

Guidance Note for Service Users

Deferred payments scheme

-information about the scheme

The deferred payments scheme is designed to help you if you have been assessed as having to pay the full cost of your care home placement or supported living accommodation - but cannot afford to pay the full weekly charge because part of your capital is tied up in your home.

This information is valid from 1 July 2022 until 31 December 2022.

What is a Deferred Payment Agreement?

A Deferred Payment Agreement is an agreement between you and the Council that is designed to help you if you have been assessed as having to pay the full cost of your care, you meet certain criteria and you are going to live in a care home or supported living – but cannot access your money because your capital is tied up in your home. You will usually be able to consider your options for paying for your care during the 12 week period when the value of your property is not taken into account.

It is recommended that you seek independent financial and legal advice during this period to consider all options.

Effectively the scheme means that West Berkshire Council offers people who are eligible a loan using their home as security. It doesn't work in exactly the same way as a conventional loan – the Council doesn't give you a fixed sum of money when you join the scheme, but pays an agreed part of your weekly care costs while the agreement is in place.

In addition, you pay a weekly contribution to the Council towards your care that you have been assessed as being able to pay from your income and savings.

The Council will charge you a set-up fee, an annual administration fee and interest on the amount of the loan. There is more information on this below.

Images courtesy of NHS Photo



How does a Deferred Payment Agreement work?

The agreed part of the costs paid by the Council together with any set up fees and interest builds up as a debt – which is usually cleared when the money tied up in your home is released. For many people this will be done by selling their home.

However, you can also pay the debt back from another source if you want to. For example, the repayment could be made by a third party or it could be paid back from another asset in the estate such as a life insurance policy.

The Deferred Payment Agreement is designed so 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 the money owed to the Council out of your estate, or you may want to rent out your property to generate income.

If the property is let you must provide a copy of the tenancy agreement and a copy of the letting agency agreement where applicable.

If you intend letting the property after entering into the deferred payment agreement you must first obtain the Council's written consent. Any proposed tenancy should be for a period of not more than 12 months and must be an assured shorthold tenancy.

If you do rent out your property, the Council will take into account 80% of the gross rent being charged for the property in calculating your contribution towards your care.

Can you have a Deferred Payment?

If all the following statements relate to you and reflect your situation, the Council is required to offer you a Deferred Payment Agreement:

- Your assessed eligible care needs will be met through the provision of a permanent care home placement or supported living accommodation
- You have been assessed as having less than (or equal to) £23,250 in assets excluding the value of your home (ie in savings and other non-housing assets)
- Your home is not disregarded for the purposes of financial assessment (for example, it is not occupied by a spouse, civil partner or dependent relative as defined in Regulations on charging for care and support)
- The Council is able to place a first legal charge in the Land Register on the property that is/was your main or only home to secure the debt. To do this, your property must be registered at the Land Registry
- If there are other people who own the property with you, they agree that the Council's interest will rank above their interest in the property and will sign the relevant documents to say this
- You, and any co-owners, agree to join in as borrowers to the legal charge. In addition the co-owners will need to consent to the legal charge and will need to agree not to object to the sale of the property for the purpose of repaying the debt due to the Local Authority.
- You have mental capacity to enter into a Deferred Payment Agreement or have an Attorney or Deputy able to enter into the agreement on your behalf.

When the Council can refuse your application

The higher the risk to the Council of being unable to recover the money due, the more likely the Council will be to refuse to offer you a Deferred Payment Agreement.

If the Council cannot ensure adequate security is in place for the amount being deferred the application will be turned down. The Council needs to be confident that the amount deferred will be repaid in the future. Adequate security is usually when the Council secures a first legal charge against a property in the Land Register. This means that when the property is sold, the debt you owe the Council takes priority over any other charge on the property.

If your application for a Deferred Payment Agreement is refused by the Council, we will explain why.

How much do I pay back?

The amount you will pay back is made up of the amount the Council has paid towards your care costs plus any legal and administration fees that have been deferred plus interest on the deferred amount.

There will be legal and administration fees to be paid in respect of setting up the Deferred Payment Agreement. You will have the option to pay the fees on signing of the documents or to add them to the debt and settle them on the sale of the property. However, if you add them to the debt they will continue to accrue interest until they are settled. Unless you state otherwise, the set up legal and administration fees will become payable on the signing of the documents.

The set up legal fees are currently £700 plus the Land Registry registration fee (sliding scale based on property value ranging from £20 to £250) and any Land Registry search fees (£3 per search). The Council's Legal Service will write to you separately about these charges.

The set up administration fee is currently £157

There will also be an annual administration fee of £262 per year and a termination fee of £300. Unless you state otherwise the administration fee will be invoiced annually on the anniversary of the start of the Deferred Payment Agreement.

Interest charged under a Deferred Payment Agreement

West Berkshire Council will charge interest on the deferred amount for the whole period that the agreement is in place. The interest will form part of the amount you owe to the Council. The Council charges the maximum interest rate as set nationally. The rate of interest is updated twice yearly in Government Office of Budgetary responsibility reports. Updated rates will be applied to your debt from the following 1 January and 1 July as appropriate. The rate of interest may therefore change between starting discussions with the Council and the time when you sign the agreement.

The current maximum interest rate as at 1 July 2022 is 1.55% per annum, compounded daily.

How the Council will calculate the amount it will offer to include in your Deferred Payment Agreement

- Before it offers you a Deferred Payment Agreement the Council will require a valuation of your property.
- West Berkshire Council will use your home as security for the amount owed under the Deferred Payment Agreement. The maximum we can defer against the value of your home (the 'equity limit') is 90% of its current market value, less £14,250.
- When the amount you have deferred reaches 70% of the equity limit, we will request a valuation of your property to monitor the amount of equity remaining. We will provide you with at least 30 days written notice when you are about to reach your equity limit.

What are the key things I need to consider?

- The scheme gives you the choice of whether or not to sell your home to help pay care costs
- A Deferred Payment could be used as a 'bridging loan' to give you time and flexibility to sell your home when you choose to do so
- It may provide peace of mind during a time that can be challenging for you and your loved ones
- You can terminate the agreement at any time but you will need to repay the full amount due, including administration costs and interest, straight away
- If the Council agrees there is enough equity in your home you can add the cost of any top up arrangement to the Deferred Payment Agreement loan amount
- You may wish to consider who would be responsible for your finances should you lose capacity during the period of the Deferred Payment Agreement, and to consider putting steps in place to appoint an attorney.

What are the key things I need to have in place/organise?

- **You should obtain your own legal advice/representation and seek independent financial advice in respect of the deferred payments documentation and the signing of the same. This should include verification of your identity and completion of Land Registry Form ID1 (see below the Section headed 'Evidence of Identity' as to identity requirements).**
- Register the property at the Land Registry if your property is currently unregistered.
- Ensure that necessary maintenance is carried out on the property at your own expense
- Insure your property at your expense
- Decide whether you want to pay an administration fee up front or add it to the deferred amount on which interest will be charged.
- Ensure that all owners of the property are prepared to sign all relevant documentation.
- Provide evidence of any other mortgage/loan details including details of any future advances. You must provide written consent from any other lender to use the

- property as security against a deferred payment agreement
- If you are a leaseholder, you will need to supply a copy of the lease and where stipulated in the lease, the Freeholder's and /or third party consent for you to use the property as security against a deferred payment agreement
 - If you have a Deputy or an attorney, the Council needs to see the deputyship or lasting power of attorney order. If the power of attorney is more than 12 months old and has not been registered you will need to supply evidence that this has not been revoked.
 - If you are in the process of appointing a Deputy or Attorney please provide evidence of the application. As soon as your Deputy or Attorney receives the papers giving them legal authority, they should send a certified copy to the Council.
 - In circumstances where you lack mental capacity but have made an enduring or lasting power of attorney, the Land Registry will require proof that the donor lacks capacity in the form of a letter or report from a medical doctor
 - If the property is co-owned with your Deputy or Attorney, you will need to appoint a second Trustee before any dealing with the property can take place. To do this, you will need to apply to the Court of Protection.

When the Council will stop deferring any more care costs

The Council will not continue to defer any further costs and charges under the Agreement in the following circumstances:

- If your total assets – including the value of your property – fall below the level of £23,250 and you therefore become eligible for Council support in paying for your care
- If you no longer have a need for care in a care home or supported living accommodation
- If you breach certain predefined terms of your deferred payment agreement and it is not possible to resolve the issue
- If the property becomes disregarded under charging regulations
- The Council must cease deferring further amounts when a person has reached the 'equity limit' that they are allowed to defer (see 'how much can be deferred'). This also applies when the value of the security has dropped and so the 'equity limit' has been reached earlier than expected.
- Upon death – Future correspondence will be with the executor of your estate and payment will be expected 90 days after the date of your death. After this 90 day period, if West Berkshire Council conclude that active steps to repay the debt are not being taken, West Berkshire Council may enter into legal proceedings to reclaim the amount due.

If the Council refuses to defer any more charges for you it will provide you with a minimum of 30 days advance notice and an indication of how your care costs will need to be met in the future. The Agreement remains in place in respect of the costs deferred prior to any of the events that result in no further amounts being deferred and interest continues to be added to the deferred amount.

Capacity – acting on someone’s behalf

If the person receiving care already has an attorney for finance and property or a court appointed Deputy, the Attorney or Deputy can consider whether to enter into a Deferred Payment Agreement.

If the person lacks mental capacity to manage their finances and has not already appointed an Attorney, an application will need to be made to the Court of Protection for someone to become their Deputy. Once appointed, a Deputy can consider whether to enter into a Deferred Payment Agreement on the person who is receiving care’s behalf.

More information about applying to be appointed a deputy can be found at www.gov.uk/court-of-protection

Evidence of Identity

In order to reduce registration fraud we are required, by the Land Registry, to confirm that steps have been taken to verify an individual’s identity.

Consequently, when we register a legal charge under the deferred payments scheme ID needs to be verified, where applicable that of your attorney(s) and any co-owner(s) of the property.

A Land Registry form ID1 is required in each instance for this purpose. This will entail an inspection, at your Solicitors office, of the original of either of the following documents:

One of the following (List A):

- Current valid full passport
- Current United Kingdom, EU, Isle of Man, Channel Islands photocard driving licence (not a provisional licence)
- Current Biometric Residence Permit issued by the UK Home Office to a non-UK national resident in the UK

OR

Two of the following (List B):

- Credit Card bearing the Mastercard or Visa Logo or a debit or multi-function card bearing the Maestro or Visa Logo which was issued in the United Kingdom which is supported by an original account statement less than three months old
- Utility bill less than three months old
- Council tax bill for current year
- Council rent book showing the rent paid for the last three months
- Mortgage Statement for the mortgage accounting year just ended
- Current firearm or shotgun certificate

Supporting statements must be postal statements and not sent electronically.

The form and guidance can be found at www.gov.uk/completing-forms-id1-and-id2

West Berkshire Council’s Legal Services will be unable to proceed with your application without a completed form(s) ID1.

Your identity, and that of any attorney(s) or co-owner(s), should ideally be verified by your own Solicitor. As an exception, where this is not possible, verification can be undertaken by West Berkshire Council's Legal Services, at the Council's Market Street Offices, for which a fee of £75.00 will be payable. A pre-booked appointment must be arranged in these circumstances. Legal Services is unfortunately not able to verify ID at any other location.

Please note that the Land Registry does not require identity evidence for a deputy(s) appointed by order of the Court of Protection.

In addition, in circumstances where you lack mental capacity but have made an enduring or lasting power of attorney, the Land Registry will require proof that the donor lacks capacity in the form of a letter or report from a medical doctor. Identity evidence would still be required for the attorney(s).

Frequently Asked Questions

Do I have to enter into a Deferred Payment Agreement? No. A Deferred Payment Agreement is one option available for covering the cost of your care if you meet the criteria and relevant conditions. However, you can choose to pay for your own care through arranging a loan with a third party or selling your home.

Why am I being advised to seek independent legal and financial advice before entering into a Deferred Payment Agreement? The agreement is a legally binding document and it is important that anyone signing such an agreement has the opportunity to consider whether they wish to seek such advice.

What happens if I wish to sell my property? You can choose to sell your property at any point during the Deferred Payment Agreement. The full deferred amount – including any deferred legal fees and interest – is repayable on the date of sale or disposal of the property.

Do I still need to pay some money to the Council during the Deferred Payment Agreement period? You will need to pay your assessed financial contribution towards your care costs throughout the period of your agreement. This will be assessed based on your financial circumstances other than your property and will include your income and savings.

How long will the Deferred Payment Agreement be in place? A Deferred Payment Agreement can remain in place until you sell or dispose of your property or if someone else repays the money to the Council. The full deferred amount – including any deferred administration charges and interest – is repayable immediately on the sale of the property or within 90 days of the date of death of the service user (whichever is sooner). When final payment is received West Berkshire Council will release the legal charge on your property with the Land Registry.

What happens if I use up the equity in my property? You will only be able to continue to defer your care costs against the property whilst the property remains within the 'equity limit'. Your twice yearly statement will ensure you are kept informed of this. The statement will show the amount of care fees deferred, interest and deferred set up fees accrued to date, the total amount due and the equity remaining in the home, along with an estimate of the date the equity limit will be reached. West Berkshire Council will also provide a statement on request within 28 days

Interest will continue to be added to the full existing deferred amount once this limit has been reached although no additional amounts to cover care costs will be deferred.

What costs does the Deferred Payment Agreement cover? You can defer an agreed part of your care costs including any top up arrangement, plus legal set up fees and interest. It does not cover any contribution you are assessed to make towards the cost of your care from your income and savings.

Do I still pay legal set up fees if I decide not to go ahead with the agreement? The Council will charge you for the legal costs of any work carried out.

My property is not registered at the Land Registry. Can I still enter into a Deferred Payment? If your property is unregistered and you wish to apply for a Deferred Payment Agreement you will first need to register your property at the Land Registry.

I own the property with other people. Can I still enter into a Deferred Payment Agreement? The Council will consider offering a Deferred Payment Agreement in relation to property in which more than one person has an interest. It will consider each case of co-ownership on its own facts as complications can arise depending on how the property is owned by more than one person and what is registered at the Land Registry.

If a deferred payment agreement is offered, **ALL** co-owners must join in as borrowers to the legal charge. In addition they will need to consent to the legal charge and will need to agree not to object to the sale of the property for the purpose of repaying the debt due to the Local Authority

How much will I be allowed to keep each week from my income and/or savings? You will be allowed to keep a Disposable Income Allowance of up to £144 per week. However, by choosing to retain less than the maximum amount you will reduce the amount you are deferring and will accrue less debt overall.

What happens if West Berkshire Council cannot offer me a Deferred Payment?

It is hoped that instances where this occurs will be rare, but can occur if:

1. You do not return the Deferred Payment Agreement
2. A co-owner will not sign the Deferred Payment Agreement
3. West Berkshire Council cannot register a first legal charge on your property
4. You do not meet the eligibility criteria for a deferred payment

In these instances you will have to find alternative ways to fund your care and make arrangements to pay the care provider direct until your assets reach the upper capital limit, at which point you should contact West Berkshire Council to request funding.

Will entering into a Deferred Payment Arrangement have any effect on my benefits?

Yes. If you have entered into a Deferred Payment Arrangement and it is not your intention to sell your property during your lifetime any means tested benefits will cease. This is because within the rules of these means test benefits, your property is unable to be disregarded. If it is your intention to put your property up for sale, you are able to retain your means tested benefits or Pension Credit for a period of 26 weeks. You will be required to provide verification to the Department of Works and Pensions of your intention to sell the property; this is usually in the form of an estate agent's valuation.

If you have entered into a Deferred Payment Arrangement you are entitled to retain your Attendance Allowance, Disability Living Allowance or Personal Independence Payment. Your contribution towards your care will be adjusted to reflect this.

Where you can get independent advice

If you need further guidance concerning local authority charging for care, independent advice can be obtained from the Citizens Advice Bureau, charities for older people, solicitors and financial advisors.

Some financial advisers specialize in advising older people on financial matters. For further information contact the Society of Later Life Advisers (SOLLA) 0845 2909 or **www.societyoflaterlifeadvisers.co.uk**

How to apply for the Deferred Payment Scheme

The first step is to complete the deferred payment scheme application form and return it to:

Financial Assessment & Charging Team
West Berkshire Council
Market Street
Newbury
Berkshire,
RG14 1BZ

The deferred payment agreement and legal charge must take effect immediately after the property disregard period ends. Therefore this application form should be returned to the Financial Assessment & Charging Team by no later than the start of the 8th week of the disregard period.

You can only sign this form on behalf of your relative, friend or client if you have the relevant legal authority.

Contact us...

By post: Financial Assessment & Charging Team
West Berkshire Council
Market Street
Newbury
Berkshire, RG14 1BZ

Telephone: 01635 503027

Further information

This handout is one of a range of Guidance Notes about charging for various services from Community Care.

These are available from the Adult Social Care Team or can be downloaded on the West Berkshire Council website - www.westberks.gov.uk/chargesforyourcare

If you need this information in a different format, such as audio tape or in another language, please contact the Adult Social Care Team

Telephone: 01635 503050 or email adultcare@westberks.gov.uk

Or write to:

Financial Assessment & Charging Team
West Berkshire Council
Market Street,
Newbury
Berkshire,
RG14 5LD