

**Isle of Wight Council
Adult Social Care**

DEFERRED PAYMENT POLICY

July 2021

1 Document Information

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Author:	Hannah Donbavand Financial Assessment and Charging Team Manager hannah.donbavand@iow.gov.uk (01983) 821000
Sponsor:	Ian Lloyd Strategic Manager – Partnerships & Support ian.lloyd@iow.gov.uk (01983) 821000
Consultation:	Vicky Parker, Legal Department.
Approved by:	V1.0 Adult Social Care Leadership Group V2.0 Assistant Director, Legal Services and Team Manager V3.0 ASC Leadership Group V3.1 Assistant Director, Legal Services and Team Manager V3.2 Strategic Manager – Partnerships & Support
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Version	Date	Description
V0.1		Initial draft
V0.2	December 2013	Second draft
V1.0	March 2014	Final
V2.0 and V2.1	January–April 2015	To comply with Care Act 2015
V2.2	February 2015	Included Section 5 on Capacity.
V3.0	March 2015	Included amendments on Section 5 on deputyship from Legal Services and Team Managers addition to Section 9 and clarity on any outstanding debts.
V1.1	April 2016	Annual review (was version v4.0)
V1.2	July 2016	Team Manger confirmed the revised interest rate for Deferred Payment Agreements is 1.85% effective from 1/7/16 to 31/12/16.
V1.3	Aug-Sept 2016	Approval received from Legal, 22/08/16 with additional comment on joint beneficiary. Changed name from Deferred Payment Scheme to Deferred Payment Agreement Policy (DPA). Added in Section 11.
V1.4	19 th & 21 st Sept 2016	Additions made by Legal Services
V1.5	Oct/Nov 2016	Additions made by Team Manager re: funding. DP Policy.
V1.6	January 2017	Revised interest rate of 1.35% effective from 1/1/17 to 30/6/17 in DPS Information Leaflet. Change service user wording

V2.0	March 2018	Amendments made by Team Manger and Legal Services re: charging/loan styles and fees.
V3.0	June 2020	Amendments made by Team Manager / Legal services to include revised links to the IWC website and revised interest rate of 1.05%.
V3.1	January 2021	Amendments made by Team Manager / Legal services to include revised interest rate of 0.45%
V3.2	July 2021	Amendments made by Team Manager / Legal services to include revised interest rate of 0.75%

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1. PURPOSE OF POLICY

The purpose of this document is to provide advice and practical guidance to Adult Social Care employees and business support staff relating to Deferred Payment Agreements.

2. BACKGROUND / LEGAL CONTEXT

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 legal duty came into effect on 1 April 2015.

The regulations require the Isle of Wight council to offer deferred payments to people meeting certain eligibility criteria (see section 8 below). These agreements can be retained until the person passes away (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”).

There are two types of Deferred Payment Agreements:

- 2.1 Charging style – the IWC has a contract with the residential/nursing care provider in order to make payments on behalf of the person.
- 2.2 Loan style – the person has a contract with the residential/nursing care provider and the IWC will make a direct payment to the person in order for them to pay the provider direct.

The Care Act and regulations allows the deferred payment scheme to be offered to persons who have incurred debt in relation to their care fees.

The regulations allow Local Authorities to offer the deferred payment scheme for extra care housing and supported living but not for persons receiving care in their own home.

Local Authorities are allowed further discretion to offer the deferred payment scheme where otherwise a person might be required to sell their home to pay for care.

3. SCOPE

The Deferred Payment Scheme applies to individuals aged 18 or over who own their own property and are living in or entering residential or nursing care on a permanent basis OR who own their own property and are living in supported accommodation which is more suitable to meet their needs than their own property.

4. EQUALITY AND DIVERSITY

The Deferred Payment Scheme will be offered to all those who meet the eligibility criteria regardless of age, sex, sexual orientation, religion or belief, ethnicity, disability, gender reassignment, marriage or civil partnership, or pregnancy/maternity.

5. CAPACITY

At the time of the assessment of care and support needs, the council will determine whether a person has the capacity to the part in the assessment. If the person does not have capacity, the council will establish if the person has any of the following as the appropriate person will then be involved:

- Enduring Power of Attorney (EPA)
- Lasting Power of Attorney (LPA) for Property and Affairs
- Lasting Power of Attorney (LPA) for Health and Welfare
- Property and Affairs Deputyship under Court of Protection or
- Any other person dealing with the person's affairs (for example someone who has been given appointee-ship by the Department of Works and Pensions (DWP) for the purpose of benefit payments)

If it is identified that a person lacks capacity and does not have any of the above people with authority to be involved with their affairs, the council will consider the appointment of a Deputyship. This could be a family member if they are willing, or the council can apply to appoint their own Deputyship Officer if there is no family member willing or involved in the care of the person.

A person who lacks capacity will not undergo a financial assessment until an appropriate person has been identified and this person has gained the appropriate authority to be involved in their affairs.

6. INFORMATION

Local Authorities are required to ensure that individuals (and / or their legal representative) considering entering residential or nursing care are

- Made aware of their ability to defer charges against their property for their care fees
- Provided with information about the operation of the Deferred Payment Scheme
- Advised of the administration charge when entering into a Deferred Payment Agreement
- Advised of the interest charge to be applied from day one of the Agreement
- Advised of the criteria attached to eligibility for the Deferred Payment Scheme
- Made aware of sources from which to seek independent financial advice if they wish (*)

An information leaflet has been produced that can be used to explain the above and informs individuals and / or their legal representative of the implications of choosing to take advantage of the scheme.

*The Local Authority must provide individuals and / or their legal representatives with details of contacts who are able to give independent financial advice and/or legal advice (either from a professional or in the voluntary sector) with explanations regarding the Court of Protection and Lasting Power of Attorney processes. These details are included in the information leaflet.

7. EFFECT OF DEFERRED PAYMENT ARRANGEMENT

Where a request to defer payment is agreed by the Director of Social Services or the Director's delegated officer (referred to as "the Director"), the individual will be required to enter into a Deferred Payment Agreement by the expiration of 12 Week Property Disregard Period.

Wherever possible and under the terms of this agreement a legal charge will be put on and registered against the individual's property to secure the repayment due to the Council. The individual and any joint owners must have executed the Council's form of charge and Agreement on or before the expiration of the 12 Week Property Disregard Period. If there is already a charge on the property the consent of the mortgagee must be obtained before the Director can agree to a Deferred Payment Agreement.

In certain cases, an individual will be entitled to apply for a Deferred Payment Agreement even if he/she is not entitled to a 12-week disregard. This will be the case if an existing self-funding resident's other capital falls below £23,250 and he/she asks the Council to pick up the funding. In this case the Deferred Payment Agreement should be offered to the individual as soon as possible after the initial request for funding is made.

8. ELIGIBILITY CRITERIA

Individuals may request a Deferred Payment Arrangement either as a short-term measure while the sale of the property is being completed or exceptionally, as a longer-term arrangement. In either case, the Director can only agree to a Deferred Payment Agreement following an assessment, and if the individual does not have enough other money or income to cover his/her fees. The Council cannot refuse to enter into a loan-type deferred payment agreement if the qualifying criteria are met and the individual requests it, unless there are grounds for refusal as set out in section 9 below.

The Council will usually secure any deferred payments on land or property only. However, in exceptional circumstances, other forms of adequate security may be considered. Individual circumstances will be considered on a case by case basis.

- The individual must have received an assessment carried out under the National Eligibility Criteria from the Isle of Wight council that confirms their eligibility to have their needs met in a long term residential care home or nursing home, and this decision must have been ratified by a Group Manager.
- The Council will only consider a Deferred Payment Agreement following a full financial assessment by the Financial Assessment and Charging Team.
- The individual and / or their legal representative must consent to the agreement.
- The Deferred Payment Agreement must be signed by a person with capacity to make the decision or their legal representative.
- The individual's capital, excluding the value of their main or only home, must be less than the prevailing upper capital threshold for Local Authority funding (£23,250).
- The individual must have insufficient income and other assets, other than the value of their property to meet the full cost of their care.
- The individual must contribute towards the cost of their care from income and other assets held. They are entitled to retain a maximum disposable income allowance of £144.00 per week; however by choosing to retain less than this amount and contribute more towards the cost of their care, they will reduce their accruing deferred debt.
- The person must have a beneficial interest in the property.

- There must be no outstanding mortgage on the property, or where there is an outstanding mortgage, the deferred payment scheme can only be offered if the person can continue to make the mortgage payments, while at the same time meeting their assessed contribution to the care costs. Each case will be assessed on its merits on a person level, taking into account the mortgage lender's requirements.
- There must usually be sufficient equity in the property, a minimum of 70% - equivalent to the value of the persons share in the property less 10% less the current lower capital limit (£14,250). The council will need to be satisfied that there is a least one year's worth of funding in the property in order to offer a Deferred Payment Agreement.
- If the property is jointly owned by more than one person as joint tenants or tenants in common and is not disregarded, the Council will only offer a Deferred Payment Agreement if all joint tenants and tenants in common (owners) sign the Deferred Payment Agreement and agree to be bound by the arrangement to discharge the debts when it falls to be repaid. This requirement is necessary to protect the Council's debt.
- The individual must meet any costs involved in maintaining the property e.g. insurance and repairs and engage in all financial reviews.
- A Deferred Payment Agreement will not be offered on second homes.
- Where the property is already subject to a charge in relation to an equity release scheme, a Deferred Payment Agreement will not be considered.

9. REFUSING A DEFERRED PAYMENT AGREEMENT and STOPPING A DEFERRED PAYMENT AGREEMENT

The Council can refuse a request for Deferred Payment Agreement but must give the reason in writing to the applicant, giving details of how any complaints or comment about the decision can be made to the Council. The Council can refuse a Deferred Payment Agreement in the following circumstances:-

- They are unable to obtain a secure legal charge by way of a first mortgage on the property
- The person lacks capacity and there is no appointed deputy to make such a decision on their behalf
- The person does not agree to the terms and conditions of the Agreement e.g. to insure and maintain the property and engage in completing the necessary paperwork and application process
- The person is seeking to add top up payments to the Agreement

There are certain circumstances when the Council will be able to stop deferring the costs of the care, as follows:-

- When a person's assets fall below the level of the means-test and the person becomes eligible for Local Authority support in paying for their care
- When a person no longer has a need for care in a care home (or, where applicable, supported living accommodation)
- When a person breaches certain predefined terms of the Agreement and the Council's attempts to resolve the breach are unsuccessful

- If (under the charging regulations) the property becomes disregarded for any reason and, as a result, the person consequently qualifies for Local Authority support to pay towards their care
- When the person's value of their share of equity in the property has reached the "equity limit" that they are allowed to defer (see 10 below)

The Council will give the person at least 30 days' notice if they are to stop deferring the costs of the care and provide the person with an indication of how their care costs are going to be met in the future, signposting to information and advice to support them.

In any of the circumstances described above when the Council will stop deferring the costs of the care, the outstanding debt will remain payable and the Council will advise the person of the amount outstanding and pursue this amount for payment.

If the IWC discovers any part of the loan (as identified in 2.2 above) has not been used to pay the care fees for which it was lent, we will give 30 days' notice and will recover that part of monies or associated fees, together with interest and the Agreement will be ended.

The individual and/or their representative have a responsibility to fully co-operate with the Council to ensure that all paperwork is completed promptly and they comply with the conditions of the Deferred Payment Agreement.

10. BUILDINGS INSURANCE

In all cases the property must be maintained to a reasonable standard of repair and condition and property insurance kept up to date. The Council will require the individual to produce evidence that the property is adequately insured on an annual basis, until all monies are repaid and the Deferred Payment Agreement comes to an end.

11. VALUATION OF PROPERTY

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

Value of the person's share of the property less 10% less £14,250

As part of the application process, the Council must obtain a valuation on all property which a individual intends to secure a Deferred Payment Agreement. The cost of this valuation will be passed onto the individual applying for the Deferred Payment Agreement. If the application is unsuccessful, the valuation fee will remain payable by the individual.

The Financial Assessment and Charging Team will be responsible for confirming to the individual the value of their share of the property which is being taken into account in their financial assessment.

Where a person has joint beneficial ownership of a property, unless there is evidence to confirm otherwise, the total value of the property will be divided equally between the joint owners and the person will be treated as owning an equal share. The value taken into account will be less 10% and £14,250.

If the individual does not agree with the Council's valuation, they can request an independent valuation of the property value (in addition to the council's valuation and at their own expense), including:

- From an estate agent if it has been put on the market
- Ask the individual or their family for an approximate value
- Local knowledge of property values, internet sites, newspapers

Using both valuations, an agreement will then be reached (between the Council and the individual) to confirm the amount of the value of their share of the property which is being taken into account in the financial assessment.

The following circumstances will trigger a further valuation plus annual valuations thereafter:

- when the debt outstanding approaches 50% of the *value of the equity that the individual holds in the property*

Valuations arranged through the Council's valuation service are at the individual's expense. The current charge is £150 plus VAT.

12. CHARGES

The Council will charge an arrangement fee of £1,100 to cover its costs of entering into this agreement. This represents the officer time and administrative costs involved in the application process and the setting up of the Agreement. Payment of any Land Registry fees and valuation fees will be payable in addition to this fee.

The Council will require the payment of the arrangement fee and of all Land Registry fees / other legal expenses on or before the completion of the Deferred Payment Agreement. The individual can request to add this cost to the deferred costs in certain circumstances.

Where the property is already registered with the Land Registry, the Council will charge a one-off fee of £46 for each Deferred Payment Agreement.

Where the property is not currently registered at the Land Registry the Council is obliged to register the property at the same time as the Deferred Payment Agreement. In these circumstances the Land Registry fees will be payable in addition to the £1,100 arrangement fee. This is on the basis that the costs of initial registration will be payable in any event on sale of the property. If the individual wishes to instruct their own independent solicitor/licensed conveyancer for the purposes of registering the property it is open to them to do so. If this option is pursued then the Council will only charge the arrangement fee of £1,100.

The Council will charge an annual charge of £550. This covers the costs of officer time and administering the Deferred Payment Agreement each year.

Interest will be charged on the Deferred Payment Agreement from day one of the Agreement and up until the outstanding debt is repaid in full. The interest rate is fixed for periods of six months and changes every 1 January and 1 July. The interest rate is set by central government and is based on the cost of government borrowing. Compound interest will be applied to the accruing debt on a monthly basis.

Interest Rate 1 January 2021– 30 June 2021 = 0.45%

Interest Rate 1 July 2021– 31 December 2021 = 0.75%

13. STATEMENT OF OUTSTANDING DEBT

A statement of the outstanding debt under the Deferred Payment Agreement will be sent to the individual and / or their legal representative every 6 months.

This will keep the individual informed of the amount of debt accruing which is secured by the legal charge on the property. This statement will include details of the deferred costs and any other charges relating to the Deferred Payment Agreement (for example, the arrangement fee, annual fees, interest, valuation fees).

The individual and / or their legal representative also has the right to require such statement at any time by contacting the Isle of Wight Council's Shared Services department on 01983 821000.

14. LETTING THE PROPERTY

The circumstances where this may be considered would be where the individual does not want the property sold during their lifetime and the property would otherwise be empty.

If they choose to let their property, the individual would be able to retain a maximum of 20% of the rental income generated. The remaining 80% would be expected to be contributed towards

their care fees in their ongoing contribution. If the individual wishes to retain more of the rental income than stated, the Council will consider individual circumstances.

The individual and / or their legal representative will be advised of the implications of contributing the rental income generated (along with any other income) to the cost of their care, i.e. this would reduce the accruing debt against the property.

Individuals should be advised that no letting agreement should be entered into or keys given to a prospective tenant before the Deferred Payment Agreement has been entered into.

A copy of any proposed tenancy agreement must, in all cases, be approved by the Council's Legal Services. The property may only be let on an assured short hold tenancy of maximum 6-month duration if it is subject to a Deferred Payment Agreement.

If the property is already let, further advice should be sought before proceeding any further with the Deferred Payment Agreement.

Where there are other occupants of the property, appropriate consideration will need to be given to their interests. Where the Director agrees to such an arrangement, it may be a condition that the property is let and the applicant will be under a duty to maximise the income from this.

15. INDIVIDUAL AND THIRD PARTY TOP UPS

Third party top ups are additional payments over and above the amount the Council considers appropriate to pay.

From April 2015, individuals themselves are able to make top-up contributions if they have accessed the 12-week property disregard period or if they have entered into a Deferred Payment Agreement. This is so someone who would previously have been self-funding and therefore have been able to exercise personal choice, may continue to use their own resources to pay for a place which would otherwise be above the Council's ceiling.

The level of this contribution is limited to the funds the individual has available which are disregarded under the Care and Support Act 2015. These include the disregarded capital amount (£14,250). It should be noted, however, that this does NOT affect the capital tariff calculation. In other words, the capital tariff on capital between £14,250 and £23,250 will not be reduced even though this capital amount diminishes through making top-up payments.

These additional payments can be made in one of two ways. The individual can use other capital resources, e.g. savings in a building society and pay the top-up directly. Alternatively, and in some circumstances, it may be added to the Deferred Payment Agreement and the Council will recover this amount along with the Council's cost of the placement. Individuals are able to make top-up payments during the 12-week property disregard period or if they have entered into a Deferred Payment Agreement. This is so that someone who is, in effect, self-funding has the right to exercise personal choice by choosing to use their own resources to pay for a place which is above the rate that Adult and Community Services would normally expect to pay for the appropriate level of care.

The Council reserves the right to exercise discretion in whether or not it will enter into a Deferred Payment Agreement in circumstances where the amount of the top-up which needs to be added to the individual's deferred payments exceeds £100 (i.e. where the top up cannot be met in full from other financial resources.)

16. TERMINATION OF THE AGREEMENT

The Council cannot unilaterally terminate the agreement. The deferred payment agreement ends either:

- The day the individual dies, or
- The date on which the agreement is terminated by the individual and / or their legal representative

If the individual dies, the outstanding debt under the Agreement is repayable within 90 days. After this point in time the outstanding debt will be pursued for repayment through usual debt recovery procedure.

The Director will normally expect a property to be sold in due course where it is unoccupied.

If the property is sold, the outstanding debt is repayable immediately.

The Council will only remove the legal charge from the property on repayment of the outstanding debt.

The Council will actively pursue any outstanding debt left following the sale of the property from the individual or the executor of their estate through debt recovery procedure, which may result in Court action being taken against the individual if an agreement cannot be reached to pay the amount owing to the Council in full.

17. SALE OF PROPERTY BEFORE DEATH

If the individual has placed the property for sale on admission to long-term care, or chooses to sell at a subsequent date, the accrued debt will be repaid upon the sale in order to remove the charge.

The Council will not agree to the release of the charge over the property until such time as the debt has been repaid in full.

18. IDENTITY CHECKS

The Land Registry requires that ID checks are carried out before they will accept any transfer or placing of a charge on a property. If the property is jointly owned, checks must be made on all owners.

The approved documents are listed below:
Either one of the following documents -

- Current valid full passport
- Current UK, EU, Channel Islands or Isle of Man photo-card driving licence (not provisional)

Or alternatively two items from the following list:

- Cheque guarantee card (Master-card, Visa, American Express or Diners Club), or debit card (Maestro or Delta) issued in the United Kingdom supported by an original postal statement less than 3 months old.
- Postal utility bill less than 3 months old.
- Council tax statement for the current year.
- Council rent book showing the rent paid for the last 3 months.
- Postal mortgage statement for the year just ended.
- Current firearm or shotgun certificate.
- A passport photograph, signed by a conveyancer or the land registry is also needed.

If the individual is represented by a solicitor, the solicitor is to make the ID checks. If the individual is not legally represented, the Financial Assessment and Charging team will need to make the necessary checks of the approved documents and inform Legal & Democratic Services when instructions for the Deferred Payment Agreement are sent.

19. ADVICE

By entering into a Deferred Payment Agreement, the individual is consenting to the Council placing a legal charge on their property. In all circumstances individuals are encouraged to seek independent legal and financial advice, either from a professional and / or the voluntary sector, on the implications of the Agreement.

By not selling the property the individual may not qualify for as much Pension Credit which will increase the amount of the loan but may qualify for Attendance Allowance/Disability Living Allowance. The individual should be advised of this at the outset and advised to seek independent financial advice if unsure.

If an individual is offered a Deferred Payment Agreement and this is declined/refused, the individual will be liable to pay the full assessed cost of their residential care fees. If a debt accrues and a payment agreement is not reached the Council will pursue the accrued debt, and any ongoing debt, through the Courts.

The individual and / or their legal representative is responsible for notifying the Department of Works and Pensions of all changes in circumstances.

The individual and / or their representative will be advised to seek their own independent legal and financial advice from a specialist advisor.

20. WHERE A DPA IS REFUSED BY THE COUNCIL

See section 8 above. In the first instance, the application for a Deferred Payment Agreement is considered by a panel made up of the Financial Assessment and Charging Team Manager and the another manager from the Business and Market Development Team.

If a Deferred Payment Agreement is refused, full reasons will be provided to the individual and / or their legal representative in writing, and they will be advised of how to proceed if they disagree with the decision or wish to make comment.

An individual and / or their representative have the right to ask for a reconsideration of the original decision. The original decision will then be “reconsidered” by a further panel made up of the Business and Market Development Manager and Assistant Director of Adult Social Care. An individual and / or their representative will be advised, in writing of the outcome of this reconsideration.

In the first instance, requests for a reconsideration of an original decision should be forwarded to the Financial Assessment & Charging Team, Floor 2, County Hall, High Street, Newport IOW, PO301UD.