Adult
Social
Care
Services

Borough of Poole

Deferred Payments Policy

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Deferred Payments Policy

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Contents

Introduction and legal framework

The establishment of the universal deferred payment scheme ensures that people should not be forced to sell their home in their lifetime to pay for their care. By entering into a Deferred Payment Agreement, a person can 'defer' or delay paying the costs of their care and support until a later date. This can enable people to delay the need to sell their home as they make the transition into care.

A Deferred Payment Agreement can provide additional flexibility for when and how someone pays for their care and support. It should be stressed that the payment for care and support is deferred and not 'written off' – the costs of provision of care and support will have to be repaid at a later date.

The scheme will be universally available throughout England, and the Borough of Poole will be required to offer Deferred Payment Agreements to people who meet the criteria governing eligibility for the scheme. The council will need to ensure that adequate security is in place for the amount being deferred.

The council is also required to consider offering the scheme more widely to anyone they feel would benefit but who does not fully meet the criteria.

A deferral can last until death, however many people may choose to use a Deferred Payment Agreement as a 'bridging loan' to give them time and flexibility to sell their home when they choose to do so. This is entirely up to the individual to decide.

Definitions

Care costs: all costs charged to a person by a care provider, including any top-ups and core care costs. This includes where appropriate the costs associated with the provision of extra care.

Top-ups: this term has the usual meaning accorded to it within the care and support sector, but for the avoidance of doubt, top-ups are costs due to a local authority under Section 30 of the Care Act or costs for the provision of the type of care referred to in Section 34(3)(a) of the Care Act.

Principles of policy

Criteria governing eligibility for Deferred Payment Agreements

Deferred Payment Agreements are designed to prevent people from being forced to sell their home in their lifetime to meet the cost of their care. The council must offer them to people who meet the criteria and who are able to provide adequate security. They must offer them to people who have local authority-arranged care and support, and also people who arrange and pay for their own care.

The regulations specify that someone is eligible for and so must be offered a Deferred Payment Agreement if they meet all three of the following criteria at the point of applying for a Deferred Payment Agreement:

- anyone whose needs are to be met by the provision of care in a care home. 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;
- anyone who has assets amounting less than (or equal to) the capital limit (currently £23,250) excluding the value of their home (ie in savings and other non-housing assets); and
- 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 care and support (ie

someone whose home is taken into account in the local authority financial assessment and so would otherwise need to be sold to release capital).

As well as providing protection for people facing the prospect of having to sell their home to pay for care, Deferred Payment Agreements can offer valuable flexibility, giving people greater choice over how they pay their care costs. The council can, at its discretion, be more generous than these criteria and offer Deferred Payment Agreements to people who do not meet the above criteria.

In deciding whether someone who does not meet all of the criteria above should still be offered a deferred payment, some considerations the council should take into account include (but are not limited to):

- whether meeting care costs would leave someone with very few accessible assets (this might include assets which cannot quickly/easily be 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;
- whether someone has any other accessible means to help them meet the cost of their care and support; and/or
- if a person is narrowly not entitled to a Deferred Payment Agreement given the criteria above, for example because they have slightly more than the £23,250 asset threshold. This should include people who are likely to meet the criteria in the near future.

The council may also at their discretion enter into Deferred Payment Agreements with people whose care and support is provided in supported living accommodation. The council should not exercise this discretion unless the person intends to retain their former home and pay the associated care and accommodation rental costs from their deferred payment. Deferred Payment Agreements cannot be entered into to finance mortgage payments on supported living accommodation.

Scope of policy

Information and advice

Under the Care Act, the council has responsibilities to provide information and advice about people's care and support. These extend to deferred payment schemes as well.
In order to be able to make well-informed choices, it is essential that people access appropriate information and advice before taking out a Deferred Payment Agreement (DPA). It is also important that people are kept informed about their DPA throughout the course of the agreement, and that they, their representatives (and the executor of their estate where appropriate) receive the necessary information upon termination of the agreement.

How much can be deferred?

In principle, a person should be able to defer the entirety of their care costs; subject to any contribution the council is allowed to require from the person's income.

The council will need to consider whether a person can provide adequate security for the Deferred Payment Agreement (usually this requirement for 'adequate security' will be fulfilled by securing their Deferred Payment Agreement against their property) and proof of ownership of the asset being considered will be required.
If the person is considering a top-up, the local authority should also consider whether the amount or size of the deferral requested is sustainable given the equity available from their chosen form of security.

A discussion of sustainability may be helpful in all cases to ensure the person is aware of how much care their chosen form of security would afford them.

Three elements will dictate how much a person will defer:

- The amount of equity a person has available in their chosen form of security (usually their property);
- The amount a person 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
- The total care costs a person will face, including any top-ups the person might be seeking.

The council should also satisfy itself that any top-up they agree to is sufficiently sustainable.

Interest rates and charges

The Deferred Payment Agreement scheme is intended to be run on a cost-neutral basis, with the Council able to recoup the costs associated with deferring fees by charging interest. The Council will recoup the administrative costs associated with Deferred Payment Agreements, including legal and ongoing running costs, via administration charges which will be passed on to the person. Administration charges and interest will be added on to the total amount deferred as they are accrued, although a person may request to pay these separately if they choose. The agreement will make clear that all fees deferred, alongside any interest and administrative charges incurred, must be repaid by the person in full. The Council will also notify the individual in writing where they are liable for an administration charge.

Interest Rates

The Council will charge interest on any amount deferred, including any administration charges deferred. This is to cover the cost of lending and the risks to us associated with lending, for example the risk of default. Where interest is charged this will be based on the nationally-set maximum interest rate. The same interest rate will be charged on all deferred payments within the Borough of Poole.

The national maximum interest rate will be reviewed every six months (in January and June) by the Office for Budget Responsibility to reflect the cost of Government borrowing. The Council will ensure that any changes to the national maximum rate are applied in Borough of Poole.

In extremely rare circumstances (such as a severe economic shock), the Government may need to make new regulations to change the maximum interest rate which local authorities are permitted to charge before the next 1 January/1 June change date. These charges would be reflected by the Council within the Deferred Payment Agreements but these powers would only be exercised as a last resort.

The interest charged and added to the deferred amount will be compounded, and the Council will ensure when making the agreement that individuals understand that interest will accrue on a compound basis.

Interest can accrue on the amount deferred even once a person has reached the ‘equity limit’. It can also accrue after someone has died up until the point at which the deferred amount is repaid to us. If we cannot recover the debt and we seek to pursue it through the County Court system then we may charge the higher County Court rate of interest.

Administration Charges

The Council will set an administration charge at a reasonable level, and this level will not be more than the actual costs we incur in the provision of the universal deferred payments scheme, as set out in Regulations.

Relevant costs may include (but are not limited to) the costs we incur whilst:

a) registering a legal charge with the Land Registry against the title of the property, including Land Registry search charges and any identity checks required;

b) undertaking relevant postage, printing and telecommunications;

c) Council staff time administering the scheme;

d) obtaining an independent valuation of the property following and application and subsequent independent revaluations of the property;

e) removing legal charges against property;

f) incurring overheads, including where appropriate (shares of) payroll, audit, management costs, and legal services.

The charges will be separated into a fixed set-up fee for Deferred Payment Agreements, reflective of the costs we incur in setting up and securing a typical Deferred Payment Agreement - and other reasonable fees during the course of the agreement (reflecting actual charges incurred in the course of the agreement).

Making the agreement

Where someone chooses to enter into a Deferred Payment Agreement, the council should aim to have the agreement finalised and in place by the end of the 12-week disregard period (where applicable), or within 12 weeks of the person approaching the local authority regarding DPAs in other circumstances.

Decisions on a person’s care and support package, the amount they intend to defer, the security they intend to use and the terms of the agreement should only be taken following discussion between the council and the individual.

Once agreement in principle has been reached between the council and the person, it is the council’s responsibility to transpose the details agreed into a Deferred Payment Agreement, taking the legal form of a contract between the council and the person.

The council should provide a hardcopy of the Deferred Payment Agreement to the person, and they should be provided with reasonable time to read and consider the agreement, including time for the individual to query any clauses and discuss the agreement further with the council.

The Council’s Responsibilities while the agreement is in place

The council must, as a minimum, provide people with six-monthly written updates of the amount of fees deferred, of interest and administrative charges accrued to date, and of the total amount due and the equity remaining in the home.

The council should also provide the person with a statement on request within 28 days. The council may provide updates on a more frequent basis at their discretion.

The council should reassess the value of the chosen form of security once the amount deferred exceeds 50% of the security (and periodically thereafter), and adjust the equity limit and review the amount deferred if the value has changed.

Termination of the agreement

A Deferred Payment Agreement can be terminated in three ways:

- at any time by the individual, or someone acting on their behalf, by repaying the full amount due (this can happen during a person’s lifetime or when the agreement is terminated upon the DPA holder’s death);
- when the property (or form of security) is sold and the authority is repaid; or
- when the person dies and the amount is repaid to the Local Authority from their estate.

Exclusions

The council may refuse a Deferred Payment Agreement despite someone meeting the eligibility criteria:

- where a local authority is unable to secure a first charge on the person's property (eg the land is not registered, or a person with an interest in the land does not consent to the charge);
- where someone is seeking a top-up; and/or
- where a person does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property.

In any of the above circumstances, a local authority should consider whether to exercise its discretion to offer a deferred payment anyway (for example, if a person's property is uninsurable but has a high land value, the local authority may choose to accept charges against this land as security instead).

References and related information

Department of Health (2014) *Care Act (10 March 2016 updated 12 February 2018)*
As amended by the Care and Support (Deferred Payment [amendment]) Regulations 2014

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