

LUTON BOROUGH COUNCIL
DEFERRED PAYMENT POLICY
2016-17

This is a policy for the Deferred Payments Scheme under the Care Act 2014. This policy has been drafted in accordance with the statutory guidance and regulations. It may be subject to amendment pending any further amendments to the Act.

This Policy replaces the Deferred Payment Policy [April 2014].

1. Summary

1.1 This policy aims to identify the following;

- (i) Those situations where the Council will enter into a deferred payment agreement under the Care Act 2014
- (ii) Persons who may be entitled to an offer of a deferred payment agreement
- (iii) The procedure on how to apply for a deferred payment agreement

1.2 The duties and powers to offer a deferred payment is to be found in Sections 34 – 36 of the Care Act 2014 (“the Act”) and the Care and Support (Deferred Payment Agreements) Regulations 2014 (“the Regulations”). This Policy is intended to assist members of the public who require residential care (and their families and carers) to decide whether they would meet the criteria

1.3 Subject to the terms of this policy a Deferred Payment Agreement will be agreed as either a short-term or long-term measure to assist the resident with payment of care home fees.

1.4 The Policy only relates to residential and nursing care.

2. Background

2.1 The Care Act 2014 establishes a universal scheme for deferred payments which is aimed to ensure anyone who requires residential care should not be forced to sell their home in their lifetime to pay for that care. A qualifying person may delay the sale of their home during their transition into care.

2.2 It is important to note that such an agreement does not “write off” the debt but defers the liability to pay to a later date.

2.3 A person may enter into a legal contract with the Council which will enable the council to reclaim the outstanding fees at a later date either when the home is sold by the resident or his/her estate or where the agreement is otherwise ended. The deferral may last until death or take the form of a “bridging loan” while the individual takes the time to decide whether they wish to sell their home.

3. 12 Weeks Disregard

- 3.1 Where a person becomes a permanent resident in a care home and the value of their non-housing assets is below the upper limit (currently £23,250) the value of any home he/she would normally occupy as his only or main residence will be disregarded for the first twelve weeks of a permanent stay where arrangements are made by the Council.
- 3.2 Where an application for a Deferred Payment Agreement is successful this would usually commence after the initial twelve week disregard period subject to adequate security being in place.
- 3.3 Where a person enters a care home as a self-funder and subsequently becomes eligible for local authority assistance the property will not normally be disregarded, however, where this has been due to a sudden and unexpected change in finances, the Council will give consideration to exercise their discretion to apply the disregard.

4. Eligibility

- 4.1 The option of a deferred payment agreement will be offered to anyone who meets all the following criteria;
 - (i) Anyone who has been assessed as requiring residential or nursing care;
 - (ii) Who owns a legal or beneficial interest in a property which is his/her main or only home;
 - (iii) Who has less than £23,250 in assets (excluding the value of their home);
 - (iv) Whose home is taken into account in the financial assessment
 - (v) Who can provide adequate security for the debt (usually by way of a legal mortgage or land registry charge over their property)
 - (vi) Who agrees with the terms and conditions set out in the Deferred Payment Agreement
- 4.2 In exceptional circumstances the Council may give consideration to offering a deferred payment agreement to those who do not meet all the criteria where it considers it would be fair and reasonable to do so. This includes where a person is renting Supported Living/Extra Care accommodation and who still owns their previous main residence
- 4.3 Each case will be considered on its own facts and a decision will be made by the Service Director of Adult Social Care.
- 4.4 If the person lacks mental capacity to enter into a deferred payment agreement, a Court of Protection appointed deputy for property and affairs, or attorney appointed under an Enduring or Lasting Power of Attorney for finance may enter into the agreement on their behalf.
- 4.4 The amount of the deferral will be agreed between the Council and person, or their financial representative, and set out in the agreement. This will be reviewed annually or where there has been a change of financial circumstances.

5 Conditions

- 5.1 When a person requests a deferred payment arrangement a financial assessment will be carried out, or reviewed, to determine the amount of contribution the resident is liable to pay towards their care costs.
- 5.3 Where a person wishes to enter into a deferred payment agreement they or their financial representative must complete an application form.
- 5.4 Where a person wishes to enter into a deferred payment agreement they or their representative must seek an independent assessment of the value of the property. If there is any dispute regarding the valuation, the Council has the right to seek an independent valuation. The costs of any valuation will be payable by the service user.
- 5.5 The Council will offer deferred payments in accordance with the "lending limit". The Lending Limit is the equity value of your share in the property less 10%, less the lower capital limit (currently £14,250), less the amount of any indebtedness secured over the property by a charge with priority over the Council's security.
- 5.6 The Council will review the deferred payment agreement and care when the person approaches 70% of the equity value of the property or other security to ascertain whether the deferred payment agreement remains the best way to meet the costs.
- 5.7 The Council may review the deferred payment agreement and care if there is a significant fall in the value of the property and the loan comes to exceed the lending limit.
- 5.8 The Council will expect the property to be adequately maintained and insured during the period of the deferred payment agreement.
- 5.9 The Property must not be let or occupied by any person without the Council's prior written consent.
- 5.9 The Council will require the Executor of the estate to deal with the termination of the agreement and to assist to reclaim the costs on the death of the service user.
- 5.10 If a dependent moves into the property during the life of the agreement the Council will require written consent that the debt owed to the Council takes precedence over any beneficial interest they may accrue in the property.
- 5.11 The Council will charge interest at Government set rates per annum and require payment of administrative costs
- 5.12 The Council will provide a bi-annual written statement of the amount of fees deferred, interest and administrative charges accrued to date, the total amount due and the equity remaining in the home.

- 5.13 Any person wishing to enter into a deferred payment agreement is strongly advised to seek independent financial and legal advice. The person will need to acknowledge that the Council has advised them to seek independent financial and legal advice.
- 5.14 The person must notify the Council of any changes to their circumstances that would affect the agreement or value of the property.

6 Security

- 6.1 The Council must ensure there is adequate security in place before it will enter into a DPA. This will generally be by way of a legal charge or legal mortgage charge over the property
- 6.2 Where a property is jointly owned we can only offer a DPA with the agreement and consent of all co-owners to a legal charge being placed on the property. All co-owners must sign the DPA and legal charge agreement and agree not to object to the sale of the property for the purpose of repaying the debt. A similar consent may be required from others with a beneficial interest in the property.
- 6.3 The co-owner must be advised to seek independent legal and financial advice before signing the DPA. Independent advice for this purpose means advice from an adviser who is neither related to nor acting on behalf of the borrower.
- 6.4 Security will be reviewed periodically to ensure it remains adequate. If the value has significantly changed the amount deferred will be reviewed.

7 Ceasing to Offer the Deferred Payment

- 7.1 The Council will not lend any further amount at any time if:
- i) A person is no longer receiving care and support in a care home;
 - ii) In the reasonable view of the Council the persons needs should no longer be met by the provision of care and support in a care home;
 - iii) The Property can no longer be insured against all usual risks;
 - iii) The value of the security has decreased so the upper limit has been reached;
 - iii) The person becomes eligible for local authority support in paying for their care;
 - iv) The property becomes disregarded for any reason;
 - vi) There is any breach in certain terms of the agreement as set out in the deferred payment agreement

- 7.2 The Council must cease any further payments;
- i) When a person has reached the “equity limit” (or amount) they are allowed to defer as agreed
 - ii) Where a person is no longer receiving care and support in a care home setting.
- 7.3 The Council will give not less than 30 days notice of the date when further deferred payments will cease and will provide an indication of how care costs will be met in the future. The person may be required to meet the future costs from their income or assets.

8 Refusal to Offer a Deferred Payment

- 8.1 The Council may refuse to offer a deferred payment agreement where;
- i) It is unable to secure a charge on the property
 - ii) The person wishes to defer a larger amount than they are able to provide security for
 - iii) The person’s property is uninsured or uninsurable
 - iv) There is less than one years’ worth of funding, including administration and interest charges in the equity value of the property.
 - v) The person does not agree to the terms and conditions of the agreement

9 Termination of the Agreement

- 9.1 The deferred payment agreement may be terminated in one of four ways;
- i) Voluntarily by the individual or someone acting on their behalf, repaying the full amount due;
 - ii) On sale of the property (or other security);
 - iii) When the person dies; or
 - iv) If the person receives a capital sum that takes them over the funding thresholds
- 9.2 If a person decides to sell their home they must notify the Council at an early stage (as per the terms of the agreement)
- 9.3 Payment of the deferred amount is either the date of sale or disposal of the property or 90 days after the death of the adult with whom the agreement is made, whichever is the sooner.
- 9.4 The Council will discharge any legal charge over the property upon receipt of the full amount due.

10. Fees and Charges

- 10.1 The Council will charge a £240 administrative fee for arranging the deferred payment. The fee covers the Council's legal costs and disbursements involved in drawing up the agreement, carrying out searches and fees for registering a legal charge against your property. Should the valuation of your property be disputed by the Council, the costs of any independent valuation the Council may incur will be charged separately.
- 10.2 Administration charges will only reflect the set-up and ongoing costs incurred in arranging the deferred payment and will be set out within the Agreement. These can be paid at the time of the request, or can be added to the deferred payment agreement.
- 10.3 The local authority will charge interest on the amount deferred. Interest will be charged at a rate set by government and will continue until the deferred amount is repaid in full. Interest accrued will be added to the amount deferred to be repaid at the end of the agreement. Full details of interest charges will be set out in the Agreement.
- 10.4 Any additional requests for items such as valuations will be subject to a fee. These can be paid at the time of the request, or can be added to the deferred payment agreement.

11. Further Information and advice

- 11.1 Easy read documents (braille/other languages/LD) are available upon request.
- 11.2 Further information and advice concerning charging, deferred payments etc. can be found on the Council's website www.luton.gov.uk or can be requested in writing from Luton Borough Council
- 11.3 Any appeals or requests for a review of any decision of the Council should be submitted within 21 days of the date of the decision and will go through the normal reconsideration and appeals process. If still not resolved then the person should use the Complaints procedure.