



# Doncaster Council

**Adults, Health and Wellbeing  
POLICY & PROCEDURES**

**DATE:16th June 2015**

## Deferred Payments Policy

EFFECTIVE DATE:	1 <sup>st</sup> July 2015			
KEYWORDS:	Care Act 2014; Deferred Payment; Residential Care			
ISSUED BY NAME/TEL NO:	Care Act Programme Board Contact: Helen Dorr Senior Development Officer 01302 734327			
POLICY/ PROCEDURES CANCELLED OR AMENDED:	Supersedes pre existing Deferred Payment arrangements for those entering care after 1 <sup>st</sup> July 2015			
CABINET APPROVAL ON:	16 <sup>TH</sup> June 2015			
REMARKS:				
SIGNED:	NAME:		SIGNATURE:	
DESIGNATION:			DATE:	

### YOU SHOULD ENSURE THAT:-

- You read, understand and, where appropriate, act on this information
- All people in your workplace who need to know see this procedure
- This document is available in a place to which all staff members in your workplace have access

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## **1.0 Background**

1.1 The Care Act 2014 requires every local authority to have a scheme in place to offer deferred payments. A deferred payment is an alternative option for a person who might otherwise be forced to sell their home to cover the cost of care. The Council will pay the care costs and put a legal charge on the property. The Council then defers collection of the subsequent debt until the property is sold.

1.2 Regulations set out requirements regarding eligibility, adequate security, sustainability, terms of an agreement and information to be provided by the Council to a person with a deferred payment. The Council has discretion to offer deferred payments more widely if they wish. This document sets out the Deferred Payment Policy for Doncaster Metropolitan Borough Council (DMBC).

1.3 The agreement covering a deferred payment is a legal contract. A person must have the mental capacity to understand the responsibilities associated with taking out a deferred payment. If this is not possible a deferred payment cannot be put in place until a suitable deputy or attorney is appointed. Where a deputy or attorney is needed this should be arranged without delay.

1.4 In line with the recommendation set out in guidance, the Council will aim to have a deferred payment agreement in place within 12 weeks. This is to coincide with the 12 week property disregard period for those moving into residential care. Where this is not achievable the Council will seek a formal letter of undertaking from a deputy, attorney or solicitor in order to secure any debt that accrues whilst the deferred payment is being finalised.

## **2. Eligibility for a Deferred Payment**

The criteria apply equally to a person who has had an assessment undertaken by the Council and one who arranges and pays for their own care. Where a person arranges their own care, the Council must be confident that they would have eligible needs for the applicable type of care, if it had undertaken a full assessment.

National Requirement	Criteria to be applied by DMBC
Where a person has eligible needs which are to be met by the provision of care in a care home.	Where a person has eligible needs which are to be met by moving into <ul style="list-style-type: none"> <li>• a care home</li> <li>• or rented supported living accommodation</li> </ul>
<b>and</b>	
a person's home is not disregarded for the purpose of financial assessment, for example not occupied by a spouse or other dependent relative	a person's home is not disregarded for the purpose of financial assessment, for example not occupied by a spouse or other dependent relative
<b>and</b>	
a person has less than (or equal to) £23,250 <sup>1</sup> in assets excluding the value of their home	Officers will exercise their discretion where a person is narrowly not entitled to a deferred payment agreement because they have more than the upper capital limit excluding the value of their home  Where a person has more than this amount but it is invested in a way that would make it difficult to release it to meet care costs, the case will be referred to Senior Officers for a discretionary decision.

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<sup>1</sup> This being the upper capital limit at the time the legislation came into force. This figure may change as this upper capital limit changes

### **3. Refusing a Request for a Deferred Payment**

There are certain circumstances where the Council may refuse a deferred payment even though a person meets the eligibility criteria set out above. Consideration has been given to these circumstances and the Council intends to respond to them as set out below.

	<b>DMBC</b>
Where the authority is unable to secure a first legal charge upon a property.	The Council will consider another level of legal charge where the deferred payment would still be sustainable.
	Consideration will be given to other forms of security based upon individual circumstances. The Council may request a solicitor's letter of undertaking.
Where a person is seeking to defer an additional or 'top up' payment to fund care from a more expensive provider.	The Council will consider allowing the deferral of 'top up' payments where the deferred payment would remain sustainable.
Where a person does not agree to the terms and conditions of a deferred payment, for example the requirement to keep the property insured.	The Council will not agree to a deferred payment in such a circumstance.
Where a person lacks capacity and there is no appointed deputy or attorney.	The Council cannot agree to a deferred payment in these circumstances.
Where a property is jointly owned and the other parties refuse to agree to the charge being placed on the property.	The Council cannot agree to a deferred payment in such circumstances.

3.1 **N.B.** Where a person needing care or their legal deputy decides not to sell the property and refuses a deferred payment, full cost accounts will be issued. If these accounts remain unpaid the debt will be pursued through court action if necessary.

## **4. Sustainability**

There are several factors which must be taken into account when determining the sustainability of a deferred payment. The Council will keep these factors under review during the life of the deferred payment. Guidance recommends that a deferred payment should be sustainable for at least 12 months.

### **4.1 Value of the security**

The property offered as security must be valued. Valuations will be undertaken by the Council's Property Services Team. The cost of valuations will be included in the Administration Fee (please see section 5.1). The property will be re-valued on an annual basis and when the deferred amount has reached 50% of the value of the property. When there is reason to believe that there has been a significant change in the value of the property a revaluation will be undertaken. A person can request an additional independent valuation of the property at their own expense. Where a person challenges the initial valuation made for the Council we will approach the District Valuation Office for a definitive view. Any additional costs incurred will be included in the administration fees, unless the District Valuation Office finds the initial valuation undertaken on behalf of the Council to be incorrect.

### **4.2 How much can be deferred?**

As set out in regulations the Council will use the following calculation to arrive at an equity limit. The maximum amount that could be deferred will be;

The value of the property less 10%, less £14,250<sup>2</sup>, less any other encumbrance<sup>3</sup>.

For example: a property valued at £80,000 with an outstanding mortgage of £2,500 would yield an equity limit as follows:

£80,000	-	£ 8,000	(10%)	=	£72,000
	-	£14,250	(lower capital limit)	=	£57,750
	-	£ 2,500	(outstanding mortgage)	=	£55,250

Equity limit set at £55,250

4.3 A deferred payment can be a long term way of funding care costs or a 'bridging loan' until a property is sold.

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<sup>2</sup> This equates to the lower capital limit and will change in line with national guidance

<sup>3</sup> This could be a mortgage or any other legal charge which would take precedence over the local authority charge

#### **4.4 Contributions from income**

Under the Care Act a person with a deferred payment can retain a Disposable Income Allowance of £144 per week should they wish to do so. However, a person can choose to keep less than this and make a bigger contribution to their care costs.

n.b. This amount reverts to £24.90 per week Personal Expenditure Allowance where a deferred payment is not in place.

#### **4.5 Contributions from rental income**

A person may choose to keep the property and let it out as a way of generating income to contribute towards care costs. The Council will allow a person to retain up to £200 per week (including the Disposable Income Allowance of £144 per week) from rental income. This should keep the property insured and in good repair.

#### **4.6 'Top Up' payments**

A person may wish to use a more expensive care provider. This will require an additional or 'top up' payment. The Council will consider including this additional cost in the deferred payment as long as it remains sustainable. This additional cost may increase the overall level of debt and shorten the period that the deferred payment is sustainable.

### **5. Administration Fees and Interest**

Guidance relating to The Care Act 2014 is clear that deferred payments are expected to run in a way that is "cost neutral" to the Council. When a person is considering a deferred payment the Council will give a written breakdown of the potential costs involved so that they can make an informed choice.

#### **5.1 Administration Fees**

The Council will charge Administration Fees based upon the actual cost of providing a deferred payment. The level of fees to be charged will be reviewed annually. The Council will reclaim costs relating to set up, revaluing, providing statements and terminating the deferred payment. A person will be offered a choice between paying Administration Fees as they become due or adding them to the outstanding debt. The Council will make it clear that any charges added to outstanding debt will be subject to interest. Should a person withdraw part way through the process of setting up a deferred payment the Council will levy an Administration Fee to cover the costs incurred.

## 5.2 Interest

The Council will charge interest at the maximum rate set by the Government on 1<sup>st</sup> January and 1<sup>st</sup> July each year. Rates could rise or fall as they track the market gilts rate. This rate will be specified in a report published by the Office of Budget Responsibility. Interest will be charged on a compound basis and will apply to the full amount owed. As with Administration Fees there will be the option to pay interest as it is incurred rather than adding it to the outstanding debt. Details of exactly how interest has been calculated will be included in regular updates.

## **6. Discontinuing the Deferral of Care Costs**

The Council will stop deferring care costs when any of the following conditions apply -

- the equity limit is reached
- a person's total assets fall below the prescribed level and they become eligible for Council funded care
- a person no longer needs care in a care home or supported living accommodation
- a person is in breach or has been in breach of their contract with the Council
- the property becomes disregarded, for example where a relative who was living in the property when the deferred payment was originally agreed becomes a dependent relative

6.1 Wherever possible the Council will give six months' notice that further care costs will not be deferred. This will allow time to review the cost of care and any top ups in place. The Council cannot demand repayment of costs that have already been deferred because it does not have the power to do so. However, the Council does retain the right to charge interest on the outstanding debt. This will protect the Council against any fall in value of the asset used as security for the deferred payment. The Council will retain the legal charge on the property until such time as the outstanding debt is paid in full.

6.2 The Council will only discontinue the deferral of care costs when they consider that it is in line with their duties under the "wellbeing principle" as set out in The Care Act. Where the Council feels it is appropriate to take this step, it will work with a person and their family to identify how care costs can be met in future before stopping the deferral of costs.

## **7. Information Updates**

7.1 For as long as there is a debt owed to the Council because of a deferred payment it will provide the following information on a six monthly basis

- Total of fees deferred to date
- Total amount of fees deferred in previous six months
- Interest accrued to date
- Administrative Fees accrued to date
- Total amount due
- Amount of equity remaining based upon the most recent equity limit
- Projection of how quickly the remaining equity will be exhausted.

7.2 Subject to the Council receiving 28 days' notice, a person with a deferred payment or their authorised representative will be able to request this information.

## **8. Termination of a Deferred Payment**

8.1 **Repaying the debt** – The Council will require notice of 30 days prior to the debt being repaid. This applies however the debt is to be repaid. The Council will produce an up to date statement of the amount owing including any interest and administrative fees accrued and any fees associated with terminating the agreement. The Council will arrange to relinquish the legal charge on the property.

8.2 **Sale of the property** – The Council will expect to be informed as early as possible in the sale process. The Council will expect to be paid from the proceeds of the sale unless the debt has been cleared beforehand.

8.3 **When a person who has a deferred payment dies** – The debt owed to the Council must be paid by the estate or a third party. Two weeks after death, at the earliest, the Council will contact the executor with a full breakdown of the amount deferred, what fees will be due (including those relating to the termination of the agreement) and an explanation of how interest will continue to accrue until the debt is paid in full. The debt will fall due 90 days after the death. The Council will use its discretion following this date to assess whether active steps are being taken to make repayment. Where active steps are not being taken, or full repayment of the debt is being obstructed, the Council will pursue any outstanding amount through court action.

8.4 The Council will consider the agreement terminated when full repayment is made of any amounts owing. It will provide the person, their executor or appropriate third party with a full breakdown of how the final amount due was calculated, confirmation that the

agreement is terminated and that the legal charge against the property has been removed.

## Glossary

Assessment of Need	When a person approaches the Council for help with their care and support it must undertake an assessment of their needs. This will help the person to think about what their needs are and how they can best be met. It will also enable the Council to find out if that person has needs which it should meet. These would be described as eligible needs.
Carer	A person who provides support or who looks after a family member, partner or friend who needs help because of their age, physical or mental illness, or disability. This would not usually include someone paid or employed to carry out that role, or someone who is a volunteer.
Compound Interest	In line with Government guidance, interest charged and added to the deferred amount will be applied on a compound basis i. e. interest will be calculated on both the deferred amount and the interest accrued from previous periods.
Cost Neutral	The government is clear that deferred payments should be “cost neutral” to local authorities such as the Council. The Care Act 2014 allows the Council to charge interest and administration fees for deferred payments to cover any expenditure it incurs.
Disposable Income Allowance	A persons’ income is taken into account when their ability to pay for their own care is assessed. They are allowed to keep back a portion of this income to cover everyday expenditure. From 1 <sup>st</sup> April 2015 this allowance will be set at £144 per week but only for people who use deferred payments. This figure is subject to change by the government.
Disregard Period	A key aim of the charging framework is to prevent a person from being forced to sell their home at a time

	<p>of crisis. The regulations under the Care Act 2014 therefore create space for a person to make decisions as to how to meet their contribution to the cost of their eligible care needs. The Council must disregard the value of a person's <i>main or only</i> home when the value of their non-housing assets is below the upper capital limit (£23,250) for 12 weeks when:</p> <p>(a) they first enter a care home as a permanent resident; or</p> <p>(b) a property disregard other than the 12-week property disregard unexpectedly ends because the qualifying relative has died or moved into a care home.</p>
Encumbrance	<p>When calculating the equity limit for a deferred payment, the Council must take into account any existing debts which are secured by a legal charge on the property to be used as security. A good example would be an outstanding mortgage. This is what is meant by an encumbrance.</p>
Equity Limit	<p>This is the maximum amount that the Council could defer. This will be calculated by taking the total value of the property and making certain deductions. Firstly 10% of the total value will be deducted to cover the costs of selling the asset when the debt has to be repaid. Next the Council will deduct the lower capital limit used in financial assessment because everyone is allowed to have this amount even if they are eligible for Council support. Finally the Council will deduct the value of any outstanding debts secured against the property, for example a mortgage, because this will have to be paid when the property is sold before the Council can claim what it is owed.</p>
Mental Capacity	<p>This is the capacity to make a decision at the time that the decision needs to be made. This applies to</p>

	financial and property decisions <u>and</u> health and welfare decisions.
Self- Funder	A person who arranges and pays for their own care. They will often have support from family members or another carer to do this.
Top Up Payment	In some cases a person may actively choose a setting that is more expensive than the amount identified for the provision of that type of accommodation. An arrangement will need to be made as to how the difference will be met. This is known as an additional or “top up” payment. It is the difference between the amount specified and the actual cost.
Universal Deferred Payment Scheme	If a person owns property of sufficient value they are expected to meet their own care costs. Previously a person may have been forced into a situation where they had to sell property to pay for the care that they need. In future a person who <b>needs</b> care in a residential setting will be able to ask the Council to pay the costs of that care. This is a loan because the Council is entitled to recover the costs it has met on behalf of a person. The Council will place a legal charge on the property that the person owns so that it can reclaim the money it is owed when the property is sold.
Wellbeing Principle	This is an overarching principle introduced in the Care Act 2014. In essence, the Council must promote wellbeing when carrying out any of its care and support functions.