

Darlington Borough Council  
Services for People  
Adult Social Care

The Care and Support (Charging and Assessment of Resources)  
Deferred Payment Policy

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## INDEX

	<b>Page</b>
Policy Statement	3
Eligibility Criteria	3
Permission to Refuse	3
Stopping a DEFERRED PAYMENT AGREEMENT	4
Information and Advice	5
How Much Can Be Deferred	5
Equity Limits	6
Contributing from Other Sources	6
Retaining Income	7
Obtaining Security	7
Interest and Administration Charges	8
The Council's Responsibilities	9
The Individual's Responsibilities	9
Termination of Agreement	9
Debt Management	11
Complaints Procedure	11

## **Policy Statement**

1. The deferred payment scheme ensures that if an individual is assessed as requiring residential care, extra care or supported living they will not be forced to sell their home in their lifetime to pay for their care. By entering into a deferred payment agreement, an individual can 'defer' or delay paying the costs of their care and support until a later date. Deferring payment can help people to delay the need to sell their home, and provides peace of mind during a time that can be challenging (or even a crisis point) for them and their loved ones as they make the transition into care.
2. A deferred payment agreement can provide additional flexibility for when and how an individual pays for their care and support. 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 by the individual (or a third party on their behalf) at a later date.
3. A deferral can last until death, however individuals 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.

## **Eligibility criteria**

4. The Council will offer deferred payment agreements to people who meet certain criteria governing eligibility for the scheme providing adequate security is in place to ensure that the amount deferred will be repaid in the future. The Council may, at their own discretion, choose to offer the scheme more widely to anyone they feel would benefit who does not fully meet the criteria.
5. In order to be eligible for the deferred payment scheme individuals' care and support must be arranged by either the Council or themselves, if paying for their own care.
6. The regulations specify that someone is eligible for a deferred payment agreement if they meet all the following criteria:
  - (a) they are assessed as having eligible needs which the Council determines should be met through a care home, supported living or extra care placement;
  - (b) their assets, excluding the value of their home (i.e. in savings and other non-housing assets), do not exceed the upper capital threshold; and
  - (c) their home is not disregarded, 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).

## **Permission to refuse a deferred payment agreement**

7. The Council may refuse a deferred payment agreement despite someone meeting the eligibility criteria where:
  - (a) the Council is unable to secure a first charge on the person's property;
  - (b) an individual is seeking a top up; and/or
  - (c) an individual does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property.
  - (d) Where a person lacks mental capacity or does not have a representative empowered to support them.

## **Where the person lacks the ability to enter into a Deferred Payment**

8. This situation might arise where a person is unable to enter into a deferred payment agreement, due to lack of capacity; and there is no one empowered to support them, their family or a representative and as a last resort Darlington Borough Council should make application to obtain a Deputyship order to support their best interests being observed.
9. Whilst this is being obtained Darlington Borough 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, Darlington Borough Council may need to obtain a court order for the debt outstanding.

## **10. Enduring Powers of Attorney (EPA)**

11. These only cover property and affairs, and remain valid as long as they were drawn up before 1st October 2007. No new EPAs can be created since October 2007 when Lasting Powers of Attorney were introduced.

## **12. Lasting Powers of Attorney**

13. People over the age of 18 can formally appoint one or more people as Lasting Powers of Attorney (LPAs) to look after their personal welfare, and/or their property affairs. This allows persons to plan ahead for a time when they may not have capacity to make certain decisions. The person making the LPA is known in legal terms as the donor, and the power they are giving to another person is the Lasting Power of Attorney. The person appointed is then called an attorney. The LPA gives the attorney the authority to make decisions on the donor's behalf. Attorneys acting under an LPA have a legal duty to have regard to the guidance in the Mental Health Act Code of Practice and act in the person's best interests.

14. An LPA must be registered with the Office of the Public Guardian (OPG) before it can be used. An unregistered LPA does not give the attorney any legal powers to make a decision for the donor. The donor can register the LPA while they still have capacity, or the attorney can apply to register the LPA at any time. Staff can check the register if they are unsure about the validity of an LPA. Contact details for the OPG can be found on their website.

#### 15. **Deputyship**

16. A Deputy may be appointed by the Court of Protection when there is no one else who could act on behalf of the person lacking capacity to manage their financial affairs and/ or personal welfare decisions. A deputy can be a representative for the person or the local authority or a solicitor.

17. The local authority will need to satisfy itself that there is no conflict of interest in exercising the duties of deputy. Financial management of a person's monies through the local authority deputy is usually under the Finance section, and should be audited

#### **Circumstances in which local authorities may stop deferring care costs**

18. The Council also has the discretion to refuse to defer any more charges for individuals who have already had an active deferred payment agreement, under certain circumstances. In these situations the Council will not demand repayment and repayment is subject to the terms of termination.

19. In these situations the Council will provide a minimum of 30 days advance notice that further deferrals will cease and an indication of how their care costs will need to be met in future.

20. Circumstances in which the Council may refuse to defer any more charges include:

(d) when an individual's total assets fall below the level of the means-test, and the person becomes eligible for Council support in paying for their care;

(e) where an individual no longer has need for care in a care home (or where appropriate supported living accommodation);

(f) if an individual breaches certain predefined terms of their contract and the Council's attempts to resolve the breach are unsuccessful; or

(g) if the property becomes disregarded for any reason and the person consequently qualifies for Council 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, where this means the person is eligible for Council support in paying for care and no longer requires a deferred payment agreement; and
  - ii. where a relative who was living in the property at the time of the agreement subsequently becomes a dependent relative (as defined in charging regulations).
21. The Council will also cease deferring further amounts when an individual has reached the 'equity limit' that they are allowed to defer or when a person is no longer receiving care and support in either a care home setting, extra care or in supported living accommodation. This also applies when the value of the security has dropped and so the equity limit has been reached earlier than expected.

### **Information and advice**

22. The Council will provide easy-to-read information about how the scheme works to individuals, their carer's and their families.
23. The Council will provide information and advice in formats that ensure compliance with the requirements of the Equality Act 2010.

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

24. When offering a deferred payment agreement the Council will consider whether a person can provide adequate security for the deferred payment agreement. If the person is considering a top-up, the Council will also consider whether the amount or size of the deferral requested is sustainable given the equity available from their chosen form of security.
25. Three elements will dictate how much a person will defer:
- (a) The amount of *equity* an individual has available in their chosen form of security (usually their property);
  - (b) The amount an individual 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
  - (c) The total *care costs* an individual will face, including any top-ups the person might be seeking.

### **Equity Limit**

26. If an individual intends to secure their deferred payment agreement with a property, the Council will obtain a valuation of the property. An individual may

request an independent assessment of the property's value. If an independent assessment finds a substantially differing value to the Council's valuation, the Council and the individual will agree an appropriate valuation prior to proceeding with the agreement.

27. When considering the equity available, the Council will be guided by an 'equity limit' for the total amount that can be deferred and will ensure that the amount deferred does not rise above this limit. When calculating progress towards this limit, the Council will also include any interest or fees to be deferred.
28. Where a property is used as security to offer a deferred payment agreement, the equity limit will be calculated as the value of the property minus ten percent, minus the lower capital limit and the amount of encumbrance secured on it.
29. When an individual is approaching or reaches the point at which they have deferred 70% of the value of their chosen security, the Council will review the cost of the care with the individual, discuss when the person might be eligible for any means tested support, discuss the implications for any top-up they might currently have, and consider jointly whether a deferred payment agreement continues to be the best way for the individual to meet these costs.

### **Contributing to care costs from other sources**

30. An individual may meet the costs of their care and support from a combination of any of the following primary sources:
  - income, including pension income;
  - savings or other assets they might have access to, including any contributions from a third party;
  - a financial product designed to pay for long-term care; or
  - a deferred payment agreement which enables them to pay for their care at a later date out of assets (usually their home)
31. The share of care costs that an individual defers will depend on the amount they will be paying from the other sources listed above.

### **Retention of income**

32. When an individual has been assessed to pay a contribution towards care costs from their income, they have a right to retain a proportion of their income (the 'disposable income allowance'). The disposable income allowance is up to a maximum amount, as set out in the Care Act 2014, which is currently £144 per week, of their income.

33. An individual may choose to keep less of their income than the disposable income allowance. This would reduce the amount they are deferring (and accrue less debt to the Council overall).
34. A discussion will take place between the Visiting Financial Assessment Officer and the individual (or their representative) to agree this amount however the decision is entirely the individual's to make.
35. If a person decides to rent out their property during the course of their deferred payment agreement, the individual will be able to retain a percentage of any rental income they possess. A discussion will take place between the Visiting Financial Assessment Officer and the individual (or their representative) to agree this amount however the decision is entirely the individual's to make.

### **Obtaining security**

36. The Council will accept a first legal mortgage charge against a property on the Land Register as adequate security.
37. In cases where an agreement is to be secured with a jointly-owned property, the Council will require both owners' consent (and agreement) to a charge being placed on the property. Both owners will need to be signatories to the charge agreement, and the co-owner will need to agree not to object to the sale of the property for the purpose of repaying the debt due to the Council.
38. The Council will also request consent to a charge being created against the property from any other person who has a beneficial interest in the property.
39. The Council has discretion to decide what else may constitute 'adequate security' for a deferred payment agreement, in cases where a first charge cannot be secured. Other forms of security that the Council may choose to consider include (but are not limited to):
  - a third-party guarantor – subject to the guarantor having / offering an appropriate form of security;
  - a solicitor's undertaking letter;
  - a valuable object such as a painting or other piece of art; or
  - an agreement to repay the amount deferred from the proceeds of a life assurance policy.
40. The Council has full discretion in individual cases to refuse a deferred payment agreement if it is not satisfied that adequate security is in place.

### **Interest rate and administration charge**



41. The Council will recover the administrative costs associated with deferring fees, including legal and ongoing running costs, via interest and administration charges to the individual. This is currently £365 plus valuation cost (this will increase each year).
42. Administration charges and interest will be added to the total amount deferred as they are accrued, although an individual can request to pay these separately.
43. The Council will notify individuals in writing if they are liable for an administration charge.
44. The level of administrative charges will not exceed the actual costs incurred by the Council when providing the Universal Deferred Payment Scheme, as set out in regulations. Relevant costs may include (but are not limited to) the costs incurred by the Council whilst:
  - registering a legal charge with the Land Registry against the title of the property, including Land Registry search charges and any identity checks required;
  - undertaking relevant postage, printing and telecommunications;
  - costs of time spent by those providing the service;
  - cost of independent valuation and re-valuation of the property;
  - costs for removal of charges against property;
  - overheads, including where appropriate (shares of) payroll, audit, management costs, and legal service.
45. The Council will charge interest on any amount deferred, including any administration charge deferred, in line with the national maximum interest rate which will change every six months, on 1<sup>st</sup> January and 1<sup>st</sup> June. This is to cover the cost of lending and the risks to the Council associated with lending, for example the risk of default.
46. The maximum interest rate for deferred payments is based on the cost of government borrowing – more formally, the 15-year average gilt yield, as set out by the Office for Budget Responsibility twice a year in their Economic and Fiscal Outlook report. This is the weighted average interest rate on conventional gilts as published in table 4.1 of Economic and Fiscal outlook, preceding 1<sup>st</sup> January and 1<sup>st</sup> June each year.
47. The final interest rate is derived by adding the gilt yield rate for the year as described above, in which the period starts to the default component (0.15%).
48. On the basis of the current gilt rates at the time of publishing (as set out in the document linked-to above, for financial year 2014/15, this is 2.0%), the interest rate will be 2.15% (when the default component is added in).

49. The Council will inform individuals prior to setting up a deferred payment agreement if interest will be charged, what interest rates are currently set at, and when interest rates are likely to change.
50. Interest will accrue on a compound basis on the amount deferred even once an individual has reached the 'equity limit'. It will also accrue after an individual has died, up until the point at which the deferred amount is repaid to the Council.
51. The individual will be notified every six months by way of a statement confirming the amount the individual owes and the total cost to them of repaying the debt.

### **The Council's responsibilities whilst the agreement is in place**

52. The Council will provide individuals 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 will provide the individual with a statement on request within 28 days.
53. The Council will 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.

### **The individual's responsibility whilst the agreement is in place**

54. The individual must notify the Council of any changes in their income or outgoings.
55. The individual must notify the Council of any changes in their need for care and support, if those changes are ones which will mean that the Council must or is entitled to stop making further instalments under the agreement or to alter the amount of the instalments.
56. The individual must notify the Council of changes which mean that their property may be disregarded if the agreement has been entered into on the basis that the adult's property has not been disregarded for the purposes of the financial assessment.
57. The individual must have appropriate arrangements in place to maintain their home whilst they are in care. In particular, the contract will require that their home is maintained adequately, and require an individual to have arrangements in place for regular maintenance to take place.
58. The individual must also have adequate insurance for their property. If their home is to be left empty for an extended period of time, the person will need to ensure their insurance covers this adequately and that any terms required by the insurer are met. Proof of insurance must be provided to Darlington Borough Council.

59. The individual must have the Council's consent before allowing someone to move into the property after the agreement has been made.

### **Termination of agreement**

60. A deferred payment agreement can be terminated in three ways:
- (a) 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 through the deferred payment agreement holder's death);
  - (b) when the property (or form of security) is sold and the authority is repaid; or
  - (c) when the person dies and the amount is repaid to the Council from their estate.
61. Upon termination of the agreement, the full amount due (including care costs, any interest accrued and any administrative or legal fees charged) must be paid to the Council.
62. If the individual decides sell their home, they should notify the Council during the sale process. They will be required to pay the amount due to the Council from the proceeds of the sale, and the Council will be required to relinquish the charge on their property.
63. If the individual decides to repay the amount due to the Council from another source, or a third party may elects to repay the amount due on behalf of the individual, the Council should be notified of the person's/the third party's intention in writing, and the Council must relinquish the charge on the property on receipt of the full amount due.
64. If the deferred payment agreement is terminated due to the person's death, the amount due to the Council must be either paid out of the estate or paid by a third party. A person's family or a third party may wish to settle the debt to the Council by other means of repayment (as may be the case if the family wanted to avoid having to sell the property or means of security), and the Council must accept an alternative means of payment in this case, provided this payment covers the full amount due to the Council.
65. The executor of the will or Administrator of the Estate can decide how the amount due is to be paid; either from the person's estate (usually via the sale of the house or potentially via a life assurance policy) or from a third party source.
66. The Council will wait at least two weeks following the individual's death before approaching the executor with a full breakdown of the total amount deferred (but

a family member or the executor can approach the Council to resolve the outstanding amount due prior to this point).

67. Responsibility for arranging for repayment of the amount due (in the case of payment from the estate) falls to the executor of the will.
68. Interest will continue to accrue on the amount owed to the Council after the individual's death and until the amount due to the Council is repaid in full.
69. If terminated due to an individual's death, the amount owed to the Council under a deferred payment agreement is due 90 days after the person has died. After this 90 day period, if the Council concludes that active steps to repay the debt are not being taken, for example if the sale is not progressing and a Council has actively sought to resolve the situation (or if the Council believes the executor is wilfully obstructing sale of the property), the Council may enter into legal proceedings to reclaim the amount owed.
70. In whichever circumstance an agreement is terminated, the full amount due to the Council must be repaid to cover all costs accrued under the agreement, and the person (and/or the third party where appropriate) will be provided with a full breakdown of how the amount due has been calculated. Once the amount has been paid, the Council will provide the relevant person(s) with confirmation that the agreement has been concluded, and confirm (where appropriate) that the charge against the property has been removed.

### **Debt Management**

71. Where an individual has accrued a debt, the Darlington Borough Council may use its powers under the Act to recover that debt. In deciding how to proceed, we will consider the circumstances of the case before deciding a course of action.
72. Ultimately, Darlington Borough Council may institute County Court proceedings to recover the debt due to us. However, we will only use this power once other reasonable alternatives for recovery have been exhausted.

### **Complaints Procedure**

73. Darlington Adult Social Care welcomes and responds positively to all comments, compliments and complaints as a means of demonstrating its commitment to working in partnership with individuals and carers and improving services.
74. The Adult Social Care Complaints Procedure comprises of one stage after which the complainant should be advised to discuss the matter with the Complaints Manager or refer the matter to the Local Government Ombudsman.

75. Although complainants can refer their complaint from the outset to the Local Government Ombudsman, they will not normally investigate the matter until the Council has conducted its own investigation and made a response.

76. More information is available from:

Complaints and Information Governance Team  
Darlington Borough Council  
Town Hall  
Feethams  
Darlington  
DL1 5QT  
Tel: 01325 388043

[www.darlington.gov.uk/complaints](http://www.darlington.gov.uk/complaints)

E-mail: [complaints@darlington.gov.uk](mailto:complaints@darlington.gov.uk)

77. Complaints concerning the conduct of Officers of the Council will be dealt with under the Council's employment policy and procedures.