Deferred Payments Scheme

Adults Social Care
1. **Background**

1.1 The Care Act 2014 establishes a universal deferred payment scheme. A deferred payment is a way of deferring the costs of care against a property which is the person’s main home. It is a loan against the value of the property.

1.2 From April 2015, all Councils in England are required to provide a deferred payment for local residents who go to live in residential or nursing care, own a property and have other assets below a certain amount. They must also have assessed care needs for residential or nursing care. The new scheme will have national eligibility criteria which replaces Waltham Forest Council’s existing eligibility criteria for deferred payments. Local authorities are required to follow new national guidance on the eligibility criteria for a deferred payment. There will be some local discretion on how the scheme will be implemented.

2. **Universal Deferred Payments (April 2015)**

3.1 Under Sections 34-36 of the Care Act 2014, all Councils will have a deferred payment scheme which includes:

- A set of national eligibility criteria on entitlement
- The ability to charge interest and administrative fees to offset the costs of the scheme
- Retaining some local discretion, for example the amounts that can be deferred

3. **Waltham Forest Council’s deferred payments scheme (from April 2015)**

3.1 Waltham Forest Council’s deferred payments scheme will be consistent with relevant legislation and statutory guidance. The principles underpinning the scheme are:

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

3.2 The Council’s deferred payments scheme has been written in accordance with statutory guidance and the regulations.
Introduction

For the purpose of clarity, when the scheme uses “we” it means the Council (London Borough of Waltham Forest), and “you” means the person applying for a Deferred Payment (including the legal representative, Deputy or person holding a Lasting or Enduring Power of Attorney)

What is a Deferred Payment?

A deferred payment is an arrangement with the Council that will enable people to use the value of their homes to help pay care home costs. If you are eligible, we will help to pay your care home bills on your behalf. You can delay repaying us until you choose to sell your home, or until after your death.

Deferred payment agreements (will suit some people’s circumstances better than others’). We will charge interest on the amount owed to us, and there will be a fee for setting this arrangement up.

A deferred payment agreement is only one way to pay for care. To find out more about the options available, you can speak to an independent financial adviser or seek advice from an independent organisation. Organisations which may be able to help include: Age UK, Waltham Forest Citizen’s Advice Bureau, and DWP. In addition the Borough also funds specialist advice services, the details of which are on the council website.

Who is eligible for a deferred payment agreement?

Waltham Forest Council must offer a deferred payment where the person receiving care (residential or nursing) meets the eligibility criteria and is able to provide adequate security for the deferred payment.

Deferred payment agreements will suit some people’s circumstances better than others’ and not everyone will be eligible. You should be eligible for a deferred payment agreement if:

- you are receiving care in a care home (or you are going to move into one soon)
- you own your own home
- you have savings and investments of less than £23,250 (not including the value of your home or your pension pot)

Other circumstances:

The Council may agree to a deferred payment agreement if any or some of the following apply (this should be considered on a case by case basis)

- The person’s care needs are met by supported or sheltered housing
- They have assets which are difficult to convert into cash
They have more than the maximum level of capital, but are likely to use up that capital in the relatively short term.

Any discretionary powers will be exercised on a case by case basis for people who do not meet the mandatory national criteria.

Get in touch to find out about your circumstances and whether you might be eligible for a deferred payment agreement, the council will assess your individual situation and a decision will be made having regards to statutory guidance.

**What costs are involved?**

We will charge the set up, administration, and any ongoing costs for the deferred payment scheme on a cost recovery basis. The information below outlines the costs that will be taken into account, the council will provide a case by case estimate of any charges before anyone enters into the agreement.

**Administration fees and interest charges**

The Care Act allows the Council to charge an administrative fee for arranging the deferred payment. There will also be an on-going administrative fee which becomes payable during the course of the Deferred Payment Agreement. This fee can also be deferred. Administrative fees are the actual costs of providing a deferred payment, including:

- The costs of registering a charge with the Land Registry, including any Land Registry searches

- Costs of valuing and any re-valuation of the property

- administrative costs are detailed in the regulations and include but are not limited to:
  
  (a) the costs of postage, printing and photocopying;
  
  (b) the costs of time spent by persons in relation to the agreement;
  
  (c) the costs of overheads, such as computer equipment and utility charges (to the extent that they are not already included in the costs of time spent by persons in relation to the agreement);
  
  (d) the costs incurred for the purpose of ascertaining the value of the adequate security;
(e) the costs incurred in registering the charge on the land or land charges register;

(f) the costs incurred in perfecting the security obtained in respect of the deferred amount;

(g) the costs incurred in discharging or redeeming the security obtained in respect of the deferred amount; and

(h) the costs which are incurred by the authority for the purpose of ensuring compliance by the parties of the terms and conditions in the agreement.

**Interest**

The Care Act also allows the Council to charge interest on the deferred payment amount. Interest rate charges can go up to but not exceed the amount as set by legislation. The guidance from the Department of Health suggests that the interest rate is currently around 2.6%. Waltham Forest Council’s deferred payments scheme will apply the maximum interest rates as set by Government based on rates set by the Office of Budget Responsibility (which is anticipated to be updated twice a year, and will be notified on the Council’s website) plus 0.15% which is intended to ensure the scheme is cost neutral to the Council.

The council will be charging compound interest at the Government defined maximum level based on Office of Budget Responsibility defined by Statutory Guidance plus 0.15%.

All charges and fees will be clearly set out within the Deferred Payment Agreement. Fees and charges will be set at a level to ensure that they only cover the actual cost of providing a deferred payment. A schedule of deferred payment fees and charges will be publicly available. This will enable the person applying for a deferred payment full transparency on the costs of the scheme and to enable the person or their carer/legal representative to plan for the costs of care.

**When can I apply for a deferred payment agreement?**

From April 2015, they will be available from all councils across England.

**How do I apply for a deferred payment agreement?**

1. You should approach the Council to apply for funded care

2. You will then receive a care assessment to determine eligibility
3. If eligible, you will then receive a financial assessment (if you are not, you will receive information and advice as to how to access care at your own cost)

4. If you have assets over £23,250, you may be considered to be a self-funder and receive information and advice

5. If not, you may be eligible for what is called the ‘12-week disregard’ which is a period during which the value of any property is not taken into account as a capital resource in the financial assessment. During this time, the deferred payment scheme will be discussed with you.

6. In an ideal world, by the end of the 12 weeks, if you wish to proceed with a deferred payment agreement and are eligible this agreement will be completed and come into effect

When will I have to repay the deferred payment agreement?

You can sell your home and repay the deferred payment agreement at any point. Or if you have the deferred payment agreement for the full length of your stay in a care home it will be paid back out of your estate, following your death.

How much can I defer?

The amount you can defer will depend on the value of your home, which determines what is called your ‘equity limit’. As a guide, the council will use the following formula: property evaluation minus 10% minus £14,250 (this is currently the lower limit of discretional capital assets)) of the equity available in their home. The limit on equity is to protect you from not having enough money to pay sale costs of the property (like solicitor’s fees,) and to protect the council against a drop in housing prices and any risk that we may not get all of the money back.

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<th>Item</th>
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<tr>
<td>Less 10%</td>
<td>(20,000)</td>
</tr>
<tr>
<td>Less specified amount</td>
<td>(14,250)</td>
</tr>
<tr>
<td><strong>Maximum amount to be deferred</strong></td>
<td><strong>165,750</strong></td>
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Assessment of Applications
All applicants for a deferred payment must complete Waltham Forest Council’s designated application form. When assessing applications for a Deferred Payment the Council will have regard to the sustainability of the deferred payment. In addition to the LTV ratio, the Council will have regard to the following when deciding this:

- The likely duration of the deferred payment
- Equity available in the property
- Contributions which may be made from a person’s savings
- The period of time a person would be able to defer weekly care costs

All applicants for a deferred payment must complete the application form in full and disclose full information about their circumstances and finances, as set out in the application form.

Obtaining Security
The Council is required to have adequate security in place when deciding whether a person is entitled to a deferred payment. The onus is on the person applying for a deferred payment, that they or their representative provides evidence that they are able to give the Council adequate security. Where the person owns a property this security will usually be in the form of a legal charge on the property. In cases of jointly owned properties the Council will require all of the owners’ agreement to the 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 not be offered universally and will only be exercised by the Council on a case by case basis. The Council will need to be satisfied that there is adequate security to protect the interests of the Council and that the debt is secure.

Property valuation
Under the deferred payment scheme the Council will arrange for a valuation of the
property against which payments will be deferred. The person applying for the deferred payment will also be entitled to request an independent valuation of the property; this would be separate to the Council’s own valuation. The cost of valuation(s) will be paid for by the deferred payment applicant or their representative. If the deferred payment is approved the costs of valuation can be rolled up into the Deferred Payment Agreement.

The valuation of the property will be periodically reviewed during the lifetime of the Deferred Payment Agreement to ensure that the upper limit is not exceeded and in any other circumstance where the value of the property will affect the sustainability of the Deferred Payment Agreement.

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

**Deferred Payment Agreement**

All successful applicants will be required to enter into a Deferred Payment Agreement (DPA) with the Council. The Council can enter into an Agreement with residents, who are the owner(s) of a property or their representative who holds a Power of Attorney or 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 the following terms:
- Set up costs, and any costs of reviewing them
- Interest rates and how interest will be worked out against the deferred payment
- How the agreement can be terminated
- Circumstances on which the Council can refuse to pay any more care fees
- Details of the property charge or any other form of security
- Information on the effects of taking out a Deferred Payment Agreement
- Restrictions on what the deferred amount can be spent on
- How problems should be resolved if either party feels the terms of the agreement have been broken

**Conditions of entering into a Deferred Payment Agreement**

The Deferred Payment Agreement shall only take effect upon the applicant’s or duly appointed representative signing the Deferred Payment Agreement. 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 DPA will also be required to abide by a number of conditions:

- That 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.
- That any net rental income derived from letting the property during the period of the scheme will be assessed in accordance with Department of Health statutory guidance, including what proportion, if any will be allowed to be additional spending power for the applicant.
- That the person receiving care and/or their representative acknowledges that they have received the Council's advice that they have taken independent financial advice before committing themselves to the agreement.
- That the client makes 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.
- That the applicant or representative notifies the Council of any change in circumstances which would affect the value of property or the sustainability of the deferred payment.

**Financial Assessment of contributions**

Applicants entitled to a deferred payment will be assessed to make a financial contribution towards the costs of care from their assessable income and capital (for example, savings and investments). The assessed contribution will follow Department of Health guidance.

**Annual reviews and Deferred Payment statements**

The Deferred Payment Agreement will be reviewed periodically to assess the value of the property and ensure that there is adequate security to protect the
Council’s legal charge on the property and/or any other asset accepted as security. The frequency of this review will be decided on a case by case basis.

In addition to reviewing the deferred payment an annual statement will be sent to the person entitled to the deferred payment and/or their representative.

The annual statement will set out: the amount of fees deferred; interest and administrative charges to date; total amount due and equity available in the property. The statement will record the amounts deferred and progress towards the deferred payment upper limit.

**Refusing an application**

The Council can refuse a request for deferred payment. In such circumstances the decision will be notified in writing to the applicant and/or their personal representative. The decision will set out the grounds for refusal and provide for appeal rights. Reasons for refusing a deferred payment can include:

- There is insufficient equity in the property to fund the deferred payment
- The applicant or their representative has failed to provide all of the relevant information to process the application
- The Council is unable to place a legal charge on the property which would secure the deferred payment

**Review procedure**

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

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

Requests for a review should be made within 20 working days of being notified of the outcome of the application for a Deferred Payment Agreement. This period can be extended if there are exceptional circumstances. If you remain dissatisfied with the outcome of the review then you can request that this matter is dealt with under Waltham Forest Council’s Adults Social Care Complaints
FREQUENTLY ASKED QUESTIONS

What if my husband/wife/civil partner lives in my house?

If you need care in a care home but your partner lives in your own home then the council may be able in accordance with the current rules decide to exclude the value of your home when we assess your finances to work out how much you will have to pay towards the costs of your care. This means that you will not face having to sell your home to pay for care and will not need a deferred payment agreement.

If your partner or others living in your house mean the council decides that the value of your home cannot be excluded, you should still be eligible for a deferred payment agreement, provided anyone who the Council considers has an interest in the property is willing to sign their consent.

What if anyone else lives in my house?

The council will only agree to enter into a deferred payment scheme if all those who the council consider has an interest to the property have agreed to the deferred payment scheme. The deferred payment element will be based on the proportion of ownership of the person applying for it.

I pay for my own care at home, can I apply for a deferred payment agreement?

A deferred payment agreement is designed for people who are most at risk of selling their home to pay care fees. If you are still living in your own home, you should not need a deferred payment agreement, and there are other ways for you to pay for your care (including council support if you have less than £23,250 in savings and investments). You should speak to a financial adviser or an independent organisation to find out more.

I already live in a care home. Can I apply for a deferred payment agreement?

If you have savings and investments of less than £23,250, do not have a partner or dependent living in your home, you should be eligible for a deferred payment agreement. If you have more than £23,250, we may still offer you a deferred payment agreement. Contact us directly to find out more.

My partner's share of our savings are in my name, will that be taken into account?

This will depend on how the savings are held – contact the council or an independent financial adviser for guidance.
How much will it cost me to set up a deferred payment agreement?

Every council is entitled to charge an administrative fee for setting up a deferred payment agreement. This fee is to cover the costs we incur in setting up your deferred payment agreement, and not to make a profit. We will charge the set up, administration, and any ongoing costs for the deferred payment scheme on a cost recovery basis.

Will the council make a profit out of deferred payment agreements?

No. We need to make sure that we can invest in the scheme so that people can benefit from it for many years to come. The interest rates and administrative fee will cover our costs, and we won’t make a profit from them.

Who can live in my home if I have a deferred payment agreement?

This is up to you. There are benefits to keeping your home occupied. It must be maintained and insured for as long as you have the deferred payment agreement, and this can be cheaper and/or easier if someone is living there. You might choose to rent it out and use the income to reduce the amount you asked the council to defer.

You may be eligible to rent your property via the council’s private renting scheme. We will discuss these options in more detail when applying for the scheme.

Can I avoid selling my home if I get a deferred payment agreement?

If you have a deferred payment agreement, it means you should not have to sell your home in your lifetime unless you decide you want to.

The money owed to the council from care home bills paid on your behalf during the deferred payment agreement will need to be repaid eventually. This can either be repaid by selling your house or you can arrange another way to pay if you are able to. For example, someone else could pay the money owed, or your family could use any pay-out from your life assurance after your death instead of selling the property to pay off any sums owed to the Council.

Your deferred payment agreement will end automatically following your death, and your executor (the person who is administering your estate) will have 90 days to arrange payment of the money owed. If someone else (like a friend or relative) chooses to pay the sums owed, or there are other assets in the estate from which payment can be made then your home will not have to be sold.
When does my Deferred payment agreement end?

The deferred payment agreement ends when you die or when you decide to pay for your own care costs. However, when you reach the upper capital limit the council will stop deferring your care payments.

In principle, you should be able to defer the entire costs of your care costs; subject to any contribution the Council is allowed to require from your income. The Council will need to consider whether you can provide adequate security for the deferred payment agreement when the arrangements are made at the beginning of the process. However, circumstances may arise where the amount deferred reaches the capital limit. At this point the Council cannot defer any additional amounts under this scheme.

Can I still get a deferred payment agreement if I have gifted money or my home to my children?

If the council believes that your home or your money have been given away deliberately to avoid paying care charges, then we have the power to include the value of the asset as part of your financial assessment and may also recover any money that we are owed.

Your home and your money still belong to you if you have a deferred payment agreement, so you can of course make gifts to your children or anyone else who you would wish to benefit. However, a deferred payment agreement for care costs will always need to be repaid – either by the sale of your home after your death, by someone else, or by something like the pay-out from a life assurance policy.

How long does it take to set up a deferred payment agreement?

During the first twelve weeks you are in a care home, your home is ignored for the purposes of calculating what you might pay and a DPA would usually start after that period. If you are eligible, we should be able to set up a deferred payment agreement within twelve weeks of you moving to a care home but some will be arranged more quickly than this.

Who will value my home?

The council will arrange to have your property valued (which will be charged). If you disagree with that valuation you can arrange another independent valuation at your own cost.

Can the terms of my deferred payment agreement be changed at any time?
The maximum amount of costs that the council will pay on your behalf, along with the interest rate and any administrative fees, will be set out at the start of the deferred payment agreement. These will be reviewed regularly and can be changed.

Any other conditions – for example how the property should be maintained – will also be written down in your agreement. Make sure that you understand the full terms and conditions and get independent advice from a solicitor, financial advisor or an independent organisation before signing a deferred payment agreement.

Can I get a deferred payment agreement if my house is in a flood risk area?

In order to be eligible for a deferred payment agreement your property will need to be insured. Please contact us if you have specific concerns about this.

What will happen to my home after my death?

The executor of your estate should arrange repayment of the money owed to the council, either by putting your home up for sale, or by arranging for another person, such as your heir, to pay. This will usually need to be done within 90 days. If the money owed is repaid without your home being sold, then your property will be dealt with according to any instructions you have left. If the money is not repaid the Council’s debt recovery procedure will apply.

Who decides on the price my home will be sold at after my death?

Your executor will arrange the sale and repayment of the money owed to the council. The deferred payment should be a first charge on the net value of the property without a mortgage. The executor has a duty towards the beneficiaries in the Estate to get the best and most advantageous price possible within the market in existence at the relevant time.

How long will my heirs have to pay back the deferred payment agreement without incurring extra charges?

Your heirs will usually have 90 days to repay the deferred payment agreement. Interest charges will continue to be added during this period. If the money is not repaid, the Council will implement its Debt Recovery procedures.

What will happen if my heirs don’t pay back the deferred payment agreement within the 90 days? Will they be charged extra?

If, after 90 days they haven’t taken reasonable steps to repay the deferred payment agreement, then the council has the power to recover the amount owed through the courts which could incur additional costs.

Are all heirs equally liable for the repayment of a deferred payment agreement?
The Council’s charge is on the property which is being used for deferred payments. This would normally be a first charge on the assets of your estate. This needs to be paid off first before any distribution to heirs.

**How is the money reclaimed?**

You may need to name someone (usually the executor of your will) in your deferred payment agreement, who will help us to reclaim our costs in the event of your death.

**Can a family member apply for a deferred payment agreement if a person needing care has dementia or does not have the capacity to understand?**

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

**Where can I find out more about deferred payment agreements?**

To find out how the changes are being introduced in this area, get in touch with us.

A deferred payment agreement is only one way to pay for care. To find out more about the options available, you can speak to a financial adviser or seek advice from an independent organisation.