

# Oldham Council

## Deferred Payments

### Policy

June 2015

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April 2023	Changes PEA rates, requirement to self-fund, admin fees	Lisa Entwistle	Sophie Harland	April 2023	April 2024

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## **1. Purpose**

- 1.1 This policy provides a clear explanation and the requirements for when a Deferred Payment can be offered.
- 1.2 The policy should be applied fully to all applications for a deferred payment to ensure compliance with our statutory requirements.
- 1.3 This guidance will affect those people who are assessed as eligible for long term care and wish to defer the sale of their property or have not yet sold their property which is taken into account as part of the financial assessment process.
- 1.4 Oldham Council (“the Council”) will be able to advise customers about their eligibility for deferred payments and apply deferred payments in a consistent manner.

## **2. Scope**

- 2.1 This policy applies to all staff involved in dealing with the deferred payment processes. Primarily this relates to staff working in the Financial Assessment and Income Team.
- 2.2 The policy is of relevance to service users and carers where the service user wishes to be considered for a deferred payment agreement.
- 2.3 The policy relates to permanent residential services only; it is not relevant to community based services.

## **3. Legal Context**

- 3.1 The Care Act 2014 (sections 34 and 35) requires local authorities to offer Deferred Payments Agreements to allow persons to defer the sale of their home where it is needed to fund care fees. The Care and Support (Deferred Payment) Regulations 2014 set out the legal framework and local authorities’ responsibilities in greater detail. These legal duties came into force on 1 April 2015.
- 3.2 The regulations require local authorities to offer deferred payments to people meeting certain eligibility criteria. These agreements can be retained until the person dies, with the amount repayable from their estate, but can also be offered to a person who decides to sell their home whilst still alive (the deferred payment providing “bridging finance”).
- 3.3 The Care Act and regulations also allow the deferred payment scheme to be offered to persons who have incurred debt in relation to their care fees.
- 3.4 The regulations allow local authorities to offer the deferred payment scheme for extra care housing and supported living, but not for people receiving care in their own home. The Council will consider requests for entry into the deferred payment scheme for people living in these situations in exceptional circumstances only. Acceptance onto the scheme in these circumstances remains entirely at the discretion of the Council.

- 3.5 Local authorities are also allowed further discretion to offer the deferred payment scheme where otherwise a person might be required to sell their home to pay for care. The Council will generally not allow entry onto the scheme except in the circumstances set out above.

## **4. Eligibility for a Deferred Payment**

- 4.1 The Council must offer a deferred payment to people who meet the eligibility criteria set out below:
- 4.1.1 anyone whose needs are to be met by the provision of care in a care home<sup>1</sup>;
  - 4.1.2 anyone who has less than (or equal to) £23,250 in assets excluding the value of their home (i.e., in savings and other non-housing assets); and
  - 4.1.3 anyone whose 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 (i.e., someone whose home is taken into account in the Council financial assessment and so might need to be sold).
- 4.2 In addition, the following terms must be met to be eligible for the deferred payment scheme:
- 4.2.1 The person must have a beneficial interest in the property.
  - 4.2.2 There should be no outstanding mortgage on the property or if accepting a mortgaged property, the outstanding amount must leave sufficient value to meet the criteria for self-funding.
  - 4.2.3 The person, their attorney or person with deputyship must consent to the agreement.
  - 4.2.4 The deferred payment must be signed by a person with capacity to make the decision or someone with a lasting power of attorney registered at the Office of the Public Guardian or the Deputy
- 4.3 Where we accept a property as security, a Land Registry charge must be placed on the property.
- 4.4 To ensure that the deferred payment is sustainable at least one year's worth of funding from the property should be available when the deferred payment is accepted.
- 4.5 The deferred payment scheme within the Council applies solely to property and no other forms of security will be accepted.

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<sup>1</sup> This is determined when someone is assessed as having eligible needs which the Council decides should be met through a care home placement. This should comply with choice of accommodation regulations and care and support planning guidance and so take reasonable account of a person's preferences.

- 4.6 A deferred payment will be refused where the Council is not satisfied that its interest is secure. This does not include situations where we are able to secure a first legal charge as this must be accepted as adequate security.
- 4.7 If a spouse or dependent relative moves into the property following entry into the deferred payment scheme, eligibility to the scheme will be reviewed.
- 4.8 If the property is subsequently disregarded and the person qualifies for Council support as a consequence the deferred payment will be frozen. Interest will continue to accrue on the outstanding amount deferred.
- 4.9 A person is required to complete an application form to apply for a deferred payment.

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

- 5.1 A person can defer the entirety of their care costs, subject to any contribution required from the person's income.
- 5.2 In considering 'top-ups,' the amount to be deferred should be sustainable relating to the lending available in their property.
- 5.3 When agreeing the amount a person can defer, the following three elements will be considered:
  - a) The amount of lending a person has in their property
  - b) The amount a person 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 a person will face, including any top-ups the person might be seeking.

## **6. Permission to Refuse**

- 6.1 There are certain circumstances in which a deferred payment may be refused. This is referred to as 'permission to refuse.' Permission to refuse can apply even if a person meets the eligibility criteria and we would otherwise be required to offer an agreement.
- 6.2 An agreement may be refused where:
  - a) we are unable to secure a legal charge on the persons property (including cases where the property is not registered)
  - b) where someone is seeking a top up<sup>2</sup>

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<sup>2</sup> In these situations we should still seek to offer a deferred payment but should be guided by a maximum amount that is sustainable (or reflects their core care costs without any top-ups) and agree a deferral. The person can then choose whether they wish to agree.

- c) where a person does not agree to the terms and conditions of the agreement, for example, the requirement to insure and maintain the property
- 6.3 Where the person lacks capacity and there is no appointed deputy a deferred payment will be refused whilst action is taken to regularise this situation.
- 6.4 Where a 'permission to refuse' is applied, the person must be notified of this in writing and the reason for the refusal stated.

## **7. Information about Deferred Payments**

- 7.1 Where a person is considering entering residential care, we are required to ensure that the person is aware of the ability to defer charges against their property to meet their care costs, subject to meeting the eligibility criteria.
- 7.2 The information we provide to the person should, as a minimum, inform them about:
  - 7.2.1 Administrative charges
  - 7.2.1 Interest charges and that these are applied from day one of the agreement (except in cases of the 12 week disregard)
  - 7.2.2 The eligibility criteria for the deferred payment scheme
  - 7.2.3 Options for use of their property whilst in long term care
- 7.3 To support a person in deciding whether a deferred payment agreement is appropriate to them, they should be provided with the Deferred Payment Scheme leaflet.
- 7.4 The person should also be provided with the deferred payment agreement and contract in advance of a home visit, so they have time to fully consider how the agreement may affect them.
- 7.5 If a person wishes to consider a deferred payment agreement, they should be signposted to organisations which can provide advice on options available to them. This could include information around renting their property or selling the property after their death.
- 7.6 As a minimum, people should be signposted to organisations which can provide independent financial advice on taking up a deferred payment agreement.
- 7.7 Where relevant, information should be provided as early as possible within the 12 week disregard period, enabling a smooth transition from the disregard period to the deferred payment, should a person wish to take up this option.

## **8. Equity Limit**

- 8.1 We must obtain a valuation of the property before the equity limit can be confirmed. The person can also obtain an independent valuation if they wish to do so. If the independent valuation is substantially different to the Council's valuation, the Council must meet with the person and agree an appropriate valuation prior to proceeding with the DPA.
- 8.2 The equity limit must be set at the value of the Property minus 10% less the lower capital limit (currently £14,250) and less the amount of any mortgage or other charges already placed on the property.
- 8.3 Additional amounts cannot be deferred beyond the equity limit and the 'permission to refuse' will be applied. Interest and administrative charges can continue to accrue even when the equity limit has been reached.

## **9. Top Ups**

- 9.1 In principle, a person should be able to include any top ups within the deferred payment amount. However, the amount a person is able to top up remains at our discretion and is dependent on affordability, sustainability and the available lending.
- 9.2 However, the person should be informed in writing before the agreement is made what might happen to any top up if they reach their lending limit. This should include finding other ways to pay for it or a change in their care package (including a possible change of care home).

## **10. Sustainability of the Deferred Payment**

- 10.1 When deciding on the amount to be deferred in the agreement the sustainability of the arrangement should be considered with the person.
- 10.2 The following factors should be taken into account when considering sustainability:
- a) The likely period the person would want the DPA to last for, including where it is intended as a bridging loan
  - b) The available lending within the Property
  - c) The sustainability of a person's contributions from their savings
  - d) Flexibility to meet future care needs, particularly where these may increase
  - e) The period of time the person would be able to defer their care costs for.
- 10.3 In considering sustainability, this should be discussed fully with the person and agreement reached about the amount to be deferred. This final agreement should be clearly set out in the deferred payment agreement.
- 10.4 The available lending within a person's property should be sufficient to cover their care costs for a period of at least 12 months.

- 10.5 The Department of Health (DH) have developed a sustainability tool which should be applied when calculating the deferred payment. You can access the tool at the DH web pages on [www.gov.uk](http://www.gov.uk)

## **11. Refusing a Deferred Payment Agreement and not selling the Property**

- 11.1 If the person does not want to sell their property and also chooses not to take advantage of the scheme, they should be deemed to be able to pay the full cost of their care and make arrangements to pay the provider directly.
- 11.2 The person should again be directed to an independent financial advisor upon indicating that this is their decision.

## **12. Renting out the Property**

- 12.1 If a person wishes to rent out their property during the course of their deferred payment agreement, they are entitled to retain 25% of the rental income.

*The percentage someone can retain excludes any maintenance costs associated with renting out the property.*

The remaining rental income should be applied to their financial assessment to determine how much they will contribute towards their care home costs.

- 12.2 The Council will require sight of the tenancy agreement if arranged privately by the person. The prospective tenants must enter a minimum of a six month short term assured tenancy.
- 12.3 The person should again be directed to an independent financial advisor upon indicating that this is their decision.

## **13. Interest Rate and Administrative Charges**

- 13.1 The Deferred Payments regulations set the maximum interest rate that can be charged on deferred payments. Local authorities have discretion to charge less than this maximum or to charge no interest at all; but cannot exceed the maximum. This maximum rate is fixed for periods of six months, and changes every 1 January and 1 July.
- 13.2 The Council will charge the maximum interest rate to enable the scheme to be cost neutral to the Council.
- 13.3 As the guidance and regulations set out, 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.

- 13.4 The final interest rate is derived by adding the gilt yield rate for the year in which the period starts to the default component (0.15%).
- 13.5 Subsequent rates will be dictated by the next fiscal events:
- a) From 1 July – 31 Dec next year, the rate will match the figures published with the 2024 Budget (likely to be published March 2024)
  - b) From 1 January – 30 June 2025, the rate will match the figures published with the 2025 Autumn Statement
- 13.6 Compound interest will be applied to the deferred amount owed on a daily basis.
- 13.7 Information on interest rates should be provided to the individual to assist them in making an informed choice about a deferred payment.
- 13.8 The interest charged and added to the agreement will be compounded. It is important that the person taking out a deferred payment understands that the interest will accrue on a compounded daily basis.
- 13.9 The interest will continue to accrue, even when someone has reached the equity limit.
- 13.10 In all circumstances, the interest will continue to accrue until the deferred amount has been repaid.
- 13.11 Administrative charges will be applied to recover the costs of running the scheme. These charges cover the setting up, and termination of the agreement, land registry fees, legal charges, and the associated ongoing running costs.
- 13.2 The administrative charges are set at:
- a) £555.17 to set up the deferred payment
  - b) £267.80 annual charge to cover updates to the account and 6 monthly statements
  - c) £123.60 to close the deferred payment account once the agreement is terminated
  - d) Other relevant actual costs e.g., land registry fees
- 13.3 Administrative charges are added to the deferred payment amount. The person can request to pay these separately if they wish to do so. If the charges are added to the deferred payment, interest charges will be incurred.
- 13.4 Whenever a person is liable for an administrative charge, they must be notified of this in writing.

- 13.5 Charges are also made to the person for the initial valuation and subsequent valuations at the appropriate lending 'trigger points.' The charge for this is met by the individual (see section 17 – Valuing the Property).

## 14. Property Ownership

- 14.1 This section provides an overview of the different types of ownership which will need to be considered when considering an application for a deferred payment:

### **Sole ownership**

This situation arises where a person owns their property outright, with no other owners.

### **Jointly owned property**

This situation arises where all co-owners effectively own 100% of the property while they are alive and 0% of it if they die leaving a survivor.

This means that if two people own a property as Joint Tenants and one of them dies, the survivor automatically becomes the sole 100% owner of the property and the deceased (and the deceased's estate) owns 0%. This means that the deceased cannot leave the property in their Will as they no longer own any interest in it.

To access the deferred payment scheme the joint tenants will have to sign the agreement and the charge.

To support the future claim if non-payment occurs regular invoices should be sent to the person or their representative for the care they have received.

### **Tenants in Common**

This situation can arise where a property is held as tenants in common - an increasingly frequent situation where each party owns a defined share, this can be two or more persons, but the total shares will add up to 100%. Each person can dispose of their share however they choose.

To access the Deferred Payment Scheme all parties have to agree to the Council having a charge on the property but only the share relating to the person in care can be deferred.

To support the future claim if non-payment occurs regular invoices should be sent to the person or their representative for the care they have received.

### **Unregistered land**

On occasion you will come across a property that is not registered with the Land Registry. Before entering into a deferred payment agreement, the property will require to be registered.

### **Refusal to the deferred payment scheme**

Refusal does not mean the property cannot be taken into account; it just means the deferred payment scheme cannot be accessed. It is crucial that the person or their representative is made aware of the implications i.e., that they will still be charged the full cost of their care (if assessed as being able to do so). They should be referred to IFAs as to what is the best option for them going forward.

## **15. Mental Capacity**

15.1 The Mental Capacity Act 2005 (MCA) applies to care, treatment and support of people aged 16 years and over, in England and Wales, who are unable to make some or all decisions for themselves. Staff working with people who lack capacity must have regard to the Mental Capacity Act.

15.2 The Act is accompanied by a statutory Code of Practice which explains how the MCA will work on a day to day basis and provides guidance to all those working with, or caring for, people who lack capacity. As the Code has statutory force, all staff who are employed in health and social care are legally required to 'have regard' to the MCA Code of Practice.

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

15.3.1 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. The family or a representative and as a last resort the Council should make an application to obtain a Deputyship order

15.3.2 Whilst this is being obtained the Council should pay the provider and send regular invoices detailing the charges to be paid to the person applying for deputyship. A signed letter of undertaking is required, confirming that any outstanding fees will be settled or the deferred payment scheme will be entered once legal authority is granted. If the deputyship is obtained and the responsible party has not paid, we will need to obtain a court order for the debt outstanding or resolve the outstanding debt through a deferred payment.

15.3.3 The person applying for the deputyship order should sign the Deferred Payment Agreement

### **15.4 Enduring Powers of Attorney (EPA)**

15.4.1 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. Details of the law and policies covering EPAs can be found via the Office of the Public Guardian (OPG). When a person lacks capacity the EPA must be registered with the OPG to give power to the attorney to act.

## **15.5 Lasting Powers of Attorney (LPA)**

- 15.5.1 People over the age of eighteen can formally appoint one or more people as Lasting Powers of Attorney 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.
- 15.5.2 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.
- 15.5.3 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.

## **15.6 Deputyship**

- 15.6.1 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.
- 15.6.2 A deputy can be a representative for the person or the Council or a solicitor.
- 15.6.3 The Council will need to be satisfied that there are no conflicts of interest in exercising the duties of deputy. Financial management of a person's monies through the Council deputy is within the Client Support Service.

## **15.7 Proof of identity**

- 15.7.1 A person applying for the scheme on behalf of someone for who they have legal authority must provide proof of their identity.

## **16. Securing the Deferred Payment**

- 16.1 The Care Act 2014 section 34 subsection 4 states that:

*“Regulations under subsection (1) may, in particular prohibit a Council from entering into, or permit it to refuse to enter into a deferred payment agreement unless it obtains adequate security for the payment of the adults deferred amount.”*

- 16.2 The Care & Support (Deferred Payments) Regulations 2014 states (section 4 subsection 1a) that:

*Local authorities must obtain adequate security for the payment of the adults deferred amount*

- 16.3 The deferred payment scheme in Oldham relates solely to property, no other form of security is included within the scheme.
- 16.4 Ideally the Council would prefer to have a first charge on the property but in cases where there is already a charge in place the Council may consider taking a second charge (depending on the amount of lending limit there is remaining in the property) with the consent of the first chargee.
- 16.5 The purpose of the valuation is initially to establish whether the available lending is greater than the upper capital limit which will make the resident self-funding; however, the value of the property will also inform the limit on the amount of lending the person can draw. This must be set at:
- The value of the person's share in the property is – 10% of the value - £14,250
- 16.6 When assessing whether the property is greater than the upper capital limit, an allowance of 10% of the estimated value should be allowed for sale costs to give a net estimated value. This 10% is included within the calculation of the lending limit.
- 16.7 The valuation must be net of any outstanding loan or mortgage secured on the property and of any repayment requirements of the property if it was purchased through "Right to Buy."
- 16.8 When calculating the lending within the property, this should be based on the minimum percentage of ownership attributed to the person.
- 16.9 The valuation of the property must be at the current market value and not the original purchase value.
- 16.10 To maintain adequate security for the deferred payment a first legal charge should be placed on the Property subject to clause 16.4.

## **17. Valuing the Property**

- 17.1 A valuation must be obtained on the property to be able to calculate the lending available for the deferred payment.
- 17.2 For a person applying for the scheme the following valuations will be accepted:
- a) Valuation provided by the person, their representative or family member which has been obtained from an independent valuer. In these cases a search will be carried out by the authority to cross check the valuation received.
  - b) A valuation by Oldham Council on behalf of the person applying for the scheme. A recharge for this valuation will be payable by the person or they can opt to add it to their deferred payment. The charge for this service will be the actual cost incurred, including the Council's administration costs. This is £375 plus VAT.

- 17.3 The approximate value of the property that is being taken into account in their financial assessment will be confirmed with the person.
- 17.4 On each anniversary of entry into care an updated valuation must be obtained. This can be completed by using either of the options within 17.2. If a person chooses to obtain their own valuation this must be provided to Oldham Council within 45 days of the initial request.
- 17.5 If a valuation is not provided within 45 days Oldham Council will instruct their own valuer and the cost of this service will be added to the deferred payment.
- 17.6 If the valuation is disputed by either party an independent valuation will be undertaken and carried out by a professional valuer. The person applying for the deferred payment will be liable to meet the charge for this service.
- 17.7 Where an independent professional valuer is instructed, their valuation of the property will be used to calculate the available equity for the deferred payment.

## **18. Property Search**

- 18.1 A property search must be completed for each application to the deferred payment scheme in Oldham. Wherever possible, this should be completed using the online Land Registry search.
- 18.2 If the result of the search to the enquiry is that the property is registered in the sole name of the person, then they should sign the deferred payment agreement and charge
- 18.3 If the result of the search is that the property is registered in joint names, then all parties must sign the deferred payment agreement and charge.

## **19. Legal Agreement**

- 19.1 It is necessary for the person or Attorney or Deputy to sign an agreement confirming that they wish to take advantage of the DPS and that all implications have been explained.
- 19.2 Where the property is registered in joint names all parties must sign and agree to the terms and conditions of the deferred payment scheme.
- 19.3 As part of signing up to the deferred payment scheme the complete process, timescales and policy of Oldham Council should be provided to the person in writing.

## **20. The Council's Responsibilities**

- 20.1 The Council must ensure that statements are provided in line with the minimum national standards (see section 22.)
- 20.2 The statement must include the amount of fees deferred, interest and administrative charges accrued to date, the total amount due and the lending remaining in the property.
- 20.3 Annual revaluations of the property must be obtained (see section 13) to ensure that the deferred payment arrangement continues to be viable.

- 20.4 When a person reaches 70% of the lending limit, the Council must review the cost of their care, when they might be eligible for any means tested support, the implications of any top-ups and whether the deferred payment agreement remains the best way for them to continue to meet their care costs.

## **21. The Person's Responsibilities**

- 21.1 If the person is making a contribution to their care, they are responsible for informing the Council of any changes to their income.
- 21.2 If the person's care and support needs change they are responsible for informing the Council of these changes so that the existing deferred payment agreement can be reviewed.
- 21.3 If the person has not had the property disregarded, they are responsible for informing the Council of any changes which may lead to the property being disregarded.
- 21.4 The person is responsible for ensuring that their home is adequately maintained whilst they are in care including adequate insurance to be insured with an insurance office of good repute and if requested to produce a copy of the policy to the Council
- 21.5 Before renting out the property the person must inform the Council in writing of their intention.
- 21.6 The person must obtain the consent of the Council prior to allowing someone to move into the property once the agreement for a deferred payment is in place and the person must ensure that any tenants enter into an assured shorthold tenancy.

## **22. 12 Week Disregard & Deferred Payment**

- 22.1 If it would be necessary to sell the property immediately to fund the care, i.e., any other available resources are below the upper capital limit (£23,250), then a 12 week property disregard will be automatic, and the deferred payment will be available subject to the appropriate eligibility criteria.
- 22.2 If there are sufficient resources in excess of the upper capital limit (£23,250), to fund care for any period, no matter how short, access to the scheme can be given at the time that capital reduces to the upper capital limit, and it would be necessary to sell the property. However, this time should be used to discuss the availability of the deferred payment scheme.
- 22.3 Any persons already in residential care who may need to access Council funding are not entitled to the 12 week property disregard.
- 22.4 However, if the request to access Council support is made due to a sudden and unexpected change the Council has the discretion to allow a 12 week property disregard. An example where this might be considered could be where a person's partner dies suddenly. This discretion would be applied on a case-by-case basis and a person would not have automatic entitlement.

- 22.5 The Council should aim to have the deferred payment agreement and the charge completed by the end of the 12 week disregard to enable a smooth transition to the deferred payment scheme.
- 22.6 If the disregard does not apply to a person's circumstances, the agreement should still be aimed to be finalised and in place within 12 weeks.

## **23. Deferred Payment Statement**

- 23.1 Twice yearly the person will be provided with up to date statements showing the amount owing to the Council or within 28 days of a request for a statement.
- 23.2 These statements must be sent as a minimum every 6 months and under regulations must be provided to the adult:
- a) at the end of the 6 months from the date the deferred payment agreement was entered into.
  - b) every 6 months after that; and
  - c) within 28 days of a request being made by the person or their representative

## **24. Benefits Entitlement**

- 24.1 As a self-funder the person is likely to be entitled to and should apply for Attendance Allowance or Personal independence Payments and any other relevant social security benefits and pensions. They may already be in receipt of Disability Living Allowance (care component). Benefit checks should be undertaken, and referrals made to an appropriate welfare benefits adviser where relevant.
- 24.2 The person or their legal representative is responsible for notifying the Department for Work and Pensions of any changes to circumstances.

## **25. Equity Depletion**

- 25.1 When the remaining lending value reduces to the lower capital limit a revaluation of the property is required. This must be carried out by an independent valuer.

## **26. Disposable Income & Personal Expenses Allowances**

- 26.1 The person may be required to pay a contribution from income to meet the costs of their care (the remaining care fees being the amount deferred); but the person must be left with the prescribed minimum allowance.
- 26.2 The general personal expenses allowance (PEA) received by every person placed in residential care by the Council may not be enough to cover the maintenance of the property.
- 26.3 The costs involved in maintaining the property, for example, insurance and repairs must be met by the person. The Department of Health guidelines and regulations state that an amount of up to £144 per week should be allowed to be retained by the person towards the upkeep of their property, if they want it. This is called the Disposable Income Allowance.



- 26.4 The person could choose to keep less than this per week; and the Council may wish to discuss the person's needs with them when arranging the deferred payment.
- 26.5 On leaving the deferred payment scheme (or if the deferred payment becomes frozen) the PEA reverts back to the normal figure currently £28.25 per week.

## **27. Notification on reaching the maximum deferred amount**

- 27.1 When the deferred debt is reaching the maximum amount that can be deferred the regulations state that the Council must give 30 days' notice. However, this could be served sooner and it is suggested that 6 months beforehand is a more appropriate length of time.
- 27.2 Discussions around the cost of care with the person and in particular what might happen to any top ups or the need to consider movement to another care home should take place at this stage.

## **28. Continuing health care**

- 28.1 The deferred payment cannot cease because full continuing health care funding is awarded and no funding is due from the Council.
- 28.2 Making voluntary payments will reduce the amount of the accrued debt as interest will continue to accrue on the debt until the amount due is repaid in full.

## **29. Circumstances when a Deferred Payment may be Stopped**

- 29.1 In some circumstances it may be necessary to refuse to defer any more charges. Examples of this can include:
- a) when a person's total assets fall below the level of the means-test, and the person becomes eligible for Council support in paying for their care;
  - b) where a person no longer has need for care in a care home.
  - c) if a person breaches certain predefined terms of their agreement and attempts to resolve the breach are unsuccessful and the contract has specified that the authority will stop making further payments in such a case.
  - d) if, under the charging regulations 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.
    - ii. where a relative who was living in the property at the time of the agreement subsequently becomes a dependent. The Council may cease further deferrals at this point.

- 29.2 Where it is decided that an agreement should cease, a minimum of 30 days advance notice of the termination should be provided to the person, with an indication of how their care costs will need to be met in future. This notification must be in writing.
- 29.3 Termination of the agreement should not be applied if the person would, as a result, be unable to pay any charges due to the Council from their non-housing assets.
- 29.4 The deferred payment agreement **must** be ceased if the person has reached the 'lending limit' that they are allowed to defer or when the person is no longer receiving care and support in a care home setting.

### **30. Termination of the Deferred Payment**

- 30.1 The deferred payment agreement can be terminated in 3 ways:
- a) at any time by the person, or someone acting on their behalf, by repaying the full amount due
  - b) when the property is sold and the debt is repaid in full
  - c) when the person dies, and the amount is repaid in full from their estate
- 30.2 On termination of the agreement, the full amount due, including care costs, any accrued interest, administrative charges, and legal fees, must be paid in full.
- 30.3 Where the Council, as Deputy, is selling the property, it is essential that the Council applies a fair and equitable approach to agreeing the purchase price.
- 30.4 In cases where the agreement is terminated due to the person's death, the amount due must be either paid out of the estate or by a third party and the accrued debt should be added to any other outstanding amount due to calculate the final debt that is payable.
- 30.5 The Council should wait a minimum of 2 weeks before providing the executor/administrator with a breakdown of the actual or provisional debt and seek information from the executor/administrator on the approximate value of the estate to confirm previous financial statements and inform the executor/administrator that the debt is due 90 days after death.
- 30.6 The final debt should be confirmed in writing to the executor/administrator no later than 4 weeks after the person's death however interest will continue to accrue on the amount owed after a person's death until the amount due is repaid in full.
- 30.7 If the debt has not been cleared within 4 weeks of the expiry of the 90 day period a reminder should be sent confirming the amount of the debt and requesting a progress report.
- 30.8 If the Council concludes that active steps are not being taken to repay the debt the Council will commence legal proceedings in line with Section 69 of the Care Act 2014 and instigate the Council's debt recovery process and all reasonable costs associated with instigating this process will be added to the debt.

- 30.9 The interest rate charged is that as detailed in the Care and Support Regulations 2014 and any amount owed as a debt which is being pursued through the County Court procedure will attract a higher rate of interest.
- 30.10 Once the debt has been repaid in full the Council will provide the executor/administrator with confirmation that the agreement has been concluded and the charge removed from the Property.

## **31. Removing the Charge**

- 31.1 The charge is removed by completing form AP1 and a DS1 and forwarded to the Land Registry.
- 31.2 The Land Registry will confirm that the charge has been removed.