

Deferred Payments Policy

Warwickshire County Council

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1. Introduction

This document sets out the policy for Warwickshire County Council's Deferred Payment Scheme.

2. Background

The Care Act 2014 requires all councils in England to provide a Deferred Payment Scheme for residents who enter residential or nursing care, subject to eligibility requirements.

National guidance on the eligibility criteria for the scheme is provided by the Department of Health and Social Care, with councils being responsible for implementing their own policies, including any discretionary elements.

Further information about the Care Act and deferred payments can be found on the Warwickshire County Council website.

3. Key legislation, regulations & guidance

- The Care Act (2014) - Sections 34-36
- The Care and Support (Deferred Payment) Regulations 2014 ('the Regulations')
- The Care and Support (Deferred Payment) (Amendment) Regulations 2017
- Care and Support Statutory Guidance chapter 9

4. Principles

The main purpose of the scheme is to prevent people from having to sell their home in their lifetime to pay for their care home charges. The discretionary parts of the scheme may provide additional flexibility for when and how people pay for their care and support.

It should be stressed from the outset that the payment for care and support is deferred and not 'written off'. The costs of provision of care and support will have to be repaid by the individual (or a third party on their behalf) at a later date.

This policy describes Warwickshire County Council's approach to deferred payments in line with relevant legislation, regulations and guidance. It may be updated in line with any subsequent changes.

5. Eligibility for the deferred payment scheme

The council will offer a deferred payment where a person receiving residential or nursing care meets the eligibility criteria described in Chapter 9 of the Care and Support Statutory Guidance, namely that the person:

- is ordinarily resident in the Warwickshire area, or present in Warwickshire but has no settled residence; or is ordinarily resident in another local authority area but Warwickshire County Council has determined that they will or would

meet the individual's care needs

- has eligible care needs which need to be met through residential or nursing care in a care home
- has a legal or beneficial interest in a property which is their main or only home, and is not disregarded in their financial assessment, for example, it is not occupied by a spouse or qualifying relative
- has capital of less than £23,250. Capital is defined within the Care and Support Statutory Guidance and includes savings and other non-housing assets, excluding the value of the person's main home

AND

- is able to provide adequate security for the deferred payment.

Where a person does not meet all of the eligibility criteria, the council will consider whether to exercise its discretion to accept an application. These applications will be considered on a case-by-case basis subject to individual circumstances. As this power is discretionary, a definitive list of criteria cannot be provided. However, circumstances may include:

- Where a person has few accessible assets that cannot be easily, or quickly liquidated or converted to cash to pay for fees.
- Where a person wishes to use property equity to fund more than their core care costs and purchase affordable top-ups.
- Where a person is narrowly not entitled to a deferred payment e.g. they have assets slightly above £23,250 but are likely to meet the criteria in the near future.

The council will also consider applications for deferred payments from people whose care and support is provided in supported living accommodation, and who intend to retain their former home and pay their care costs from their deferred payment.

6. How much can be deferred?

The council will defer actual residential or nursing care costs. The amount will be determined in accordance with statutory guidance and take account of:

- the cost of the residential or nursing care less any contribution which the applicant will be making following a financial assessment of their other resources
- the equity within the person's property.

Where the deferred amount reaches a level where it is likely to exceed the upper limit, the council has discretion on a case-by-case basis to exceed this amount. This

discretion can be exercised in cases where, for example, refusal of a deferred payment will cause severe hardship, because the person does not have sufficient other assets or income to pay for care costs without selling their property.

7. Security

The council will consider whether there is adequate security in place when deciding whether a person is entitled to a deferred payment. The onus is on the applicant or their representative to provide evidence to the council of adequate security and to comply with reasonable requests by the council. Security will be in the form of a first legal charge on property.

In cases of jointly owned property the council will require all owners to agree to conditions and a charge being registered against the property.

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 be exercised by the council based on the individual circumstances, and subject to the council being satisfied that there is adequate security to protect any debt.

Where a property value substantially changes the council may review the amount being deferred and the sustainability of the agreement.

A deferred payment agreement which includes a legal charge on property is **not** a regulated credit agreement in line with the Credit Act 1974 and Financial Services and Markets Act.

Once the deferred amount reaches 50% of the value of the security, then the valuation of the security will be reviewed periodically.

8. Sustainability

The council will consider whether a Deferred Payment Agreement will be appropriate and sustainable to meet the applicant's likely care charges. To determine this, it may consider:

- The potential duration of the agreement
- The equity available in property
- The cost of the care
- The sustainability of a person's contributions e.g., from savings
- The flexibility to meet future care needs, including if there is an escalation in those care needs.

The total amount deferred will be reviewed on a regular basis to ensure amounts do not exceed the equity limit of the property value minus 10% minus £14,250¹ and the value of any legal charge already secured on the property.

¹ The Lower Capital Limit set by the Department of Health and Social Care

9. Property valuation

Under the deferred payment scheme the council will require a valuation of the property against which payments will be deferred. The person applying for the deferred payment will also be entitled to arrange an independent valuation of the property, which may be separate to the council's own valuation. The cost of a valuation will be paid for by the deferred payment applicant or their representative.

If multiple valuations differ substantially or a valuation is disputed, the council will refer to the Valuation Office Agency for a valuation and the cost will be payable by the person applying for the deferred payments.

The valuation of the property will be periodically reviewed during the lifetime of the Deferred Payment Agreement to ensure the sustainability of the deferred payment agreement.

Disputes about property valuations will be dealt with under the review and appeals procedure.

10. Financial assessment of contributions

Applicants entitled to a deferred payment will also be assessed to check if they will have to make a financial contribution towards the costs of care from their eligible income and capital (for example, savings and investments). The assessed contribution will follow Department of Health and Social Care guidance, and it is the responsibility of the applicant or their representative to keep the council informed of changes to their financial circumstances that may affect their contributions or deferred amounts.

Should payment of the assessed charge not be made the council will consider whether to offer extending the Deferred Payment Agreement to cover any debt arising. In doing so, it will consider the sustainability and conditions of the agreement. Where the council includes any non-payment within the deferred amount, interest will be payable in accordance with the appropriate deferred payment interest charges. Where the council pursues recovery through the Courts interest may be charged at the County Court rate.

11. Applying for a deferred payment

All applicants for a deferred payment must complete the designated application form, risk assessment form and provide suitable evidence of ownership as requested by the council. Incomplete forms or a failure to disclose information will result in applications being rejected.

The applicant must have mental capacity to enter into a Deferred Payment Agreement or, where they lack mental capacity, have a legally appointed person who manages their finances, for example a Deputy or Attorney who must apply on their behalf.

When assessing applications for a deferred payment the council will have regard to the eligibility criteria, security and the sustainability of the arrangement.

The Deferred Payment Agreement will be in a standard form, provided by the council. It will take effect as a legal charge over the applicant's property.

The Deferred Payment Agreement will only take effect when it has been signed by the council and the applicant or their appointed representative. A certified copy of the appointment of a Power of Attorney or order from the Court of Protection appointing a Deputy will be accepted as evidence of authorisation to sign on behalf of the applicant.

The person entering into the Deferred Payment Agreement will need to abide by a number of conditions including but not limited to the following:

- The property is maintained in reasonable standard of repair and condition.
- All outgoings associated with the property (e.g., Council Tax, service charges, ground rent, insurance) are paid.
- Any net rental income derived from letting the property during the period of the scheme will form part of the individual's financial assessment, in accordance with Department of Health and Social Care statutory guidance.
- The applicant and/or their representative acknowledge that they have received the council's advice that they should seek independent financial advice before committing themselves to the agreement.
- The applicant completes a full application for assistance on the council's designated application form, and provides any evidence required by the council in support of the application.
- Where the property is jointly owned, the co-owners as well as the applicant must agree to the council's form of charge.
- The applicant or their representative agrees to notify the council of any change in circumstances that would affect the value of property or the sustainability of the deferred payment.

12. Deferred Payment Agreements

Successful applicants will be required to enter into a Deferred Payment Agreement. This will take effect as a legal charge over the applicant's property.

The council may enter into an agreement with the applicant who is the owner of a property, or (if they lack capacity) their representative who holds a Power of Attorney or is a Deputy appointed by the Court of Protection, providing the application conditions are fulfilled, as described in this scheme.

The Deferred Payment Agreement will set out a number of terms and conditions that must be adhered to, including but not limited to:

- The level of interest and how interest will be calculated against the deferred

payment.

- The administrative charges applicable.
- How the agreement can be terminated.
- Circumstances in which the council can refuse to defer the payment of any more care fees.
- Details of the property charge or any other form of security.
- A written statement from the council of the amount owing at least every six months and within 28 days if a person asks for it.
- Terms and conditions that must be met to maintain or progress the agreement and the effects of the terms of the agreement being broken.
- The person's responsibility to notify the council if they intend to rent, sell or dispose of any interest in the property.
- A requirement for the person to obtain the council's consent for any person to occupy the property.
- A term which explains the equity limit applicable and the requirement for 30 days' notice when this limit will be reached.
- An explanation that charges will not be deferred once the adult no longer requires or receives care and support in a care home (or supported living if applicable).

The Deferred Payment Agreement will be subject to the 'Unfair Terms in Consumer Contracts Regulations 1999' and all other relevant legislation.

13. Administration fees and interest charges

The Care Act (2014) allows the council to charge an administrative fee for arranging the deferred payment. There may also be ongoing administrative fees which become payable during the course of the Deferred Payment Agreement that will be detailed on the Warwickshire County Council website. These fees can also be deferred. Administrative fees are the actual costs of providing a deferred payment and may include but are not limited to:

- The costs of registering a charge with the Land Registry, including land registry searches.
- Costs of valuing and any re-valuation of the property.
- Staffing, management and legal costs incurred.
- Postage, printing and communications.

The Care Act allows the council to charge interest on the deferred payment amount. The maximum interest rate is set by legislation and may change every six months.

This currently sets the maximum interest to track the market gilts rate published in the Economic and Fiscal Outlook by the Office of Budget Responsibility plus 0.15% but may be subject to future changes.

The council's interest rates, compound method of calculation and charges will be available when completing a Deferred Payment Agreement and will be published and updated on the Warwickshire County Council website.

This will enable applicants for a deferred payment to clearly see the costs of the scheme and to enable them or their representatives to plan for the costs of care.

Fees and charges will be set at a level to cover the cost of providing a deferred payment.

If payment of the debt is not made when due the council will pursue recovery through the County Court and may charge the County Court rate of interest if higher.

14. Refusal of Deferred Payments Agreements

Where an applicant does not meet the eligibility criteria for a deferred payment, the council may refuse to offer one (subject to any discretionary decisions it may make). The applicant will be notified in writing of the decision and given reasons for it and informed of any appeal rights. Reasons for refusal may include but are not limited to:

- There being insufficient equity in the property to fund the deferred payment.
- The person or their representative failing to provide relevant information to process the application.
- The council being unable to place a legal charge on the property which would secure the deferred payment.

Where a person meets the eligibility criteria for a deferred payment and, according to guidance, the council would otherwise be required to offer the person an agreement, the council may exercise discretion to refuse a Deferred Payment Agreement where for example:

- The council is unable to secure first charge on the property.
- A person does not agree to terms or conditions contained within the agreement.
- The property becomes uninsurable.
- A person wants to defer more than they can provide adequate security for.
- A person is seeking a top up.
- There is considered to be a risk of non-payment and as a safeguard against default.

15. Reviews and deferred payment statements

The Deferred Payment Agreement will be reviewed periodically to consider the value of the property and ensure adequate security is available to protect the council's legal charge on the property. The frequency of this review will be decided on a case-by-case basis.

A statement will be sent (at least six-monthly) to the individual or their representative.

The annual statement will set out:

- The amount of fees deferred.
- Interest and administrative charges.
- Total amount due.
- Estimated equity remaining available in the property.

The Deferred Payment Agreement will be reviewed when the deferral exceeds 50% of the value of the security, to determine whether the arrangement can continue.

16. Stopping deferred payments

In some circumstances the council may refuse to defer any more charges for a person who has an active Deferred Payment Agreement. Where this applies, subject to the normal terms of termination, the council will provide a minimum of 30 days' notice that deferrals will cease.

Where the council decides to stop further deferrals it will consider the person's circumstances and its overarching duties under the wellbeing principle.

In such circumstances the council will not demand repayment, and repayment is still subject to the usual terms of termination.

Circumstances where the council may refuse to defer any more charges subject to its discretionary powers can include:

- Where a person's total assets fall below the level of the means test, and the person becomes eligible for local authority support in paying for their care.
- Where a person no longer requires care in a care home, or their care becomes funded by another organisation.
- If a person breaks predefined terms of their contract and the council's attempts to resolve the matter are unsuccessful.
- Where a property becomes disregarded under regulations and the person qualifies for council support.

- Where the person has reached the equity limit.

17. Terminating the Deferred Payment Agreement

A Deferred Payment Agreement can be terminated in the following circumstances:

- Voluntarily by the person receiving care or someone acting on their behalf, e.g., by repaying the total amount due
- When the property is sold
- When the person receiving care dies and the outstanding amount is repaid from their estate or by a third party.

On termination the full amount due (care charges, interest accrued, administrative and legal fees) must be paid to the council.

Where an agreement is voluntarily terminated the council will require written notice of termination (as defined within the Deferred Payment Agreement).

Where a person dies the full amount due (care charges, interest accrued, administrative and legal fees) must be paid to the council from a person's estate. Where payment remains outstanding 90 days after death the council will take active steps to recover the debt that may include legal proceedings.

If a Deferred Payment Agreement is terminated, the council may undertake a reassessment of the person's social care needs and finances. The purpose of the reassessment would be to ensure, for example, that the person receiving care continues to have eligible care needs, where the council has a continuing responsibility to fund or arrange care.

If the person fails to comply with the terms of the agreement, the council may cancel any commitment to lend. In this case, the agreement would immediately be cancelled.

18. Review and appeals

A person may ask for any decision relating to a deferred payment and application to be reviewed. The reasons for review may include:

- Review of a decision to refuse an application due to the provision of new information.
- Review of a decision to refuse an application because of an error in the decision-making process.

Any request for a review should be made within 14 days of the date of being notified of a decision for a Deferred Payment Agreement application. It should explain the reason for the request and include any appropriate evidence. This period may be

extended at the discretion of the council, if it considers there are exceptional circumstances.

If the applicant is dissatisfied with the outcome of the review, they can then appeal within 14 days of being notified. This period may be extended at the discretion of the council, if it considers there are exceptional circumstances. Decisions will be made by an appropriate person / persons.

If the applicant remains dissatisfied with the outcome of the appeal then they can request that this matter is dealt with under the council's complaints procedure.

19. Information and advice

The council will provide information about deferred payments through a variety of channels including the council's website. Information will be provided during the care and financial assessment processes or on request.

Information and advice may also be available from third parties, including access to independent financial advice and advice on care funding options, which is recommended.

Appendix 1: Deferred payment scheme flowchart

