

# Worcestershire County Council

## DEFERRED PAYMENT AGREEMENT POLICY

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# The Deferred Payment Agreement

## 1. Policy Statement

The Care Act 2014 (sections 34 and 35) introduces a national deferred payment scheme which imposes a duty on local authorities in England to offer Deferred Payments Agreements to allow people to defer the costs of their care where their needs are to be met by the provision of care in a care home provided certain criteria are met. In exceptional conditions, Local authorities may also at their discretion enter into deferred payment agreements with people whose care and support is provided in Supported Living or Extra Care accommodation provided certain criteria are met, but not for people receiving care in their own home. In such instances, each case will be considered on its own merits and specific circumstances. The Care and Support (Deferred Payment) Regulations 2014 and the Care and Support Statutory Guidance set out the legal framework and local authorities' responsibilities in greater detail. The new legal duties will come into force on 01 April 2015.

The Regulations provide that Worcestershire County Council must offer a deferred payment to people meeting certain eligibility criteria (see section two below). A Deferred Payment Agreement can be retained until the person dies, with the amount of care fees accrued being repayable from their estate. They can also be offered to persons who decide to sell their home whilst still alive (the deferred payment providing "bridging finance").

To see the Government Guidance please visit:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/366048/43738\\_2902999\\_Regs\\_Affirmative\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366048/43738_2902999_Regs_Affirmative_Accessible.pdf)

In this policy the reference to 'you' refers to the person receiving the service from Worcestershire County Council. Where the policy makes reference to the 'Council' it means Worcestershire County Council.

## 2. What is a Deferred Payment Agreement?

A Deferred Payment Agreement is designed for people who own their own home, but either do not wish to, or cannot sell it immediately and cannot meet the full cost of their care home fees from their other income or capital. A Deferred Payment Agreement that is to be secured on a person's interest in a property / land can only apply to your former main or only home.

Effectively, the agreement offers you a loan from Worcestershire County Council, using your 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 enter in to the agreement, but will agree with you a maximum amount we will loan up to, based on certain criteria.

The Council will complete a financial assessment, in line with their Charging Policy for Care and Support, to determine what you can afford to contribute towards your care costs, from you income and savings.

The Council will pay the care home the difference between the amount the home charges you per week and the amount you are assessed as being able to pay.

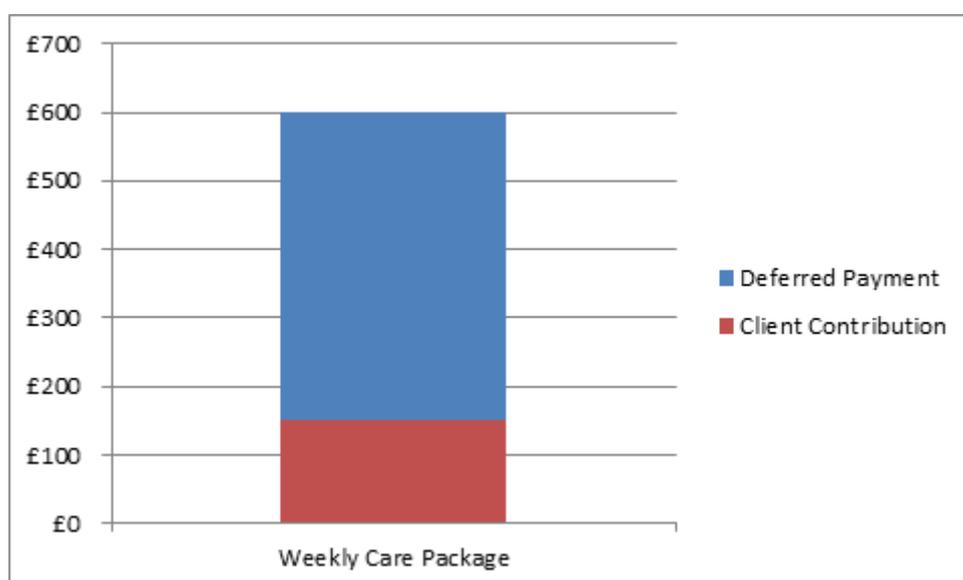
The part that the Council pays is your 'Deferred Payment'. The deferred payments build up as a debt - which is cleared when you have the capital available to clear the debt, this for many people will be done, when they sell their home, either immediately or later on.

An example of how this work is below:

The weekly cost of the care home is £600.00 per week

A person is financially assessed as being able to contribute £150.00 per week

The weekly amount of the deferred payment is £450.00 per week



Top Ups (also known as Above Banding Supplements)

A Top Up (sometimes referred to as an Above Banding Supplement) is payable when your preferred choice of accommodation is charging more than the amount specified in your personal budget for accommodation of that type. This amount is the difference between the amounts specified in the personal budget and the actual cost and can be met by a third party or, if you enter into a Deferred Payment Agreement, this can be added to your loan.

### 3. How will I know if I am eligible for a Deferred Payment?

Worcestershire County Council must offer a deferred payment to you, if you meet the criteria set out below:

- You have been assessed as requiring 24 hour care, and this is to be provided in a care home, Supporting Living or an Extra Care accommodation; and

- You own a property which was your former main or only home; and
- Excluding the value of this home, you have capital less than or equal to the upper capital threshold (see [Appendix 1](#)); and
- If the value of your former main or only home, is not disregarded, details of when a disregard can be considered can be found at [Appendix 2](#).
- Your loan is able to be secured by way of a legal charge being placed on your property in favour of Worcestershire County Council

#### 4. Does my property qualify for a Deferred Payment?

In most cases Worcestershire County Council will only consider offering a Deferred Payment Agreement on the property which is your former main or only home.

You must have either a beneficial or legal interest in the property. The property should be registered with the Land Registry Department in either your sole name, joint tenants or as tenants in common.

There should be sufficient equity in your share in the property to cover the costs of a minimum of 12 months care home fees. Worcestershire County Council is able to secure their loan by way of placing a legal charge against your property.

The deferred payment must be agreed to and the agreement signed by you or your legal representative e.g. an Attorney or Deputy. See [Appendix 3](#) for more information on mental capacity and deputyship. It is recommended that anyone entering in to a Deferred Payment Agreement should seek Independent Regulated Financial Advice.

#### 5. Do I have to pay to enter into a Deferred Payment Agreement?

You will be asked to pay an initial set up administration fee (see [Appendix 1](#)) which will be payable at the time the charge is placed against the property and the Deferred Payment Agreement is entered into, however, you have the choice to add the fee to the loan. This fee covers the Council's legal costs and disbursements involved in drawing up the agreement, carrying out searches and placing the legal charge against your property. We will write to you with details of the administration charges before you enter into the Deferred Payment Agreement. Once on the scheme, an annual fee of £140.00 per year will apply for the duration of the agreement.

Interest will also be applied to the Deferred Payment. This is set nationally by the Department of Health and is reviewed every six months, usually in July and January of each year. [Appendix 1](#) shows the current interest rate. This interest will be compounded when it is added to the accruing debt.

In certain circumstances additional costs may also be incurred from time to time which will be added to the deferred payment debt, for example, this could be if a specialist valuation is required at any point during the life time of the agreement. We will write to you setting out what these charges are before they are added to

the loan. Alternatively you will have the option to settle these charges as and when they are incurred.

## 6. What if I do not want to enter in to a Deferred Payment Agreement?

If you decide that you do not want to enter into a Deferred Payment Agreement and the value of your property exceeds the upper capital limit, the Council will assess you as being able to pay for your care fees in full.

## 7. What if I am a legally appointed representative for someone?

If the person receiving care lacks capacity to make decisions regarding their finances, there must be a legally appointed representative to make decisions on their behalf. This must be someone that holds either a registered Enduring Power of Attorney for Property and Financial Affairs, a Lasting Power of Attorney for Property and Financial Affairs or a Deputy appointed by the Court of Protection. The Council is unable to offer a Deferred Payment Agreement until someone is appointed to act legally on their behalf. See [Appendix 3](#) for more details.

## 8. Could the Council refuse to offer me a Deferred Payment Agreement?

Worcestershire County Council may refuse a Deferred Payment if:

- We cannot place a legal charge on your property. This could be if you already have a legal charge on your property due to an existing mortgage or equity release scheme and this prohibits another charge being placed on the property.  
or
- There is insufficient equity available in the property, in order to cover a minimum of 12 months care home fees.  
or
- You do not have capacity to make decisions and if you do not have a Person legally appointed to act on your behalf, for example an Attorney or Deputy for Property and Financial Affairs. For more information relating to acting on behalf of someone else and the Mental Capacity Act please see [Appendix 3](#).  
or  
Where you are seeking a top up and/or where you do not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property.  
or
- If your property or land is unregistered and you are unable to prove ownership  
Or
- A co-owner or interested party do not give their consent to the creation of a legal charge on the property.

The treatment of the property will then be considered in line with Worcestershire County Council's Charging Policy for Care and Support.

## 9. What happens when I first go in to a care home?

If you have savings of more than the upper capital limit, ([see Appendix 1](#)) excluding the value of your home, you will be expected to pay for your care fees in full. Once your savings fall close to this limit, you can approach the Council for possible assistance towards your care costs. If the Council assess your needs as eligible and they are to be met in a care home, it must offer you a Deferred Payment if the qualifying criteria are met. At the same time you will also be given a Property Information Pack, which gives more details regarding the agreement including the Deferred Payment Application form. You will need to complete and return this form within 2 weeks of receipt, if you would like to accept the offer to defer the payment of your care fees under a Deferred Payment Agreement.

If, however, you do not have savings above the upper capital limit, the Council may disregard the value of your property which was your former main or normal home, for the first 12 weeks of your permanent residential or nursing care stay.

If your stay was initially temporary the 12 weeks starts from the date it is decided your care is permanent. If your property is sold within this 12-week period, the Council will take into account the money you receive from the sale as capital and you will be expected to pay the full cost of your care from the date of the date of completion of the sale.

If you have been in residential or nursing care and paying for your care fees without any assistance from the Council for more than 12 weeks, the 12 week property disregard will not apply to you. If you have been paying for your care in full for less than 12 weeks and your capital falls below the upper capital limit, you may be entitled to some of the 12 week property disregard period.

Although the value of your property is disregarded during this time, you will still be required to complete a 'Financial Assessment' this is to establish what you can afford to contribute towards your care costs from your income and other savings. Whilst we are gathering information to be able to accurately assess how much you will be asked to pay, you will be charged a provisional contribution for your residential or nursing care and this will be payable to the home. (See [Appendix 1](#) for current amount)

Before the end of this 12 week period, you will be asked to confirm if you would like to accept the offer of deferring payment of your care fees and enter into Deferred Payment Agreement, as the initial contract with the home will cease at the end of the 12 weeks.

## 10. What is the financial assessment and why do I need to complete one?

If you have been assessed as needing a care service. Social care, unlike health care is not a free service.

A financial assessment is needed to decide if you are eligible for any financial assistance from the Council and also what you can afford to contribute towards your care. It is a means tested assessment, based on your income, savings and expenditure. Financial assessments are completed by a member of the Care Contribution Assessment Team, in line with Worcestershire County Council Charging Policy For Care and Support.

If your property falls to be disregarded for the first 12 weeks, your financial assessment will not take into account the value of your home.

From the start of the 13<sup>th</sup> week of your care, the value of your property will need to be considered in the second financial assessment; this is called the 'Deferred Payment Financial Assessment' which will need to be completed.

If the total amount of your capital, including the value of your home, exceeds the upper capital limit, you will be assessed as being able to pay for your care fees in full.

However, if you chose to enter in to a Deferred Payment Agreement, we will base the assessment on your income and savings, excluding the value of your property, and the Council will pay the part of your weekly fees that you can't afford until the value of your home is realised. The part that the Council pays is your 'Deferred Payment'.

The deferred payments build up as a debt - which is cleared when you have the capital available to clear the debt, this for many people will be done, when they sell their home, either immediately or later on.

#### The Deferred Payment Financial Assessment

This assessment will establish what your contribution will be from the start of your Deferred Payment Agreement, which will be reviewed annually.

We will consider your total weekly income and savings and leave you with the 'Disposal Income Allowance' as set out in the fore mentioned charging policy. (See [Appendix 1](#))

This allowance is to cover your weekly personal expenditure and also to cover the costs of insuring and maintaining your property whilst you are in the care home. You may decide that you do not want to take the full amount of the Disposal Income Allowance, instead reducing the amount of your accruing, weekly debt to the Council. However, as a minimum you must retain at least the weekly amount of the Personal Expense Allowance (see [Appendix 1](#))

## 11. What benefits can I claim if I chose to enter in to a Deferred Payment Agreement?

During the Deferred Payment Financial Assessment, the officer will advise you of any benefits they feel you may be entitled to when on a Deferred Payment. You or your legal financial representative will be responsible for applying for such benefits and for notifying the Department for Work and Pensions of any changes in your circumstances.

Likewise, should there be any changes in your income or benefits; it is your responsibility to notify the Care Contribution Assessment Team of any such changes.

## 12. Can I rent out my home whilst I am in the care home?

Before entering into any tenancy agreement, you must obtain consent from the Council and can do this by contacting the Care Contribution Assessment Team.

Renting out your property will affect the amount you are asked to pay toward your weekly care fees. We will however, disregard 25% of the gross rental income. The Care Contribution Assessment Officer will ask you to provide verification of the proposed tenancy agreement and proposed rental income.

## 13. How do I apply for a Deferred Payment Agreement?

First of all you will need to fully complete the Deferred Payment Application Form, found within your Property Information Pack. This should be returned with any appropriate supporting documentation, such as copies of Last Power of Attorney certificates, wills and possibly death certificates.

## 14. What happens next?

The Care Contribution Assessment Team will complete a certain number of preliminary checks and enquires as follows:

### 1. Ownership

In order to confirm you are the legal / beneficial owner the Council will complete a land registry search to confirm ownership. If your property is registered it will confirm if you are either of the following:

- Sole ownership

Is if you own your property outright, with no other owners.

- Joint Tenants

This is where you own the property with one or more other people, and when one joint tenant dies that person's share automatically passes to the survivor(s). This means that you cannot leave your share of the property to someone else in your will.

- Tenants-in-Common

This is where the property is owned by 2 or more persons, and each person can leave their share in the property to whomever they chose in their will.

Property held as tenants in common may be suitable for a Deferred Payment Agreement in certain circumstances and the Council will consider each case on its own merits. If the co-owner is deceased and probate is currently being

administered, the Council will require additional information and the property, if unregistered, may have to be registered with Land Registry before the agreement can be entered in to, or the registration may need to be amended/updated before we offer an agreement.

Please note the Council will not cover any related costs in doing this.

In all cases, written informed consent of all co-owner(s) and any other person with an interest in the property will be required agreeing to the legal charge being placed against the property and this charge taking priority to and ranking before their interest in the property.

If a Deferred Payment is not appropriate then the persons share in the property will be considered in the financial assessment as a capital asset and if that share exceeds the upper capital limit the person will be required to pay the full costs of their care.

- Unregistered Property

If the property is unregistered and you are unable to prove ownership, you may be refused a Deferred Payment Agreement, until such time that the property is registered.

- Requirement of Co-Owner(s') & Interested Parties Consent

Where the property that is to be the subject of the Deferred payment Agreement is co-owned or there is another interested party, for example, there is a tenant or lodger in the property, we will require in writing genuine and informed consent of each co-owner and/or anyone else the Council considers has an interest in the property/land confirming their understanding and agreement that your entering into the agreement will lead to the creation of a legal charge taking priority to and ranking before any interest the person has in the property/land which will be the subject of the charge.

If we are unable to place a charge against the property, the persons share will be considered and treated as a capital asset and taken in to account in line with Worcestershire County Council's Charging Policy for Care and Support which may result in the person being assessed as being able to meet the full cost of their care.

## 2. Disregards

There are specific circumstances when the value of your property will be disregarded. See [Appendix 2](#) for full details of such circumstances.

## 3. Valuation

You will be asked to state on your application form the approximate value of your property. The Council will compare this by using a number of means, such as local knowledge, internet sites or local estate agents.

If you are not happy with the valuation the Council uses to determine the maximum loan offered, a specialist valuation may be required. In these circumstances you may be asked to pay for this valuation.

#### 4. Equity

In order to determine if we are able to offer a Deferred Payment Agreement and if so how much, we need to calculate your share of the equity available in the property.

This is calculated as shown below:

Value of your share, less 10% (sale costs), less any outstanding loan/mortgage, less lower capital limit (see [appendix 1](#)) = total amount of equity available. This is the maximum the Council will loan up to, this is called your 'Equity Loan Limit'

This is illustrated below:

Property value:	£150,000.00
Minus sale costs (10%)	£15,000.00
Minus outstanding mortgage	£20,000.00
Minus lower capital limit	£14,250.00

Equity Loan Limit is                      £100,750.00

This amount will be reviewed regularly and subject to change to reflect the current market position.

After all these preliminary checks have been completed a member of the Care Contribution Assessment Team will be in contact with you with a view to providing you with an offer. In some circumstances you may be asked to attend a meeting to finalise our enquiries.

Should you accept the Council's offer you will be asked to sign a Deferred Payment Agreement and its terms and conditions.

#### 15. Can a Deferred Payment be considered against the value of any other asset?

In some circumstances the Council may consider other forms of security providing this security gives the Council adequate protection. Each case will be considered on its own merits but the Council reserves the right to refuse any other form of security.

#### 16. What are my responsibilities whilst the agreement is in place?

The Deferred Payment Agreement sets out various contractual requirements on you and the Local authority as parties to the agreement. These are detailed in the agreement but are set out in brief below.

Your responsibilities include, but are not limited to the following:

- You must notify the Council of any changes in your income or capital during the life time of the agreement.
- You must notify the Council of any changes to your need for care and support, as these may affect the assistance the Council may be able to provide.
- If your property has not been disregarded for the purpose of your financial assessment you must inform the Council of any changes that may mean that the property subsequently falls to be disregarded.
- You must ensure that you have adequate buildings insurance on the property at all times, even if the property is empty and ensure that any terms required by the insurer are met. The Council may wish to see verification of this from time to time.
- You must agree to adequately maintain the property whilst you are in a care home, to ensure it is in a good state of repair. If you are not able to do this yourself you must have in place an arrangement for regular maintenance to take place. You may wish to appoint someone to oversee this on your behalf and you will need to inform the Council who you have appointed.
- You must obtain consent from the Council before allowing someone to move into the property after the agreement has been made. We will require from any such person their written consent and understanding that the legal charge on the property, in favour of the Council, will take priority to and ranking before any interest the person has in the property.
- You must inform the Council if you decide you wish to sell the property and keep it fully informed as to the progress of any sale.

## 17. What are the Council's responsibilities whilst the agreement is in place?

The Deferred Payment Agreement sets out various contractual requirements on you and the Local authority as parties to the agreement. The Council's responsibilities are set out in brief below:

- The Council must provide you with a written statement at the end of the initial six month period and then six monthly thereafter, detailing how much you would have to pay the Council in order to terminate the agreement on the date the statement is sent or such later date that you may request, including any administrative fees and interest applied in addition to advising you of the equity remaining with a projection as to how quickly this will deplete up to your equity limit.
- The Council must provide you with an up to date statement within 28 days of your request, which must be done in writing to:

DAS Finance Team  
Worcestershire County Council  
County Hall  
Spetchley Road  
Worcester  
WR5 2NP

or via email to [ACSBud-Acc@worcestershire.gov.uk](mailto:ACSBud-Acc@worcestershire.gov.uk)

- The Council will look again at the valuation of your property or chosen form of security once the amount which has been deferred has exceeded 50% of the security and adjust the equity limit according and keep this under review if the value has changed. The Council will give 30 days' written notice on the date of which you are likely to reach your equity loan limit.

## 18. What happens if my circumstances change - will this affect my agreement?

There are certain circumstances where your agreement will not end but your care fees temporarily cease to accrue as part of your debt.

However, the debt that has accrued so far will still be subject to interest.

These circumstances are listed below:

- You reach your maximum equity loan limit.
- In most cases the Council will only disregard the value of your property where a qualifying relative (as defined in [Appendix 2](#)) has been continuously occupying the property as their only or main home prior to you entering long term care. In certain circumstances the Council may consider disregarding the value of your home should a qualifying relative (as defined in [Appendix 2](#)) move in to your property after you have entered long term permanent care. The Council will however, need to consider the reason why this person has subsequently moved in to the property and each case will be looked at on its own merits.
- You become eligible for Continuing Health Care funding via the NHS. Whilst this is in place the Council will not be assisting with your care fees. At this time your care fees will temporarily cease to accrue as part of your debt but will still attract interest. You may choose to continue to make contributions from your income during this time, which will reduce the amount outstanding.
- The Council may choose to stop deferring your care costs, if the terms of the agreement are breached, for example, the property fails to be adequately maintained or insured. In such cases, a new financial assessment will need to be completed and the remaining equity will be treated as capital which may

result in the person being assessed as being able to pay for their care fees in full.

- You are subsequently assessed as no longer needing 24 hour care. A new financial assessment will be completed in such cases in line with Worcestershire County Council's Charging Policy for Care and Support, depending on what if any care and support the person then receives.

## 19. Can the agreement be terminated?

A Deferred Payment Agreement can be terminated in 3 ways:

- At any time, you or someone acting on your behalf, can repay the full amount due
- When the property (or form of security) is sold and the Council is repaid on the completion of sale
- Or the Council is repaid from the person's estate.

## 20. How and when is the legal charge removed from my property?

The charge is only removed once the full amount of the accrued debt has been repaid to the Council. On receipt of the repayment, the Council will authorise its Legal Services Division to instruct the Land Registry to release the charge. This can take between 7 and 10 days to remove. The charge can also be removed on completion of the sale of the property, following confirmation from your solicitor.

## 21. What if I don't agree with the Council on any of its decisions relating to my Deferred Payment Application?

If you are unhappy in the first instance, please contact a member of the Care Contribution Assessment Team, who will discuss your concerns with you. If you still feel that your concerns have not been resolved then the Council complaints process is available to you.

For more information please see the Worcestershire County Council's Adult Social Care complaints procedure. This is available through the Worcestershire HUB or through contacting the Consumer relations officer (01905 766365) or by visiting [www.worcestershire.gov.uk/cms/consumer-relations.aspx](http://www.worcestershire.gov.uk/cms/consumer-relations.aspx) and using the online form.

## 22. Consumer Credit Act

In the majority of cases a Deferred Payment Agreement will only be offered against your former main or only home, in some cases the Council may choose to apply its discretion whereby a loan is agreed and secured against another form of asset, such as land. In both circumstances, the agreement is exempt from the Consumer Credit Act as per Article 72G(4) of the Financial Services and Markets Act 2000 (Regulated

Activities) Order 2001, where both types of Deferred Payment Agreements (secured, and not secured, on land) are to be supplied by a Local Authority and fall within one of the definitions contained in Article 2(2) of European Council Directive 2008/48/EC.

Worcestershire County Council supports the objectives of the Data Protection Act 1998 and is registered as a data controller. Information that you provide will be governed by the requirements of the Data Protection Act 1998 and may be processed by the Council in the performance of its statutory duties or for purposes required by law. More information is available at [www.worcestershirecountycouncil.gov.uk](http://www.worcestershirecountycouncil.gov.uk)

#### CAPITAL LIMITS

Figures set by Government from April 2017 – March 2018. These figures will change as of April 2018.

Upper Capital Limit	£23,250.00
Lower Capital Limit	£14,250.00

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#### PROVISIONAL CHARGE

64 years and over	Under 64 years
£134.45 per week	£80.45 per week

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#### ADMINISTRATION FEES

Initial Set up Fee:

£620.00	if the property is registered with Land Registry
£630.00	if the property is unregistered

Annual Fee:

£140.00 per year for the duration of the agreement

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#### CURRENT INTEREST RATE

1.45% as of 1<sup>st</sup> January 2018  
to be reviewed every 6 months by Department of Health

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#### PERSONAL EXPENSE ALLOWANCE

£24.90 per week

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#### DISPOSABLE INCOME ALLOWANCE

£144.00 per week

## PROPERTY DISREGARDS

### Mandatory Disregard

The Council will disregard the value of your main or only home when:

- (a) Where the person is receiving care in a setting that is not a care home;
- (b) If the person's stay in a care home is temporary and they:
  - (i) intend to return to that property and that property is still available to them; or
  - (ii) are taking reasonable steps to dispose of the property in order to acquire another more suitable property to return to.
- (c) Where the person no longer occupies the property but it is occupied in part or whole as their main or only home by any of the people listed below, the mandatory disregard only applies where the property has been continuously occupied since before the person went into a care home (for discretionary disregards see below):
  - (i) the person's partner, former partner or civil partner, except where they are estranged;
  - (ii) a lone parent who is the person's estranged or divorced partner;
  - (iii) a relative as defined in the paragraph below of the person or member of the person's family who is:
    - (1) Aged 60 or over, or
    - (2) Is a child of the resident aged under 18, or
    - (3) Is incapacitated.

This person is referred to in the policy as the 'Qualifying Relative'

For the purposes of the disregard a 'Qualifying Relative' is defined as including any of the following:

- (a) Parent (including an adoptive parent)
- (b) Parent-in-law
- (c) Son (including an adoptive son)
- (d) Son-in-law
- (e) Daughter (including an adoptive daughter)
- (f) Daughter-in-law
- (g) Step-parent
- (h) Step-son
- (i) Step-daughter
- (j) Brother
- (k) Sister
- (l) Grandparent
- (m) Grandchild
- (n) Uncle
- (o) Aunt
- (p) Nephew
- (q) Niece

(r) The spouse, civil partner or unmarried partner of (a) to (k) inclusive.

A member of the person's family is defined as someone who is living with the qualifying relative as part of an unmarried couple, married to or in a civil partnership. For the purposes of the disregard the meaning of "incapacitated" is not closely defined.

However, it will be reasonable to conclude that a relative is incapacitated if either of the following conditions apply:

(a) the relative is receiving one (or more) of the following benefits: incapacity benefit, severe disablement allowance, disability living allowance, personal independence payments, armed forces independence payments, attendance allowance, constant Attendance Allowance, or a similar benefit;

or

(b) the relative does not receive any disability related benefit but their degree of incapacity is equivalent to that required to qualify for such a benefit. Medical or other evidence may be needed before a decision is reached.

For the purpose of the property disregard, the meaning of "occupy" is not closely defined. In most cases it will be obvious whether or not the property is occupied by a qualifying relative as their main or only home. However, there will be some cases where this may not be clear and the local authority should undertake a factual inquiry weighing up all relevant factors in order to reach a decision. An emotional attachment to the property alone is not sufficient for the disregard to apply.

The Council will need to take account of the individual circumstances of each case; however, the Council will consider the following factors in making a decision:

- Does the relative currently occupy another property?
- If the relative has somewhere else to live do they own or rent the property (i.e. how secure/permanent is it?)
- If the relative is not physically present is there evidence of a firm intention to return to or live in the property
- Where does the relative pay council tax?
- Where is the relative registered to vote?
- Where is the relative registered with a doctor?
- Are the relatives belongings located in the property?
- Is there evidence that the relative has a physical connection with the property?
- Where address is given when claims for benefits and pension have been made (where applicable)

The Council will disregard the property, where the relative meets the qualifying conditions (i.e. is aged 60 or over or is incapacitated) and has occupied the property as their main or only home since before the resident entered the care home.

## Discretionary Disregard

The Council may also use its discretion to apply a property disregard in other circumstances. However, the Council will need to balance this discretion with ensuring a person's assets are not maintained at public expense. An example where it may be appropriate to apply the disregard is where it is the sole residence of someone who has given up their own home in order to care for the person who is now in a care home or is perhaps the elderly companion of the person.

The Council may apply the disregard when a qualifying relative moves into the property after the resident enters a care home. Where this happens the local authority will need to consider all the relevant factors in deciding whether the property must be disregarded. Factors such as the timing and purpose of the move may be relevant to establishing if the property is the relative's main or only home.

### What is the Mental Capacity Act and why is it important to Deferred Payments?

#### Definition

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.

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.

#### If the person receiving care does not have capacity to enter in to a Deferred Payment Agreement

Where there may be doubt as to a person ability to make appropriate decisions, a social worker will be required to complete a Mental Capacity Assessment. Should this find that the person receiving care lacks the mental capacity to make appropriate decisions, a deferred payment agreement cannot be entered into unless that person has a legally appointed representative e.g. an Attorney acting under a Registered Enduring Power of Attorney or Lasting Power of Attorney for Property and Financial Affairs or a Court of Protection appointed Deputy for Property and Financial Affairs who can make decisions on their behalf. A list of appropriate people who can enter in to an agreement are listed below

#### Enduring Powers of Attorney (EPA)

An Enduring Power of Attorney give power the Attorney to take decisions relating to the Donor's property and financial affairs, and remain valid provide that they were drawn up before 1st October 2007. No new EPAs can be created since 1<sup>st</sup> 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). The EPA is required to be registered and bear the Court of Protection seal for it to be valid and operative where the Donor has lost capacity to take decision on matters pertaining to the Power.

#### Lasting Powers of Attorney

People over the age of 18 can formally appoint one or more people as their Attorney acting under a Lasting Powers of Attorney (LPA). There are two types of LPA i.e. a personal welfare, and property and financial affairs LPA. An LPA allows persons to plan ahead for a time when they may not have capacity to make certain decisions. An LPA must be registered with the Office of Public Guardianship and sealed by the Court of Protection before it may be used.

The person donating the LPA is known in legal terms as the donor. The legal instrument donating the Power to the Attorney is referred to as 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.

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 must apply to register the LPA while they still have capacity. 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.

### Deputyship

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 property and financial affairs and/ or personal welfare decisions.

A Deputy can be a representative for the person or the local authority or a solicitor, or a member from the Court of Protection's approved panel of professional Deputies.

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.

### What if there is no one yet appointed?

It is normal practice for a family member, friend or legal representative apply to the Court of Protection to become the persons Deputy. Whilst this application is being processed, Worcestershire County Council can make arrangements for the persons care fees to be paid in full, however, the person applying for the Deputyship, will be asked to sign a letter confirming your understanding that you liable to repay any assessed fees from the Donor's finds once the Deputyship order is in place. At this point, a Deferred Payment could then be considered.

For more information please visit:

The Court of Protection Contact Details:

Web links:

<https://www.gov.uk/court-of-protection>

<https://www.gov.uk/apply-to-the-court-of-protection>

<https://www.gov.uk/become-deputy/responsibilities>

Email: [courtprotectionenquiries@hmcts.gsi.gov.uk](mailto:courtprotectionenquiries@hmcts.gsi.gov.uk)

Telephone: 0300 456 4600 (Monday-Friday 9am to 5pm)

You can also write to the following address:

PO Box 70185, First Avenue House

42 - 49 High Holborn, London, WC1A 9JA