

Deferred Payment Policy

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LONDON BOROUGH OF EALING



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1. Legal Status

1.1 The Care Act 2014 (sections 34 and 35) requires the Council to offer Deferred Payments Agreements to allow you to defer the sale of your home where it is needed to fund care fees. The Care and Support (Deferred Payment) Regulations 2014 set out the legal framework and the Council's responsibilities in greater detail.

1.2 The regulations require the Council to offer deferred payments to you if certain eligibility criteria is met. (See section two below). These agreements can be retained until you pass away, with the amount repayable from your estate, but can also be offered to you if you decide to sell your home whilst you are still alive. (the deferred payment providing "bridging finance").

1.3 The Care Act and regulations also allow the deferred payment scheme to be offered you if you have incurred debt in relation to your care fees.

1.4 Discretion to Offer a Deferred Payment

1.4.1 The Council will offer the deferred payment scheme to you if you meet the eligibility criteria. The Council may offer a deferred payment agreement where those criteria are not met. This will be considered on a case-by-case basis. E.g. where you are slightly over the capital threshold of £23,250

1.4.2 The Council's discretion in 1.41 is limited to applicants whose support needs are met by way of the provision of care home or supported living accommodation.

2. Eligibility Criteria

2.1 The Council must offer a deferred payment to you if you meet the eligibility criteria set out below:

2.2 Your needs are to be met by the provision of care in a care home¹;

2.3 You have less than (or equal to) £23,250 in assets excluding the value of your home (i.e. in savings and other non-housing assets); and

2.4 Your home is not disregarded for the purpose of the Council's financial assessment, for example it is not occupied by your spouse or your 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).

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 will comply with choice of accommodation regulations and care and support planning guidance and take reasonable account of a person's preferences. This includes situations in which the Council is not asked to meet your needs, but would have met them through care home accommodation if it had been.

2.5 The Council is able to obtain a first legal mortgage for the amount deferred (including any interest or administration costs).

2.6 The provision of care home accommodation does not involve a “top-up” payment (you or third party paying an additional sum for a preferred care home placement).

2.7 You or your legal representative agree to terms and conditions of the Council’s Deferred Payment Agreement.

2.8 In cases where the mandatory criteria above are not met the Council has a discretion to offer a deferred payment in the following circumstances:

2.9 Where your assets excluding the value of your home exceeds £23,250.

2.10 Where the Council is unable to secure a first legal mortgage for the amount deferred but is able to obtain some other form of adequate security. The Council is unable to offer a deferred payment agreement where it cannot obtain adequate security. See paragraph 10 for further information on security.

2.11 Where your needs are met through the provision of supported living rather than care home accommodation.² The Council is unable to offer a deferred payment agreement where support is provided other than in care home or supported living accommodation.

2.12 Where the provision of care home or supported living accommodation includes a “top-up” payment.

2.13 If your spouse or your dependent relative moves into the property following entry into the Deferred Payment Scheme, the Council will review eligibility at that point.

2.14 If the property is subsequently disregarded (and you qualify for Council financial support as a consequence) then the deferred payment is frozen and interest will continue to accrue.

2.15 Your application to the Deferred Payment Scheme will require an application form to be filled in and signed by you/your legally appointed representative and by an authorised Council Officer.

2.16 Your property must be fully insured for as long as the Deferred Payment Agreement is in force. The Council reserves the right to request copies of insurance documents to prove your property is insured. Where documentation cannot be produced, a Deferred Payment Agreement may be cancelled.

2.17 Your property must be maintained in order to protect the valuation as being true and accurate as well as impacting on other residents and neighbours in the borough. Where

² This includes situations in which the Council is not asked to meet your needs, but would have met them through supported living accommodation if it had been.

your property is not being maintained, the Council may intervene. If the Council chooses to intervene due to your property not being maintained, you will incur all costs.

3. Information for Cared-for Persons

3.1 The Council will ensure that when you are considering entering residential care you are made aware of the ability to defer charges against your property for your care.

3.2 The Council will advise you or your representative that there is an administration charge when entering into a Deferred Payment Agreement.

3.3 Interest will be applied from day one of the agreement for charges that are deferred. If you qualify for the 12 week property disregard, no deferment of charges will apply within this period.

3.4 The Council will advise you of the criteria that is attached to eligibility for the Deferred Payment Agreement.

3.5 You may wish to seek independent financial advice.

4. The 12 week Property Disregard

4.1 Where you have been assessed as having eligible needs for residential or nursing care and you own a property, the capital value of the property is disregarded for up to 12 weeks whilst you are in permanent residential/nursing accommodation. After the 12 weeks' disregard ends, your property will be regarded in the financial assessment.

4.2 If your property is sold within the 12 week period, the disregard from the financial assessment will automatically end on the date of sale.

4.3 During the 12 week property disregard the Council will provide information and advice on our Deferred Payments product. Independent Financial Advice should also be sought, by you, in order to establish other products that may be available to you in the marketplace.

5. Deciding Not to Sell and Refusing a DPA

5.1 If you do not want to sell your property and choose not to take advantage of the scheme, the Council will financially assess and invoice you as being able to pay the whole amount of your care.

5.2. The Council recommends that you seek independent financial advice over your financial affairs in paying for your care.

5.3 If you thereafter are unable to pay the full cost of your care, the Deferred Payment product will still be available to you.

5.4. If thereafter you fail to pay the Council invoices, our debt recovery process, ultimately leading to potential court action will come into force.

5.5 If you are struggling to pay your invoices, please contact our Debt Recovery department on 020 8825 9499 as soon as possible to discuss your case.

6. Renting the Property Out

6.1 The option of renting out your property may be a route that you wish to take. The decision to rent is your own. Please be aware there are registration and legal requirements for landlords in the borough. Details can be found on www.ealing.gov.uk, by e-mail to landlords@ealing.gov.uk or to Ealing Council's Local Lettings Team on 020 8825 5000

If you do decide to rent out your property, we will require proof of rental agreements in force.

6.2 The Council has no objections if you wish to pay the rent you receive to reduce the balance on your Deferred Payment.

6.3 You are entitled to keep up to £144 a week from your income to cover your property expenses. If you wish to keep less and pay the remainder towards your Deferred Payment, please contact us and we can assist.

7. Interest Charges, Calculation and Fees

7.1 Interest will be charged on your Deferred Payment and can fluctuate both up and down in the future.

7.2 The interest rate that the Council charges may not be the best available rate that you may be able to secure. There may be other financial products on the market and new products may come on the market in the future, we recommend that you review the Deferred Payment product with others on the market at regular intervals to ensure that you are getting the best deal. An independent financial advisor will be able to give you an independent appraisal of the whole market dependant on your needs.

7.3 The Council's interest rate for the Deferred Payment scheme is published in the schedule of rates. We can charge interest up to the maximum interest rate allowed.

7.4 The interest rate for Deferred Payments will be reviewed every 6 months in line with the Deferred Payment regulations, more information can be found in 7.7 to 7.10.

7.5 The maximum interest rate for a Deferred Payment that can be charged is set by central government and linked to the Office of Budget Responsibility, details on this can be found in point 7.8 to 7.10.

7.6 Interest charged will be compounded and charged on a daily basis from the beginning of the agreement.

7.7 The Deferred Payments regulations set the maximum interest rate that can be charged on deferred payments. The Council has discretion to charge less than this maximum or to charge no interest at all; but cannot exceed the maximum. This maximum rate is fixed for periods of six months, and can change every 1 January and 1 July.

7.8 The Deferred Payment regulations sets out the maximum interest rate and this is based on the cost of government borrowing i.e. the 15-year average gilt yield, as set out by the Office for Budget Responsibility twice a year in their Economic and Fiscal Outlook report³ (Page 98). The final interest rate used is derived by adding the gilt yield rate to the default component (0.15%).

7.9. On the basis of the current gilt rates at the time of publishing (see footnote), the interest rate chargeable can be up to 2.65% (when the default component is added in). This rate will be applicable from the scheme's launch on 1 April 2015 until 30 June 2015.

7.10 Subsequent rates will be dictated by the next fiscal events:

- From 1 July – 31 Dec 2015, the rate will match the figures published with the 2015 Budget (likely to be published March 2015).
- From 1 January – 30 June 2016, the rate will match the figures published with the 2015 Autumn Statement.

7.11. The Council will charge a set up administration charge for all Deferred Payments but will not charge an ongoing administration fee. This charge can be added to your Deferred Payment or paid immediately. If you chose to add this amount to your Deferred Payment Account, interest will accrue in line with the interest rate noted in the schedule of rates for Deferred Payments.

7.12 The Set Up - Administration Fee will cover:

- Postage; printing and photocopying in relation to the agreement
- Staffing costs
- Land registry fees
- Legal costs
- Valuation fees
- Land search fees

The set up - admin fee is detailed in the schedule of Rates Charges and Allowances.

³ The Autumn Statement in 2014 from the Office of Budget Responsibility.
http://cdn.budgetresponsibility.independent.gov.uk/December_2014_EFO-web513.pdf

8. Jointly Owned Properties and Application to the Deferred Payment

8.1 Jointly Owned Property

If your property is jointly owned, i.e. there is more than one name on the Title Deed and you wish to apply for a Deferred Payment all parties will have to agree to the charge being placed on your property.

If the Council refuses a Deferred Payment Agreement in this situation it does not mean your property will not be taken into your financial assessment. The Council will advise you to seek independent legal and financial advice on what options are available to you in order to pay the care home fees.

8.2 Tenants in Common

If your property falls under the tenants in common - where each party owns a defined share, this can be two or more persons, but the total of those shares add up to 100%. Each person can dispose of their share however they choose. If you wish to access our Deferred Payments, all parties (tenants in common) will have to agree to your authority to put a charge on the property.

If the Council refuses a Deferred Payment Agreement in this situation it does not mean your property will not be taken into your financial assessment. The Council will advise you to seek independent legal and financial advice on what options are available to you in order to pay the care home fees.

8.3 Unregistered Land

If your property is not registered at the Land Registry, and you wish to apply for our Deferred Payment product, you or a representative will need to register it with the Land Registry.

The cost and process to register the land will be yours and not ours to undertake. By registering your property with the Land Registry does not qualify you to automatically being granted a Deferred Payment product.

9. Mental Capacity Act

9.1 Definition

9.1.1 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.

9.1.2 The Act is accompanied by a statutory Code of Practice which explains how the MCA will work on a day to day basis and provides guidance to all those working with, or caring for, people who lack capacity. As the Code has statutory force, all staff who are employed in health and social care are legally required to 'have regard' to the MCA Code of Practice.

9.2 Where you Lack the Ability to Enter into a Deferred Payment.

9.2.1 Where you lack the mental capacity to request a Deferred Payment Agreement, your Deputy or the holder of an Enduring or Lasting Power of Attorney may do so on your behalf. If your family member requests a Deferred Payment Agreement on your behalf and you are incapacitated but they do not have the power to do so, the Council can provide advice or assistance in obtaining the necessary legal authority. Where the Council is your Deputy as you are incapacitated and receiving services, the Council may apply for a Deferred Payment Agreement on your behalf where it is in your best interests for the Council to do so.

9.2.2 Whilst any Deputyship Order is being obtained for you the Council will pay the provider and send regular invoices detailing the charges to be paid to the person applying for deputyship. If the Deputyship is obtained and the responsible party has not paid we will obtain a court order for the debt outstanding.

9.2.3 If you are in the process of applying for a Deputyship Order, we require a signed letter of undertaking to pay the care fees by the person applying for the Deputyship Order.

10. Securing the DPA

In order to offer a Deferred Payment, the Council must have adequate security for the deferred amount. If adequate security is not gained, the Council will refuse to enter into a deferred payment.

The Council will accept as adequate security a first legal mortgage for the amount deferred including any interest of administration costs.

The Council has a discretion to accept other forms of security and will consider these on a case-by-case basis. These could include land, valuable assets or third party guarantors.

In all cases, the Council needs to be satisfied that there is adequate security in order to protect the interests of the Council and that the any debt is secure. Where the agreement is secured against an asset, the Council would have to be satisfied that we could gain ownership of this asset on your passing away or the sale of the object.

Where DPAs are agreed due to outstanding amounts that cannot be paid, the Council may discretionally allow a second charge on a property. This will be decided on a discretionary case by case basis and on the condition that no additional borrowing can be placed on the first charge.

11. Valuations

A valuation will be required if the security is agreed.

An initial valuation can be sought by you if you believe you are able to state what you think it is worth. We will consider your estimate and decide if we believe this to be accurate.

If a further valuation is required, or is disputed by either party this can be undertaken by:

- Professional Valuer
- Council In House Valuer (if specialism exists and is available)
- Internet sites

If costs are incurred for obtaining further valuations, these are to be borne by you.

11.1 Where appropriate, the valuation will be net of any outstanding loan/mortgage and of any repayment requirements of the property if it was purchased through "Right to Buy".

A yearly valuation may be required. Initially this will be in line with market increases for the area. Where the value is disputed by you, a professional valuer will be involved to provide a current market valuation of the property. This cost is to be borne by you.

The professional valuer's market valuation will be the final decision in cases of dispute.

12. Loan To Value

The council will offer the loan to value rate of 70%.

The maximum applicable deferred payment amount will be based on:

- The valuation of the security (i.e. property)
- Deduction of any mortgage/right to buy/outstanding payments on them
- Any joint ownership/tenants in common established when agreeing the Deferred Payment

12.1 Changes to the maximum applicable value of the deferred payment.

An up to date valuation will affect (both positive and negative) the maximum amount you are able to defer.

13. Periodic Statement of Accrued Debt

13.1 You will receive a six monthly statement, produced every January and June. Your statement will show:

- The balance of what your deferment is.
- The maximum amount you are allowed to defer.
- Estimation on the maximum amount remaining that you can still defer.

If you require a statement outside of this timescale please contact us

14. Re-valuation of Property

14.1 The Council will ask for a revaluation of your property provided as security when the deferred amount reaches 50% of the available equity and regularly thereafter.

14.2 The method of carrying out a re-valuation of your property will be same as that described in section 11.

15. When the Deferred Payment Ends (Due to Depletion of Equity)

15.1 When the remaining equity value reduces a re-valuation of your property is required (see previously) this may be undertaken by a professional valuer.

15.2 An account or letter detailing the amount of debt currently accrued against your property will be produced.

15.3 You will be financially re-assessed for future contribution towards your care costs to reflect the depletion of equity in your property and you will be advised in writing of the new weekly contribution figure.

16. Termination of the Agreement by the Parties

16.1 Where a Deferred Payment Agreement is in place, the Council may refuse to defer any further payments in circumstances where:

16.1.1 Your total assets fall below the level of the means-test and you become eligible for Council support in paying for your care;

16.1.2 You no longer have need for care in a care home (or where appropriate supported living accommodation);

16.1.3 You or your legal representative breach certain predefined terms of your agreement and the Council's attempts to resolve the breach are unsuccessful; or

16.1.4 Your property becomes disregarded or any reason and you consequently qualify for Council support in paying for your care.

16.2 The Council will provide 30 days' notice where it intends to cease deferring future payments.

16.3 You may terminate the agreement by repaying the full amount [including any interest of administrative charges owed] either by selling your property offered as security or by any

other means. The Council will provide confirmation that the agreement has been terminated and that any mortgage has been discharged.

17. Disposable Income Allowance for Property Maintenance / Insurance

17.1 If your property is security in the Deferred Payment Agreement, you must maintain the property e.g. insurance and repairs. These costs must be met by you.

In order for you to pay for maintenance and insurance, we can exclude some of your income for you to pay this. The maximum we can exclude is £144.00 per week. This is referred to as your Disposable Income Allowance.

On leaving the Deferred Payment Agreement (or if the deferred payment becomes frozen), your Disposable Income Allowance will stop.

You may ask for less than £144.00 per week to be excluded to enable you to pay more of your fees now, so less will be deferred against your property. Please contact us if you would like to discuss this.

The Council is only able to exclude your income that you have coming in. If you do not have £144.00 or more of income, you will not be able to retain £144.00 per week. We are only able to exclude the income items you have coming in.

You will still be entitled to retain a Personal Expenses Allowance to cover necessities for yourself; this will be part of your Disposable Income Allowance figure.

If your property expenses are greater than £144.00 and you have income greater than this, the Council may be able to discretionally increase your Personal Expenses Allowance to cover this. Any increase in Personal Expenses Allowance for this reason, will automatically revert back to the standard amount once the Deferred Payment Agreement ends.

18. Calculation of Equity Limit

18.1 The Calculation of the lower equity limited will be 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.

The calculation of the “equity limit” is a prescribed formula as follows:

The value of the property less 10% (for costs incurred in its sale) and less the lower capital threshold limit*

* £14,250 for 2015/16

19. Notification on Reaching the Maximum Deferred Amount

19.1 When the deferred debt is reaching the maximum amount the Council will notify you when there is 6 months remaining.

19.2 If you have a self-top-up arrangement in place and on nearing the maximum deferred amount, you will need to consider how to meet these costs in the future. *The Council will be unable to continue paying for this on your behalf, as you will not have the funds to reimburse us.*

20. Terminating the Deferred Payment - Sale of Property Before Death

20.1 If you have placed your property for sale from your admission to a care home or choose to sell at a subsequent date the accrued debt must be repaid upon the sale and in order to remove the charge.

20.2 By selling your property you will terminate the Deferred Payment Agreement and you will become self-funding. You will receive monthly invoices and be required to pay these by the due date.

20.3 If you choose to sell your property, you must give 30 days' notice in writing of this decision to the Council.

20.3 The actual sale price (less 10% to account for the cost of sale) and less the lower capital threshold limit will be used for a final calculation of the debt and if appropriate, to identify when self-funding status ends.

21. Terminating the Deferred Payment - Sale of Property After Death

21.1 Calculating the Debt – the accrued debt will be added to any other outstanding amount due to identify the final debt that is payable.

21.2 If known, the Executor of the Estate will be notified within 28 days after we receive confirmation of the death, with the actual or provisional debt.

21.3 The Council will expect the Executor to confirm the final estate value.

21.4 The Council will expect full payment of the debt to be paid within 90 days after you pass away.

21.5 If your Executor experiences problems in paying your debt, they should contact our Debt Recovery Team to discuss this further.

21.6 The Council will contact your Executor for an update if payment has not been received or no contact has been established 4 weeks after 90 days after death has expired. Interest will continue to accrue on your outstanding debt.

21.7 In no contact has been made and payment is still outstanding, 4 weeks after 90 days after death, our Debt Recovery Procedures will apply. This may resort in County Court action.

21.8 Calculating Interest – The interest rate to be charged is the rate held in the charges and rates guide. This rate can go up as well as down. If the Council pursues your outstanding debt through the County Court procedure, this may attract a higher rate of interest, called the County Court Rate. Under Section 69 of the **County Courts** Act 1984 the rate is currently 8%.

22. Removing the Charge

22.1 For a legal charge to be removed please allow 7 and 10 days' notice. The charge will be removed on the payment of the debt.

23. Continuing Healthcare.

23.1 If you have an active Deferred Payment Agreement and are awarded Continuing Healthcare, your Deferred Payment Agreement will not be cancelled and require full payment, unless your are near the maximum deferred payment amount (Section 20)

23.2 Interest will continue to be charged on your deferred payment amount until the full debt is cleared.

23.3 If you wish to reduce the amount deferred against your property which will reduce the interest charges owed, please contact us for further details.

24. Product Disclaimer/Independent Financial Advice.

24.1 A Deferred Payment Agreement is a Council product that we may be able to offer you. There are other products on the market that may be better suited to your needs that we are unable to advise you on.

24.2 We recommend that you seek independent legal and financial advice or guidance on your financial matters before proceeding with a Deferred Payment Agreement with us to ensure that it's the best option for you.