



Deferred Payment Scheme Policy

April 2017

Contents

1. Background
2. Universal deferred payment scheme outline
3. 12 week property disregard
4. Eligibility
5. Deferred charge limits
6. Application considerations
7. Security
8. Administrative fees and interest charges
9. Property valuations
10. Deferred payment agreement
11. Terms and conditions of a DPA
12. Financial assessment
13. Reviews
14. Termination
15. Declining an application
16. Appeals
17. Recovery of debt
18. Information and advice
19. Appendices



1. Background

The Care Act came into force on the 1st April 2015 and is the largest change in Adult Social Care experienced by Local Authorities in England. One of the key changes from April 2015 is that all Local Authorities must offer a Universal Deferred Payment Scheme.

Deferred payments are intended to allow you not to be forced to sell your home in your lifetime if you need to pay for residential care. By taking out a deferred payment agreement, a person can 'defer' or delay paying the costs of their care and support, perhaps until death; or can choose to use the deferred payment as a 'bridging loan' to give them more flexibility in deciding when to sell their home.

The loan from the Council is secured against their property and these agreements can be retained until the person dies, with the amount repayable from their estate, but can also be offered to persons who decide to sell their home whilst still alive (the deferred payment providing "bridging finance").

The universal deferred payment scheme replaced all existing local authorities' schemes and the Care Act 2014 guidance replaced the charging for residential accommodation guide (CRAG), which applied before the Act came into force. The 2014 guidance also provide for new national eligibility criteria for deferred payments whilst allowing for some local discretion on implementation.

2. The Universal Deferred Payments scheme

2.1 Sections 34-36 of the Care Act 2014 provides regulations for when a local authority may or must enter into a deferred payment agreement which will allow people to defer paying their care fees by taking out a loan from their council (secured against their property) to pay for care and support. The loan will be repaid upon the sale of the person's home. It introduces:

- A national eligibility criteria for entitlement to a deferred payment;
- An interest charge and administrative fees to help recover the costs of the scheme.

2.2 The Merton Council deferred payment scheme will follow relevant legislation and statutory guidance applicable from the Care Act 2014.

2.3 It will be updated to reflect any future changes to the legislation and statutory guidance.



2.4 It will underpin the following principles:

- To ensure those that have been assessed as needing care will not need to sell their property during their life time to pay for their care;
- That those who are able to pay a contribution towards their care do so;
- That residents are kept fully informed about deferred payments and their eligibility to the scheme;
- That the scheme is self-financing and sustainable.

2.5 This scheme covers residential and nursing care services only.

3. The 12-week property disregard

3.1 If a person has been assessed as having eligible long term needs for residential or nursing care and they own a property, then they will have the capital value of their main residence disregarded during the first 12-weeks of a placement made by the Council in long term accommodation.

3.2 A person in receipt of a 12-week property disregard will still be financially assessed to see how much they can contribute from their income.

3.3 After the 12-weeks property disregard has expired the property would be regarded as a capital resource in any financial assessment unless there is a statutory disregard as detailed in the Care and Support Statutory guidance issued under the Care Act 2014 (e.g. where a defined relative resides in the property).

3.4 The London Borough of Merton must be satisfied that there is adequate security in place when entering into a deferred payment agreement. The security would be a legal charge over the applicant's main residence and the applicant or their representative must be able to evidence that they are able to provide adequate security. If the property to be secured is jointly owned, then all owners of the property must consent to a charge being a deferred payment arrangement can be agreed by the Council and registered against the property.

3.5 A deferred payment would commence after the expiry of the 12-week property disregard and subject to successful application for such arrangements.

4. Eligibility

4.1 A deferred payment must be offered to people who meet the criteria as defined by the Care Act 2014 Sections 34-36, so from April 2015 a deferred payment will be offered by London Borough of Merton where all the following apply:

[Type text]



- A person has eligible care needs that need to be met through the provision of care in a residential or nursing care; this is determined when someone is assessed as having eligible needs which the local authority decides should be met through a care home placement.
- They have capital of less than (or equal to) the upper threshold (£23,250 for 2015/16 and until changed by Central Government) in assets excluding the value of their home (i.e. in savings and other non-housing assets). This upper figure will be reviewed by the government in subsequent years
- You own your home and have a legal and beneficial interest in that home, which is not disregarded in your financial assessment (other than during a 12-week property disregard period)
- The home meets the disregard criteria, for example it is not occupied by a spouse or dependent relative as defined in the regulations on charging for care and support.
- A person must have the mental capacity to enter into a deferred payment agreement or have someone acting in a legal capacity to do so on their behalf (e.g. Deputy or Lasting Power of Attorney)

Should you have capital higher than the upper threshold of £23,250, a discretionary DPA may still be offered. This will be considered as a 'loan style' DPA. The other eligibility criteria must still be met and in these cases, the agreement must make clear:

- the authority will make advances of the loan to the adult in instalments
- The contractual arrangement is between the individual and the care home provider.
- the purpose of the loan is to pay for care home costs only
- the local authority must agree a care home place is a suitable option for meeting your needs, even if they have not carried out a needs assessment.
- the adult must inform the local authority if he or she no longer receives or intends to receive care in such accommodation.

4.2 If a person is eligible for a deferred payment then discretion may still be applied to refuse a deferred payment under circumstances detailed in the Care and Support statutory guidance (October 2014). These are as follows:

- London Borough of Merton is unable to secure a first charge on the property (known as 'security');
- Where a person does not agree to the terms and conditions of the agreement e.g. a person cannot insure the property because the property is uninsurable;
- Where someone wishes to defer an amount greater than the amount of the security e.g. where they are seeking a top up.

4.3 The council may also decide not to defer any more charges for an active Direct Payment Agreement in situations such as follows:-



- The upper limit of the amount that can be deferred has been reached;
- Where a spouse or dependent relative (as defined in the Care and Support Statutory Guidance) has moved into the property after the agreement has been made;
- Where a relative in the property at the time of the agreement subsequently becomes a dependent relative.

5. Deferred charge limit

5.1 The maximum amount that someone is able to defer against their main property must be set at the value of the property less 10%, less the lower capital limit (2015/16 £14,250). (For example, where a property is worth £300,000 then the maximum amount able to be deferred will be £300,000 minus £30,000 minus £14,250 = £255,750).

5.2 If the deferred payment approaches or reaches 70% of the value of the property then a meeting is to take place with the person or their representative to discuss options and considerations.

6. Application considerations

6.1 All applicants for a deferred payment must complete Merton Council's application form (see appendix a). When assessing applications for a Deferred Payment, the sustainability of the deferred payment will be taken into account. In addition to the LTV (loan to value) ratio, Merton Council will also consider the following when deciding the suitability of an agreement:

- The likely duration of the deferred payment
- Equity available in the property and if there are any restrictions against the security
- Contributions which may be made from a person's savings and income including rental income
- The period of time a person would be able to defer weekly care costs
- The property is suitably insured
- Arrangements made for the security and occupation of the property during the period of the proposed period of deferred payment

6.2 The application must be completed in full, detailing the applicant's financial situation and circumstances. The application must be signed by the applicant or their representative (e.g. Deputy or Lasting Power of Attorney).

7. Security

[Type text]



7.1 The London Borough of Merton must be satisfied that there is adequate security in place when entering into a deferred payment agreement. The security would be a legal charge over the applicant's main residence. If the property to be secured is jointly owned then all owners of the property must consent to a charge being registered against the property.

7.2 The council will accept a first charge over property as security for a deferred payment agreement. Other forms of security e.g. a second charge over property would only be considered in exceptional circumstances on a case by case basis.

7.3 The Council has discretion to accept other forms of security on a case by case basis, for example from a third party guarantor. This discretion will not be offered universally and will only be exercised by the Council on a case by case basis. The Council will need to be satisfied that there is adequate security to protect the interests of the Council and that the debt is secure

7.4 Life insurance policies and high value items (such as paintings) cannot be accepted as security. Life insurance cannot be signed over. The council would require a consumer credit act licence before it could accept high value items as security. Items such as paintings would need to be authenticated and have sufficient security in place to protect the item. The costs of accepting high value items would be a disproportionate expenditure of limited public funds. The Council is responsible for public funds and therefore it is not cost effective to accept such items.

8. Administrative fees and interest charges

8.1 The Care Act 2014 introduces powers that allow local authorities to charge for running the deferred payment scheme. The council is not allowed to profit from the administration fee or interest charged to the customer.

8.2 The Act allows for an administrative fee to be charged for setting up and monitoring the deferred payment. This fee can be paid at the beginning of the agreement or deferred until conclusion. If deferred, the amount will be liable for interest charges (see 8.4). The administrative fee is a one off fee of £805 and includes the following:

- The cost of registering a charge with the Land Registry that may include Land Registry searches;
- Administrative costs in maintaining the deferred payment e.g. staff costs, legal costs, postage, printing costs etc.

8.3 The Care Act 2014 allows interest to be charged on the deferred payment, including any deferred fees. Interest will be charged throughout the term of the deferred payment and up until the point the deferred payment is repaid to the council.

8.4 The interest rate charged is the gilt yield rate + 0.15%.

[Type text]



8.5 The rate is laid down nationally and is determined by the weighted average interest rate on conventional gilts from the OBR Economic and Fiscal Outlook Report.

8.6 The rate is reviewed every six months on 1 January and 1 July in line with national legislation.

8.7 Interest will be on a compounding basis and will be added to the deferred payment annually on the 31 December.

8.8 There will be an on-going annual administrative fee of £50 which becomes payable yearly during the course of the Deferred Payment Agreement. This can also be deferred at the local authorities' discretion.

8.9 There will be a termination fee of £100 plus HM Land Registry fees for removing the legal charge from the property at the end of the agreement.

8.10 The administration fees and interest rate will be clearly defined in the deferred payment agreement. They will also be publically available on the council's website. This will enable all customers applying for a deferred payment full transparency on the costs of the scheme.

9. Property Valuation

9.1 The council will arrange for the property being provided as security for the deferred payment to be valued. The applicant is also entitled to request an independent valuation of the property separate from the council's own valuation. The cost of any independent valuation is to be paid for by the deferred payment applicant.

9.2 The council will undertake regular reviews of the value of the property during the lifetime of the deferred payment to ensure that the upper limit of the property valued is not exceeded.

9.3 Any dispute regarding the property valuation will be dealt with under the councils reviews and appeals procedure (see section 16)

10. Deferred Payment Agreement

10.1 If the application for a deferred payment is successful then the applicant will need to sign a Deferred Payment Agreement (see appendix b and c). The council can enter into an agreement with residents who are the owner(s) of a property; their representative who holds a Power of Attorney in respect of property; or a Deputy



appointed by the Court of Protection in respect of property. The conditions contained in the application as described in this scheme would need to be fulfilled.

10.2 The deferred payment agreement sets out the following:-

- How the agreement can be terminated;
- Details of the security;
- The requirement to maintain buildings insurance;
- How problems should be resolved if either party feels the terms of the agreement have been breached.

11. Terms and conditions of a DPA

11.1 The deferred payment agreement will only take effect once the agreement has been signed by the applicant or their appointed representative. The council would require evidence that the person who is signing for the applicant is entitled to do so e.g. certified copy of the appointment of a Power of Attorney or an order from the Court of Protection appointing a Deputy.

11.2 The following conditions will apply and be applicable to a person entering into a deferred payment agreement:-

- The property must be maintained in a reasonable standard of repair throughout the term of the deferred payment agreement;
- All necessary outgoings associated with the property must be paid e.g. council tax, any applicable service charges, buildings insurance, ground rent and maintained throughout the lifetime of the agreement;
- Any rental income derived from letting the property will be financially assessed in accordance with the Care and Support Statutory Guidance;
- If the property is subject to a rental agreement then the period of the rental agreement is no longer than 12 months unless specifically agreed in writing by the council;
- That the applicant and/or their representative acknowledges that they have received the council's advice that they should seek independent financial advice before entering into the deferred payment agreement;
- That they have been provided with a hardcopy of the deferred payment agreement and they have been allowed reasonable time to read and consider the agreement and discuss any queries with the council;
- The full application form must be completed and any evidence required by the council to support the application is provided;
- If the property is jointly owned, all joint owners must agree to the council taking a legal charge over the property;
- That the applicant or representative makes the council aware of any circumstances that would affect the value of the property or the ability to fulfil the terms of the deferred payment agreement.
- Properties abroad will not be considered for a Deferred Payment



- The applicant/resident will notify the Council of any change in circumstances during the period of the deferred payment arrangements which would affect the value of the Property or sustainability of the deferred payment
- The applicant/resident is responsible for ensuring that adequate buildings insurance is in place and which includes cover where properties are left unoccupied for more than 30 days. The Council's interest in the property under the terms of the Deferred Payment Agreement must be notified to the insurer within 14 days of the commencement of the agreement and at the time of commencement of subsequent policies.
- Failure to maintain appropriate Buildings Insurance cover could result in the Council deciding that there is lack of adequate security for the loan and to terminate the deferred payment arrangements .
- The applicant/resident shall provide a copy of the schedule of the current building policy annually.
- The Council shall have the right, to request a copy of current copies of building and contents insurance policies from time to time.

12. Financial assessment of contributions

12.1 All successful applicants for a deferred payment will be financially assessed to make a contribution towards the cost of their care from their assessable income and capital. The financial assessment to determine the amount of contribution will follow the Care and Support Statutory Guidance.

13. Reviews

13.1 The deferred payment agreement will be reviewed periodically to provide a current valuation of the property to ensure that the security is sufficient to cover the outstanding deferred payment amount. The frequency of the review will be decided on a case by case basis and according to national market property conditions.

13.2 An 6 monthly/annual statement will be sent to the deferred payment customer and will detail the following:

- Amount deferred;
- Interest to date;
- Administrative charges applied;
- Total amount due;
- Available equity left in the property;

14. Terminating the deferred payment agreement

14.1 The deferred payment agreement can only be terminated in the following circumstances:

[Type text]



- **Voluntarily** by the person receiving care and/or their representative by paying the full amount due, including interest and any fees. If the agreement is voluntarily terminated then the council will require 28 days' notice of termination.
- **Upon the sale of the property** held as security. If the person decides to sell the property then they must advise the council and keep the council advised throughout as the sale progresses. The full amount, including interest and fees, must be paid to the council once the sale has taken place.
- **If the person receiving care dies.** The deferred payment will automatically come to an end upon the death of the person receiving care. The deferred payment, including fees and interest, can either be paid from the estate of the deceased person or a third party, such as a family member, may choose to settle the debt themselves rather than from the sale of the deceased's property held as security. If the agreement is terminated following a person's death then the deferred payment, including interest and fees, becomes payable within 90 days following the date of death.

15. Declining a deferred payment application

15.1 When a request for a deferred payment is declined, the applicant and/or their representative will be notified in writing by the council. The applicant and/or their representative will be given reasons for the decision and informed of the right to a review (see appendix d). A deferred payment can be declined for the following reasons:

- There is insufficient equity in the property to fund the deferred payment
- The applicant or their representative has failed to provide all of the relevant information to process the application within a timely manner.
- The council is unable to place a first legal charge against the property to secure the deferred payment;
- The property is uninsurable.
- Where the property is rented on terms that are unacceptable to the council e.g. a period greater than 12 months
- The market value of the property is less than the deferred payment or estimated amount to be deferred during the proposed period of the agreement

16. Review and appeals procedure

16.1 If an applicant or their representative is not happy with application outcome they can ask for a review. The grounds for review could include the following:-

- The decision to refuse the application failed to take into account any new information which would have led to a revision of the decision.
- There are eligible care costs which the council have failed to take into account



16.2 Requests for a review 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.

16.3 If the applicant is dissatisfied with the outcome of the review, they can then appeal within 20 working days of being notified of the outcome of the review. This period can be extended for exceptional reasons.

16.4 If the applicant remains dissatisfied with the outcome of the appeal then they can request that this matter is dealt with under the councils Adults Social Care Complaints procedure.

17. Recovery of Debt

17.1 In the event of failure to pay the deferred payment in accordance with section 14 (terminating the deferred payment agreement) then the council will pursue the debt through the normal debt recovery procedures and litigation in court .

18. Information and advice

18.1 The Council will provide advice and information about deferred payments through a variety of channels including; Merton council website and publicly available leaflets (see appendix e)

18.2 Information and advice will be provided during the 12 week property disregard period and at other stages during the financial assessment process.

18.3 Under the Care Act all local authorities are required to ensure that people have access to independent financial advice. There is an Independent Financial Advice leaflet available on request.