

Deferred Payments Scheme

Care Act 2014 (Residential Care Funding)

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Team/Dept responsible for Policy: Department for Communities and Wellbeing, Personalisation and Support Business Team.

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Glossary

An explanation of the special words and phrases used is set out below:

Key word	What does it mean?
Assured Tenancy	A type of lease that gives limited security of tenure to a tenant and specific means of terminating the lease to the landlord.
Compound Interest	Interest that is calculated on the combined total of the original sum borrowed and the interest it has already accrued.
Court of Protection	A specialist court for all issues relating to people who lack capacity to make specific decisions. The court makes decisions and appoints deputies to make decisions on the best interests of those who lack capacity.
Deferred Debt	This is the amount that the Local Authority will pay on the person's behalf in care home fees until the total amount is repaid.
Deputyship for Property and Affairs	Deputies are appointed by the Court of Protection to manage the property and affairs and/or personal welfare of someone who lacks capacity to make certain decisions for themselves.
Disposable Income Allowance	This is the weekly amount that the Department of Health sets and states that people on the Deferred Payments Scheme should be allowed to retain towards the upkeep of their property.
Enduring Power of Attorney	A legal form of authority to appoint a named person to act in legal and financial matters on behalf of a person who lacks capacity.
Equity	For the purpose of the Deferred Payment Scheme this is considered to be the value of a person's share in the property, less any mortgage or existing charge on the property, less 10%, less the lower capital threshold value.
Independent Financial Advice	This would be provided by a professional giving advice on the whole financial market who work independently rather than representing any particular company or product.
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 his/her Will – as he/she no longer owns any interest in it.
Land Registry	A non-ministerial government department that keeps a register of the ownership of land and property in England and Wales.
Land Registry Title/Land	The Title reference identifies the land or property address.
Lasting Power of Attorney	Replaced the Enduring Power of Attorney. A legal form of authority for people to plan ahead to appoint a named person to act in legal and financial matters on their behalf when the time comes that they lack capacity.
Legal Charge	A legal document held by the Land Registry showing who

	has claim on a property. A form of security to ensure payment of a debt.
Net Proceeds of Sale	The sale price less any associated legal fees.
Office of the Public Guardian	The Office of the Public Guardian is an executive agency sponsored by the Ministry of Justice to protect people in England and Wales who may not have the mental capacity to make certain decisions for themselves regarding their health and finance. This agency monitors and supervises the court appointed Deputies.
Personal Expenditure Allowance	This is the weekly amount that the Department of Health sets and states all people in residential care should retain to cover their personal expenses.
Regulated Financial Advice	A professional advisor giving financial advice who is authorised and regulated by the Financial Conduct Authority and will be subject to regular testing and scrutiny.
Sole Ownership	This situation arises where a person owns their property outright with no other owners.
Tenants in Common	This situation arises where each party owns a defined share of a property. This can be two or more people but the total shares will add up to 100%. Each person can dispose of their share however they choose and may leave their share in a Will to a person of their choice.
Unregistered Title/Land	This situation arises where the property has not been registered with the Land Registry. This usually occurs where the property has not been sold or transferred for a number of years. It was 1997 when registration became compulsory in this region.

1: Introduction

- 1.1 This Policy details how the Deferred Payments Scheme will be operated by Bury Council as from April 2015 in accordance with the requirements of the Care Act 2014.
- 1.2 A person entering residential care will pay their fees by using their income and capital. In certain circumstances they can apply for Local Authority assistance with the funding.
- 1.3 If the person entering residential care owns a property or land this may be taken into account when calculating the financial assessment client contribution towards the cost of their care home placement.
- 1.4 The Local Authority will offer the option of the Deferred Payment Scheme which allows a person to accrue some of their charges for residential care against a Legal Charge placed on the Land Registry against their property or land which avoids the immediate need to sell the asset to fund care. The Deferred Payment Scheme can only be used to fund care home fees. It can be used as a form of short term "loan" until the property is sold or can be used as a longer term arrangement. The Local Authority will fund the proportion of care home fees for the duration of the Deferred Payment Scheme and the accrued debt will be repaid from the sale of the property whether this is during the lifetime of the owner or as part of the Estate administration after death.

2: Legal Status

- 2.1 The Care Act 2014 (sections 34 and 35) requires the Local Authority to offer the Deferred Payments Scheme to allow people to defer the sale of their home where it is needed to fund care home fees. The Care and Support (Deferred Payment) Regulations 2014 set out the legal framework and local authorities responsibilities in greater detail. The new legal duties come into force on 1st April 2015.
- 2.2 The regulations require local authorities to offer the Deferred Payments Scheme to people meeting certain eligibility criteria. These agreements can be retained until the person dies, with the amount repayable from their Estate. They can also be offered to people who decide to sell their home during their lifetime, the deferred payment acting as bridging finance.
- 2.3 The Care Act and regulations allow the Deferred Payment Scheme to be offered to people who have incurred debt in relation to their care home fees.
- 2.4 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.

3: Eligibility Criteria

- 3.1 The Local Authority must offer the Deferred Payment Scheme to people who meet the eligibility criteria, as below;
 - 3.1.1 Anyone whose needs are to be met by the provision of care in a care home, and
 - 3.1.2 Anyone who has less than (or equal to) £23,250 in assets excluding the value of their home, ie in savings and other non-housing assets, and
 - 3.1.3 Anyone whose home is not disregarded, eg it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support, ie someone whose home is taken into account in the local authority financial assessment and so might need to be sold.

4: Security

- 4.1 Bury Council will refuse a Deferred Payment Scheme application if it can't obtain adequate security for the deferred accrued debt, any amount of administration costs and interest charges.
- 4.2 Bury Council will offer the Deferred Payments Scheme to people in extra care housing and supported living schemes if all detailed standard conditions and criteria are met.
- 4.3 The Local Authority must be aware of and have regard to the following conditions when considering an application to join the Deferred Payments Scheme.
 - 4.3.1 The person must have a legal and beneficial interest in the property,

- 4.3.2 There should be no outstanding mortgage on the property. In certain circumstances Bury Council will accept a mortgaged property if the equity in the property is above the capital threshold and is sufficient to pay the care home fees, any interest and administration fees for a period of at least 12 months. Bury Council will require a valid and up to date statement from the mortgage lender of the debt outstanding.
- 4.3.3 The person or their legal representative must consent to the Deferred Payment Agreement and the required terms of conditions.
- 4.3.4 The Deferred Payment Agreement must be signed by a person with mental capacity to make the decision or someone legally authorised to deal with financial affairs on their behalf. See Section 9 for more information on mental capacity and Deputyship.
- 4.3.5 When accepting the property as security the title must be registered with the Land Registry to enable Bury Council to place a Legal Charge on the property.
- 4.3.6 A property with an unregistered title will not be accepted as security. Where a property is unregistered arrangements must be made to register the property before the offer of the Deferred Payments Scheme can continue. The Deferred Payments Scheme application will be suspended whilst the property is being registered and will recommence when registration has been completed.
- 4.3.7 Bury Council may advance the cost of registration which will be added to the accrued deferred debt if required and if sufficient equity is available. Interest will be charged at the standard rate.
- 4.3.8 The person or their legally appointed representative will be required to make the arrangements for registration.
- 4.3.9 Bury Council will require that at least 12 months value of funding is available in the equity of the property to accept an application to the Deferred Payments Scheme.
- 4.3.10 The Local Authority has discretion to refuse a Deferred Payment Agreement if they are not satisfied that its interest is secure. The Council has to accept a first legal charge as adequate security.
- 4.3.11 Bury Council may exercise its discretion to take other forms of security rather than the person's property, eg a valuable object, or the proceeds of a life assurance policy. The discretion will not be offered universally and will only be considered and exercised on an individual case basis. Bury Council will need to be satisfied that the security offered provides adequate security to protect the interest of the Council and that the debt is secure.
- 4.3.12 If a spouse or dependent relative moves into the property following entry into the deferred payment scheme, the Local Authority will review eligibility, the deferred payment may be frozen and interest will continue to accrue.
- 4.3.13 If the property is subsequently disregarded, and the person qualifies for local authority support as a consequence, the deferred payment will be frozen and interest will continue to accrue.

5: Refusing a Deferred Payment

- 5.1 Bury Council will refuse a deferred payment if they cannot obtain a Legal Charge security on the property via the Land Registry, ie the property is unregistered title, or there is insufficient equity on the property.
- 5.2 Bury Council will refuse a deferred payment if the person lacks mental capacity and there is no court appointed Deputy for Property and Affairs or other person legally authorised to make such a decision and sign legal documentation.
- 5.3 Where a person is seeking to use the deferred payment to fund a top-up of care home fees, Bury Council will consider the request but retains a discretion to decide whether to agree or not. This would be based on assessed needs, affordability and sustainability of the additional payment.
- 5.4 Bury Council will refuse a deferred payment where a person does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property.

6: Information and Charges

- 6.1 Bury Council will ensure that a person entering residential care or their legally appointed representative is made aware of the ability to defer charges against their property for their care. This information will include details of;
 - the eligibility criteria of the Deferred Payments Scheme,
 - any impact on the financial assessment client contribution charge,
 - details of the property disregard criteria,
 - details of the 12 week property disregard,
 - the amount of the Disposable Income Allowance required, and
 - details of any Department for Works and Pensions benefit entitlement impacts.
- 6.2 This information will be provided by leaflet, letter and additionally will be provided during a personal visit by an appropriately trained financial assessment officer during the first 12 weeks in residential care, ie during the period of the 12 week property disregard when the value of the property is not taken into account.
- 6.3 The Council will provide a twice yearly statement of the outstanding debt and an estimated length of time the remaining equity will fund the cost of the care home fees. This statement will be sent to the person entering the Deferred Payments Scheme or to their legally appointed representative. A statement can be requested at any time and will be provided within 28 days of request.
- 6.4 The Council will give the person on the Deferred Payment Scheme or their legally appointed representative at least 6 months notice that the maximum amount to be deferred is due to be reached and provide an opportunity to meet a financial assessment officer to discuss the future cost and funding of care home fees.

- 6.5 The person or their legally appointed representative will be advised of the administration costs of entering into the Deferred Payments Scheme. These costs will be reviewed annually as part of the Delegated Decision process for setting all departmental discretionary fees and charges.

The administration costs for the financial year 2015/16 are;

Type:	Amount:
Set up administration fee	£250.00
Annual administration fee	£150.00
Termination fee	£75.00

- 6.6 The annual administration fee will be due in arrears and invoices raised at the end of the annual period. The annual administration fee represents a period beginning at the start date of the Deferred Payment Agreement for 12 months. The final year fee will be a rate pro-rata to the actual number of complete months of duration before the date the Agreement is terminated.
- 6.7 The person or their legally appointed representative will be advised of the interest charges to be applied from the first day of the Deferred Payments Scheme agreement. Bury Council will use the interest rate to be charged as set based on the cost of Government borrowing as set out by the Office for Budget Responsibility. These rates are set twice a year at 1st January and 1st July.
- 6.8 Bury Council will charge compound interest at four-weekly intervals set at the government advised rate.

Interest Rate effective from:	Percentage Rate:
1 st January 2015	2.65%
1 st July 2015	2.25%

- 6.9 Bury Council will charge for reimbursement of any additional fees it incurs during the set up and administration of the Deferred Payment Agreement. These may include;
- A valuation fee,
 - Property registration fee,
 - Land Registry search fee,
 - Land Registration fee.
- 6.10 Bury Council contracts with the care home providers to pay two additional days after the death of a resident. This payment will be included in the deferred accrued debt.
- 6.11 Bury Council will produce invoices at four-weekly intervals that cover the care home fees accruing debt, any administration and interest charges due.
- 6.12 Bury Council will advise those considering the Deferred Payment Scheme to seek independent and regulated financial advice to aid their decision and to identify any alternative options available to them to fund the care home fees.

- 6.13 If the person chooses not to sell their property and chooses not to apply for the Deferred Payments Scheme they will be deemed to be able to pay the full cost of their care fees without local authority assistance. They will be required to pay the full fees direct to the care home.
- 6.14 The person or their legally appointed representative will be required to ensure that the property is fully insured and adequate arrangements are made for ongoing repairs and maintenance.
- 6.15 Bury Council will require a copy of the valid Insurance cover certificate.

7: Renting the Property

- 7.1 Where a person chooses to rent out their property during the period of the Deferred Payment Scheme the rental income should be paid towards the care home fees thereby reducing the amount of the accruing debt.
- 7.2 Bury Council will allow a 10% disregard of the rental income to be retained.
- 7.3 Any amount of rental income disregarded must be used for property maintenance costs and other landlord related costs.
- 7.4 The Person or their legally appointed representative will require consent from Bury Council for any person to occupy the property. The Council may require written consent from the person occupying the property that places the debt owed to the Bury Council above any beneficial interest they may accrue in the property.
- 7.5 Where property is rented out Bury Council will require a copy of the tenancy agreement and details of the agreed rental income. Bury Council would expect that the rental agreement would be on a short term assured tenancy basis.
- 7.6 The property owner will need to give consideration to how the tenancy will come to an end when the deferred debt will be required to be repaid.

8: Types of Property Ownership

- 8.1 Where there are co-owners of a property as either Tenants in Common or as Jointly Owned property all parties must agree to the terms and conditions of the Deferred Payments Scheme and sign the Deferred Payments Agreement.
- 8.2 There are several types of property ownership as detailed below;
- Sole Ownership
 - Jointly Owned Property
 - Tenants in Common
 - Unregistered Land
- 8.3 The different type of property ownership will influence the specific details of the Deferred Payment offer and will be discussed individually during the application process.

9: Mental Capacity Act 2005

- 9.1 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 and the accompanying statutory Code of Practice.
- 9.2 Bury Council can only enter into a Deferred Payment Agreement with the owner of the property who has capacity or the person legally authorised to deal with their personal financial affairs.
- 9.3 The acceptable types of legal representative are, as follows;
- Court of Protection appointed Deputyship Order for Property and Affairs.
 - Enduring Power of Attorney drawn up prior to 1st October 1997 and registered with the Office of the Public Guardian.
 - Lasting Power of Attorney for Property and Affairs registered with the Office of the Public Guardian.
- 9.4 A certified copy of the relevant document will be required to support the Deferred Payment Scheme application.
- 9.5 Where a person lacks capacity and there is no legally appointed person yet in place but someone is applying to be appointed, Bury Council will pay the care home provider and invoice the person who is applying for Deputyship. A letter of undertaking to pay the accrued debt of care home fees will need to be signed by the person applying for the Deputyship. The standard compound interest rate will be applied to these invoices and the accrued debt.
- 9.6 Where a person lacks capacity and there is no one available to apply for Deputyship, Bury Council may consider applying for Deputyship. Bury Council will pay the care home provider while these decisions take place. A letter of undertaking to pay the accrued debt of care home fees will need to be signed by the person applying for the Deputyship when this has been determined. The standard compound interest rate will be applied to these invoices and the accrued debt.

10: Valuation

- 10.1 Bury Council will use the valuation to establish whether there is sufficient equity in the property to cover the expected accrued and deferred debt.
- 10.2 When assessing the equity of the property an allowance of 10% will be included for sale costs to give a net estimated value.
- 10.3 The valuation will be considered net of any outstanding loan/mortgage on the property and any repayment requirements of the property if applicable under the "Right to Buy" scheme.
- 10.4 Bury Council requires the person or their legally appointed representative to provide a current written valuation of the property provided by an Estate Agent.
- 10.5 Bury Council may use any of the following methods to check the provided valuation;

- Internet sites
- Local knowledge/newspapers
- Council employed valuers.
- Land Registry for previous sale prices.

10.6 Where a dispute of the valuation exists Bury Council will request a further independent valuation be provided. The average valuation of those provided will be used. The cost incurred in obtaining a valuation will be charged to the person for payment. This may be added to the deferred accrued debt if there is sufficient equity available. The standard compound interest rate will be applied to this as it is added to the deferred debt.

10.7 Bury Council will require and request an updated valuation of the property on an annual basis on the anniversary of the start date of the Deferred Payment Agreement.

11: Ending the Agreement

11.1 A Deferred Payment Agreement will end in the following circumstances;

- At any time by the person or their legally appointed representative by repayment of the full amount due, ie the full deferred accrued debt.
- When the property is sold and the full deferred accrued debt is repaid.
- When the person dies and the full deferred accrued debt is repaid in full.

11.2 The Agreement will end and the debt will stop accruing when the equity limit is reached. Bury Council will provide a minimum 30 day notice that further deferred accrued debt will not be allowed. The person or their legally appointed representative will be notified 6 months before the equity limited is expected to be reached.

11.3 Where the property is being sold Bury Council will require 30 days notice of the completion date where possible. The net proceeds of sale will be used to calculate the final debt due.

11.4 On the death of the person Bury Council will inform the Executor of the Estate of the final debt within 14 days. The debt should be repaid within 90 days. Where the debt is not repaid within the 90 days timescale it will be consider under standard debt recovery procedures. The interest rate to be applied after 90 days will be 8% compound in line with County Court debt recovery rates and will continue to accrue until the debt is paid in full.

11.5 Bury Council will raise invoices on a four-weekly basis during the period of the Deferred Payment Agreement for the care home fees, administration and interest charges which do not require payment until the end of the Agreement period. The accrued debt and invoices raised will be recalculated and any adjustments made based on the actual net proceeds of sale.

11.6 The Legal Charge on the property will not be removed until the debt is repaid in full. Interest will continue to be charged until the debt is repaid in full.

11.7 Bury Council will provide confirmation that the Agreement has been concluded and that the Legal Charge against the property has been removed.

- 11.8 In order for the property to be sold Bury Council will accept a written undertaking from the Solicitor that they will discharge the debt. On receipt of this formal undertaking Bury Council will make arrangements to remove the Legal Charge and confirm the details to the Solicitor.
- 11.9 If a person or their legally appointed representative decides not to continue accruing the care home fees against the Deferred Payments Agreement and chooses to pay the accrued debt and ongoing charges from another source Bury Council will require 30 days written notice to stop the debt accruing. Interest will continue to be charged until the debt is repaid in full.
- 11.10 If any invoice is not paid following the Debt Management process the Council will issue a Section 103 notice in line with the Law of Property Act (1925). The Notice provides for a period of three months within which the invoice may be paid. If at three months the debt has not been settled the Council can force a sale to recoup the debt thereby becoming the Mortgagee in Possession. The property may be sold at auction or otherwise and any outstanding debt and fees relating to the sale will be deducted from the proceeds, the balance being returned to the person or their estate.

12: Personal Expenditure Allowance

- 12.1 Bury Council will require a financially assessed client contribution to be paid from income and any other relevant savings/capital towards the costs of the care home fees. The remaining amount being the amount deferred.
- 12.2 The person must be left with a prescribed minimum personal allowance. The general personal allowance rate (2015/16 £24.90 per week) received by every person in residential care home accommodation may not be enough to cover maintenance and insurance costs.
- 12.3 Bury Council will ensure that a Disposable Income Allowance of up to £144.00 per week will be allowed for people who have signed the Deferred Payment Agreement. This amount will include the standard Personal Expenditure Allowance of £24.90 per week. The difference between the Disposable Income Allowance and the standard Personal Expenditure Allowance will be included in the deferred debt.
- 12.4 The purpose of the additional Disposable Income Allowance is to cover insurance, repairs and maintenance costs, and any other property related expenses. A person can chose to keep less than this per week.
- 12.5 On ending the Deferred Payment Agreement or if this becomes frozen the Personal Expenditure Allowance reverts back to the standard weekly rate.

Equality Analysis

The embedded document is the detailed Equality Analysis Form.



EA - Deferred
Payments Scheme Eq

Contact us

For further information about the Deferred Payment Scheme please contact:



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