



# **Deferred Payment Agreement Policy – Residential Care**

**April 2021**

# Durham County Council

## Deferred Payment Agreement Policy

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# **1 Introduction and Purpose**

- 1.1 The establishment of the universal deferred payment scheme means that people should not be forced to sell their home in their lifetime to pay for their care. Deferring payment of care fees can help people to delay the need to sell their home and provide peace of mind during a time that can be challenging for them and their loved ones as they make the transition into care.
- 1.2 Sections 34 to 36 of the Care Act 2014 defines the requirement for councils to offer a Deferred Payment Agreement (DPA) enabling people to defer the sale of their main or only home where it is needed to fund and pay care fees.
- 1.3 The Care and Support (Deferred Payment) Regulations 2014, as amended by the Care and Support (Deferred Payment) (Amendment) Regulation(s) 2017 and the Care and Support Statutory Guidance, set out the legal framework and the Council's responsibilities in greater detail.
- 1.4 The Council has a duty to offer a DPA to people who have Council arranged care and support, and also to people who arrange and pay for their own care. The person must have liquid assets less than, or equal to, the upper capital limit of £23,250.
- 1.5 A DPA can provide additional flexibility for when and how a person pays for their care and support. However, it must be made clear at the outset that the deferred amount is not written off and will have to be repaid by the individual, or a third party on their behalf, at a later date. The Council's debt is secured by way of a legal charge on the property in question.
- 1.6 The deferral can last until death or may be used as a bridging loan to give time and flexibility to sell the home.
- 1.7 The Council has a duty to provide clear and easy to understand information and advice explaining how a DPA works enabling people to make well-informed choices and the options for paying for care.
- 1.8 This policy sets out the Council's Deferred Payment scheme (for the administration and implementation of DPAs), including type of DPA, eligibility for a DPA, and the Council's obligations in terms of the administration.
- 1.9 The policy should be read with the Council's Residential Care Charging Policy.

## 2 Type of DPA and Qualifying Conditions

2.1 The Care and Support (Deferred Payment) Regulations 2014 underpin DPAs and the Council's obligation to offer two schemes, commonly known as the 'traditional' type scheme and 'loan' type scheme:

- Traditional type - the Council pays the care home or supported living accommodation directly and defers the charges due to it from the individual at the Council's contracted rate
- Loan type - the individual pays the care provider for their care and the Council loans them the cost of care in instalments less any contributions

2.2 A self-funder is the term given to someone who has undergone a needs assessment and pays the full cost for their own care and support requirements direct to the care provider. This is because they have over £23,250 (the current upper capital limit) in capital and assets. They will be advised that they can make their own arrangements with a care provider without a financial assessment being undertaken.

2.3 A DPA can be offered to people who are classed as self-funders that have capital under £23,250 but additional assets will take them over the £23,250 upper capital limit.

2.4 A loan style DPA will be offered to a self-funder unless the Council will be exercising its discretion using the powers defined in section 19 Care Act 2014 in which case a traditional type DPA will be offered. Further information regarding when the Council will exercise its discretion can be found in the Residential Care Charging Policy section 5.

2.5 In all cases a number of qualifying conditions and criteria must be met to enable a person to qualify for a DPA:

- The person must be resident in the Council area or present in the area but of no settled residence; or
- The person must be ordinarily, resident in another area but the Council has determined that they will meet the person's care and support needs under section 19, the Care Act 2014; and
- The person has been assessed to have care and support needs that the Council considers should be met through a care home placement, or would have been assessed as having eligible needs were the Council to have undertaken an assessment; and

- The person 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
- The person's 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) section 17 Care Act 2014

2.6 If the person satisfies the first two conditions in relation to residency in 2.5 but does not satisfy the remaining conditions the Council will also consider whether to offer a DPA in the following circumstances;

- If meeting care costs would leave very few assets, including assets that cannot be quickly or easily liquidated or converted to cash
- If someone would like to use wealth tied up in their home to fund more than just their core care costs and purchase affordable top-ups (see Financial Charging Policy – Residential Care section 19)
- Whether there are other accessible means to fund the cost of care and support
- Those narrowly failing to meet the qualifying conditions but likely to meet them in the near future e.g. because of assets slightly over £23,250

2.7 The Council also has discretion to offer a DPA for other types of security which include:

- An agreement to repay the amount deferred from the proceeds of a life assurance policy with evidence to show the policy is valid. This must be accompanied by a solicitor's letter of undertaking

### **3 The Application Process**

2.8 The person or their representative will be required to complete an application for a deferred payment (Appendix 2). This form must be returned within 4 weeks from the date the application was sent or the person will be considered a self-funder. However, they could make an application at a later date which would be considered from date of receipt.

2.9 Once the application has been received it will be checked to ensure it is complete and all necessary documents to support the application are included.

- 2.10 If the application or supporting documentation is incomplete a reminder letter will be sent giving 14 days to supply the necessary information. This letter will confirm the date that the information must be received by. If the requested information is not received within 14 days the person will be considered a self-funder.
- 2.11 The completed application form is sent to the Council's legal team for them to arrange the legal contract for DPA and secure a legal charge on the property.
- 2.12 The Council's legal team will:
- check the applicants title to the land
  - complete the standard form of agreement with the necessary details and send to the person or their representative
  - have the agreement approved and signed by the person or their representative
  - complete identity checks
  - the Council approve and sign the agreement
  - register the charge at the Land Registry
  - notify the Deferred Payments Team that the charge has been placed
- 3.6 The Deferred Payments Team will update the person's record to show a DPA is in place and confirm the amount of assumed equity of the property that is subject to a DPA.

## **4 Refusing a DPA**

- 4.1 Sections 34-36 of the Care Act 2014 allows the Council discretion to refuse a DPA, even if the qualifying criteria are satisfied. This discretion provides a reasonable safeguard against default of non-payment of debt and is known as 'permission to refuse'.
- 4.2 Refusal may be considered if:
- the Council is unable to secure a charge on the property (see 8.1)
  - if a top-up has been requested but that top-up exceeds the maximum amount sustainable (see 8)
  - refusal to agree to the terms and conditions of the DPA
  - where there are co-owners of a property either as tenants in

common or jointly owned property, and all parties do not agree with and sign up to the DPA

- 4.3 A DPA will also be refused where a person lacks mental capacity and there is no court appointed Deputy (Property and Affairs), holder of an Enduring Power of Attorney or Lasting Power of Attorney or other person legally authorised to make such a decision. Once a deputy or other person is legally authorised to make a decision an application will be considered at that time (see section 6).

## **5 Information and Charges**

- 5.1 The Council has a duty, under section 4 of the Care Act 2014, to provide information and advice about care and support. This includes how a person might plan for their future care and support and how to pay for them. The Council will support people to make informed, affordable and sustainable decisions about their care. To enable well-informed choices this duty is extended to DPA's. Fact sheets will be available on the Council's website and people will be supplied these during the process.
- 5.2 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 at the earliest point possible. This should be during the period of the '12 week property disregard' when the value of the property is not taken into account. This will include information on top-ups.
- 5.3 The Council will provide a twice yearly statement of the outstanding debt to the person(s) entering into the DPA. A statement can be requested at any time and this will be provided within 28 days of request.
- 5.4 The Council will give the person(s) entering into the DPA at least 6 months' notice that the maximum amount to be deferred is due to be reached and provide a contact to discuss the future cost and funding of care.
- 5.5 The person or their representative will be advised of the costs of entering into a DPA. These can be paid in full or added to the deferred payment agreement (appendix 1).
- 5.6 There will be costs for the initial set-up of the DPA and an annual administration cost which will be added to the DPA each year in January. This will be pro-rata for the 1<sup>st</sup> year.
- 5.7 Compound interest is charged from the first day of the agreement until all the debt is settled in full. The interest rate is based on the cost of Government borrowing (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 interest will be applied daily in line with the accrual of the debt. Interest will continue to accrue until the debt is repaid in full. Interest charges will be reviewed twice a year in January and July.

- 5.8 If the Council has to instigate the enforced sale procedure in order to recover our debt, an admin fee will be charged, plus any professional costs incurred. All costs can be accrued against the deferred payment agreement.
- 5.9 In all cases the Council recommends that independent legal advice is sought before entering into a DPA.

## **6 Renting the Property Out**

- 6.1 The Council encourages people to rent out their property and will allow 20% of any rental income to be disregarded in the financial assessment. This amount is to allow for property maintenance and other landlord related costs.
- 6.2 Where a property is rented out, the Council will require copies of any tenancy agreements that are in place or put in place and would expect this to be via an assured tenancy. Property owners will be encouraged to speak to the Empty Homes Team for advice.

## **7 The Mental Capacity Act 2005**

- 7.1 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 must have regard to the MCA.
- 7.2 The Council can only enter into a DPA with someone who has the mental capacity to make a decision to enter into a DPA, or the person legally authorised to deal with that person's financial affairs. This may be a Deputy, Lasting Power of Attorney or Enduring Power of Attorney which has been registered at the Court of Protection or in some circumstances a specific order from the Court of Protection. The Council requires a certified copy of the document for its records.
- 7.3 Where there is no legal authority in place, but where an application is to be made or in progress, the person applying for Power of Attorney or Deputyship is responsible for negotiating with the Care Home regarding payment of fees until they can apply for a Deferred Payment.



7.4 Where no-one is available to apply for Deputyship, the Council will consider applying for Deputyship.

7.5 The compound interest charge will apply to these invoices.

## **8 How Much Can Be Deferred?**

8.1 The Council will consider deferral of the full care costs, and any top-up, subject to the provision of adequate security and any contribution from personal income that may be required (see Residential Care Charging Policy section 19).

8.2 Some residential care providers may charge extra for a larger room or other additional services. These are known as top-ups. They are normally paid by a third party (known as third party top-ups) but can be paid by the person themselves (first party top-up) if they are deferred in a DPA.

8.3 A top-up is not relevant for a loan type DPA as the person has not been set a personal budget setting out the maximum amount they can get to meet their eligible needs. Therefore, the full amount of their care costs can be considered.

8.3 The Council will discuss with the person the projected limit of what their equity could cover, given their projected care costs, and how their care costs might change over time. This may include a discussion of when they are likely to reach any of the capital thresholds and may begin to qualify for Council support in paying for their care. If the person is requesting a top-up, the Council will discuss what might happen to any top-up requested if the person reaches the equity limit and moves on to Council support in paying for their care, and ensures that a written agreement is in place.

8.4 For a traditional type DPA there must be 12 months equity available for the Council to consider a first party top-up.

8.5 There are three elements that dictate the amount that may be deferred:

- the amount of equity available in the property
- the amount of any contribution from other sources, including income, savings, other financial products or contributions from a third-party
- total care costs, including any top-up

8.6 In order to establish available equity the Council will seek a property valuation in all cases from a fully qualified property surveyor. The cost for

this is detailed in appendix 1. This cost can be paid in full or added to the deferred payment. In addition to the Council's valuation, independent valuations may be sought at the person's own expense (see 9.9).

- 8.7 The Council has a defined equity limit. This is set at the property value minus 10%, minus the lower capital limit, currently £14,250, and the amount of encumbrance already secured on it e.g. a mortgage or other claim on the property or assets.
- 8.8 When the accrued deferred costs reach 70% of the value of the security a financial review will be undertaken with the individual. The review will consider the cost of care, eligibility for any means tested support e.g. financial assessment or welfare benefits and implications of any top-ups.
- 8.9 The Council will not allow additional amounts to be deferred beyond the equity limit and will refuse to defer any further costs. However, interest will still accrue and administrative charges applied and added to the deferred balance.

## **9 Securing the Deferred Payment Agreement**

- 9.1 Section 34.4 of the Care Act 2014 provides that the Council may refuse a DPA unless it can obtain adequate security for the payment of the deferred amount.
- 9.2 Regulation 4.1a of the Care & Support (Deferred Payments) Regulations 2014 make further provision that councils must obtain adequate security for the payment of the adult's deferred amount and of any interest and administration cost.
- 9.3 Where a property is owned outright with no mortgage or other charge on it the Council will secure a first legal mortgage against the property on the Land Register. Where the property is jointly owned, all parties will have to agree to the charge being placed.
- 9.4 The Council may accept a property with an existing mortgage or other charge, as security where there is sufficient equity to warrant placing a charge. The Council must be provided with an up to date statement from the lender of the debt outstanding.
- 9.5 The Council may accept other forms of security if they consider them adequate to cover the costs.
- 9.6 Equity is defined as:

- the value of a person's share in the property, less
- any charge on the property, less
- 10%, less
- £14,250 (£14,250 being the current lower capital limit).

9.7 The Council will obtain a valuation on the property as per 8.6.

9.8 The Council will also re-value the property once the equity level is deemed to be less than 50%. The costs will be added to the DPA.

9.9 If the Council's valuation or re-valuation is disputed by the owner then a separate valuation from a RICS registered valuer can be obtained at their own expense. The Council will consider this valuation and on a case by case basis determine if the person's valuation can be used.

## **10 Traditional Deferred Payment Agreement - Payment**

10.1 Payment will be made direct to the care provider 4 weeks in arrears by BACS transfer.

10.2 The service user is charged a contribution on a four-weekly basis (an affordable amount which is established by means of a financial assessment). An invoice will be sent 4 weekly. The difference between the Council's contracted rate and the assessed contribution accrues as a debt against the property, upon which a legal charge is held.

## **11 Loan Style Deferred Payment Agreement – Payments**

11.1 Payment will be made to the service user 4 weeks in arrears.

11.2 Payment will be made via BACS transfer.

## **12 Contractual responsibilities of the individual whilst the agreement is in place**

12.1 The Council will include in the deferred payments contract provisions requiring the individual or their agent to ensure that appropriate arrangements are in place to maintain their home whilst they are in care. In particular, the contract will require that their home is maintained

adequately, and require the individual or their agent to have in place an arrangement for regular maintenance to take place. The Council will also require the individual or agent to have adequate insurance for their property. If their home is to be left empty for an extended period of time, they will need to ensure their insurance covers this adequately and that any terms required by the insurer are met.

12.2 The DPA will provide that the individual or their agent must obtain the Council's consent before allowing anybody to move into the property after the agreement has been made. In these circumstances, the Council may (if it is reasonable to do so) require written consent from the person which places the debt owed to the Council above any beneficial interest they may accrue in the property.

### **13 Ending the Deferred Payment Agreement and Stopping Deferring Care Charges**

13.1 A Deferred Payment Agreement will end in the following circumstances:

- Repaying the full amount due
- When the property (or other form of security) is sold and the Council is repaid
- When the person dies and the amount is repaid to the Council from their estate
- If a loan type DPA is in place but care fees are not being paid

13.2 Debt will stop accruing against the DPA when the equity limit is reached; the person(s) entering into the DPA will be informed 6 months before the equity level is likely to be reached.

13.3 Where a property is being sold, the Council requires 30 days' notice of the intended completion date where possible. The net sale price will be used to calculate the final debt due; the net sale price being the actual sale price less associated fees.

13.4 If someone decides not to continue accruing their care charges against the deferred payment agreement and can pay the charge from another source instead, 30 days written notice is required to stop the debt accruing. Interest will continue to accrue until the debt is repaid in full.

13.5 If a person has a loan type DPA but the Council is informed by the care provider that care fees are not being paid the DPA will end immediately.

## **14 Repaying the Deferred Charges**

- 14.1 Upon a person's death the Council will issue a final statement confirming the amount of debt due within 28 days of the notification. If this balance is settled in full within 90 days then no further interest will accrue. If the balance will not be settled within 90 days the debt will be pursued in accordance with the Council's Debt Management Policy. The legal charge on the property will not be removed until the debt is repaid in full.
- 14.2 In all other cases an invoice will be raised and the debt pursued in accordance with the Council's Debt Management Policy.
- 14.3 The debt should be paid, when the property the charge was secured against, has been sold. However, in some cases the property may not be sold and the debt will need to be paid by other means
- 14.3 If any invoice is not paid within the time limit specified when issued, the Council will issue a Section 103 notice in line with the Law of Property Act (1925). The Notice provides for a period of three months within which the invoice may be paid. If at three months, the debt has not been settled the Council can force a sale to recoup the debt, thereby becoming the Mortgagee in Possession. The property may be sold at auction or otherwise and any outstanding debt and fees relating to the sale will be deducted from the proceeds, the balance being returned to the person or their estate.

## **15 Appeals**

- 15.1 All persons requesting a DPA have the right to appeal if a DPA has been refused. The appeal will examine whether this policy has been applied correctly and whether there are any exceptional circumstances that justify a DPA.
- 15.2 The appeal must be in writing and clearly state why the person believes that a DPA should be entered into.
- 15.3 The appeal will be considered by a senior member of Council staff not previously involved in the decision making and the outcome notified to the person in writing within three weeks from receipt of the appeal.
- 15.4 Appellants will be advised of their right to access the Adult and Health Services Complaints Procedure.

## DPA Policy Appendix 1

### Deferred Payment Scheme Costs

<b>Fees and Charges</b>	<b>Frequency</b>	<b>Cost</b>
<b>Legal Fees –</b>		
Preparation and Registration of DPA and charge	per activity	£155.00
Removal of Charge	per removal	£50.00
Application for Voluntary First Registration**	per application	£205.00

\*\* anyone with un-registered title deeds will be required to apply for the voluntary registration of their title deeds prior to being granted a DPA

### Land Registry Fees

Office Copy and Title Plan	per request	£6.00
Registration of Charge	per registration	£20.00
Discharge of Charge	per discharge	Free

### Voluntary First Registration- Value of Property

£0-£80,000	per application	£ 40.00
£80,001- £100,000	per application	£ 80.00
£100,001- £200,000	per application	£190.00
£200,001 - £500,000	per application	£270.00
£500,001 - £1,000,000	per application	£540.00
£1,000,001 and over	per application	£910.00

### Valuation Costs

Property Valuation	per valuation	£150.00
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### Administration Fees

Initial set-up	per case	£190.00
Annual fee	per case	£50.00
Abortive Admin Fee*	Per case	£50.00

\* *This relates to a standard charge for admin costs where a deferred payment application/agreement is terminated before its completion (whatever the reason).*