

Deferred Payment Scheme

Please Note – Deferred Payment Agreements can:-

*Only be taken up by someone who **has capacity themselves** or by someone who is their **legally authorised representative**, i.e. someone with a lasting power or attorney or a financial & property deputy under the Court of Protection.*

AND

*Only be taken out against properties that are **formally registered** with the Land Registry.*

IF BOTH OF THESE ARE NOT IN PLACE A DEFERRED PAYMENT AGREEMENT CANNOT BE CONSIDERED.

Why do Social Services charge for its services?

The Welsh Government expects Social Services Departments to raise income to help pay for the services they provide.

Moving into a care home can have major financial implications so whilst this factsheet provides details as to how your residential and nursing care services are calculated, you should note that this is for information only and you should not rely on it as a full statement of the law.

Details of some of the national organisations who can offer independent advice can be found at the end of this factsheet.

Regulations and Codes of Practice within the Social Services and Wellbeing (Wales) Act 2014 (hereby referred to as Act 2014) determine the charging rules which means that the Council may have to ask you to pay a contribution towards the cost of care services you receive.

Background

The Act 2014 sets out the requirements for local authorities in relation to the deferment of payments for those individuals whose assessed needs can be met in a care home.

From 6th April 2016, the Council must offer a deferred payment agreement to all individuals entering or are in a care home who meet the eligibility criteria. Deferred payment agreements made by the Council on or after 6th April 2016 will be subject to the requirements of the Act 2014.

Deferred payment agreements agreed by the Council and an individual or their financial representative prior to 6th April 2016 will continue subject to the terms and conditions of that existing agreement.

By entering into a deferred payment agreement an individual, whose property is taken into account in their financial assessment, can defer or delay paying some or all of their care costs until a later date so as to not be required to sell their property immediately upon entering a care home. Deferring payment of these costs can help an individual to delay the need to sell their home at a time that can be challenging (or even a crisis point) for them and their family as they make the transition into residential care.

What is the Eligibility Criteria to be able to access a Deferred Payment?

The Council **must offer** a deferred payment agreement to all individuals entering or in residential care who meet the set eligibility criteria. In summary, these individuals are:

- Someone who has been assessed by the Council as having eligible needs, which should be met through care in a care home.
- Someone who owns or has a beneficial interest in a property which they occupy as their only or main home.
- Someone who is or will be required to pay a charge for their residential care.
- Someone who understands and agrees to the terms and conditions of the deferred payment agreement.

The requirement to offer a deferred payment agreement to those individuals who meet the eligibility criteria **does not apply unless the following conditions are met:**

- The value of the individual's capital assets, excluding their home, is less than the upper capital limit, (the capital limit set by Welsh Government for 2022/23 is £50,000).
- The Council is satisfied the individual has an interest in a property which they occupy as their home, or which they used to occupy as their home.

- The individual's weekly assessed income (*as calculated under the Council's Residential Charging Policy*) is insufficient to meet the full care costs for their residential accommodation in a care home.
- The individual is in agreement with all of the terms and conditions included in the deferred payment agreement offered.
- The Council has obtained consent from any other person who it considers has an interest over the property and which it considers may prevent it from realising the sale of the property or recovering any deferred amount.
- The Council is able to create a charge over the property which the individual has an interest in and that it takes priority over any other interest or charge on the property.
- The property is registered with the Land Registry.

How do I apply?

As part of the Council's eligibility criteria for care services, we will provide you with a financial assessment form, consent to share information form and charging for care factsheet.

At this stage of the process it will also be identified that you own a property, which may need to be taken into account as part of the financial assessment process. If this is the case, this factsheet and accompanying Deferred Payment Application Form will be provided to you by your care assessor. All applications for a deferred payment agreement must be made on the Council's standardised deferred payment agreement application form signed or affirmed by the individual or their legal representative. Alternative formats will be made available where necessary.

The application form should be returned to the address provided at the end of this factsheet, within 15 days of receipt. The aim is to have an agreement finalised within the 12 week period your property is initially disregarded or within 12 weeks of the person approaching the Council.

You will be required to undertake a Financial Assessment

All individual's applying for a deferred payment agreement will be subject to a financial assessment (under the Council's Residential Charging Policy) to determine how much they are able to contribute to their care costs from their assessable income. The shortfall between their weekly contribution and the full cost of the residential accommodation will be the sum available for the deferred

payment agreement.

An individual may choose to keep less of the appropriate minimum income amount should they wish. This might be advantageous to the individual as they would be contributing more towards their care costs from their income, and consequently reducing the amount they are deferring. However, this **must** be entirely at the decision of the individual and the Council will not ask the individual to retain less.

If a person decides to rent out their property during the course of their agreement, the Council will permit the person to retain a percentage of any rental income they secure. The remaining amount will be included in their assessed contribution.

Appointing someone to act for you

The Council is unable to support a request for a deferred payment agreement where there is any doubt about the service user's capacity* to enter into the agreement. However, a deferred payment agreement may be requested on behalf of an adult assessed as lacking capacity by someone who is their legally authorised representative, i.e. someone with a lasting power or attorney or a financial & property deputy under the Court of Protection.

** The Mental Capacity Act 2005 (MCA) makes it clear that capacity is decision specific. By this it means that an individual's capacity will need to be assessed in relation to whatever decision they are facing and that no assumptions should be made about an individual's, or group of individuals', capacity.*

How much can be deferred?

In principle an individual will be able to defer all their care costs, subject to any contribution their financial assessment has determined they are required to pay towards this cost from their assessed income.

A deferment can be for:

- 100% of the care costs due from the individual, less any amount they are required to pay towards these costs from their assessable income.
- A lesser amount as the person requests, less any amount they are required to pay.

The Council will consider whether an individual can provide adequate security for the amount of the deferment agreed (i.e. the likely duration of the deferral, projected costs and how care needs and costs may increase over time and the equity available to recover the amount advanced).

If an individual has expressed a preference for a care home that costs more than the Council's usual rate for the type of care home they require, the Home will charge the person in certain circumstances, or a third party, an additional cost payment for the additional cost involved.

Where this occurs and an individual requests that the additional cost forms part of the amount to be deferred (i.e. to be included in the required amount), the Council will also consider whether the total amount being requested as a deferred payment agreement is appropriate for the value of the security to be used for the agreement.

Sustainability of the Deferred Payment

When deciding the amount that can be deferred, the Council will need to have assurance that the arrangement is sustainable. The factors that will need to be taken into consideration, upon receipt of the application form, will include:-

- The likely period that the person wishes to have the deferred payment agreement for (if they intend to use it as a bridging loan).
- The Equity available.
- The flexibility to meet future care needs, and
- The period of time a person would be able to defer their care costs for.

The value of the property will be discussed prior to any agreement being signed. An independent valuation can be requested but this will be at the expense of the individual.

The amount being deferred will be reviewed twice a year to ensure that the amount being deferred does not exceed the equity limit.

Refusing a request for a Deferred Payment

The Council will decline any application for a deferred payment agreement when:

- An individual or their representative has failed to provide the information required to process the application; or

- Eligibility criteria are not met; or
- Adequate security cannot be provided or the Council is unable to secure the consent of another person with an interest in the property to placing a charge on it, or where it cannot obtain a priority or ranking first charge on the property.
- A deferred payment has been requested for an individual assessed as lacking capacity to enter into a deferred payment agreement where the person has no representative and no deputy can be appointed. (Under these circumstances, as a last resort, the Council may consider applying to the Court of Protection to become their financial deputy).
- The service user does not agree to the terms and conditions of the deferred payment agreement. This might be, for example, failing to meet a condition that the person insures and maintains the property in good order or the property is unregistered.
- An individual's capital, other than the value of the property, is above the capital limit (£50,000 for 2022/23), or
- Where their weekly assessed income is sufficient to meet their care costs, so that they are able to afford the full cost of the residential accommodation without the need for an agreement.

In any circumstance, where any of the eligibility criteria for a deferred payment are not met, the Council will consider the nature of the non-compliance with the above criteria and whether in any event to exercise discretion to offer a deferred payment agreement.

When an application for a deferred payment agreement is declined, the Council will provide the applicant or their representative with its written reasons for refusing the request. Information about the right to appeal against the decision will also be provided.

Obtaining Security

The Council will require that adequate security must be provided for the amount deferred. Where eligibility criteria are met, the Council will accept as adequate security a legal charge in favour of the Council over the property which the individual owns (either solely or jointly) as their only or main residence.

The Council will obtain written consent to the deferred amount being secured by legal charge by way of a first legal charge in favour of the Council from all owners, or their representatives, and any other person who has a beneficial interest in the property before an offer of a deferred payment agreement may be

made.

All owners will then need to be signatories to the legal charge agreement and, where there are co-owners, they will need to agree not to object to the sale of the property for the purpose of repaying the required amount due to the Council. The Council will also obtain similar consent to a charge being created against the property from any other person who has a beneficial interest in the property.

The property must be registered with the Land Registry before a deferred payment agreement can be offered. Registration and all fees and charges relating to registration are the responsibility of the property owner(s).

Maintenance, Insurance and use of secured property

It will be the responsibility of the individual or their legal representative to ensure that the property, over which a deferred payment agreement is secured, is adequately maintained and insured throughout the duration of the agreement.

The individual or their legal representative must seek the Council's consent:

- To the way in which the property is to be used throughout the duration of the agreement
- Before allowing any person to occupy the secured property during the duration of the deferred payment agreement.

Administration Charges, Legal Fees and Interest

The Council does not, at this time, propose to apply charges, fees or interest to the accruing deferred debt.

Valuations

Where an individual intends to secure their deferred payment agreement against their interest in a property, the Council will obtain a valuation of that property. An individual may request an independent assessment of the property's value (in addition to the Council's valuation). If an independent assessment finds a substantially differing value to the Council's valuation, the Council and individual will discuss and agree an appropriate valuation prior to proceeding with the agreement.

Making the Agreement

Once agreement in principle for a deferred payment has been reached, the Council will provide a deferred payment agreement, taking the legal form of a contract between the Council and the individual in receipt of care.

Where an individual chooses to enter into a deferred payment agreement, the agreement should be finalised and in place before the end of the 12-week property disregard period which is provided for in the Council's Residential Charging Policy or within 12 weeks of the person approaching the Council.

The deferred payment agreement will include all of the terms and conditions and information necessary to enable the individual or their representative to ascertain his or her rights and obligations under the agreement.

This will include:

- Details of the legal charge that will be placed against the property by the Council to secure the debt.
- How the agreement can be terminated by either party.
- Details of six-monthly statement of debt.
- Requirement to obtain consent from Council before allowing any person to occupy the property.

You should be aware that 14 days will be allowed to read and consider the agreement, including time for the individual to query any clauses and discuss the agreement further with the Council.

Care costs cannot be deferred until the Council's deferred payment agreement has been signed or affirmed by the individual in need of care or where relevant their representative.

Six-monthly written updates will be provided of the amount of care costs deferred to date. This will also include the total notional amount due and an estimate of the equity remaining in the property not covered by the required amount deferred. The Council will also provide the person with a statement on request within 28 days.

The update will set out the required amount deferred during the previous period, alongside the total amount deferred to date, and will also include a projection of how quickly the required amount deferred would leave only the level of the capital limit entity in their property (at which point no further deferment against the value of the property could occur).

A reassessment of the value of the chosen property used as security will be undertaken once the amount deferred exceeds 50% of the security (and periodically thereafter) and this amount considered against the level of the capital limit so as to ensure a person is left with at least the level of the capital limit equity in their property.

Circumstances in which we may stop deferring care costs

There are also certain circumstances where the Council may refuse to defer any further care costs for an individual who has an active deferred payment agreement in place. This refusal may be permanent or temporary depending upon whether the reason for it is a permanent or temporary change in the individual's circumstances. The Council will not demand repayment of the whole required amount deferred in these circumstances and repayment of that amount will still be subject to the usual terms of termination.

The Council will provide advance notice that further deferred payments are going to cease and will provide the individual with an indication of how their care costs will need to be met in future. Depending on their financial circumstances, the individual may be required to meet all or part of their care costs from their weekly assessed income, where this is more than the appropriate minimum income amount or from any savings they hold above the level of the capital limit.

The Council will only exercise these powers to cease a deferred payment agreement after consideration as to the impact the decision to do so has on the individual's financial circumstances and their overarching duties to meet an individual's assessed social care needs.

Termination of the Agreement

A deferred payment agreement can be terminated in three ways:

- 1) At any time by the individual or their financial representative by repaying the outstanding care costs due in full. The Council should be notified in writing by the individual or their financial representative of their intention and the Council will relinquish the charge on the property on receipt of the full amount due.
- 2) When the property is sold and the authority is repaid. If a service user decides to sell their property, they should notify the Council during the sale process. They will be required to pay the amount due in full from the

proceeds of the sale and the Council will relinquish the charge on their property.

- 3) When the service user dies and the amount is repaid to the local authority from their estate.

On termination, the full deferred amount due must be paid to the Council to cover all costs accrued under the agreement and the individual (and/or the third party where appropriate) will be provided with a full breakdown of how the amount due has been calculated.

Once the amount has been paid, the Council will provide the individual or the appropriate third party with confirmation that the agreement has been concluded and confirm (where appropriate) that the charge against the property has been removed.

Termination following the death of an Individual

The Council must be either paid from the estate or paid by a third party. A person's family or a third party can settle the debt to the Council by other means of repayment if they wish, so as to avoid selling the property against which the deferred payment agreement had been secured. Where they do the Council will accept an alternative means of payment, provided the payment covers the full amount due.

The Council will wait at least two weeks following the individuals' death before approaching the executor with a full breakdown of the total amount deferred (but a family member or the executor can approach the Council to resolve the outstanding amount due prior to this point).

Responsibility for arranging for repayment of the amount due (in the case of payment from the estate) falls to the executor of the will. In the event of an undue delay the Council may charge interest on the amount owed, from the person's date of death until the date the amount due is repaid in full.

If terminated through a service user's death, the amount owed to the Council under a deferred payment agreement falls due 90 days after the individual has died. After this 90 day period, if the Council concludes that active steps to repay the debt are not being taken, for example if the sale is not progressing and the Council have actively sought to resolve the situation, or the executor is wilfully obstructing sale of the property, the Council may enter into legal proceedings to

reclaim the amount due.

Review and Complaints

Where a deferred payment agreement has been refused by the Council, the applicant or their representative has the right to ask for the decision to be reviewed.

If an individual is still unhappy with the Council's decision they will be able to make a formal complaint about this to the Council. This will be considered through the Social Services complaints procedure.

Where can I get more information than there is in this leaflet?

The Council has a helpline for information and advice. Please do not hesitate to contact the Financial Assessment Team on **(01443) 680380 or (01443) 680383** between 9am and 5pm (Monday-Friday) or in writing to; Charging Unit, Oldway House, Porth, CF39 9SD.

Any documentation relating to a deferred payments application should be returned to the above address.

Where can I get Independent financial advice?

We are aware that planning for your future care and support needs can be complicated and funding can be expensive. Taking professional advice may be helpful in enabling you (and your family) to identify the most suitable and cost effective solution.

There are a large number of organisations that will provide free general advice about the funding of care and support. These are a good place to start if you are looking for information and want to see what sort of options are available.

The Money Advice Service

Tel No 0800 138 7777

<https://www.moneyadviceservice.org.uk/>



Age Cymru

Tel No - Advice Line 0300 303 44 98

<http://www.ageuk.org.uk/cymru/>

Citizens Advice

Tel no Helpline 0800 702 2020

<https://www.citizensadvice.org.uk/wales/>

**This information can be made available in other formats
(Welsh, large print, Braille and other languages)**

To comment about this fact sheet or any other information received from social services please contact: socialservices@rctcbc.gov.uk or visit:

<https://www.rctcbc.gov.uk/EN/Resident/AdultsandOlderPeople/SupportingAdultsinRhonddaCynonTaf.aspx>