



Deferred Payment Scheme

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Directorate for Commissioning, Public Health and Adults
Social Care and Well-being for Adults

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1. Purpose of document

- 1.1 This policy provides a clear explanation and the requirements for when a Deferred Payment can be offered.
- 1.2 The policy should be applied fully to all applications for a deferred payment to ensure compliance with our statutory requirements.
- 1.3 This guidance will affect those people who are assessed as eligible for long term care and wish to defer the sale of their property or have not yet sold their property which is taken into account as part of the financial assessment process.

2. Scope

- 2.1 This policy applies to all staff involved in dealing with the deferred payment processes. Primarily this relates to staff working in the Client Financial Affairs Service.
- 2.2 The policy is of relevance to customers and carers where the customer wishes to be considered for a deferred payment agreement.
- 2.3 The policy relates to long term care services only; it is not relevant to community based services.

3. Legal context

- 3.1 The Care Act 2014 makes a legislative requirement for a universal Deferred Payment Scheme to be available throughout England. Regulations made under sections 34 and 35 of the Act require local authorities to offer deferred payment agreements to people who meet certain criteria governing eligibility for the scheme.
- 3.2 The implementation of the universal Deferred Payment Scheme intends to support people so that they do not have to sell their home in their lifetime to pay for their care. Use of a deferred payment agreement allows a customer to 'defer' or delay paying the costs of their care and support until a later date.

4. Policy aims and objectives

- 4.1 Kirklees Council will be able to advise customers about their eligibility for deferred payments, and apply deferred payments in a consistent manner.
- 4.2 This policy adheres to the Care Act 2014 legislation and the regulations and statutory guidance stating that no one should have to sell their home in their lifetime and to give homeowners peace of mind and additional flexibility for when and how someone pays for their care and support.

5. When a deferred payment can be offered

- 5.1 A Deferred Payment Agreement must be offered to customers who fulfil all of the following criteria:

- They have liquefiable capital assets (excluding the property) of less than £23,250 (the upper capital limit)
- They have a legal or beneficial interest in a property, which has been their main or only home prior to entering permanent care and the property is not benefitting from a property disregard
- They have mental capacity to agree to a deferred payment agreement or have a legally appointed agent willing to agree this
- Their income is insufficient to meet the costs of their care
- The available equity in the property is less than the “Equity Limit” (see ‘Equity Limit’ below)
- The customer meets the Council’s eligibility criteria for provision of services and we have assessed their eligible needs should be met with a long term care home placement
- The customer has entered a registered care home or will be entering a registered care home

5.2 The Council must offer a customer the option of a deferred payment agreement in order to recover debt wherever the person could be offered a deferred payment (is eligible). Only if the customer refuses a deferred payment can the council make an application to the court. A customer’s decision to refuse a deferred payment must be fully documented.

5.3 The Council may offer the option of a Deferred Payment Agreement in other circumstances. The most likely circumstance when the Council will consider offering the option of a Deferred Payment agreement is when the customer already has a mortgage to pay on the property but otherwise meets all the other criteria set out in paragraph 5.1. The Council will though want to ensure that the customer can continue to make the any mortgage payments that are due whilst at the same time making their assessed contribution to care costs

6. When a deferred payment may be refused

6.1 There are certain circumstances in which a deferred payment may be refused. This is referred to as ‘permission to refuse’. Permission to refuse can apply even if a customer meets the eligibility criteria and we would otherwise be required to offer an agreement.

6.2 An agreement may be refused where:

- a) we are unable to secure a first legal charge on the customer’s property
- b) where someone is seeking a top up¹
- c) where a customer’s does not agree to the terms and conditions of the agreement, for example, the requirement to insure and maintain the property.

¹ In these situations we should still seek to offer a deferred payment but should be guided by a maximum amount that is sustainable (or reflects their core care costs without any top-ups) and agree a deferral. The person can then choose whether they wish to agree.

6.3 Where a 'permission to refuse' is applied, the customer must be notified of this in writing and the reason for the refusal stated.

7. Making an informed choice

7.1 To support a customer in deciding whether a deferred payment agreement is appropriate to them, they should be provided with the Deferred Payment Scheme leaflet.

7.2 The customer should also be provided with the deferred payment agreement application and the accompanying guidance and notes in advance of a home visit, so they have time to fully consider how the agreement may affect them.

7.3 If a customer wishes to consider a deferred payment agreement, they should be signposted to organisations which can provide advice on options available to them. This could include information around renting their property or selling the property after their death.

7.4 As a minimum, people should be signposted to organisations which can provide independent financial advice on taking up a deferred payment agreement.

7.5 Where relevant, information should be provided as early as possible within the 12 week disregard period, enabling a smooth transition from the disregard period to the deferred payment, should a customer wish to take up this option.

8. Mental capacity

8.1 Where a customer has been assessed to lack the capacity to enter into a Deferred Payment Agreement, a Deputy or Attorney² may request a deferred payment on their behalf.

8.2 If a family member requests a deferred payment and they do not have the legal power to act on behalf of the customer, then the customer and the family member should be signposted to information and advice on how to obtain Lasting Power of Attorney and Deputyships.

8.3 Where we are the Deputy for a customer, then we may apply for deferred payments where this is in the best interests of the customer.

8.4 A deferred payment agreement must not be entered into in any of these situations without the proper legal arrangements in place.

8.5 Where the customer has capacity, consideration should be given to any potential losses of capacity in the future. Where appropriate, information on deputyship, legal power of attorney and advocacy should be provided to the customer.

² A person with a relevant Enduring Power of Attorney or Lasting Power of Attorney

9. How much can be deferred?

- 9.1 When a customer is entitled to a Deferred Payment Agreement a customer has a right to defer the entirety of their “core care” costs which are those charges which the council considers to be necessary to meet the customer’s needs whilst the customer is living in a care home.
- 9.2 In principle a customer (who is entitled to a Deferred Payment Agreement) should also be able to include any top up fees within the deferred payment amount. However, the amount a customer is able to top up remains at the council’s discretion and is dependent upon affordability, sustainability and the availability equity.
- 9.3 When a customer is not entitled to a Deferred Payment Agreement the council may choose to offer the customer the option of a Deferred Payment Agreement if it is appropriate to do so and may set a limit on what may be deferred. In these circumstances and in order to determine what the limit should be the Council will consider the following factors:
- 1) The amount of equity a customer has in their property
 - 2) The amount a customer is contributing to their care costs from other sources, including income and (where they choose to) any contribution from savings, a financial product or a third-party; and
 - 3) The total care costs a customer will face, including any top-ups the customer might be seeking.
 - 4) The likely period the customer would want the Deferred Payment Agreement to last for
 - 5) The period of time the customer would be able to defer their care costs for
- 9.5 In considering sustainability, this should be discussed fully with the customer and agreement reached about the amount to be deferred. This final agreement should be clearly set out in the deferred payment agreement.
- 9.6 The Department of Health is seeking to develop a sustainability tool which could be applied when calculating the deferred payment. *DoH web pages. Not currently available*
- 9.7 In every case the customer should be informed in writing what might happen to any top up if they reach their equity limit. This should include finding other ways to pay for it or a change in their care package

10. Equity Limit

- 10.1 We must obtain a valuation of the property before the equity limit can be confirmed. The customer can also obtain an independent valuation if they wish to do so. If the independent valuation is substantially different to our valuation, we must meet with the customer and agree an appropriate valuation prior to proceeding with the DPA. In the event of a dispute the authority will commission a third independent valuation. In this instance the average valuation will be used for the DPA equity limit.

- 10.2 The equity limit must be set at the value of the property minus 10%. Less the lower capital limit (currently £14,250). Less the amount of any mortgage or other claims already placed on the property.

For example, Paul wishes to take a Deferred Payment. His property has been valued at £165,000.

The amount of equity available will be the property value minus 10%, minus the lower capital limit.

$$£165,000 - £16,500 - £14,250 = £134,250.$$

Paul also has a mortgage on the property of £20,000.

$$£134,250 - £20,000 = £114,250.$$

This would mean the equity limit for the total amount Paul could defer is £114,250. This would leave £50,750 in equity in his home.

- 10.3 In cases where the council is not required to offer a Deferred Payment Agreement The equity in a property needs to be sufficient to cover an individual's likely care cost for a minimum period of 2 years .
- 10.4 Additional amounts cannot be deferred beyond the equity limit and the 'permission to refuse' will be applied. Interest can continue to accrue even when the equity limit has been reached.

11. Contributing to care costs

- 11.1 A customer's contribution to their care costs should not result in the customer being left with less than the 'disposable income allowance'. This is a fixed amount of £144 per week.
- 11.2 A customer may choose to keep less of their disposal income and contribute more to their care costs. This decision must be entirely the customer's choice.
- 11.3 If a customer wishes to rent out their property during the course of their deferred payment agreement they are entitled to retain a proportion of the rental income. The remaining rental income should be applied to their deferred payment agreement to lower the amount accruing. The amount retained by the customer will be determined following a new financial assessment and is dependent upon their other income.
- 11.4 A customer may also contribute to their care costs by third party payments, such as financial products, or their savings. However, we should not compel a customer to contribute to their deferred payments from these sources.

12. Land Charges

- 12.1 For a customer to be accepted for a deferred payment there must be adequate security in place.
- 12.2 The deferred payment scheme in Kirklees relates solely to property, no other form of security is included within the scheme.
- 12.3 To obtain adequate security, a legal charge must be placed on the property to secure the debt. Legal Services will need to be instructed to enter into the legally binding deferred payment agreement with the customer and to take a supporting legal charge from the owners of the Property.
- 12.4 Where the property is jointly owned, consent and agreement must be sought from all owners. All owners must sign the legal charge and enter into a collateral agreement whereby they acknowledge that any rights in the Property that they may have would be postponed to the council's legal charge in the event of the council exercising its powers of sale under the legal charge.
- 12.5 If another party has a beneficial interest in the property their consent to the deferred payment must also be sought and evidenced by a signed agreement in which the third party agrees to postpone any rights in the Property that they may have to the rights of the Council under the Legal Charge.

13. Interest rate and administrative charges

- 13.1 Administrative charges are applied to the deferred payment amount. These charges cover the setting up of the agreement, property valuations, legal charges and the associated ongoing running costs.
- 13.2 The administrative charges are made up by the following:
 - Staff time (visiting officer, finance assistant, team manager, unit manager, business support)
 - Postage, printing & photocopying the agreement
 - Valuation fee
 - Land search fee
 - Legal charge
 - Legal staffing
 - Providing statements
 - Central charges/system support costs
- 13.3 The customer can request to pay the administrative charges separately if they wish to do so or these can be added to the deferred payment amount. If the charges are added to the deferred payment, interest charges will be incurred.
- 13.4 Whenever a customer is liable for an administrative charge, they must be notified of this in writing.

- 13.5 Charges are made to the customer for the initial valuation and subsequent valuations at the appropriate equity 'trigger points'.
- 13.6 Interest is chargeable on a deferred payment agreement and is charged from the point of the deferred payment being taken.
- 13.7 The interest rate is the current conventional gilts rate (from time to time) plus 0.15%.
- 13.8 The interest rate changes every 6 months on 1 January and 1 July. This must be reflected and applied to any agreements.
- 13.9 Information on interest rates and the interest rates should be provided to the individual to assist them in making an informed choice about a deferred payment.
- 13.10 The interest charged and added to the agreement will be compounded on a daily basis. It is important that the customer taking out a deferred payment understands that the interest will accrue on a compounded basis.
- 13.11 The interest will continue to accrue, even when someone has reached the equity limit.
- 13.12 In all circumstances, the interest will continue to accrue until the deferred amount has been repaid.

14. The deferred payment agreement

- 14.1 When someone chooses to enter into a deferred payment, it is best practice for the agreement to be finalised and in place by the end of the 12 week disregard.
- 14.2 If the disregard does not apply to a customer's circumstances, the agreement should still be finalised and in place within 12 weeks.
- 14.3 Decisions on a customer's care and support package, the amount they intend to defer, their security and the terms of the agreement should only be taken once a discussion has taken place with the customer considering a deferred payment.
- 14.4 Once an agreement in principle is reached, the Council is responsible for preparing the deferred payment agreement and supporting legal charge.
- 14.5 The customer will be provided with both a copy of the Agreement a commentary upon the agreement that provides an explanation of all the terms and a sheet that sets out the key terms of the Agreement.

15. Our responsibilities

- 15.1 As a minimum, a 6 monthly statement must be provided to the customer. This should coincide with the interest rate change (January and July)

- 15.2 The statement must include the amount of fees deferred, interest and administrative charges accrued to date, the total amount due and the equity remaining in their property.
- 15.3 A customer can also request an additional statement at any time. We must provide this statement within 28 days of the request.
- 15.4 Once the amount deferred exceeds 50% of a customer's equity the council will revalue the property.
- 15.5 Revaluations of a customer's property are required at regular intervals once a customer's has exceeded 50% of their equity limit. In Kirklees the following timescales for revaluations should be applied:

Amount deferred in relation to agreed equity	Frequency of revaluations
50%	Initial revaluation
51 – 84%	Revaluations every 2 years
85 – 100%	Revaluations on an annual basis

- 15.6 When a customer reaches 70% of the equity limit, the council will review the cost of their care with them, when they might be eligible for any means tested support, the implications of any top-ups and whether the deferred payment agreement remains the best way for them to meet their care costs.

16. Responsibilities of the individual

- 16.1 If the customer is making a contribution to their care they are responsible for informing the service of any changes to their income.
- 16.2 If the customer's care and support needs change they are responsible for informing the service of these changes so that the existing deferred payment agreement can be reviewed.
- 16.3 If the customer has not had the property disregarded they are responsible for informing the service of any changes which may lead to the property being disregarded.
- 16.4 The customer is responsible for ensuring that their home is adequately maintained whilst they are in care including the maintenance and adequate insurance.
- 16.5 Where the property will be empty for an extended period of time the customer is responsible for ensuring adequate insurance cover is in place and that the terms of the insurer are met.
- 16.6 Before renting out their property the customer must inform us in writing of their intention.
- 16.7 The customer must obtain the consent of the service prior to allowing someone to move into the property once the agreement for a deferred payment is in place. In

these circumstances, we require written consent from the customer that they agree to postpone any interest they may have in the property in favour of the council's right to exercise its power of sale. In practice such an interest is in any event postponed as it will have been acquired after the date of the Legal Charge but it is usual to have an agreement to postpone from the third party for evidential purposes.

16.8 The customer must notify the service if someone has gained, since the agreement was signed, or may gain (in the future) a beneficial interest in the property.

17. Circumstances in which we may stop deferring care costs

17.1 In some circumstances we may refuse to defer any more charges. Examples of this can include:

- a) when a customer's total assets fall below the level of the means-test and the customer becomes eligible for local authority support in paying for their care;
- b) if a customer breaches certain predefined terms of their agreement and attempts to resolve the breach are unsuccessful and the contract has specified that the authority will stop making further payments in such a case;
- c) if, under the charging regulations the property becomes disregarded for any reason and the customer consequently qualifies for local authority support in paying for their care, including but not limited to:
 - i. where a spouse or dependent relative has moved into the property after the agreement has been made, which means the customer is eligible for local authority support in paying for care and no longer requires a deferred payment agreement;
 - ii. where a relative who was living in the property at the time of the agreement subsequently becomes a dependent. The local authority may cease further deferrals at this point.
- d) In our reasonable view the needs of the customer should no longer be met by the provision of care and support in a care home

17.2 Where it is decided that the deferment of care costs should cease, a minimum of 30 days advance notice of the cessation should be provided to the customer, with an indication of how their care costs will need to be met in future. This notification must be in writing.

17.3 We should not cease to defer care charges if the customer would, as a result, be unable to pay any tariff charges due to the local authority from their non-housing assets.

17A Circumstances in which we must stop deferring care costs

17.A4 We must cease deferring care costs under the deferred payment agreement if the customer has reached the 'equity limit' that they are allowed to defer or when the customer is no longer receiving care and support in a care home setting.

18 Repayment of the Deferred Amount

18.1 The specified time for the repayment of the total sum of the deferred costs interest and administration charges is the sooner of:

- (i) The date of the transfer of the Property (that is subject to the Council's Legal Charge); or
- (ii) 90 days after the date of the death of the adult or such longer time as we permit

18.2 The Council may, at their discretion, allow an extension to the 90 days. Allowances will be made in instances such as:

- i) The Property is listed to be sold but a sale has so far been unsuccessful, despite best efforts to sell the property
- ii) The Property has tenants and there is a lease in place that needs to expire before the property can be sold

19. Terminating the agreement

19.1 The deferred payment agreement can be terminated in 3 ways:

- 1) at any time by the individual, or someone acting on their behalf, by repaying the full amount due. This can happen during a customer's lifetime or when the agreement is terminated through the customer's death.
- 2) when the property is sold and the debt is repaid in full
- 3) when the customer dies and the amount is repaid in full from their estate.

19.2 In order to terminate the agreement, the full amount due, including care costs, administrative and legal charges (if these were deferred) and any accrued interest, must be paid in full.

19.3 If the customer decides to sell their home they are responsible for notifying the service of the sale price. At the point of selling the property they are responsible for repaying the debt in full. The council will relinquish the charge on the property on receipt of the full deferred amount to enable the sale to proceed.

19.4 Where the property is being sold for the less than the market value, or where we are selling the property on behalf of a Court of Protection client, it is essential that we apply fair and equitable approaches to signing off the final sale value.

19.5 Where the customer or a third party elect to pay the amount due they should notify the service in writing of their intention. The council will relinquish the charge on the property on receipt of the full amount due.

19.6 In cases where the agreement is terminated due to the customer's death, the amount due must be either paid out of the estate or by a third party. An alternative means of payment is acceptable provided it covers the full amount owing.

- 19.7 The Executor of the Will or Administrator of the Estate can decide how the amount due is to be paid; either from the estate or a third party source.
- 19.8 The council should wait a minimum of 2 weeks before providing the executor with a breakdown of the amount deferred.
- 19.9 Interest will continue to accrue on the amount owed after a customer's death until the amount due is repaid in full.
- 19.10 If the agreement is terminated as a result of the customer's death, the amount owed under the deferred payment agreement falls due 90 days after the customer has died.
- 19.11 After this 90 day period if we conclude that active steps are not being taken (i.e. the house has not been put up sale, lack of communication) to repay the debt we will enter into legal proceedings in line with Section 69 of the Care Act 2014 and apply debt recovery processes as instructed by the Assistant Director for Social Care and Wellbeing for Adults.
- 19.12 If debt recovery processes are applied all reasonable costs associated with this process will be included within the amount owing under the deferred payment agreement.
- 19.13 All costs under the agreement must be repaid in full and the customer or the representative acting on their behalf must be provided with a full breakdown of how the amount due has been calculated.
- 19.14 Once the debt has been repaid in full we should provide the customer or the representative acting on their behalf with confirmation that the agreement has been concluded and either a sealed discharge of the Council's legal charge or official copy entries of the registers of the Property that show that the Council's legal charge has been removed from the property.
- 19.15 Where the deferred amount is discharged from the funds of any unrepresented third party then the council will require that third party to comply with its money laundering procedures.

20. Internal monitoring

- 20.1 Each deferred payment agreement should be reviewed as identified within this procedure.
- 20.2 Deferred payment agreements should be reviewed at the Client Financial Affairs Senior Management meeting and with the Business & Partnership Development Manager.
- 20.3 Reports should be made available to EMT on a six monthly basis and include an overview on the current numbers of deferred payment agreements in place, the total outstanding debt and the number of agreements repaid.

21. External monitoring returns

21.1 Reports should be made available to the Health & Social Care Information Centre (HSCIC), when requested, providing the following information:

- Total number of DPAs and the value of these
- Number of new DPAs within a set time period and the value of these
- Number of DPAs recovered during a set time period, the length of the DPAs and the values
- Number of DPAs written off during a set time period, reason of the write offs and the values

22. Internal recording

22.1 Throughout all stage of the deferred payment process, full documentation should take place, recording on CareFirst, DPA module and Wisdom.