaints, and service user contact with Social Work Teams and Welfare and Financial Assessment staff.

### **Related Policies**

- Care and Support Charging Policy
- Third Party Contributions (top ups) Policy
- Debt Recovery Policy

**Where to find policies** [Adult health and social care policies - Herefordshire Council](#)

## APPENDIX 1

### Assessing the impact of policies and procedures

#### Introduction

All council policies and procedures that affect people's lives or communities are to be subjected to the following initial assessment.

Where this shows that there are likely to be significant effects and/or costs a further more in-depth assessment of the policy or procedure should be made. This judgement should be made by the relevant JMT member.

#### Section 1 – background information

<b>Title of policy or procedure:</b>	Deferred Payment Agreements Policy
<b>Date of Assessment:</b>	January 2015
<b>Completed by:</b>	Welfare & Financial Assessment Team Manager

<b>What outcomes is the policy or procedure designed to achieve?</b>	To make clear when, and how, deferred payments can be made.
<b>What group or groups (if any) is the policy or procedure intended to affect?</b>	People living in a care home or supported living setting on a permanent basis after 1 <sup>st</sup> April 2015 who do not wish to sell their main home
<b>What geographic area or areas is the policy or procedure intended to affect?</b>	County-wide and out-of-county placements where the person is has ordinary residence
<b>Who has been consulted in designing this policy or procedure?</b>	Finance, Legal, Care Act lead, Adult Well-Being Directorate Leadership Team.

**Section 2 – Impact on health and well-being**

<b>How will the policy or procedure impact upon the following factors that affect health and well-being?</b>	<b><u>Positively</u></b> Evidence how it will have a positive impact. Disclose sources and cite them. Indicate whether the impact will be high, medium or low	<b><u>Negatively</u></b> Evidence how it will have a negative impact. Disclose sources and cite them. Indicate whether the impact will be high, medium or low	Not expected to make an impact
<b>● Personal lifestyle</b> (e.g. diet, smoking, drugs, exercise such as walking and cycling, personal choices, sense of control, access to green space)			✓
<b>● Social and community</b> (e.g. social isolation, peer pressure, cultural beliefs, crime or anti-social behaviour. How will it influence engagement, empowerment or participation in decision-making?)	Ensure some greater freedom of choice for service users in where they wish to live. Service users do not have to sell their homes to fund residential and nursing care.		
<b>● Home, education, work</b> (e.g. housing, services, amenities, school, jobs, use of local and ethical goods and services)	Ensure some greater freedom of choice for service users in where they wish to live		
<b>● The environment</b> (e.g. climate change, pollution, air quality, hazardous waste, neighbourhood, protecting the environment, promoting biodiversity)			✓
<b>● The Economy</b> What is the impact on the local / regional / national economy (e.g. incomes, benefits, skills, jobs, cost of energy & food)	Ensure that residential and nursing home placements are paid for appropriately.		

**Section 3 – Geographical impact**

<b>How will the policy or procedure impact upon different geographical areas?</b>	<b><u>Positively</u></b> Evidence how it will have a positive impact. Indicate whether the impact will be high, medium or low	<b><u>Negatively</u></b> Evidence how it will have a positive impact. Indicate whether the impact will be high, medium or low	Not expected to make an impact
<b>Rural areas</b>			✓
<b>Market towns</b>			✓
<b>Hereford city</b>			✓
<b>Natural systems &amp; resources:</b> such as landscape, areas with nature conservation designations, agricultural land, green infrastructure, biodiversity, water resources			✓

**Section 4 – impact on specific target groups**

<b>How will the policy or procedure impact upon the following potentially marginalised groups?</b>	<b><u>Positively</u></b> Evidence how it will have a positive impact. Indicate whether the impact will be high, medium or low	<b><u>Negatively</u></b> Evidence how it will have a negative impact. Indicate whether the impact will be high, medium or low	Not expected to make an impact
● <b>People on low incomes</b>	Service users who are asset rich, but cash poor will not have to sell their homes to fund residential and nursing care.		
● <b>People from a minority cultural or ethnic group</b>		Charging interest is a barrier to faith groups who have objections on religious grounds.	✓
● <b>Families with children</b>			✓
● <b>Disabled people</b> (e.g. people with learning difficulties, older people with impairments, people with mental health problems, people with physical disabilities)	Ensure some greater freedom of choice for service users in where they wish to live. Older and disabled people account for the		

	majority of care home residents		
• Gender or sexual orientation			✓

**Section 5 – monitoring the policy or procedure – How will you know whether you are on track to meet your targets?**

How will the policy or procedure be monitored?	The effectiveness of this policy will be determined by the level of consistency in which deferred payments are applied. The main channels through which this will be ascertained are: <ul style="list-style-type: none"> <li>• Feedback through complaints</li> <li>• Service user contact with Social Work Teams and Welfare and Financial Assessment staff</li> </ul>
How often will this take place?	On-going
Who will be responsible for monitoring the policy or procedure?	Welfare and Financial Assessment Team Manager

**Section 6 – evaluating the policy – How will you know how successful the policy has been?**

How will the policy or procedure be evaluated?	On-going monitoring of the application of this policy through the channels identified above will provide the basis for evaluation of the effectiveness of this policy
Who will be responsible for evaluating the policy or procedure?	
When is the evaluation expected to be completed?	January 2016
When <b>and to whom</b> will the evaluation of this policy or procedure be reported?	Adult Well-Being Directorate Leadership Team – March 2016