

DEFERRED PAYMENTS IMPLEMENTATION TOOLKIT

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The National Deferred Payments Scheme

1. Legal Status

- 1.1 The Care Act 2014 (sections 34 and 35) requires local authorities to offer Deferred Payments Agreements to allow persons to defer the sale of their home where it is needed to fund care fees. The Care and Support (Deferred Payment) Regulations 2014 set out the legal framework and local authorities' responsibilities in greater detail. The new legal duties will come into force on 1st April 2015.
- 1.2 The regulations require local authorities to offer deferred payments to people meeting certain eligibility criteria (see section two below). These agreements can be retained until the person dies, with the amount repayable from their estate, but can also be offered to persons who decide to sell their home whilst still alive (the deferred payment providing "bridging finance").
- 1.3 The Care Act and regulations also allow the deferred payment scheme to be offered to persons who have incurred debt in relation to their care fees.
- 1.4 The regulations also 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.
- 1.5 Local authorities are also allowed further discretion to offer the deferred payment scheme where otherwise a person might be required to sell their home to pay for care.

2. Eligibility Criteria

- 2.1 **The local authority must offer a deferred payment to people who meet the eligibility criteria set out below:**
 - 2.1.1 anyone whose needs are to be met by the provision of care in a care home¹;
 - 2.1.2 anyone who has less than (or equal to) £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets); and
 - 2.1.3 anyone whose home is not disregarded, for example it is not occupied by a spouse or dependent relative as defined in regulations on charging for

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

care and support (i.e. someone whose home is taken into account in the local authority financial assessment and so might need to be sold).

2.2 Additionally:

- 2.2.1 The person must have a beneficial interest in the property.
- 2.2.2 There should be no outstanding mortgage on the property (or if accepting a mortgaged property, the outstanding amount must leave sufficient value to meet the criteria for self-funding).
- 2.2.3 The adult or their legal representative must consent to the agreement.
- 2.2.4 The deferred payment must be signed by a person with capacity to make the decision or their legal representative. See section nine for more information on mental capacity and deputyship.
- 2.3 If accepting a property as security, the local authority is advised to ensure it is able to place a Land Registry charge on the property.
- 2.4 As a guide we would recommend that you have a years' worth of funding in the property when you accept a deferred payment.
- 2.5 The local authority may exercise its discretion to take other forms of security rather than the person's property.
- 2.6 The local authority has discretion to refuse a deferred payment agreement if it is not satisfied that its interest is secure (aside from where it is able to secure a first legal mortgage charge, which it must accept as adequate security). Whatever security is provided, the local authority would have to be satisfied that they could gain ownership of this asset on the death or sale of the object.
- 2.7 If a spouse or dependent relative moves into the property following entry into the deferred payment scheme, the local authority should review eligibility.
- 2.8 If the property is subsequently disregarded (and the person qualifies for local authority support as a consequence) then the deferred payment is frozen and interest will continue to accrue.
- 2.9 The local authority may choose to ask the person to complete an application for the scheme (though this is not a requirement of the scheme). A sample application form is provided later in this pack.

3. Permission to refuse a deferred payment agreement

- 3.1 A local authority can refuse a deferred payment if they cannot obtain a legal charge by way of mortgage on the property.

- 3.2 A local authority can refuse a deferred payment if the person lacks capacity and there is no appointed deputy to make such a decision.
- 3.3 A local authority may also refuse a deferred payment where someone is seeking a top up²; and/or where a person does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property.

4. Information for cared-for persons

- 4.1 Local authorities are required to ensure that persons considering entering residential care are made aware of the ability to defer charges against their property for their care. This needs to fit in with your local authority's general responsibility on information and advice.
- 4.2 Local authorities must advise the person or their representative that there is an administration charge when entering into a DPA. See section seven below for more guidance.
- 4.3 Local authorities must advise the person or their representative, that interest will be applied from day one of the agreement. The 12 week property disregard must be allowed where appropriate. See section 13 below.
- 4.4 The local authority should advise the person of the criteria that is attached to eligibility for the Deferred Payment Scheme.
- 4.5 There is a further requirement to advise people wishing to take advantage of the scheme that they may wish to seek independent financial advice and this should also be incorporated into the information leaflet.

5. Deciding not to sell and refusing a DPA

- 5.1 If the person does not want to sell their property and also chooses not to take advantage of the scheme, they should be deemed to be able to pay the full cost of their care and should be invoiced as such.
- 5.2 If they then fail to pay their invoices this should be dealt with via the local authority's debt process. For further information, see the forthcoming good practice guide on debt.
- 5.3 The person should again be directed to an independent financial advisor upon indicating that this is their decision.

² In these situations, a local authority should still seek to offer a deferred payment agreement but should be guided by considerations of sustainability (or reflects their core care costs without any top-ups) and agree a deferral. The person can then choose whether they wish to agree.

6. Renting the property out

- 6.1 Best practice would be to encourage persons to rent their Property (though ultimately any decision on rental must be their own). Local authorities that have housing departments may choose to support this by offering to place persons from their housing list into the empty property and pay rent to the person.
- 6.2 These same authorities may use their general maintenance departments to update and maintain the property and recovering their costs via the deferred payment scheme (with the person's consent).
- 6.3 The local authority should see sight of the tenancy agreement if arranged privately. Good practice would suggest that they should enter a six month short term assured tenancy.

7. Interest charges; calculation; fees

- 7.1 It may be necessary for you to complete a public consultation on whether and how much interest to apply to the Deferred Payment Scheme.
- 7.2 The Deferred Payments regulations set the maximum interest rate that can be charged on deferred payments. Local authorities have discretion to charge less than this maximum, or to charge no interest at all; but cannot exceed the maximum. This maximum rate is fixed for periods of six months, and changes every 1 January and 1 July.
- 7.3 As the guidance and regulations set out, the maximum interest rate for deferred payments is based on the cost of government borrowing - more formally, the 15-year average gilt yield, as set out by the Office for Budget Responsibility twice a year in their Economic and Fiscal Outlook report. The one that accompanied the previous Autumn Statement (2014) is at:

http://cdn.budgetresponsibility.independent.gov.uk/December_2014_EFO-web513.pdf
- 7.4 The penultimate row of table 4.1 sets out the gilt yield rate, and the final interest rate is derived by adding the gilt yield rate for the year in which the period starts to the default component (0.15%).
- 7.5 On the basis of the current gilt rates at the time of publishing (as set out in the document linked-to above, for financial year 2014/15, this is 2.5%), the interest rate will be 2.65% (when the default component is added in). This rate will be applicable from the scheme's launch on 1 April until 30 June 2015.

7.6 Subsequent rates will be dictated by the next fiscal events:

- From 1 July – 31 Dec next year, the rate will match the figures published with the 2015 Budget (likely to be published March 2015).
- From 1 January – 30 June 2016, the rate will match the figures published with the 2015 Autumn Statement.

7.7 Compound interest will be applied. The local authority will need to decide the frequency with which to apply this interest. This should either be in line with your payment terms to providers (weekly, fortnightly, four-weekly or monthly), or can be calculated daily.

7.8 The costs to include in your administration charge (if you choose to apply one) are:

7.8.1 costs of postage; printing and photocopying in relation to the agreement;

7.8.2 staffing costs;

7.8.3 Land registry fees;

7.8.4 Legal costs;

7.8.5 Valuation fees and Land search fees.

7.9 Your set-up fee should be an average of the above costs.

7.10 You can also pass on costs incurred during and at the end of the agreement, including any costs associated with revaluing the property, the cost of providing statements, and any charges incurred in removing a legal charge from a property.

7.11 Costs must reflect the actual costs you incur.

8. Types of property ownership

8.1 *Sole ownership*

8.1.1 This situation arises where a person owns their property outright, with no other owners. This is the most straight-forward case to handle and requires no special treatment.

8.2 *Jointly owned property*

8.2.1 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.

- 8.2.2 To access the deferred payment scheme all parties will have to agree to the charge being placed on the property.
- 8.2.3 Refusal of a deferred payment agreement does not mean the property cannot be taken into account, it just means the deferred payment scheme cannot be accessed. It is crucial that the person or their representative is made aware of the implications - i.e. that they will still be charged the full cost of their care (if assessed as being able to do so). They should be referred to Independent Financial Advisors (IFAs) as to what is the best option for them going forward.
- 8.2.4 To support the future claim if non-payment occurs regular invoices should be sent to the person or their representative for the care they have received.

8.3 Tenants in Common

- 8.3.1 This situation can arise where a property falls under tenants in common - an increasingly frequent situation where each party owns a defined share, this can be two or more persons, but the total shares will add up to 100%. Each person can dispose of their share however they choose.
- 8.3.2 To access the Deferred Payment Scheme this will require the original charge (tenants in common) to be deferred and all parties having to agree to your authority having a charge on the property.
- 8.3.3 Refusal does not mean the property cannot be taken into account, it just means the deferred payment scheme cannot be accessed. It is crucial that the person or their representative is made aware of the implications - i.e. that they will still be charged the full cost of their care (if assessed as being able to do so). They should be referred to IFAs as to what is the best option for them going forward.
- 8.3.4 To support the future claim if non-payment occurs regular invoices should be sent to the person or their representative for the care they have received.

8.4 Unregistered land

- 8.4.1 On occasion you will come across a property that is not registered with the Land Registry. Before entering into a deferred payment agreement the

property will need to be registered. It is good practice to require the person, or their representative to ensure that this action is taken.

9. Mental Capacity Act

9.1 Definition

9.1.1 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.

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

9.2 Where the person lacks the ability to enter into a Deferred Payment

9.2.1 This situation might arise where a person is unable to enter into a deferred payment agreement, due to lack of capacity; and there is no one empowered to support them. The good practice recommendation is that their family or a representative and as a last resort the Local Authority should make application to obtain a Deputyship order to support their best interests being observed.

9.2.2 Whilst this is being obtained the Local Authority should pay the provider and send regular invoices detailing the charges to be paid to the person applying for deputyship. If the deputyship is obtained and the responsible party has not paid you will need to obtain a court order for the debt outstanding (or seek to resolve the debt through a deferred payment – see guidance on debt to follow).

9.2.3 It is recommended that a letter of undertaking to pay the care fees is signed by the person applying for the deputyship order.

9.3 Enduring Powers of Attorney (EPA)

9.3.1 These only cover property and affairs, and remain valid as long as they were drawn up before 1st October 2007. No new EPAs can be created since October 2007 when Lasting Powers of Attorney were introduced. Details of the law and policies covering EPAs can be found via the Office of the Public Guardian (OPG).

9.4 Lasting Powers of Attorney

- 9.4.1 People over the age of 18 can formally appoint one or more people as Lasting Powers of Attorney (LPAs) to look after their personal welfare, and/or their property affairs. This allows persons to plan ahead for a time when they may not have capacity to make certain decisions.
- 9.4.2 The person making the LPA is known in legal terms as the donor, and the power they are giving to another person is the Lasting Power of Attorney. The person appointed is then called an attorney. The LPA gives the attorney the authority to make decisions on the donor's behalf. Attorneys acting under an LPA have a legal duty to have regard to the guidance in the Mental Health Act Code of Practice and act in the person's best interests.
- 9.4.3 An LPA must be registered with the Office of the Public Guardian (OPG) before it can be used. An unregistered LPA does not give the attorney any legal powers to make a decision for the donor. The donor can register the LPA while they still have capacity, or the attorney can apply to register the LPA at any time. Staff can check the register if they are unsure about the validity of an LPA. Contact details for the OPG can be found on their website.

9.5 Deputyship

- 9.5.1 A Deputy may be appointed by the Court of Protection when there is no one else who could act on behalf of the person lacking capacity to manage their financial affairs and/ or personal welfare decisions.
- 9.5.2 A deputy can be a representative for the person or the local authority or a solicitor.
- 9.5.3 The local authority will need to satisfy itself that there is no conflict of interest in exercising the duties of deputy. Financial management of a person's monies through the local authority deputy is usually under the Finance section, and should be audited.

10. Valuation of Property / Securing the DPA

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

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

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

must obtain adequate security for the payment of the adults deferred amount

10.3 The regulations also make clear that a local authority **must** accept a first legal mortgage charge as adequate security. That is to say, if the person owns the property outright without a mortgage or another charge on it, the local authority must accept it as adequate security.

10.4 The purpose of the valuation is initially to establish whether the available equity is greater than the upper capital limit which will make the resident self-funding; however the value of the property will also inform the limit on the amount of equity the person can draw. This must be set at:

Value of the person's share in property – 10% - £14,250

10.5 When assessing whether the property is greater than the upper capital limit, an allowance of 10% of the estimated value should be allowed for sale costs to give a net estimated value. (This has already been taken into account in the above calculation of the equity limit). NB when eventually sold the actual costs of sale should be deducted when assessing capital.

10.6 Where appropriate, the valuation will be net of any outstanding loan/mortgage on the property and of any repayment requirements of the property if it was purchased through "Right to Buy".

10.7 It is established best practice that the discount is the minimum percentage of ownership attributed to the person. The value is at current market value and not that of the original purchase.

10.8 It is advisable that the local authority always obtains a first legal mortgage charge charge to maintain adequate security.

10.9 There are a variety of methods to determine the valuation which can be summarised as follows:

- Asking the person and/or Family
- Local knowledge/newspapers
- Internet sites
- In-house Valuers
- Estate Agents
- Land registry for previous sale price
- DWP who may have valued a property for benefit purposes

10.10 It is good practice to confirm the approximate value that is being taken into account in their financial assessment with the person.

10.11 An updated valuation should be obtained annually, it is suggested this is in line with their entry into care.

10.12 The local authority's policy should be clear on what happens when the valuation is disputed, the process and who will pay for the valuation.

10.13 In cases of dispute

10.13.1 A professional valuer should be asked to provide a current market valuation of the property in all cases of dispute.

11. The Land Search Process

11.1 It is recommended that you open an online account with the Land Registry who will allocate a "key number" for charging purposes.

11.2 If the response to the enquiry is that the property is registered and in the sole name of the person, you should follow the process as detailed below

11.3 If the response is that the property is registered in joint names then agreement to register a charge must be obtained by all parties, to enable entry to the deferred payment scheme.

12. The Legal Agreement

12.1 It is necessary for the person or a legal representative to sign an agreement confirming that they wish to take advantage of the DPS and that all implications have been explained.

12.2 A formal Legal Agreement should be agreed with the councils Legal Department. A model legal agreement will shortly be published by the Department of Health (in January 2015), and this guidance document will be updated with the requisite link.

12.3 The complete process, timescales and policy of the council should be provided to the person in writing.

13. Deferred Payments and the 12 Week Disregard

13.1 If it would be necessary to sell the property immediately to fund the care, i.e. any other available resources are below the upper capital limit (£23,250), then a 12 week property disregard will be automatic and the DPS will be available subject to the appropriate eligibility criteria.

13.2 If there are sufficient resources in excess of the upper capital limit (£23,250), to fund care for any period, no matter how short, access to the DPS can be

given at the time that capital reduces to the upper capital limit and it would be necessary to sell the property. However, the local authority could use this time to discuss the availability of the deferred payment scheme; and authorities do have discretionary powers to offer a deferred payment to people with more than the upper capital limit.

- 13.3 Persons already in residential care who may need to access local authority funding are not entitled to the 12 week property disregard.
- 13.4 However, if the request to access local authority support is made due to a sudden and unexpected change the local authority has the discretion to allow a 12 week property disregard. An example where a local authority might consider exercising this discretion might be a person's partner dying suddenly.
- 13.5 The local authority should ensure that there is a smooth transition where possible to the deferred payment scheme by the 13th week of residential care.
- 13.6 It is recommended that this time could be used to discuss how they plan to use, insure and maintain their property whilst in the deferred payment scheme.

14. Periodic Statement of Accrued Debt

- 14.1 The person should be informed at regular intervals of the current level of the outstanding debt, reminded of the rate at which it is growing and given an estimate of the length of time their remaining assets will be sufficient to fund the full cost of their care. It is good practice that these statements are sent as a minimum every six months. However, depending on your financial IT system you may be able to do this monthly on the monthly client contribution invoice.
- 14.2 It is suggested that this information should be provided for the person at a minimum of annual intervals on the anniversary of the date of permanent admission or on the date of annual re-assessment if this is different.
- 14.3 In times of an economic downturn it is possible that property values will go down, possibly significantly, and this could impact on the self-funding period. Regular valuations of the property should be undertaken it is suggested annually.
- 14.4 Following the implementation of the Care Act 2014 and its impact on charging a regular check of the current value in calculating self funding status and the estimated remaining equity becomes even more important.

15. Re-valuation of Property

- 15.1 This should be carried out annually, preferably at an appropriate time to provide information for the process described in 14 above.
- 15.2 The method of carrying out a re-valuation of the property will be same as that described in section 10 above.

16. Benefits entitlement

- 16.1 As a self-funder the person is likely to be entitled to and should apply for Attendance Allowance or Personal independence Payments. They may already be in receipt of the Disabled Living Allowance (care component).
- 16.2 The legal representative is responsible for notifying the Department for Work and Pensions of any changes to circumstances.

17. When the Deferred Payment ends (due to depletion of equity)

- 17.1 When the remaining equity value reduces to the lower capital limit the following process should be followed. A re-valuation of the property is required (see previously) though it is more likely that a professional valuation should be considered if this has not been done previously.
- 17.2 A copy of the charging order, or a letter from the authority's legal department acknowledging the authorities interest in the property, is also required.
- 17.3 An account or letter detailing the amount of debt currently accrued against the property should be produced.
- 17.4 Supporting Documents should then be submitted with an Income Support/Pension Credit claim form to the appropriate Benefits Office, either the Local Pensions Service or Jobseeker Plus.
- 17.5 When completing the Income Support/Pension Credit Claim form the final "Comments" box should be annotated with the following wording or similar.

Mr/Mrs (name) is the owner of the property detailed on this form. Although the property is not being actively marketed for sale the value of his/her equity in the property is now [£16,000] and I should be grateful if you would regard this as a valid claim for Income Support. Evidence is attached that confirms the value of the current equity i.e. a current valuation , a copy of the Charging Order in favour of (name) local authority (or a letter from the legal

department of the (name) local Authority) and confirmation of the current debt accrued against the value of the property”.

- 17.6 When completing the Pension Credit claim form there is not a capital limit as such, but a similar statement showing the equity value remaining in the property after taking into account the accrued debt to the authority would be necessary.
- 17.7 As the accrued debt continues to increase it will be necessary to seek a review, by the appropriate Benefits Office, of the level of Income Support/Pension Credit being paid. At these times the Benefits Offices will require verification of the level of debt accrued to date and may , depending on the length of time since the initial claim was submitted and the nature of the property market i.e. whether prices remain static , require a re-valuation of the property
- 17.8 In the event of an Income Support/Pension Credit claim being rejected on the grounds that the property is not being marketed for sale a request for reconsideration should be made immediately that the refusal of benefit notification is received

18.Increased Personal Expenses Allowance for Property Maintenance / Insurance

- 18.1 You can require a contribution from income to meet the costs of the person's care (the remaining care fees being the amount deferred); but the person must be left with a prescribed minimum allowance.
- 18.2 The general personal expenses allowance (PEA) received by every person placed in residential care by the local authority may not be enough to cover the maintenance of the property.
- 18.3 The costs involved in maintaining the property e.g. insurance and repairs must be met by the person. The Department of Health guidelines and regulations state that an amount of £144 per week should be allowed to be retained by the person towards the upkeep of their property, if they want it. This is called the Disposable Income Allowance. A person could choose to keep less than this per week; and you may wish to discuss the person's needs with them when arranging the deferred payment.
- 18.4 On leaving the deferred payment scheme (or if the deferred payment becomes frozen) the PEA reverts back to the normal figure currently £24.40 per week.

19. Calculation of equity limit

- 19.1 When identifying what equity the person should have left in their property, it should be noted that you must leave the lower capital threshold currently £14,250 together with 10% of the property value intact in order to defray any costs incurred with the sale or settlement of the estate.

20. Notification on reaching the maximum deferred amount

- 20.1 When the deferred debt is reaching the maximum amount that can be deferred the regulations state that the local authority must give 30 days' notice. However, good practice would advise that you should do this sooner and it is suggested that 6 months is a more appropriate length of time.
- 20.2 At this time the local authority should be discussing cost of care with the person, in particular what might happen to any top ups or the need to consider movement to another care home/room if they are unable to make other arrangements.

21. Terminating the deferred payment - sale of property before Death

- 21.1 If the person has placed the property for sale from admission or chooses to sell at a subsequent date the accrued debt must be repaid upon the sale in order to remove the charge.
- 21.2 Sale of the property is one of the agreed reasons for termination of the agreement. This will terminate the Deferred Payment Agreement and the service user will become self-funding. The person must give 30 days' notice in writing of any such decision.
- 21.3 The actual sale price should be used for a final calculation of the debt and if appropriate, to identify when self-funding status ended.

22. Terminating the deferred payment - sale of property after Death

- 22.1 Calculating the Debt – the accrued debt should be added to any other outstanding amount due to identify the final debt that is payable.
- 22.2 Lodging a Claim – the Executor of the estate should be notified 14 days after the death, with the actual or provisional debt. At this stage it would be reasonable to seek information on the approximate value of the estate to confirm previous financial assessment declarations. It would also be good practice to explain that the debt is due from 90 days after death.

- 22.3 Notifying Final Debt – If it has not already been notified the final debt should be confirmed in writing no later than 4 weeks after death.
- 22.4 Debt Collection – If the debt has not been cleared within 4 weeks of the expiry of the 90 day period a reminder should be sent confirming the rate of growth of the debt and requesting a progress report. If no response is received you should follow your local authority's debt policy for next steps.
- 22.5 Calculating the Interest – The interest rate able to be charged is that as detailed in the Care and Support (Assessment) Regulations 2014. Note that if you are pursuing the amount owed as a debt through the County Court procedure, this may attract a higher rate of interest. Further guidance is in the debt guidance.

23. Removing the Charge

- 23.1 A charge will take between 7 and 10 days to remove. In order for a property to be sold it may be necessary for the person's Solicitor to give the Local Authority a written undertaking that they will discharge the debt. The Local Authority can then give the Solicitor an undertaking that the charge will be removed. This will ensure that the sale can go ahead.
- 23.2 The charge is removed by completing form K11 to the Land Registry. The fee is currently £1.00.
- 23.3 The Land Registry will send form K22 notifying the Authority that the charge has been removed.

24. Continuing Healthcare

- 24.1 The deferred payment cannot cease just because full continuing health care funding is awarded and no funding is due from the local authority. It is good practice to ask for voluntary payments to continue, wherever possible, pointing out that this will reduce the amount of the accrued debt set against the value of the property.
- 24.2 The local authority will continue to charge interest until the debt is cleared.

Example leaflet wording

(NB: an alternative fully-formatted leaflet featuring different wording and more basic information is being released through the national 'Care and Support & You' awareness-raising campaign – your comms team should have access to this)

What is the 'Deferred Payments Scheme'?

The Deferred Payments Scheme is designed to help you if you have been assessed as having to pay the full cost of your residential care – but cannot afford to pay the full weekly charge because most of your capital is tied up in your home.

Effectively the scheme offers you a loan from **[Local Authority name]** using your home as security. It doesn't work in exactly the same way as a conventional loan – the Local Authority doesn't give you a fixed sum of money when you join the scheme, but pays an agreed part of your weekly care and support bill for as long as is necessary.

You will pay a weekly contribution towards your care that you have been assessed as being able to pay from your income and other savings. The Council pays the part of your weekly charge that you can't afford until the value of your home is realised.

The part the Council pays is your 'Deferred Payment'.

The deferred payment builds up as a debt – which is cleared when the money tied up in your home is released. For many people this will be done by selling their home, either immediately or later on. You can also pay the debt back from another source if you want to.

However, you do not have to sell your home if you don't want to – you may, for example, decide to keep your home for the rest of your life and repay out of your estate, or you may want to rent it out to generate income. If you do this, you will be expected to use the rental income to increase the amount you pay each week, thus reducing the weekly payments made by the Council, and minimising the eventual deferred payment debt.

Charging Interest

The loan will have interest charged on it in the same way a normal loan would be charged on money borrowed from a bank. The maximum interest rate that will be charged is fixed by the government. Currently the maximum rate to be charged is based on the cost of government borrowing, and will change on 1st January and 1st July every year. The local authority currently charges **[X%]**. This interest will be compounded on a **[daily/weekly/fortnightly/4 weekly/monthly]** basis.

The interest will apply from the day you enter into the Deferred Payment Scheme.

You will receive regular statements (the frequency to be agreed by LA) advising you how your charge is being calculated and what the outstanding sum on your deferred payment account is.

Your agreement with XXX Council

If you decide to use the Deferred Payments Scheme, you enter into a legal agreement with the Council by signing an agreement document. The Council then places what is called a 'legal charge' on your property to safeguard the loan. You will be charged for this expense.

The agreement covers both the responsibilities of the Council and your responsibilities, one of which is to make sure that your home is insured and maintained. If you incur expenses in maintaining your home while you are in residential or nursing care, these will be allowed for in the amount that you are assessed as contributing each week from your capital and income.

You can end the agreement at any time (for example if you sell your home) and the loan then becomes payable immediately.

Otherwise the agreement ends on your death and the loan becomes payable 90 days later.

The Council cannot cancel the agreement without your consent.

Advantages of using the Deferred Payments Scheme

You should take independent financial and legal advice to help you decide which course of action will be financially better for you.

If there is an existing agreement for a third party 'top up', where a family member or other person puts additional money towards your placement, and you decide to take advantage of the Deferred Payments Scheme; you can add the cost of the 'top up' payments to your Deferred Payments Scheme loan, if the Council agrees that there is enough equity in your home.

The government's rules say that 'top ups' for people not using the deferred payments scheme currently have to be paid for by somebody else – for example, a member of their family – so a deferred payment is currently the only way of paying the top up yourself without depending on a third party.

Costs associated with the Deferred Payments Scheme:

There are legal costs, which are currently [£XX]; a Land Registry charge of [£XX]; a land search [£XX]. There is also an administration charge of [£XX]. The local authority's legal department will write to you separately about these charges if you decide to take out an agreement.

Other options

You may choose to rent out your property, which could give you enough income to cover the full cost of your care. There are advantages to this as you will not accrue a debt, be liable for interest and administrative charges and your property will be occupied. Your tenant will be paying utilities and council tax which will reduce your outgoings.

There are also various equity release products which may be suitable for your personal circumstances.

You may also choose to pay the full cost of your care from your available income and savings/assets; or a family member may choose to pay some or all of this for you.

You should take independent financial and legal advice to help you decide which course of action will be financially better for you.

In order to apply for the Deferred Payment Scheme you must:

- have capital (excluding the property) of less than £23,250.
- be professionally assessed as requiring and be entering permanent residential / nursing care in a registered care home;
- own or have part legal ownership of a property, which is not benefitting from a property disregard, and ensure your property is registered with the Land Registry (if the property is not, you must arrange for it to be registered at your own expense);
- have mental capacity to agree to a deferred payment agreement or have a legally appointed agent willing to agree this

Whilst in the agreement, you will also need to:

- have a responsible person willing and able to ensure that necessary maintenance is carried out on the property to retain its value, you are liable for any such expenses;
- insure your property at your expense;

- pay any client contribution in a timely and regular manner; if you fail to pay the client contribution on a regular basis the council reserves the right to add this debt to the loan amount.

There can be no other beneficial interests on the property, for example outstanding mortgages or equity release schemes, unless this is approved by the Local Authority.

PLEASE NOTE:

Acceptance of any application under the scheme is subject to you meeting the criteria for entering the scheme, and the local authority being able to obtain security in your property.

Where you can get independent advice:

[XXXXXXXX]

If you wish to apply for the scheme

[XXXXXXX]

Deferred Payment Application form

[NB it is not a requirement for you to use an application form.]

Section 1	Details of person applying for the Deferred Payments Scheme	
Title (e.g. Mr, Mrs, Ms)		
First Name(s)		
Last Name		
Date of Birth		
Address		
Email		
Telephone number		
Are you	Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/>	
	Separated <input type="checkbox"/> Widowed <input type="checkbox"/> Civil partnership <input type="checkbox"/>	
Section 2	Details of representative of person applying for the Deferred Payments Scheme (if relevant)	
Title		
First Name(s)		
Last Name		
Address		
Telephone		
Email		
Relationship to person named above		
Do you have legal authority to act on behalf of the person named in Section 1? If yes please give details.		
Power of Attorney		<input type="checkbox"/>
Enduring or Lasting Power of Attorney		<input type="checkbox"/>
Deputy or receiver		<input type="checkbox"/>
Solicitor		<input type="checkbox"/>

Please attach documents confirming legal arrangements

Section 3

About the property

Please give the full address of the property

What is the current value?

£

Do you have a mortgage or other secured loan on the property?

Yes

☐

No

☐

If Yes: What type of mortgage or loan do you have?

Repayment

☐

Endowment

☐

Interest Only

☐

If other type of loan please give details

How much do you pay each month
(include any endowment or insurance premium)

£

Name of mortgage lender

Account number

Date of mortgage agreement

Amount of outstanding mortgage

Please attach documents confirming mortgage details

Does anyone else have an interest in the property with you?

Yes

☐

No

☐

If Yes: Please give their details and their interest

Name

Address

Interest in property

Please attach documents confirming details			
What type of property is it?			
Detached house	<input type="checkbox"/>	Semi detached house	<input type="checkbox"/>
Terraced house	<input type="checkbox"/>	Bungalow	<input type="checkbox"/>
Flat	<input type="checkbox"/>	Other	<input type="checkbox"/>
If other please give details			
Does anyone live in the property	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
If yes please give details			
Section 4	About the property expenses		
Type of Expense	How Much	How often? (Weekly, Monthly, Yearly)	
Service Charge	£		
Fuel Charge	£		
Ground Rent	£		
Building Insurance	£		
Other charges	£		
	£		
	£		
	£		
Please attach documents confirming expenses			

Section 6	Property Maintenance		
<p>You will need to maintain the property and land, including gardens and outbuildings. This means the property will need to be insured and utility bills will need to be paid. It may also include renting the property out. Please explain how do you intend to maintain and upkeep the property, including whether you plan to rent it out.</p>			
Section 7	Other information		
Section	Checklist for Documentation		
<p>Please check and ensure you have provided documentation requested on this form.</p>			
Details of legal representative	<input type="checkbox"/>	Mortgage details	<input type="checkbox"/>
Joint or other interests in the property	<input type="checkbox"/>	Property expenses	<input type="checkbox"/>

Section 6	Declaration	
<p>I wish to make an application under the Deferred Payments Scheme.</p> <p>I understand that acceptance of any application under the scheme is at the discretion of [INSERT AUTHORITY NAME], subject to you meeting the eligibility criteria and the local authority being able to obtain adequate security. The deferred payments will not take effect until a formal agreement is entered into.</p> <p>I confirm that I own /part-own (please delete as appropriate) the property specified in Section 3. I authorise [INSERT AUTHORITY NAME] to check legal title to the property.</p> <p>When the agreement begins, I agree to a legal charge being placed on the property specified in Section 3 and agree to pay the legal costs of [INSERT AUTHORITY NAME].</p> <p>I agree that I shall be responsible for payment of the weekly contribution to the cost of my care that I am assessed to make under the regulations specified in the Care Act 2014 regulations regarding charging from my income and other capital</p> <p>I confirm that I and all other persons who occupy or have an interest in the property specified in Section 3 have been told of the need to take independent legal and financial advice before I enter into an agreement under the Deferred Payments Scheme.</p> <p>I confirm that the information given on this form is true and accurate to the best of my knowledge.</p> <p>I have read and understood this application for the Deferred Payments Scheme and the terms of this declaration.</p> <p>The [INSERT AUTHORITY NAME] will use the information you have provided for the following purpose of deciding on the application for a deferred payment and the financial assessment of the person's contribution. No personal information you have given us will be passed on to third parties for commercial purposes. <i>[Our policy is that all information will be shared among officers and other agencies where the legal framework allows it, if this will help to improve the service you receive and to develop other services.]</i></p> <p>If you do not wish certain information about you to be exchanged within the Council, you can request that this does not happen.</p>		
Your full name		
Your signature	Date	
<p>If you are signing on behalf of the person applying to use the Deferred Payments Scheme, you must be the person named in Section 2, and have legal authority to act.</p>		

Deferred Payment Checklist

Has the financial assessment been completed?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Do you need to refer for safeguarding?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Have capital levels been checked?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Has application form been completed?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Has Land Registry search been completed?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Is property value above upper capital threshold?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Does client have capacity to sign?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If not is there a Power Of Attorney?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Have you seen sight of certified copy of POA?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Is the property insured? – look at copy of policy	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
What is the property ownership status?	Single owner	<input type="checkbox"/>	T-I-C	<input type="checkbox"/>
	Jointly owned	<input type="checkbox"/>	other	<input type="checkbox"/>

Can the authority secure the first charge?

Yes

☐

No

☐

Have you signposted for independent financial
and legal advice?

Yes

☐

No

☐

Have you completed a property valuation?

Yes

☐

No

☐

Has contract been issued?

Yes

☐

No

☐

Has contract been returned?

Yes

☐

No

☐

Date entered residential care

Date of 13th week

Letter stating reasons for refusing a Deferred Payment

Dear

Re:-.....

Thank you for your recent application to enter our Deferred Payment scheme. I am writing to advise you that we are unable to offer you a Deferred Payment because:

- (A) We are unable to secure a legal charge on the property
- (B) The property is unregistered with the Land Registry
- (C) The property is uninsurable
- (D) You have more than £23,250 in savings, excluding the value of the property
- (E) No one has the legal status to sign the legal documentation
- (F) You have not provided satisfactory evidence that the property will be maintained to an adequate standard
- (G) You have not been assessed as having a need for residential care

As you have not been accepted you will now need to make arrangements to pay the full cost of the care which is £XXXXX a week from YYYYYY.

You should seek independent legal and financial advice on your options. Please also find attached our 'information leaflet'.

If you disagree with our decision you have the right to ask for a review. To request a review please write to us detailing your reasons for your request, including any further evidence you are able to provide.

Yours sincerely,

Deferred Payment Acceptance letter

Dear

Re:-

Thank you for your application to go onto the Deferred Payment Scheme. I am pleased to confirm that your application has been successful. Please find enclosed two copies of the Deferred Payment Agreement. You should sign and return one copy and retain the other for your records. The agreement should be returned within 10 working days to qualify.

Please take time to read through the agreement which confirms the administrative costs, interest rate, weekly contribution payable and the weekly accruing debt amount. If you have any queries, please do not hesitate to contact the department.

Yours sincerely,

Standard Undertaking letter

Dear Sirs

Re: [person's name / property details]

I understand that you are instructed in connection with the sale of the above property on behalf of the above named person who is now in residential care. The twelve week property disregard has now ended and I further understand that your client's assets are tied up in the above property, and therefore will not be in a position to meet the charges for care until the property is sold. In these circumstances, **Local Authority name** will pay these charges on your client's behalf, and will seek to recover them once the property has been sold.

To this end, the Local authority would normally enter into a deferred payment agreement with the person, to allow us to place a charge on the persons property. Where the property is already on the market, however, the solicitors acting on the sale are normally asked if they would be willing to give an undertaking to repay the amount advanced from the proceeds of sale. I am informed that the above property is on the market and, accordingly, the Local Authority's standard form of undertaking is enclosed (in duplicate). Would you kindly complete and return one copy of the undertaking to me as soon as possible.

Yours faithfully

Formal undertaking agreement with solicitor

SOLICITOR'S UNDERTAKING

We, Messrs [*****] Solicitors of [*****] hereby undertake to **Local Authority name** as follows:-

1. That we are currently instructed in the sale of [******property address******] ("the Property") being the property of [******the resident******]
2. We will pay to **Local authority name** out of the proceeds of sale of the Property the amount statutorily recoverable by **Local authority** in respect of accommodation charges paid by **local authority name** for [******name of resident******] for [his/her] residential care
3. If our instructions to sell the Property are withdrawn for any reason or to significantly (i.e. 10% or more) change price, we will immediately advise the Chief Legal Officer at **Local authority address** [****reference for client/resident****])

The sum to be paid in accordance with this undertaking shall not exceed the net proceeds of sale of the Property, after the deduction of all reasonable expenses connected with the sale.

Signature :

Messrs [******solicitors******]

Date :

Standard Deferred Payment Letter to Solicitor

Dear Sirs

Re:

Property: ***** (the “Property”)
Deferred Payment and Legal Charge - Care Act 2014

I understand that you are instructed to act for [*****] formerly of [*****] who has been admitted into residential care in [*****].

Your client has asked the **Local authority name** to consider entering into a Deferred Payment Agreement and Legal Charge on the Property in order to secure the cost of the residential charges incurred during his/her stay in the above-mentioned Home. I am attaching, for your information, a copy of the consent to a Legal Charge which has been signed by him/her or on his/her behalf.

The **Local Authority name** is agreeable to entering into a Deferred Payment Agreement, subject to proof of title and adequate equity in the Property. [*****] or his/her Attorney should ensure that independent financial advice is taken and if the property is to remain empty for any period of time then issues such as security, insurance and maintenance will need to be considered.

The **Local Authority name** could turn down the request to enter into the deferred payment agreement i.e. on the grounds that the Property is already mortgaged (thereby affecting the equity available for fees) and if this is the case the reason for refusal will be provided in writing and information on how to appeal against that decision will be provided.

The **Local Authority name** will apply interest to the amount accruing on the Deferred Payment at a rate set out in the regulations, and amended on 1st January and 1st July each year. This amount will be compounded on a **daily/weekly/fortnightly/monthly/four-weekly basis** and added to your deferred payment account.

Under this scheme [*****] or his/her estate would only have to pay back the deferred payment following his/her death or when the Property is eventually sold or if [*****] leaves residential care. The **Local Authority name** will charge interest on the sum due on a daily basis until the deferred payment amount is repaid.

The **Local Authority's name** legal costs **£XX**, Land Registry fees **£XX**, Land Search **£X** and an administration charge of **£XX** will be payable by your client on completion of the agreement. However, if they hold insufficient funds the Local Authority may allow this to be added to the deferred payment amount.

If the Property is on the market then it will not be appropriate to enter into a deferred payment agreement but rather the **Local Authority name** would look to

the firm acting on the disposal to provide a suitable undertaking. If the Property is on the market can you please let me know? If you are also instructed in connection with the sale I will let you have a copy of the **Local Authority's** standard form of undertaking.

On the basis that your client is going to proceed with the Deferred Payment Agreement, can you please let me have a copy of your client's title, in the form of up to date office copy entries. If Attorney(s) are to act for him/her in this matter a certified copy of the Enduring Power of Attorney or Lasting Power of Attorney will need to be produced to me. I will then let you have a draft agreement and legal charge.

Yours faithfully