

Bedford Borough Council
Universal Deferred Payment Scheme

Effective from: 1st April 2017
Review Date: 1st April 2018

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The National Deferred Payments Scheme

1. Legal Status

- 1.1 The Care Act 2014 (sections 34 - 36) 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 come into force on 1st April 2015.
- 1.2 The regulations require local authorities to offer deferred payments to people meeting certain eligibility criteria (see section two 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 Local Authorities to enter into a loan with individuals for the payment of care and support costs in a care home or supported living.
- 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 have a further discretion to offer the deferred payment scheme to people who do not meet the eligibility criteria.

2. Eligibility Criteria

- 2.1 **The local authority must 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 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

¹ This is determined when someone is assessed as having eligible needs which the local authority 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.

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).

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. Where a person lacks mental capacity then the person entering into the Deferred Payment Agreement must be legally appointed to manage their finances for example Deputyship or Lasting Power of Attorney.
- 2.3 If accepting a property as security, the local authority has to ensure it is able to secure a charge on the property or land.
- 2.4 The local authority may exercise its discretion to take other forms of security rather than the person's property. The Council will only consider other forms of security in exceptional circumstances where there is no property but another asset of suitable value, after giving due regard to the associated risks of other forms of security.
- 2.5 The local authority 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 local authority will need to be satisfied it is able to recover care costs on the individual's death or sale of the object.
- 2.6 If a spouse or dependent relative moves into the property following entry into the deferred payment scheme, the local authority should review eligibility.
- 2.7 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.
- 2.8 The local authority may choose to ask the person to complete an application for the scheme. Bedford Borough Council will require completion of an application form.

3. Permission to refuse a deferred payment agreement

- 3.1 The authority may refuse a deferred payment agreement despite an individual meeting the eligibility criteria where:
- 3.1.1 It is unable to obtain a first charge on the property;
 - 3.1.2 The person lacks capacity and there is no appointed deputy to make such a decision;
 - 3.1.3 Where someone is seeking a top-up²;
 - 3.1.4 Where a person does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property.
- 3.3 The authority has set a maximum limit on the amount of top-up that can be added to the deferred payment. This limit is set at 25% of the maximum Local Authority Rate which is currently £595 per week, making the maximum value of any top-up that a person can add to their agreement £148.75 per week.

4. Information for cared-for persons

- 4.1 Officers are required to ensure that persons considering entering residential care are made aware of the ability to defer charges against their property for their care. This needs to fit in with the local authority's general responsibility on information and advice.
- 4.2 Officers must advise the person or their representative that there is an administration charge when entering into a DPA. See section seven below for more guidance.
- 4.3 Officers must advise the person or their representative, that interest will be applied from day one of the agreement. The 12 week property disregard must be allowed where appropriate. See section 10 below.
- 4.4 Officers should advise the person of the criteria that is attached to eligibility for the Deferred Payment Scheme.
- 4.5 There is a further requirement to advise people wishing to take advantage of the scheme that they may wish to seek independent financial advice and this should also be incorporated into the information leaflet.

² In these situations, a local authority should still seek to offer a deferred payment agreement but should be guided by considerations of sustainability (or reflects their core care costs without any top-ups) and agree a deferral. The person can then choose whether they wish to agree.

5. Deciding not to sell and refusing a DPA

- 5.1 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.
- 5.2 If they then fail to pay their invoices this should be dealt with via the Council's debt process.
- 5.3 The person should again be directed to an independent financial advisor upon indicating that this is their decision.

6. Renting the property out

- 6.1 There is no compulsion to sell the property and service users and families may choose to rent the property. In this way all the cost of placement may be met or at least cause a lower amount to be deferred and repaid.
- 6.2 Officers should request sight of the Tenancy Agreement if arranged privately. Negotiation should take place with the service user or their family to agree how much of the rental income should be included in the financial assessment.

7. Interest charges; calculation; fees

- 7.1 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 The interest rate charges will be advised to Local Authorities by Department of Health. The rate applicable from the scheme's launch on 1 April until 30 June 2015 is 2.65%.
- 7.3 Compound interest will be applied in line with payment terms to providers which is 4-weekly.
- 7.4 The Council will apply an initial one-off administration charge of £475. The costs included in the administration charge will be:
 - 7.4.1 costs of postage; printing and photocopying in relation to the agreement;
 - 7.4.2 staffing costs;
 - 7.4.3 Land registry fees;
 - 7.4.4 Legal costs;
 - 7.4.5 Land search fees.

7.5 The local authority can also pass on 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.

7.6 The Council will charge an annual administration fee of £50 on the anniversary of the start of the agreement to cover the ongoing administration and staff costs of maintaining the agreement.

7.7 The Council will charge for the production of additional statements to those provided at six monthly intervals. The charge for this will be £10 per additional statement.

8. Valuation of Property

8.1 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 must be set at:

Value of the person's share in property – 10% followed by - £14,250

8.2 When assessing whether the property is greater than the upper capital limit, an allowance of 10% of the estimated value should be allowed for sale costs followed by a further deduction of £14,250 to give a net estimated value. NB when eventually sold the actual costs of sale should be deducted when assessing capital not the estimated 10%

8.3 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'.

8.4 For Right to Buy properties it is established best practice that 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.

8.5 The Council will obtain a valuation of the property based on market information available on the internet.

8.6 It is good practice to confirm the value that is being taken into account in their financial assessment with the person or representative.

8.7 An updated valuation should be obtained when deferral reaches 50% of available security.

8.8 If there is disagreement with the valuation used by the Council, the person may request an independent valuation of the property. The cost of this will be met by the person entering into the agreement.

9. Obtaining Security

- 9.1 To enter into a Deferred Payment Agreement with a person there must be adequate security to cover the costs of 'care and support'. Where the local authority is able to secure a first legal charge against the property at the Land Registry; this should always be considered as adequate security.
- 9.2 Where there are co-owners or those with a beneficial interest in the property the Council must seek consent and agreement from all parties before the charge can be placed on the property.
- 9.3 The Council will aim to obtain a first charge against the property. In some circumstances the Council may not be able to obtain a first charge (a mortgage may be outstanding), however the Council can still enter into a Deferred Payment Agreement where it can assure itself there is sufficient value in the property to meet the care costs.
- 9.4 There may be occasions where the property search discloses the property is not registered with the Land Registry. The Council is unable to enter into a Deferred Payment Agreement at that time; the property will need to be registered. The Council can ask the person or their legal representative to register the property.

10. Deferred Payments and the 12 Week Disregard

- 10.1 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.
- 10.2 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 will be given at the time that capital reduces to the upper capital limit and it would be necessary to sell the property. The local authority can use this time to discuss the availability of the deferred payment scheme.
- 10.3 Persons already in residential care who may need to access local authority funding are not entitled to the 12 week property disregard.
- 10.4 However, if the request to access local authority support is made due to a sudden and unexpected change the local authority has the discretion to allow a 12 week property disregard. An example where a local authority might consider exercising this discretion might be a person's partner dying suddenly.
- 10.5 The local authority should ensure that there is a smooth transition where possible to the deferred payment scheme by the 13th week of residential care.

10.6 During the 12 week property disregard officers should discuss with the individual how (s)he plans to use, insure and maintain their property whilst in the deferred payment scheme.

11. Periodic Statement of Accrued Debt

11.1 Bi-annual statements (i.e. twice yearly) will be sent to the service-user indicating 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.

12. Re-valuation of Property

12.1 Annual valuations of the property should be undertaken using the process described at 8.5. The process should be carried out annually shortly before the statement referred to in 11.1 is sent to the service user.

13. Benefits entitlement

13.1 As a self-funder the person is entitled to and should apply for Attendance Allowance or Personal independence Payments.

13.2 The individual or their legal representative is responsible for notifying the Department for Work and Pensions of any changes to circumstances.

14 When the Deferred Payment ends (due to depletion of equity)

14.1 When the equity has depleted the following process should be followed. A re-valuation of the property is required.

14.2 A copy of the charging order, or a letter from the authority's legal department acknowledging the authorities interest in the property, is also required.

14.3 An account or letter detailing the amount of debt currently accrued against the property should be produced.

14.4 Supporting Documents should then be given to the resident or representative for them to apply for available benefits with the accompanying explanation:

Mr/Mrs (name) is the owner of the property detailed on this form. Although the property is not being actively marketed for sale the value of his/her equity in the property is now [£] and I should be grateful if you would regard this as a valid claim for Income Support/Pension Credit. We attach the following documents: a current valuation , a copy of the Charging Order in favour of (name) local authority (or a letter from the legal department of the (name) local Authority) and confirmation of the current debt accrued against the value of the property”.

- 14.5 In the event of an Income Support/Pension Credit claim being rejected on the grounds that the property is not being marketed for sale, officers should request reconsideration of the decision with the support of a letter from Finance.

15. Increased Personal Expenses Allowance for Property Maintenance / Insurance

- 15.1 Residential care service users pay a contribution towards care based on income, benefits and capital, leaving the person with a prescribed minimum allowance.
- 15.2 The general personal expenses allowance (PEA) received by service users may not be sufficient to cover the maintenance of the property.
- 15.3 The costs involved in maintaining the property e.g. insurance and repairs must be met by the service user. 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 that is what the service user requires. This is called the Disposable Income Allowance. A service user may choose to keep less than this amount per week. This option must be discussed when arranging the deferred payment. By retaining less than £144 per week there will be less deferring against the property value.
- 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, it should be noted that you must 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. Conditions of entering into a Deferred Payment Agreement

- 17.1 The Deferred Payment Agreement shall only take effect upon the applicant's or duly appointed representative signing the Deferred Payment Agreement. A certified copy of the appointment of a Power of Attorney or order from the Court of Protection appointing a Deputy will be accepted as evidence of authorization to sign on behalf of the application.
- 17.2 The person entering into the Deferred Payment Agreement will also be required to abide by a number of conditions:

- That the property is maintained in reasonable standard of repair and condition. The Council expects property subject to a Deferred Payment Agreement to be maintained to retain value, if not the property may be condemned and enforcement action would follow
- All outgoings associated with the property (e.g. Council tax, service charges, ground rent, insurance) are paid.
- That any net rental income derived from letting the property during the period of the scheme will be assessed in accordance with the Department of Health Statutory guidance.
- That the person receiving care and/or their representative acknowledges that they have received the Council's advice that they should seek independent financial advice before committing themselves to this agreement.
- That the client makes a full application for assistance on the Council's designated application form, and provides any evidence required by the Council in support of the application.
- Where the property is jointly owned, the co-owners as well as the applicant must agree to the Council's form of charge.
- That the applicant or representative notifies the Council of any change in circumstances which would affect the value of the property or the sustainability of the deferred payment. This includes informing the Council of when someone intends to move into the property.

18. Notification on reaching the maximum deferred amount

- 18.1 30 days notice must be given to service users as to when the maximum amount of the Deferred Payment is likely to be reached. The Council will identify this during the six monthly statement and advise accordingly.
- 18.2 Within the 6 months prior to the service user reaching the maximum deferred amount, officers should discuss with the service user the cost of care, in particular what may happen to any top ups or the need to consider movement to another care home/room if they are unable to make other arrangements.

19. Terminating the deferred payment - sale of property before Death

- 19.1 If the service user 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.
- 19.2 Service users must give 30 days' notice in writing in advance of terminating the agreement on account of a sale of the property.
- 19.3 The actual sale price should be used for final calculation of the debt. At that point the date the authority is due to assist funding the placement

will be identified.

20. Terminating the deferred payment - sale of property after Death

- 20.1 The Deferred Payment debt should be added to any other debt which is attributable to the placement.
- 20.2 Any Executor of the estate should be notified of the actual or provisional debt, 14 days after the death. At this stage, the approximate value of the estate should be requested to confirm previous financial assessment declarations. Officers should also explain in writing that the debt is due from 90 days after death.
- 20.3 Where not already notified, the final debt should be confirmed in writing no later than 4 weeks after death.
- 20.4 If the debt has not been cleared within 4 weeks of the expiry of the 90 day period a reminder should be sent confirming the rate of growth of the debt and querying when payment can be expected. If no response is received the Council's debt policy will be followed.
- 20.5 Calculating the Interest – The interest rate able to be charged is that as detailed in the Care and Support (Assessment) Regulations 2014.

21. Removing the Charge

- 21.1 The Finance Team will advise Legal Services of any discharge of the debt. Legal Services will then arrange for removal of the charge or give an undertaking to the service user or his or her legal representatives to this effect.

22. Continuing Healthcare

- 22.1 The Deferred Payment Agreement does not cease simply because Continuing Health Care funding is awarded. Where this is the case, the debt will be frozen though interest will continue to accrue until discharge of the debt.
- 22.2 Service users may choose to continue to make payments towards the outstanding debt.

23. Policy Review

- 23.1 This policy will be reviewed annually. This policy may also be subject to review at other times in response to case law, statutory amendment and guidance from the Department of Health or other statutory organizations.

24. Use of Financial Information and Privacy

Information gathered under this policy will be processed in accordance with the Data Protection Act 1998. This means the information will only be shared with other relevant agencies in accordance with the data protection principles/exemptions or with the written consent of the service users or their legal representative/advocate

Appendix 1 – Schedule of Charges

Interest Charges

Date Effective	Rate
01/04/2015	2.65%
01/07/2015	2.25%
01/01/2016	2.15%
01/07/2016	1.85%
01/01/2017	1.35%
01/07/2017	1.65%

Standard Charges

Start-up Administration Fee	£475
Annual fee payable on the anniversary of the agreement	£50
Additional Statements	£10 per statement