



BRACKNELL FOREST COUNCIL

**DEFERRED PAYMENT AGREEMENT
SCHEME**

POLICY DOCUMENT

Version Control

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Table of Contents

1.	Definitions and Abbreviations	4
2.	Introduction	5
3.	Legal Status	5
4.	Eligibility Criteria.....	5
5.	Permission to Refuse a Deferred Payment Agreement.....	6
6.	Information for Cared-For Persons	7
7.	Deciding Not to Sell and Refusing a DPA.....	7
8.	Renting the Property Out.....	7
9.	Interest Charges and Fees	8
10.	Types of Property Ownership	8
11.	Mental Capacity Act.....	9
12.	Valuation of Property / Securing the DPA.....	10
13.	The Land Search Process	11
14.	The Legal Agreement.....	12
15.	Deferred Payments and the 12 Week Disregard.....	12
16.	Periodic Statement of Accrued Debt.....	12
17.	Re-valuation of Property.....	13
18.	Benefits Entitlement.....	13
19.	Assessed Contribution.....	13
20.	Increased Personal Expenses Allowance	13
21.	Calculation of Equity Limit	14
22.	Notification on Reaching the Maximum Deferred Amount.....	14
23.	Terminating the Deferred Payment – Sale of Property During Lifetime	14
24.	Terminating the Deferred Payment – Sale of Property After Death.....	14
25.	Removing the Charge.....	15
26.	Continuing Healthcare	15

1. Definitions and Abbreviations

DPA	Deferred Payments Agreement.
The Council	In the context of this document means Bracknell Forest Council.
Lower Capital Limit	When the Council calculates whether a person has to pay for their care, this is the amount of capital which is disregarded. The limit is set annually by the Department of Health.
Upper Capital Limit	This is the maximum level of capital that can be held before a person will qualify for council assistance to fund their care. This limit is set annually by the Department of Health.
MCA	The Mental Capacity Act 2005.
Ordinary Resident	The legal test for ordinary Residence is “a man’s abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether for a short or long duration”
PEA	Personal Expenses Allowance.

2. Introduction

The Care Act 2014 has established a universal deferred payment scheme which means that people should not be forced to sell their home in their lifetime to pay for their care. In this policy document the Council will set out the legal requirements, the eligibility criteria and how the scheme will be administered.

3. Legal Status

- 3.1 The Care Act 2014 (sections 34 and 35) requires local authorities to offer Deferred Payments Agreements to allow individuals to delay the sale of their home where they have been assessed to have sufficient funds to pay for their care fees. The Care and Support (Deferred Payment) Regulations 2014 set out the legal framework and local authorities' responsibilities in greater detail.
- 3.2 The regulations require local authorities to offer deferred payments to people meeting certain eligibility criteria (see section 4). These agreements can be retained until the individual dies, with the amount repayable from their estate, but can also be offered to individuals who decide to sell their home whilst still alive, thereby providing a bridging loan.
- 3.3 The Care Act and regulations also allow the deferred payment scheme to be offered to people who have incurred debt in relation to their care fees.
- 3.4 The regulations also allow local authorities to offer the deferred payment scheme for extra care housing e.g. Clement House.
- 3.5 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. Discretion will be on a case by case basis and will require authorisation by the relevant Chief Officer within the Council.

4. Eligibility Criteria

- 4.1 The Council must offer a deferred payment to people who meet the eligibility criteria set out below:
 - 4.1.1 Anyone whose needs are to be met by the provision of care in a care home; and
 - 4.1.2 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
 - 4.1.3 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 care and support (i.e. someone whose home is taken into account in the Council's financial assessment and so might need to be sold).

- 4.2 Additionally:
- 4.2.1 The person must have a legal and a beneficial interest in the property.
 - 4.2.2 If there is a mortgage on the property, the equity must leave sufficient value to meet the criteria for self-funding.
 - 4.2.3 The adult or their legal representative must consent to the agreement.
 - 4.2.4 The deferred payment agreement will be a legal contract and therefore must be signed by a person who has capacity to make the decision or their legal representative.
- 4.3 If accepting a property as security, the Council will ensure it is able to place a Land Registry charge on the property.
- 4.4 The Council will normally require a minimum of two years' worth of funding in the property when accepting a deferred payment.
- 4.5 The Council may exercise its discretion to take other forms of security rather than the person's property. A decision to accept any other form of security will be at the discretion of the relevant Chief Officer within the Council.
- 4.6 The Council will always agree to a deferred payment application from people who meet the eligibility criteria if it can secure a first legal mortgage charge on the property. Where other forms of security are required, the Council will consider these applications on a case by case basis.
- 4.7 If a spouse or dependent relative moves into the property following entry into the deferred payment scheme, the Council will review the eligibility criteria (see section 4.1).
- 4.8 If the property is subsequently disregarded (and the person qualifies for Council support as a consequence), the deferred payment will be frozen and, if applicable, interest will continue to accrue.
- 4.9 A full application form must be completed and submitted to the Council to enable consideration for the deferred payment scheme.
- 4.10 The person must be classed as an Ordinary Resident within the Council's area.
- 4.11 The final decision as to whether the Council will enter into a deferred payment agreement will be made by the relevant Adult Social Care Chief Officer.

5. Permission to Refuse a Deferred Payment Agreement

- 5.1 The Council may refuse a deferred payment if it cannot obtain a legal charge on the property.
- 5.2 The Council will refuse a deferred payment if the person lacks capacity and there is no legally appointed deputy or attorney to make such a decision or sign the legal agreement.

- 5.3 The Council may refuse a deferred payment where someone is seeking a top-up
- 5.4 The Council may refuse a deferred payment where a person does not agree to the terms of the agreement, for example a requirement to insure and maintain the property.
- 5.5 As indicated in 4.11 above, the final decision to agree to, or refuse, a deferred payment agreement will be made by the relevant Adult Social Care Chief Officer.

6. Information for Cared-For Persons

- 6.1 The Council will ensure that persons considering entering residential care are made aware of the ability to defer charges for care against their property.
- 6.2 The Council will advise the person or their representative that there is an administration charge when entering into a DPA.
- 6.3 The Council will advise the person or their representative that interest may be applied from day one of the agreement. The 12 week property disregard will be allowed where appropriate.
- 6.4 The Council will advise the person of the criteria that is attached to the eligibility for the deferred payment scheme.
- 6.5 The Council will advise people wishing to take advantage of the scheme that they may wish to seek independent financial advice.

7. Deciding Not to Sell and Refusing a DPA

- 7.1 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.
- 7.2 Failure to pay consequent invoices will be dealt with through the Council's debt management process.
- 7.3 The person will be directed to independent financial advice upon indicating that this is their decision.

8. Renting the Property Out

- 8.1 People will be incentivised to rent their property (though ultimately any decision on rental must be their own).
- 8.2 The Council will require sight of any tenancy agreement arranged privately. The terms of this agreement may affect the Council's ability to offer a deferred payment.

- 8.3 The property may only be let on an assured short term tenancy if it is to be subject to a deferred payment agreement.
- 8.4 To encourage property letting the Council will permit the person to retain a maximum of 50% of rental income generated. The person may choose to retain a lower percentage than the maximum.

9. Interest Charges and Fees

- 9.1 The Deferred Payments regulations give local authorities the discretion to charge interest on the money deferred. The regulations further provide guidance on the maximum interest rate that can be charged and how the interest is to be calculated. The maximum rate is fixed for periods of six months, and is reviewed every 1 January and 1 July.
- 9.2 Bracknell Forest Council will charge interest on all Deferred Payments at the rate set by the Department of Health.
- 9.3 Bracknell Forest Council will charge a set-up fee and an annual administration fee on all Deferred Payments. These charges will be reviewed annually and current values can be found in the document 'Fees and Charges for Adult Social Care services'.
- 9.4 The administration and set up fee will not exceed the actual costs the Council incurs.

10. Types of Property Ownership

10.1 Sole Ownership

10.1.1 This is where one person owns their property.

10.2 Jointly Owned Property (Joint Tenants)

10.2.1 This is a property right where two or more people own the property jointly until one owner dies and his / her share automatically passes to the other owner(s).

10.2.2 To access the deferred payment scheme all parties will have to agree to the charge being placed on the property.

10.2.3 Refusal of a deferred payment agreement does not mean the property cannot be taken into account; it may just mean that the application for the deferred payment has not been successful. The person or their representative will be made aware of the implications of this i.e. that they will still be charged the full cost of their care (if assessed as being able to do so). In these situations, it will be recommended that the person take independent financial advice.

10.2.4 During the time the Council is processing the application for a deferred payment agreement regular invoices will be sent to the person or their representative for the care they have received and the full payment will become due if the application is not successful.

10.3 Jointly Owned Property (Tenants in Common)

10.3.1 This is a property right where two or more people own the property in defined shares and each owner has the right to leave his / her share of the property to another person on his / her death.

10.3.2 To access the deferred payment scheme all parties will have to agree to the charge being placed on the property.

10.3.3 Refusal of a deferred payment agreement does not mean the property cannot be taken into account; it may just mean that the application for the deferred payment has not been successful. The person or their representative will be made aware of the implications of this i.e. that they will still be charged the full cost of their care (if assessed as being able to do so). In these situations, it will be recommended that the person take independent financial advice.

10.3.4 During the time the Council is processing the application for a deferred payment agreement regular invoices will be sent to the person or their representative for the care they have received and the full payment will become due if the application is not successful.

10.4 Unregistered Land

10.4.1 If a property has not been registered with the Land Registry, it will be the responsibility of the person to arrange registration before a deferred payment agreement can be entered into.

11. **Mental Capacity Act**

11.1 Definition

The Mental Capacity Act 2005 (MCA) applies to people who do not have the ability to make their own choices and decisions due to an illness or disability. Where a person does not have capacity, a third party can legally act on their behalf on best interests principles if they have a valid power of attorney (see section 11.5 below).

11.2 Where the Person Lacks the Ability to Enter into a Deferred Payment

11.2.1 Where a person is unable to enter into a deferred payment agreement due to a lack of capacity, and there is no one with legal authority to make decisions on their behalf, a family member or a representative should make an application to the Court of Protection to obtain a deputyship order. As a last resort the Council may consider making the deputyship application.

11.2.2 Whilst the deputyship order is being obtained the Council will pay the care provider on an interim loan basis and regular invoices detailing charges due will be sent to the person applying for deputyship. Once deputyship is obtained the invoices should be paid in full or a deferred payment agreement put in place. Failure to pay the outstanding invoices or proceed with a successful deferred payment agreement may result in the Council issuing court proceedings to recover the debt.

11.2.3 The Council will require a letter of undertaking from the person applying for the deputyship order to pay the care home fees, or arrange the deferred payment agreement.

11.3 Enduring Power of Attorney (EPA)

11.3.1 These only cover property and affairs, and remain valid as long as they were drawn up before 1st October 2007 and registered with the Office of the Public Guardian (OPG). Details of the law and policies covering EPAs can be found via the OPG.

11.4 Lasting Power of Attorney (LPA)

11.4.1 People over the age of 18 can formally appoint one or more people as their Lasting Power of Attorney (LPA) to look after their personal welfare, and / or their property affairs. This allows people to plan ahead for a time when they may not have capacity to make certain decisions.

11.4.2 The LPA gives the attorney the authority to make decisions on the donor's behalf. Attorneys acting under an LPA have a duty to have regard to the guidance in the Mental Capacity Act Code of Practice and act in the person's best interests.

11.4.3 An LPA must be registered with the 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. The Council will check the OPG's register should there be any doubt over the validity of an LPA.

11.5 Deputyship

11.5.1 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.

11.5.2 A deputy can be a family member, a representative of the person, or the Council, or a solicitor.

11.5.3 The Council will satisfy itself that there is no conflict of interest in exercising the duties of deputy prior to making any application to the Court of Protection.

12. Valuation of Property / Securing the DPA

12.1 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.”

12.2 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”

- 12.3 The regulations also make clear that the Council 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 Council must accept it as adequate security.
- 12.4 The purpose of the valuation is to establish whether the equity in the property is greater than the upper capital limit (which will make the resident self-funding); and calculate the limit on the amount of equity the person can draw. The equity limit is set at:
- Value of the person’s share in property minus 10% and minus the lower capital limit*
- 12.5 When assessing whether the property value is greater than the upper capital limit, an allowance of 10% of the estimated value will be allowed for sale costs to give a net estimated value. When the property is sold the actual cost of sale will be deducted when assessing capital.
- 12.6 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 the “Right to Buy” scheme.
- 12.7 The value is at current market value and not that of the original purchase price.
- 12.8 The Council will always seek to obtain a first legal mortgage charge to maintain adequate security.
- 12.9 Methods to determine the valuation may include but are not limited to:
- Estate Agent valuation
 - Internet sites
 - Local knowledge
 - Land Registry history of previous sales
 - In House valuation services
- 12.10 An updated valuation will be determined annually, in line with the requirement for the residential care financial re-assessment.
- 12.11 In cases of dispute, a professional valuer will be asked to provide a current market valuation of the property. The cost of this valuation will be met by the person applying for the deferred payment agreement.

13. The Land Search Process

- 13.1 The Council will use the online Land Registry service to carry out checks on the property registration.
- 13.2 If the response to the enquiry is that the property is registered and in the sole name of the person, the application process will proceed.

- 13.3 If the response is that the property is registered in joint names, agreement to register a charge will be sought from all parties prior to the application process proceeding.

14. The Legal Agreement

- 14.1 The person or their legal representative will be required to sign an agreement confirming that they wish to take advantage of the deferred payment scheme. This agreement will be a legal contract and all parties will be informed to seek independent legal and financial advice before agreeing to enter into the agreement.

15. Deferred Payments and the 12 Week Disregard

- 15.1 If the total of other available capital resources are below the upper capital limit, then a 12 week disregard of the property will be automatic and the deferred payment scheme will be available subject to meeting the appropriate eligibility criteria.
- 15.2 If there are sufficient resources in excess of the upper capital limit to fund care for any period, no matter how short, access to the deferred payment scheme can be given at the time that capital reduces to the upper capital limit and it would be necessary to sell the property. The Council may, at its discretion, offer a deferred payment to people with more than the upper capital limit.
- 15.3 People already in residential care whose capital resources, excluding the value of their property, deplete to the point where they become eligible to access Council funding are not entitled to the 12 week property disregard.
- 15.4 However if the request to access Council support is made due to a sudden and unexpected change the Council has the discretion to allow a 12 week property disregard. An example where the Council may consider exercising this discretion might be the sudden death of a person's partner.
- 15.5 The Council will aim to ensure a smooth transition to the deferred payment scheme, wherever possible by the 13th week of residential care.

16. Periodic Statement of Accrued Debt

- 16.1 The Council will provide information to the person at regular intervals of the current level of the outstanding debt, the rate at which it is growing, and an estimate of the length of time their remaining assets will be sufficient enough to fund the full cost of their care.
- 16.2 Information will be provided on an annual basis at the beginning of April, thus coinciding with the usual date of financial re-assessment.
- 16.3 The person or their legally appointed representative will be able to request an updated statement of account at any time.
- 16.4 In times of an economic downturn it is possible that property values may go down and this could impact on the self-funding period.

17. Re-valuation of Property

- 17.1 The Council will undertake a re-valuation of the property on an annual basis.
- 17.2 The method of carrying out a re-valuation will be the same as that described in section 12.

18. Benefits Entitlement

- 18.1 As a self-funder the person may be entitled to Attendance Allowance or Personal Independence Payments.
- 18.2 The person or their legally appointed representative is responsible for notifying the Department for Work and Pensions of any changes to circumstances which may affect the administration or entitlement to state benefits.

19. Assessed Contribution

- 19.1 The Council will require a contribution from income to meet the costs of the person's care. This contribution will be calculated by the Financial Assessment.
- 19.2 The person will be left with a prescribed minimum allowance; the Personal Expenses Allowance (PEA).
- 19.3 The difference between the full cost and the assessed contribution from income will be the value deferred against the future sale of the property.

20. Increased Personal Expenses Allowance

- 20.1 The standard weekly personal expenses allowance may not be enough to cover the costs of maintenance and insurance of the property.
- 20.2 The costs involved in maintaining and insuring the property 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.
- 20.3 A person could choose to keep less than this amount per week; the person's preference will be discussed when arranging the deferred payment.
- 20.4 On leaving the deferred payment scheme (or if the deferred payment becomes frozen) the PEA will revert back to the standard weekly amount.

21. Calculation of Equity Limit

- 21.1 When calculating the equity in the property, the Council will disregard the lower capital threshold plus 10% of the value of the property. The 10% disregard represents future costs associated with the sale of the property or settlement of the estate.

22. Notification on Reaching the Maximum Deferred Amount

- 22.1 The Council will aim to give 60 days' prior notice of the deferred debt reaching the maximum amount that can be deferred.
- 22.2 At this time discussions regarding the future funding of care will be held with the person and / or their legally appointed representative. These discussions could include the potential requirement for a third party top-up or, on rare occasions, the possibility of considering moving to an alternative care home / room if other arrangements cannot be made.

23. Terminating the Deferred Payment – Sale of Property During Lifetime

- 23.1 A person or their legally appointed representative can terminate the agreement at any time by either paying the Council the full amount due or by arranging for the property to be sold and the full amount due being repaid from the proceeds of the sale.
- 23.2 When the property has been sold and the legal charge removed, the deferred payment agreement is ended and the person will become self-funding.
- 23.3 The person must give the Council 30 days' notice in writing of any decision to sell the property.
- 23.4 The actual sale price may be used for the calculation of the debt and, where appropriate, to identify when self-funding status ended.

24. Terminating the Deferred Payment – Sale of Property After Death

- 24.1 When the person dies, the deferred payment agreement will terminate when the full amount due is paid from the person's estate.

The accrued debt will be added to any other outstanding amount due for care services received to identify the final debt payable.

- 24.2 The Executor of the estate will be notified within 14 days after the death of the provisional debt.
- 24.3 The debt will be due from 90 days after the date of death.
- 24.4 The final debt will be confirmed in writing no later than 6 weeks after death.

- 24.5 If the debt has not been cleared within 4 weeks of the expiry of the 90 day period, a reminder will be sent. If no response is received to this reminder the Council's debt management policy will be followed.
- 24.6 The maximum interest rate able to be charged on a deferred payment is that as detailed in the Care and Support (Assessment) Regulations 2014. However, if there is a need to pursue the debt through the County Court, this may attract a higher rate of interest in accordance with the timings detailed in the Council's debt management policy.

25. Removing the Charge

- 25.1 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 Council a written undertaking that they will discharge the debt. The Council can then give the solicitor an undertaking that the charge will be removed. This will ensure that the sale can go ahead.
- 25.2 The charge is removed by the Land Registry. A fee is payable and is included in the administration charge.
- 25.3 The Land Registry will notify the Council that the charge has been removed.

26. Continuing Healthcare

- 26.1 The deferred payment will not cease just because full continuing health care funding is awarded. The existing debt to the Council will still be due and the agreement will only terminate as stated in sections 22 and 23 above. The Council may ask for payments from income to continue as this will reduce the amount of the accrued debt set against the property.
- 26.2 The Council may continue to charge interest until the debt is cleared.