

Adult Social Care Policies and Procedures

DEFERRED PAYMENTS

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POLICY VERSION CONTROL

POLICY NAME	Deferred Payments		
Document Description	This document sets out Lancashire County Council's response to powers under Sections 34-36 of the Care Act 2014 allowing it to enter into a Deferred Payment Agreement with an individual so that person can use the value of their property to help pay for residential or nursing care.		
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1. POLICY STATEMENT

A deferred payment allows people to use the value of their home to help pay for the costs of living in a care home or supported living accommodation.

If an individual's main home is not disregarded in the financial assessment then they may be able to enter into a Deferred Payment Agreement ("Agreement") with the county council. A Deferred Payment Agreement allows an individual to defer (that is, to delay the payment of) the cost of their residential or nursing care against the value of their property until a later date.

This means that they do not have to sell their property to pay for residential or nursing care charges in their lifetime. When the individual's home is sold, the county council will then collect the deferred costs.

It should be stressed from the onset that the payment is *deferred* not written off and **will have to be repaid** by the individual, or by a third party on their behalf, at a later date. It is also important to note that the county council is required to enter into a 'loan-type' Deferred Payment Agreement with individuals who qualify for one but whose needs the county council is not meeting

In all cases, a Deferred Payment Agreement relates to the deferment of charges due to the county council for the costs of meeting needs in a care home **or** supported living accommodation.

The aims of this policy are that:

- It complies with legislation and statutory guidance;
- It makes Deferred Payments available to those who are eligible;
- Those that are eligible for the scheme should not have to sell their home against their wishes to pay for care during their lifetime;
- Those that are eligible are fully informed about the Agreement and signposted to independent advisors when appropriate,
- The county council aims to complete the contract within 12 weeks of the individual's permanent placement in a care home or supported living accommodation,
- The county council will make sure that everyone who can pay for some or all of their care costs does pay for them,
- The county council will collect any unpaid charges in line with our Income and Debt Policy.

Therefore to fulfil its duty under Sections 34—36 of the Care Act, the county council will, working with its statutory, voluntary and private sector partners, comply with the national threshold relating to care and support in a manner that is relevant, coherent, timely and sufficient.

The county council will make all reasonable adjustments to ensure that all disabled people have equal access to participate in the eligibility decision in line with the Equality Act 2010.

The geography and population of Lancashire is diverse and our policies and practice will aim to deliver services and supports that are representative of the communities in which we work.

The county council will follow relevant legislation, policies and guidance to ensure our practice is of high quality and legally compliant. Where our customers or those we come into contact with wish to challenge or raise concerns in regard to our decisions, regarding eligibility the [county council's complaints procedures](#) will be made available and accessible.

2. KEY DEFINITIONS AND PRINCIPLES

2.1 Types of Deferred Payment Agreements

There are two types of Deferred Payment Agreements that the county council can offer:

Traditional type: Where the county council holds the contract with the care home or supported living accommodation and will pay the care home or supported living accommodation directly.

Loan type: Where the individual holds the contract with the care home or supported living accommodation, and the county council loans the individual the money to pay the care home or supported living accommodation. (This could result in the individual paying higher costs as a care home is not subject to any restrictions when entering into a contract with an individual rather than the council).

The county council will always enter into a "traditional type" agreement, unless the individual specifically requests a "Loan type" agreement. It is also important to note that the county council is required to enter into a 'loan-type' Agreement with individuals who qualify for one but whose needs the county council is not meeting.

2.2 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.

2.3 Disregard

[Annex B \("Treatment of Capital"\) of the Care Act Statutory Guidance](#) sets out the circumstances in which the value of the person's main or only home must be disregarded. See paragraph 34 of the Annex for more details.

2.4 Equity

Equity in a property is the market value of a homeowner's unencumbered interest in their property, that is, the difference between the home's fair market value and the outstanding balance of all liens on the property. The property's equity increases as the

debtor makes payments against the mortgage balance, and/or as the property value appreciates.

2.5 12-Week Disregard

The county council must disregard the value of a person's property for the first 12 weeks of the individual moving into a care home on a permanent basis, provided their other savings total less than £23,250 in England and provided they meet the county council's eligibility criteria' (i.e. the council agrees the person needs to move into a care home). This means that -- for the first 12 weeks of a person's residential care – the value of the home is not taken into consideration in the assessment of how much the person should contribute to their care home costs.

This gives the person breathing space to decide whether they want to stay in care permanently, without the pressure of having to sell their home straight away.

3. PROCEDURES

3.1 Qualifying for a Deferred Payment Agreement

To qualify for an Agreement the individual must meet **all three** of the following criteria:

- Receiving permanent care in a care home or supported living accommodation; and
- Has £23,250 or less in savings and assets, not including the value of their main home; and
- Their main 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.

Even if the individual meets the criteria above, the county council may refuse a Deferred Payment Agreement if:

- It cannot secure a first charge on the property, (a "first charge" is the first or the primary mortgage or loan availed against the property in question).
- Someone is seeking a top up (which may make an Agreement unsustainable over time), or
- The individual does not agree to the terms and conditions of the Agreement (e.g., a requirement to insure and maintain the property).

If the individual does not want to sell their property and chooses not to enter into an Agreement the county council will ask the individual to make payments directly to the care home or supported living accommodation.

If the county council refuses a request for deferred payment, the decision will be notified in writing to the individual. The decision will set out the grounds for refusal and provide information on how to appeal.

3.2 Information and Advice

Information and advice will be provided so that the individual can understand what is happening when they ask for a Deferred Payment Agreement. This will include:

- Eligibility requirements.
- How an Agreement may affect the individual's income, benefit entitlements, and charges.
- Any fees that are being charged. Please note that an administration charge of £810 will be applied to all applications.
- How interest will be charged on any deferred amount.
- What the county council will need the individual to do during the Agreement.
- When the county council may stop deferring charges.
- What happens when the Agreement comes to an end.
- What happens if the individual does not repay the charges that they owe.
- An overview of potential advantages and disadvantages of taking out a Deferred Payment Agreement.
- An explanation of the 12-week disregard which will afford those who qualify for it some additional time to consider their options in paying for care.
- The types of security that the county council is prepared to accept.
- An explanation that the total amount a person can defer will be governed by an equity limit (discussed in section 3.4 below) which may change if the value of the security changes.
- Advising the individual to consider taking independent financial advice and highlight the existence of a regulated financial advice sector.
- And that, if a home is used to defer payments against, it may need to be sold at a later date to repay any charges that the individual owes.

Where a person lacks capacity to request a deferred payment, a Deputy or Attorney (a person with a relevant Enduring Power of Attorney or Lasting Power of Attorney) may request a deferred payment on their behalf.

Where the county council is the Deputy for a person, then the Deputy may apply for deferred payments where this is in the best interests of the person.

A Deferred Payment Agreement will not be entered into with a person lacking the requisite mental capacity unless the proper arrangements are in place.

3.3 Conditions of a Deferred Payment Agreement

The Agreement will only take effect once the individual or appointed representative has signed the Agreement. The individual or appointed representative entering into the Agreement must abide by the following conditions:

- The property is maintained in reasonable standard of repair and condition.
- All outgoings associated with the property (e.g. Council tax, service charges, ground rent, insurance) are paid.
- Any rental income received is assessed within the financial assessment.

- Acknowledge that the county council has advised the individual they should seek independent financial advice before committing themselves to this Agreement.
- Provide any evidence required by the county council in support of the application.
- Where the property is jointly owned, the co-owners as well as the applicant must agree to the county council's form of charge. See Section 3.13 ("Obtaining Security") for more information.
- Notify the county council of any change in circumstances which would affect the value of the property or the sustainability of the deferred payment.
- Insure the property throughout the length of the Agreement term until the debt to the county council is paid.

3.4 The amount that can be deferred

The total amount the individual can defer depends on how much equity is in the asset.

The county council will need to consider if the amount to be deferred is possible. This will depend on:

- The amount of equity in the property
- The amount the individual is contributing to the cost of care from other sources, including income, savings, financial products or a third-party; and
- The total care costs including any top-ups.

The amount of equity available will be the value of the property minus 10%, minus a further £14,250 (the lower capital limit).

For example, the amount of equity available for a house worth £165,000 would be:

$$£165,000 - £16,500 (10\% \text{ of } £165,000) - £14,250 = £134,250$$

A, verified independent valuation of the property will be carried out on behalf of the county council, at a cost to the individual.

When calculating progress towards the equity limit, the county council will include any interest or fees to be deferred. The county council will not allow additional amounts to be deferred beyond the equity limit. However, interest and administrative charges will still accrue beyond this point until the full debt is repaid.

The individual may meet the costs of their care and support from a combination of any of four primary sources:

- income, including pension income;
- savings or other assets they might have access to (this might include any contributions from a third party);
- a financial product designed to pay for long-term care; or
- an Agreement which enables them to pay for their care at a later date out of their assets (usually their home).

The county council will require a contribution towards care costs from the individual's income. However the individual has a right to retain a proportion of their income which is called the 'disposable income allowance'. The disposable income allowance is a fixed weekly amount of £144. At their discretion, the individual may want to keep less than the disposable income allowance as it will reduce the amount deferred and the amount of interest charged.

If the individual decides to rent out their property during the course of their Agreement, the county council can permit that the individual retains a proportion of any rental income from the property. The county council will review these arrangements as part of the Financial Assessment.

3.5 Top ups

If the individual is considering a top-up, the county council will consider whether the amount or size of the deferral requested is sustainable given the equity available from their property. See paragraph 3.4, above, for more information on how the total amount the individual can defer depends on how much equity is in the asset.

To ensure sustainability of the deferral, the county council has discretion over the amount an individual is permitted to top up. The county council will accept any top-up deemed to be reasonable given considerations of affordability, sustainability and available equity.

If the person is requesting a top-up, it is important that the county council discusses what might happen to any top-up requested if the person reaches the equity limit and moves on to local authority support in paying for their care, and ensures that a written agreement is in place.

3.6. Sustainability

The county council will calculate the sustainability of a Deferred Payment Agreement by taking into account:

- the likely period the individual would want an Agreement for (this a formula-based calculation);
- the equity available;
- the sustainability of any contributions from their savings;
- the flexibility to meet future care needs; and
- the period of time the individual would be able to defer their care costs for.

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

3.7 Interest and administration charges

Interest and administration charges will be added to the total amount deferred as they are accrued, although the individual may request to pay these separately if they choose. The interest will accrue on a compound basis.

The county council must inform people before they make the Agreement if interest will be charged on a daily compound basis and when interest rates are likely to change. This is to enable people to make well-informed decisions about whether a Deferred Payment Agreement is the best way for them to meet the costs of their care.

The county council will charge an interest rate equalling the county council's average borrowing rate over the preceding financial year. The interest rate charged will not however exceed the maximum amount specified in the Care Act Regulations on Deferred Payments.

Interest will accrue on the amount deferred until the point that the deferred amount is repaid. If the county council cannot recover the debt and seeks to pursue this through the County Court system the county council may charge the higher County Court rate of interest.

The county council will levy an administration charge of £810 based on the actual costs incurred in providing the Deferred Payment Scheme. These costs include, but are not limited to:

- 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 valuation and re-valuation of the property;
- costs for removal of charges against property;
- overheads, including where appropriate (shares of) payroll, audit, management costs, legal service

If an individual applies for a Deferred Payment Agreement then subsequently decides not to continue with the application the individual will still be required to pay any administration charges.

The administration charge will be subject to an annual review to ensure that any cost increases related to the provision of an Agreement are covered by the charge. Any subsequent uplifts to the charge will be made under the Scheme of Delegation.

3.8 Circumstances where the county council may stop deferring care costs

The county council may stop deferring any more charges if:

- The individual's total assets fall below the level of the means test, and they become eligible for local authority support in paying for their care;
- The individual no longer has need for or is no longer receiving care and support in a registered residential or nursing care home or supported living accommodation;
- The individual breaches the terms of their Agreement;
- Under the charging regulations, the property becomes disregarded for any reason and the individual consequently qualifies for local authority support in paying for their care.

- The individual reaches the equity limit that they are allowed to defer. Interest would continue to accrue on the amount deferred until the Agreement was terminated and the amount deferred was repaid.

If a decision is made to stop deferring care costs, the repayment will be subject to the usual terms of termination. The county council will provide a minimum of 30 days advance notice that further deferrals will cease.

3.9 Obtaining security

The county council must have adequate security in place when entering into a Deferred Payment Agreement.

The county council will accept a first legal mortgage charge as adequate security. The county council will consider a second legal charge or restriction as adequate security at its discretion.

In cases where an Agreement is to be secured with a **jointly-owned property**, the county council **must** seek 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 county council. This is consistent with the procedure to be followed in cases where an individual is the sole owner of a property.

The county council will obtain similar consent to a charge being created against the property from any other person who has a beneficial interest in the property. The county council has full discretion in individual cases to refuse an Agreement if it is not satisfied that adequate security is in place.

3.10 Drawing up the Deferred Payment Agreement

Where an individual chooses to enter into a Deferred Payment Agreement, the county council will aim to have the Agreement finalised and in place by the end of the 12-week disregard period, or within 12 weeks of the individual approaching the county council regarding a Deferred Payment Agreement in other circumstances.

A hard copy of the Deferred Payment Agreement will be given to the individual or their representative, and they will be given at least a two-week period to read and consider the Agreement. The Agreement will clearly set out all terms, conditions and information necessary to enable the individual to ascertain his or her rights and obligations under the Agreement.

3.11 The county council's responsibilities whilst the Agreement is in place

The county council will provide six-monthly updates, which will include:

- the amount of fees deferred,
- interest and administrative charges accrued to date,
- the total amount due

- and the equity remaining in the property.

The county council will review the amount being deferred on a regular basis to ensure the deferred amount does not exceed the equity limit. The county council will obtain a further valuation of the property once the amount deferred exceeds 50% of the value of the security and periodically thereafter, and adjust the equity limit and review the amount deferred if the value has changed.

When the individual is approaching or reaches the point at which they have deferred a substantial proportion of the equity available in their property, the county council will:

- review the cost of their care with the individual,
- discuss when the individual 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.

3.12 Terminating the Agreement

An Agreement will be terminated when:

- The individual or representative repays the deferred debt in full. This can happen during a person's lifetime or when the Agreement is terminated through the Agreement holder's death; or
- The property is sold and the county council is repaid in full; or
- The individual dies and the amount is repaid in full from their estate.

On termination, the full amount due includes all interest accrued and any administration fees charged.

Responsibility for arranging for repayment of the amount due in the case of payment from the estate falls to the Executor of the will. Interest will continue to accrue on the amount owed to the county council after the individual's death and until the amount due to the county council is repaid in full.

If terminated through a person's death, the amount owed to the county council falls due 90 days after the person has died. After this 90 day period, if the county council concludes active steps to repay the debt are not being taken, for example if the property is not for sale on the property market or the county council concludes the Executor is wilfully obstructing the sale of the property, then the county council may enter into legal proceedings to reclaim the amount due to it.

3.13 Appeals and Complaints

An individual can appeal the outcome of a deferred payment application if they feel that:

- The decision to refuse the application failed to take into account all the available and relevant information

- There are eligible care costs which the county council have failed to take into account.

Requests for an appeal should be made within 20 working days of being notified of the outcome of the application for a Deferred Payment Agreement. This period can be extended if there are exceptional circumstances.

If the person remains dissatisfied with the outcome of the appeal then they can request that this matter is dealt with under [Lancashire County Council's Adults Social Care Complaints procedure](#).

If an individual is unhappy with the way that the deferred payments application process has been dealt with they can submit a complaint to [Lancashire County Council's Adults Social Care Complaints Team](#).

4. CASE STUDIES

Case Study 1

Lucille develops a need for a care home placement. She lives alone and is the sole owner of her home. Her home is valued at £165,000, and she has £15,000 in savings. Lucille meets the criteria governing eligibility for a deferred payment.

Case Study 2

Lucille's son Brian has been providing informal care and support to her, and has heard of the deferred payments scheme. When Lucille decides she may benefit from a care home placement, her son suggests they approach the county council together for information and advice about Deferred Payment Agreements.

The county council provides them both with a printed information sheet setting out further details on the authority's Deferred Payment scheme, and also provides them with contact details of some national and local services who provide financial information and advice.

Lucille is interested in renting her property whilst residing in a care home. The county council signposts Lucille to further advice on lettings. The county council's standard information sheet also includes information on how her rental income may be used to pay for her care and support.

Case Study 3: The Equity Limit

Lucille decides to secure her Deferred Payment Agreement with her house, which is worth £165,000. The amount of equity available will be the value of the property minus 10%, minus a further £14,250 (the lower capital limit).

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

Therefore, her 'equity limit' for the total amount she could defer would consequently be £134,250, which would leave £30,750 in equity in her home.

Case Study 4

Lucille identifies a care home placement that meets her care and support needs, costing £540 per week. She has an income provided by her pension of £230 per week. Lucille decides not to rent her home as she intends to sell it within the year.

Based on this provisional estimate of her care costs, Lucille would contribute £86 (£230 minus the weekly disposable income allowance of £144) per week from her income, and her weekly deferral would be £454.

Case Study 5

Lucille discusses her care home fees with the county council. Based on the equity available in her home (£134,250, as set out in Case study 3 above), Lucille could afford her weekly deferral of £454 for around 5 years. Given an average length of stay in a care home care of 19.7 months, the county council deems her projected care costs to be sustainable.

Lucille enquires as to the cost of a room with a garden view. This would increase her weekly deferral to £525 which she could afford for around four and a half years. The county council deems this to be sustainable, so agrees to Lucille's requested top-up.

Case Study 6

For illustrative purposes, we have used an interest rate of 3.5%. After 6 months, Lucille receives her first statement. It confirms she has deferred a total of £13,900, including £110 in interest and £100 in fees.

At this point, the county council revalues her property, and finds its value has increased to £170,000. Based on the amount deferred and her care costs, her equity would afford her just over 4 and a half more years' care at this price.

5. RELATED DOCUMENTS

POLICY, PROCEDURE AND GUIDANCE (PPG) DOCUMENTS	Policy, Procedures Guidance Intranet site
LEGISLATION AND REGULATIONS	The relevant legislation in this area are Sections 34-36 of the Care Act 2014 and the Care and Support (Deferred Payment Agreements) Regulations 2014.

6. EQUALITY IMPACT ASSESSMENT

The Equality Act 2010 requires the county council to have "due regard" to the needs of groups with protected characteristics when carrying out all its functions, as a service provider and an employer. The protected characteristics are: age, disability, gender identity/gender reassignment, gender, race/ethnicity/nationality, religion or belief, pregnancy or maternity, sexual orientation and marriage or civil partnership status.

The main aims of the Public Sector Equality Duty are:

- To eliminate discrimination, harassment or victimisation of a person because of protected characteristics;
- To advance equality of opportunity between groups who share protected characteristics and those who do not share them. This includes encouraging participation in public life of those with protected characteristics and taking steps to ensure that disabled people in particular can participate in activities/processes;
- Fostering good relations between groups who share protected characteristics and those who do not share them/community cohesion.

It is anticipated that the guidance on Deferred Payment Agreements in this document will support the county council in meeting the above aims when applied in a person-centred, objective and fair way which includes, where appropriate, ensuring that relevant factors relating to a person's protected characteristics are included as part of the process.

More information can be found on the [Equality and Cohesion intranet site](#).