

DEFERRED PAYMENTS POLICY

Integrated Strategic Commissioning



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I Introduction

- 1.1 The Care Act 2014 establishes a universal deferred payment scheme, which means that from April 2015 people may not need to sell their home in their lifetime to pay for the costs of care. A deferred payment is a way of deferring the costs of care against a property which is the person's main home. It is a loan against the value of the property.
- 1.2 From April 2015, all Councils in England are required to provide a deferred payment scheme for local residents who go to live in residential or nursing care, own a property and have other assets below a certain amount. They must also have assessed care needs for residential or nursing care. The new scheme has a national eligibility criteria which replaces Plymouth City Council's existing eligibility criteria for deferred payments.

2 Scope of Policy

- 2.1 The purpose of this Policy is to set out the framework for Plymouth City Council's Deferred Payments Scheme from April 2015. This framework takes into account the main changes introduced by the Care Act 2014 and the statutory guidance published by the Department of Health (October 2014).
- 2.2 Local authorities are required to follow new national guidance on the eligibility criteria for a deferred payment.
- 2.3 Access to the deferred payment scheme is available to people who have local authority arranged care and people who arrange and pay for their own care.
- 2.4 Under Section 34 – 36 of the Care Act 2014 and the Care and Support (Deferred Payment Agreements) Regulations 2014, all councils must have a Deferred Payments scheme which:
 - Has a set of national eligibility criteria on entitlement;
 - Allows Councils to charge interest and administrative fees to offset the costs of the scheme and
 - Retains some local discretion, for example the amounts that can be deferred.

3 Previous Deferred Payment Scheme

- 3.1 Plymouth City Council's previous deferred payments scheme was offered under Section 55 of the Health and Social Care Act 2001. The scheme allowed someone to defer their payments for permanent residential accommodation costs in exchange for granting the Council a legal charge on their main or only residence as security.
- 3.2 Those in receipt of support under the current Deferred Payment scheme will remain within their current agreement until the agreement is terminated.

4 Plymouth City Council's Deferred Payments Policy Statements

The Deferred Payments scheme set out in this policy is consistent with relevant legislation and statutory guidance. Plymouth City Council's principles underpinning the scheme are:

- To ensure that those who have been assessed as needing care may not need to sell their property to pay for care
- That those who can afford to pay a contribution towards care should do so
- To ensure that residents are fully informed about deferred payments and eligibility
- That the scheme is self-financing and sustainable

4.1 Eligibility Criteria

Deferred Payment Agreements (DPA) are designed to prevent people from being forced to sell their home in their lifetime to meet the cost of their care. Plymouth City Council must offer a DPA to people who meet all four of the criteria set out in the regulations below and who are able to provide adequate security

Criteria 1 - Where a local authority is meeting an individual's care and support needs under section 19(2) of the Care Act.

Criteria 2 - A person has needs which are to be met by the provision of care in a care home. This is determined when someone is assessed as having care and support needs which the local authority considers should be met through a care home placement, this condition is satisfied when someone who the local authority has not performed an assessment but would be assessed as having eligible needs were the authority to have carried out such an assessment.

Criteria 3 - A person has less than (or equal to) £23,250 in assets excluding the value of their main or only home (for example, in savings, other non-housing assets and housing assets other than their main or only home)

Criteria 4 - A person's home is not disregarded for the purpose of the financial assessment carried out under section 17 of the Care Act 2014; for example, it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support (for example, someone whose home is taken into account in the local authority financial assessment and so might need to be sold)

4.1.2 Plymouth City Council may refuse a deferred payment agreement despite someone meeting the qualifying criteria:

- a) Where a local authority is unable to secure a first charge on the person's property
- b) Where someone is seeking a top up
- c) Where a person does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property

Another reason for refusal would be where there is insufficient equity in the property to cover the period for which care may be required

4.2 'Discretionary' Deferred Payment Agreement

If your application doesn't meet all the criteria for a mandatory Deferred Payment Agreement under the Care Act 2014, local authorities have discretion to decide what else may constitute 'adequate security' for a deferred payment agreement, in cases where a first charge cannot be secured.

Plymouth City Council will consider the merits of each case individually and may offer a 'discretionary' Deferred Payment Agreement. The forms of security that may be considered in such cases include:

- a third-party guarantor – subject to the guarantor having / offering an appropriate form of security
- a solicitor's undertaking letter
- a legally binding agreement to repay the amount deferred from the proceeds of a life assurance policy

(This list is indicative, but not exhaustive, of the types of security that will be considered. You should contact the Council to discuss your particular circumstances. The Council has the discretion to refuse to enter into a DPA where it is not satisfied that adequate security is in place).

In addition, all of the following conditions need to be met in order to enter into a discretionary DPA. These are:

Condition 1 - Your care assessment shows that your identified needs are best met in a care home on a permanent basis, or, in exceptional cases, in rented, supported accommodation (*known as supported living accommodation* *); AND

Condition 2 - You own your home and have a legal or a beneficial interest in that home, which is not disregarded in your financial assessment (other than during a 12-week property disregard period), AND

Condition 3 - The value of your property capital is sufficient, together with your other income and assets, to be required to pay the full cost of your care home fees (or, if you have a mortgage, the outstanding amount leaves sufficient value together with your other income and assets to be required to pay the full cost of your care home fees); AND

Condition 4 - The total of your other capital assets (not counting your own home) are below the Upper Capital Limit, or, they are only slightly over the Upper Capital Limit, AND

Condition 5 - You can offer the Council adequate financial security for the deferred payment which can be legally secured, AND

Criteria 6 - The Council considers that you have enough equity in your property to enter into a Deferred Payment Agreement, AND

Criteria 7 - The Council considers that you have appropriate property insurance arrangements in place, AND

Condition 8 - You have capacity to enter into a Deferred Payment Agreement, or you have a legally-appointed representative to enter into a Deferred Payment Agreement on your behalf

The Council has discretion over whether your DPA can apply to any additional care fees (top-ups) arising through your choice of accommodation.

Although not generally available, this policy can, in exceptional circumstances, be made available for someone in rented, supported accommodation. Such exceptional circumstances may include, for example, where your property is not able to be sold nor let and you have no entitlement to Housing benefit, and your income, savings and investments do not cover the costs of your supported accommodation.

**'Supported living accommodation', is defined as: accommodation which is not a care home and is--(a) in premises which are specifically designed or adapted for occupation by adults with needs for care and support to enable them to live as independently as possible; or (b) provided--(i) in premises which are intended for occupation by adults with needs for care and support (whether or not the premises are specifically designed or adapted for that purpose); and (ii) in circumstances in which personal care is available if required.*

4.3 Administration Fees and Interest Charges

The Care Act 2014 allows Local Authorities to charge an administrative fee for arranging the deferred payment and an on-going administrative fee that becomes payable during the period of the Deferred Payment Agreement. These fees can be added to the deferred payment arrangement if requested or paid separately.

4.3.1 The administrative fees are the actual costs of providing the deferred payment including;

- Cost of Land registry searches and registering the charge with the Land Registry.
- Costs of valuation and re-valuation of the property
- Costs of statements/notification

- Staffing, management and legal costs

4.3.2 The Care Act also allows Local Authorities to charge interest on the deferred payment amount, including any charges that the person has chosen to defer. The same interest rate should be charged on all deferred payments within the Council.

4.3.3 The Deferred Payments regulations set the maximum interest rate to track the market gilt rates specific in the most recently published report by the Office of Budget Responsibility. This is published in the Economic and Fiscal Outlook which is usually published twice yearly.

The maximum rate is fixed for period of six months and changes every 1st January and 1st July.

4.3.4 Plymouth's Deferred Payment Scheme will follow the interest rate as set by Government and ensure the scheme is cost neutral to the Council. Every six months interest rates will be adjusted in line with changes to government set interest rates.

4.3.5 All charges and fees will be clearly set out within the Deferred Payment Agreement.

4.4 Independent Financial Advice

Financial information and advice is fundamental to enabling people to make well informed choices about how they pay for their care. It is integral to a person's consideration of how best to meet care and support needs, immediately or in the future. People with good and impartial financial information and advice have a better understanding of how their available resources can be used more flexibly to fund a wider range of care options.

4.4.1 Plymouth City Council has a duty to provide people with information on the availability of different ways to pay for care including through income and assets. In addition the council must signpost to an independent source of information or advice where relevant. This will be of particular relevance where a person will be meeting the total cost of care and support themselves or may be considering taking out a deferred payment agreement.

4.4.2 Carers and families can help people to make decisions about their care and how to pay for it. If we are concerned that the person applying for the deferred payment agreement does not have the capacity to understand, or won't have capacity to understand in the near future, then another person may need to represent them. Only a person that is properly authorised, such as someone with legal power of attorney, can represent someone in applying for a deferred payment agreement.

4.4.3 Where a person may lack capacity to request a DPA, a person with an Enduring Power of Attorney or Lasting Power of Attorney may request a deferred payment on their behalf. The Council may signpost the person and a family member to information and advice on how to obtain Lasting Power of Attorney and Deputyship, where this may be needed. Where the local authority is the Deputy for a person, it may apply for a DPA where this is in the best interests of the person, although must not enter into an agreement with a person lacking the requisite mental capacity unless the proper arrangements are in place. The Council and a person who has capacity and is applying for a DPA, may also want to consider options if they were to lose capacity at a later date, including Deputyship, Legal Power of Attorney and advocacy.

4.5 Financial Arrangements

A 12 week property disregard is applied where a person has been assessed as having eligible needs for residential or nursing care and owns a property. During the first 12 weeks stay in residential accommodation, the capital value of the property is disregarded.

4.5.1 After 12 weeks, unless there is a statutory disregard of the property, the property will be taken into account by Plymouth City Council as a capital resource. A statutory disregard will apply where, for

example, the property is occupied by a spouse, partner or close relative who is incapacitated and in receipt of a disability related income or benefit, or aged 60.

- 4.5.2 During this 12 week period, Plymouth City Council will provide advice and information about deferred payments. Advice and information will include, as appropriate, referring the person or their carer for independent financial advice. Advice and information about deferred payments will be available in a variety of mediums, for example leaflets, and the Council's website.
- 4.5.3 Under the Deferred Payment Scheme, Plymouth City Council may arrange for a valuation of the property against which payments will be deferred.
- 4.5.4 The person applying for the deferred payment will also be entitled to request an independent valuation; this would be separate to the Council's own valuation, e.g. an Estate Agent's valuation may be acceptable and we would use this as part of our valuation process. The cost of valuation(s) will be paid for by the applicant or their representative. If the deferred payment is approved the costs of valuation can also be deferred and will accrue interest. Where the property is already on the market and a sale has been agreed, the Council would accept an undertaking from the applicant's Solicitor to pay all outstanding fees and costs from the purchase monies on completion of the sale.
- 4.5.5 The valuation of the property will be periodically reviewed during the lifetime of the Deferred Payment Agreement to ensure that the upper limit is not exceeded and in any other circumstances where the value of the property will affect the sustainability of the Deferred Payment Agreement. Disputes about property valuation will be dealt with under the appeals procedure (see 4.8).
- 4.5.6 Loan to value: Where a property is used as security to offer a deferred payment agreement, the equity limit will be calculated in line with Care Act 2014 guidance.
- 4.5.7 The amount that can be deferred will depend on the amount of equity in the home in relation to its value, which determines the 'equity limit'. As a guide, most people can use around 70% of the equity available in their home. The limit on equity is to protect individuals from not having enough money to pay back the cost of care charges, interest & administration charges that have been deferred after the sale costs of the property.
- 4.5.8 When a person is approaching or reaches the point at which they have deferred 70% of the value of their chosen security, Plymouth City Council will review their circumstances and ongoing care needs and will consider whether a deferred payment agreement continues to be the best way to meet their care costs.
- 4.5.9 Plymouth City Council will not allow additional amounts to be deferred beyond the equity limit, and will refuse to defer care costs beyond this however, interest can still accrue beyond this point, and administrative charges can still be deferred.
- 4.5.10 Applicants entitled to a deferred payment will be assessed to make a financial contribution towards the cost of care from their assessable income and capital (for example, savings and investments). The assessed contribution will follow Department of Health guidance and the person will have the option to retain a proportion of their income (the disposable income allowance) currently set at a maximum rate of £144 per week, together with a proportion of rental income if required.
- 4.5.11 Annual Review & DP Statements - The Deferred Payment Agreement will be reviewed periodically to assess the value of the property and ensure there is adequate security to protect the Council's legal charge on the property. The frequency of the review will be decided on a case by case basis.
- 4.5.12 Plymouth City Council will provide people 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. Plymouth City Council will also provide a statement on request within 28 days.

4.6 Types of Security

4.6.1 Plymouth City Council will only secure on property.

4.7 Deferred Payments Agreement - Conditions

- 4.7.1 The customer must have capacity to enter into a deferred payment agreement, or must have a Deputy or Attorney (a person with a relevant Enduring Power of Attorney or Lasting Power of Attorney) to act on their behalf, or have someone who is their deputy appointed by the Court of Protection.
- 4.7.2 The person agrees to all the terms and conditions in the deferred payment agreement.
- 4.7.3 In cases where a deferred payment agreement is to be secured with a jointly owned property, Plymouth City Council will not enter into a deferred payment agreement unless all owners give their consent and agreement to a charge being placed on the property. All owners will need to be signatories to the charge agreement and the co-owner must agree not to object to the sale of the property for the purpose of repaying the debt due to Plymouth City Council.
- 4.7.4 Plymouth City Council can refuse a deferred payment agreement even if all of the eligibility criteria are met if it is unable to secure a first legal charge on the person's property
- 4.7.5 Plymouth City Council will cease to defer any further care costs when a person has reached their equity limit as set by the Care Act 2014, or if they are no longer to receive care in a care home setting.
- 4.7.6 Where Plymouth City Council has cause to refuse to defer any further care costs, the Council will provide a minimum of 30 days advance notice that further deferral costs will cease. Plymouth City Council will also give an indication of how care costs will be met in the future.
- 4.7.7 The person agrees to notify Plymouth City Council of any changes to their care and support if those changes are ones which will mean that the authority must or is entitled to stop making further instalments under the agreement or to alter the amount of the instalments.
- 4.7.8 Payments for residential or nursing accommodation becomes payable to Plymouth City Council when the Deferred Payment Agreement ends.
- 4.7.9 Plymouth City Council expects the property to be maintained in reasonable standard of repair and condition and responsibility for this is with the owner of the property or their financial representative.
- 4.7.10 Confirmation that the property is adequately insured must be provided on an annual basis.
- 4.7.11 All outgoings associated with the property (e.g. Council Tax, service charges, ground rent) are paid by the owner of the property or their financial representative.
- 4.7.12 Any net Rental Income derived from letting the property during the period of the scheme will be assessed in accordance with Department of Health statutory guidance.
- 4.7.13 Where a Contribution towards care costs is required from a person's income, the person has a right to retain a proportion of their income (the 'disposable income allowance'). The disposable income allowance is a fixed amount (up to £144 per week) of a person's income which the local authority must allow the person to retain (if the person wants to retain it). The local authority can require the person to contribute the rest of their income, but must allow the person to retain as much of their disposable income allowance as they want to.
- 4.7.14 Plymouth City Council may refer a case to legal services in the event a Deferred Payment Agreement fails to be implemented and finalised in order to recover outstanding debt.

4.8 Termination of Deferred Payment Agreement

4.8.1 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 DPA holder's death);
- (b) When the property is sold and the authority is repaid; or
- (c) When the person dies and the amount is repaid to Plymouth City Council from their estate.

4.8.2 On termination, the full amount due (including care costs, any interest accrued and any administrative or legal fees charged) must be paid to Plymouth City Council.

4.8.3 If a person decides sell their home, they should notify Plymouth City Council during the sale process. They will be required to pay the amount due to the council from the proceeds of the sale and once paid the council will be required to relinquish the charge on the property.

4.8.4 Where a deferred payment is terminated due to the person's death, the amount due to Plymouth City Council must be either paid out of the estate or paid by a third party. Where a person's family or a third party wishes to settle the debt by other means of repayment, Plymouth City Council may accept an alternative means of payment, provided this payment covers the full amount due; this is at the discretion of Plymouth City Council.

4.8.5 Responsibility for arranging for repayment of the amount due (in the case of payment from the estate) falls to the executor of the will or the administrator of the estate. Interest will continue to accrue on the amount owed to the local authority after the individual's death and until the amount due to the local authority is repaid in full.

4.8.6 In the event care fees cannot be recovered through a Deferred Payment Agreement the Council is able to use legal action to recover any outstanding debt.

4.9 Review and Appeals Procedure

4.9.1 The decision on the outcome of the application for a deferred payment can be reviewed. The grounds for review could include:

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

4.9.2 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.

4.9.3 If the person 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.

4.9.4 If the person remains dissatisfied with the outcome of the appeal then they can request that this matter is dealt with under Plymouth City Council's Complaints procedure.

5 Document Control

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