



MANCHESTER
CITY COUNCIL

Deferred Payments Policy

2018/2019

Children and Families Directorate

Version 1.0

www.manchester.gov.uk

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If you require this document in an alternative format, such as Braille, audio, easy read or large print, please contact the Case Management Team on 0161 234 5383

1 Introduction

- 1.1 The purpose of this Deferred Payments Policy is to say how you can use the value of your property to help pay for your care and accommodation charges in a care home. You may be offered this option when we have assessed your care needs.
- 1.2 You will receive a care assessment from a social worker or care manager. If they decide that you have eligible care needs and below £23,250 in savings and assets (other than your main home) the care assessor will inform the Council's Case Management Team. Your care assessor will evaluate the cost of your eligible care needs. This is called your Personal Budget. Your care assessor must provide you with an affordable placement within this Personal Budget. The Case Management Team will then financially assess you to work out how much you can afford to contribute towards the cost of any care you may receive.
- 1.3 If your main home is not disregarded (Appendix A) for the financial assessment you may be able to enter into a Deferred Payment Agreement with us.
- 1.4 The Deferred Payment Agreement allows you to defer (delay payment of) the cost of care and accommodation charges against the value of your property, so that you do not have to sell your property to pay for your care and accommodation charges in your lifetime. When your home is sold we will then collect the deferred costs.
- 1.5 In this policy when we say 'us' or 'we', we mean Manchester City Council. When we say 'you' we mean the service user (the person receiving care or services).

2 Legal Framework

- 2.1 All our charges are worked out using The Care Act 2014 and the Department of Health's Care and Support (Charging and Assessment of Resources) Regulations 2014.
- 2.2 Section 34-36 of the Care Act 2014 allows us to enter into a Deferred Payment Agreement.

3 Principles of the Deferred Payments Policy

- 3.1 The aims of our Deferred Payments Policy are that:
 - It is compliant with legislation and statutory guidance,
 - It makes Deferred Payments available to those who are eligible for the scheme,
 - Those that are eligible for the scheme should not have to sell their home against their wishes to pay for care during their lifetime,

- Those that are eligible are fully informed about the Deferred Payment Agreement and signposted to independent advisors when appropriate,
- We aim to complete the contract within 12 weeks of your permanent placement in a care home,
- We will make sure that everyone who can pay for some or all of their care costs, does pay for them,
- We will collect any unpaid charges in line with our Charging and Debt Recovery Policy for Care & Residential Services Debt.

4 Qualifying for a Deferred Payment Agreement

4.1 To qualify for a Deferred Payment Agreement you must meet all three of the following criteria:

- You are receiving permanent care in a care home; and
- You have £23,250 or less in savings and assets, not including the value of your main home; and
- Your main home is not disregarded (Appendix A).

4.2 We can consider you for a Deferred Payment Agreement if you narrowly miss out on the criteria above or are likely to meet it in the near future.

5 Refusing a Deferred Payment Agreement

5.1 Even if you meet the criteria above, we may refuse you a Deferred Payment Agreement if:

- We cannot secure a first charge on the your property, or
- You do not agree to the terms and conditions of the Deferred Payment Agreement, or
- We cannot obtain security (Appendix B).

5.2 If you do not want to sell your property and choose not to enter into a Deferred Payment Agreement we will charge you the full cost of your care.

5.3 We will collect any unpaid charges in line with our Charging and Debt Recovery Policy for Care & Residential Services Debt.

6 Information and Advice

6.1 We will give you information and advice so that you can understand what is happening when you ask for a Deferred Payment Agreement. We will explain:

- What the eligibility is for a Deferred Payment Agreement,

- How a Deferred Payment Agreement may affect your income, benefit entitlements, and charges,
- Any fees that are being charged,
- How interest will be charged on any deferred amount,
- What we will need you to do during your Deferred Payment Agreement,
- When we may stop deferring charges,
- What happens when your agreement comes to an end,
- What happens if you do not repay the charges that you owe,
- If a home is used to defer payments against, it may need to be sold at a later date to repay any charges that you owe,
- The total amount you can defer depends on how much equity is in the asset.

7 Mental Capacity

- 7.1 The Mental Capacity Act 2005 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.
- 7.2 When a care manager or social worker assesses your care needs they will tell us if you have mental capacity.
- 7.3 We cannot enter into a Deferred Payment Agreement with anyone who lacks the appropriate mental capacity unless someone is legally empowered to support that person with their finances (Appendix C).

8 Weekly Contribution

- 8.1 Your weekly contribution towards your care costs will depend on your financial assessment. We will assess you in line with our Residential Charging Policy.
- 8.2 We will never charge you more than the cost of the care home placement.
- 8.3 You can reduce your weekly contribution by deferring the contribution against your property. Please see Appendix D for examples.
- 8.4 We will send you an invoice every four weeks.
- 8.5 When you sign up to a Deferred Payment Agreement you can keep up to £144 per week (Disposable Income Allowance) but this will depend on how much you can defer. Please see Appendix D for examples.
- 8.6 You can choose to keep less than the £144 of your Disposable Income Allowance. You may want to do this as it will reduce the amount you defer and reduce the interest you pay on the deferred amount.

9 Amount Deferred

9.1 You may be able to defer all your care costs.

9.2 We will need to consider if the amount you want to defer is possible. This will depend on (Please see Appendix D for examples):

- The amount of equity in your chosen asset,
- How much you are contributing to your care costs from other sources, for example income, savings, financial products; and
- Your total care costs including any top-ups.

10 Top Ups

10.1 If the cost of your care home is more expensive than the assessed cost of your care needs, you will need to agree a 'top-up' payment.

10.2 With a Deferred Payment Agreement you can top up your care costs but we will decide whether the top up is sustainable. If it is not sustainable we may refuse to enter into a Deferred Payment Agreement with you. Please see Appendix D for examples.

11 Rental Income

11.1 We will allow you to keep some of your rental income if you decide to rent out the property you have deferred care costs against. Please see Appendix D for examples.

11.2 The amount we allow you to keep will depend on:

- The cost of maintaining the property,
- The cost of any managing agents fees,
- The cost of insuring the property.

12 Sustainability

12.1 We will calculate the sustainability of your Deferred Payment Agreement by taking into account the (Please see Appendix D for examples):

- Likely period you will need the Deferred Payment Agreement for; and
- Equity available in the property; and
- Your level of savings and how long they are likely to last; and
- The amount you are assessed as being able to contribute towards your care costs from your weekly income, any available rental income and the Disposable Income Allowance; and
- Possibility of changes in your future care needs; and

- Possible changes in circumstances.

13 Property Valuation

13.1 We will use the value of the property to work out:

- If the equity in the property is above the upper capital limit (£23,250) which will make you a self-funder.
- How much of your care costs you can defer against your property (appendix E).

13.2 If there is a dispute over the valuation of the property, a professional valuer or the Valuation Office Agency will be asked to provide a current market valuation of the property.

14 Administration Fee

14.1 We will charge the following administration fees for any new Deferred Payment Agreement applications:

- Setting up the Deferred Payment Agreement; and
- Maintaining the Deferred Payment Agreement (annual fee); and
- Terminating the Deferred Payment Agreement.

14.2 You can either pay the fees separately or add them onto the amount you are deferring. Any fees that you defer will accrue interest.

14.3 The fees will be provided to you with the Deferred Payment Agreement application form and are based on the costs of operating and maintaining a Deferred Payment Agreement (Appendix F).

15 Interest

15.1 We will charge compound interest on deferred care costs (Appendix G).

15.2 The interest rate is set by Central Government. It will be subject to change every year on 1 January and on 1 July.

15.3 The interest will accrue on a compound basis and you will receive four weekly invoices showing the deferred debt including interest.

15.4 You will receive statements at least twice a year showing the deferred care costs and the interest on the deferred debt.

15.5 We will still charge interest on the deferred care costs even when you can no longer defer any more of your care costs.

15.6 If you pass away, interest will still accrue until the deferred costs have been repaid.

15.7 If we cannot recover the accrued debt and pursue the debt through the County Court system, we may charge the higher County Court rate of interest.

16 The Agreement

16.1 The Deferred Payment Agreement will include all of the terms and conditions of the agreement between us and you or your representative (Appendix H).

16.2 Once you have signed the Deferred Payment Agreement it will take immediate effect.

17 Our Responsibilities Whilst the Agreement is in Place

17.1 We will:

- Provide you with an invoice every 4 weeks,
- Provide a 6 monthly update of the:
 - The amount of fees deferred,
 - Interest and administrative charges accrued to date,
 - The total amount due, and
 - The equity remaining in the property.
- Provide you with a statement on request within 28 days,
- Review the value of your property once the amount deferred exceeds 50% of the equity and regularly afterwards. We will adjust the equity limit and review the amount deferred if the value of your property has changed.

18 Your Responsibilities Whilst the Agreement is in Place

18.1 You must:

- Notify us when there is a change in your financial circumstances that might affect the amount you can defer against your property. This can include:
 - Receipt of a new benefit or changes to current benefits,
 - Changes to income and expenditure,
 - If your capital or savings cross the lower (£14,250) or upper (£23,250) capital thresholds,
 - Changes to living arrangements within your property.
- Notify us of changes to your need for care and support.
- Inform us of changes to your property that might mean that the property may be disregarded,
- Ensure that arrangements are in place to maintain the property and that it is adequately insured,

- Obtain our agreement before allowing someone to move into the property after the Deferred Payment Agreement has been signed.

19 Termination of the Agreement

19.1 The Deferred Payment Agreement will be terminated when:

- You or your representative provide us with written notice of your intention to terminate the agreement, and you repay the deferred debt in full; or,
- The property used to secure the debt against is sold. You or your representative must notify us in writing of your intention to sell the property and must repay the deferred amount in full once the property has been sold. The actual sale price of the property will be used for the final calculation of the deferred debt, and if appropriate, to identify when self-funding status starts. We will remove the charge from the property once the deferred amount is paid; or
- You pass away and the deferred amount is repaid. The deferred debt will be added to any other outstanding amount due to the Council to identify the final amount payable. Where known, the Executor of the estate will be notified 28 days after the death of the service user, with the actual or provisional debt amount. The amount becomes due for repayment 90 days after the death of the adult or as agreed by the Council. The deferred debt can either be paid from the deceased's estate or by a third party, for example a family member may choose to settle the debt rather than sell the property. The Council will seek information on the approximate value of the estate to confirm previous financial assessment declarations.

19.2 If charged, interest will continue to accrue on the deferred amount until full repayment is received by the Council and the charge will only be removed at that point.

20 Complaints

20.1 If you are not happy with how we have dealt with your case, you can make a formal complaint by emailing the Case Management Team (address in Appendix I) stating the reason for your complaint and providing any supporting evidence.

21 Debt Recovery

21.1 We have a duty to recover all care charges.

21.2 If you do not pay what you owe for your care your charges we will follow our debt recovery processes.

21.3 This may lead to legal recovery action through the courts if payment is not made. You may also be liable to repay the legal costs and interest charges on the debt at a rate set by the County Court.

Appendix A – Property Disregards

There are rules about property disregards that can be found in Annex B of the Care Act 2014 Guidance. The Care and Support (Charging and Assessment of Resources) Regulations 2014 and The Care and Support Statutory Guidance sets out circumstances where mandatory disregards apply.

Appendix B – Obtaining Security

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.”

The Department of Health’s Care Act guidance advises that:

- We can only enter into a Deferred Payment Agreement with you if we can get adequate assurance that we can get the deferred amounts back,
- We must accept a first legal mortgage charge (if you own the property outright without any mortgage or charge against the property) as adequate assurance,
- If we cannot get a first legal mortgage charge because there is an outstanding charge or mortgage, we can still enter into a Deferred Payment Agreement as long as there is enough equity in the property to sustain the Deferred Payment Agreement,
- We can use our discretion to enter into a Deferred Payment Agreement even if you do not own the property outright or there is a charge on the property,
- If you do not outright own the property or there is a restriction on the property (e.g. under an Equity Release arrangement), we can still enter into a Deferred Payment Agreement as long as all of the parties interested in the property agree to the Deferred Payment Agreement,
- If you meet the criteria to enter into a Deferred Payment Agreement but your property is not registered with the Land Registry then you will have to register the property at your own expense before the Deferred Payment Agreement can be agreed.

Appendix C – Mental Capacity and Financial Representatives

For guidance on the Mental Health Act and dealing with a resident’s financial affairs see:

- The Mental Capacity Act 2005 www.gov.uk/government/publications/making-decisions-who-decides-when-you-cant
- Lasting Power of Attorneys www.gov.uk/power-of-attorney
- Registering existing Enduring Power of Attorneys www.gov.uk/enduring-power-attorney-duties
- Deputyship www.gov.uk/court-of-protection
- Appointeeships www.gov.uk/become-appointee-for-someone-claiming-benefits

Appendix D – Deferred Payment Examples

The weekly deferred amount (see Section 8)

The weekly deferred amount is the difference between the client contribution and the cost of the residential care (excluding any third party top up, please see Residential Charging Policy for definition of a third party top up).

Both the following examples are based on the resident receiving a standard Personal Allowance of £24.90 per week.

Resident A

Weekly Cost of the residential Home	£450.00
Weekly assessed contribution based on Financial Assessment of resources (excludes the value of your property)	£200.00
Weekly deferred amount	£250.00

Resident B

Weekly Cost of the residential Home	£450.00
Weekly assessed contribution based on Financial Assessment of resources	£150.00
Weekly deferred amount	£300.00

Estimated Equity and Sustainability (see Section 12)

The estimated sustainability of the Deferred Payment Agreement is based on the amount of equity in the property and the weekly deferred amount.

If both the examples above have a property worth £120,000 and no outstanding mortgages the equity would be calculated as follows:

$£120,000 - 10\%$ (assumed disposal costs) = £108,000

$£108,000 - £14,250$ (the lower capital threshold) = £93,750 maximum deferrable amount

Sustainability is the amount of time it would take (at current rates) to reach the maximum deferred amount – in the examples £93,750

Resident A sustainability = $£93,750/£250$ (current weekly deferred amount) = 375 weeks (approximately 7 years and 3 months) at current levels of income/costs

Resident B sustainability = $£93,750/£300$ = 312 weeks (approximately 6 years) at current levels of income/costs

The impact of increasing the Disposable Income Allowance (see Section 9)

Following on from the previous examples, both residents have now decided that they want to keep more of their income than the standard £24.90 Personal Expenditure Allowance. They both want to keep the maximum permitted Disposable Income Allowance (£144). This has a significant impact on the weekly contribution and therefore the deferred amount.

Resident A

Weekly Cost of the residential Home	£450.00
Weekly assessed contribution based on Financial Assessment of resources with increased Disposal Income Allowance (DIA). The weekly assessed contribution is lower as Residential A has asked to increase their disposable income by £119.10 (from £24.90 to £144).	£80.90
Weekly deferred amount. This has increased by £119.10 because they have increased their disposable income by this amount.	£369.10

Resident B

Weekly Cost of the residential Home	£450.00
Weekly assessed contribution based on Financial Assessment of resources with increased Disposal Income Allowance (DIA). The weekly assessed contribution is lower as Residential B has asked to increase their disposable income by £119.10 (from £24.90 to £144).	£30.90
Weekly deferred amount. This has increased by £119.10 because they have increased their disposable income by this amount.	£419.10

This in turn impacts on and the sustainability of the Deferred Payment Agreement and where applicable the amount of interest charged.

Resident A sustainability = $\text{£}93,750/\text{£}369.10 = 253$ weeks at current levels of income/costs
ie a decrease from the previous 7 years 3 months to 4 years 11 months.

Resident B sustainability = $\text{£}93,750/\text{£}419.10 = 223$ weeks at current levels of income/costs
ie a decrease from the previous 6 years to 4 years 4 months.

The impact of a First Party Top Up (see Section 10)

Where agreed a First Party Top Up will increase the amount being deferred each week. This in turn effects the sustainability of the Deferred Payment Agreement and the amount of interest (where applied) due on the deferred amount. Due to this impact, the Council may not agree to the resident paying the Top Up and a Third Party (friend/relative etc) may be required to pay the additional fees from their own resources. A Third Party top up will not affect the deferred amount as this is charged to another party.

Again, following on from Resident A and Resident B after they have both increased their disposable income to £144 per week, they would both like to add a First Party Top Up.

Resident A

Weekly Cost of the residential Home	£450.00
First Party Top Up for room with a garden view	£20
Weekly assessed contribution based on Financial Assessment of resources with increased DIA	£80.90
Weekly deferred amount without top up	£369.10
Weekly deferred amount with top up	£389.10

Resident B

Weekly Cost of the residential Home	£450.00
First Party Top Up for extra-large room	£50.00
Weekly assessed contribution based on Financial Assessment of resources with increased DIA	£30.90
Weekly deferred amount without top up	£419.10
Weekly deferred amount with top up	£469.10

This in turn impacts on and the sustainability of the Deferred Payment Agreement and where applicable the amount of interest charged.

Resident A sustainability = $\text{£}93,750/\text{£}389.10 = 241$ weeks at current levels of income/costs
ie a decrease from the previous 4 years 11 months to 4 years 8 months.

Resident B sustainability = $\text{£}93,750/\text{£}469.10 = 200$ weeks at current levels of income/costs
ie a decrease from the previous 4 years 4 months to 3 years 11 months.

The impact of retaining rental payments (see Section 11)

Any income from rent would usually be counted into the resident's assessable income. An increased weekly income means a higher weekly assessed contribution which in turn means a lower weekly deferred amount

Keeping back some of the rent received from renting the property out impacts on the assessed contribution and therefore on the weekly deferred amount and the sustainability of the Deferred Payment Agreement.

Here is a new case Resident C.

Resident C

Weekly Cost of the residential Home	£450.00
Weekly assessed contribution based on Financial Assessment of resources (including £100 per week from renting out the property)	£300.00
Weekly deferred amount	£150.00

Resident C decides to keep £50 per week of the rental income

Weekly Cost of the residential Home	£450.00
Weekly assessed contribution based on Financial Assessment of resources (including £50 per week from renting out the property)	£250.00
Weekly deferred amount	£200.00

Appendix E – Property Valuation

The equity is the value of your share in property minus 10% for potential sale costs and minus the lower capital threshold (£14,250). If your property is sold before the end of the Deferred Payment Agreement then the actual costs of sale (as opposed to 10%) will be deducted when assessing equity.

The value of your property will not include any outstanding mortgages, charges or repayments through “Right to Buy”. The value of the property will be calculated at the current market value and will not be based on the original purchase price. You will be required to provide an initial valuation from a registered valuer or estate agent.

You will need to provide us with an updated valuation each year on the date the original care home placement start date and; if appropriate; when the deferred amount exceeds 50% of the equity. Once the deferred amount passes 50% of the equity we will need more frequent updates on the value of the property to ensure the Deferred Payment Agreement is still sustainable.

Appendix F – Costs Of Deferred Payment Agreement

A one-off Set Up fee - £450

An Annual Maintenance fee - £144

A Deferred Payment Agreement Termination fee - £100

Appendix G – Interest Rates

The current interest rate from January 2018 is 1.45%

Appendix H – The Agreement

The agreement will include:

- An explanation of the maximum amount which may be deferred and that this is likely to vary over time,
- Notice that we will secure your debt by placing a legal (Land Registry) charge against your property,
- Information about the administrative costs you would be liable for,
- An explanation of how the interest will be calculated and that it will be compounded,
- An explanation of when we might refuse to defer further fees,
- An explanation that we will stop deferring care charges if you no longer receive care and support in a care home or if we no longer consider that your needs should be met in a care home,
- An explanation of how you can terminate the Deferred Payment Agreement, including what notice should be given.

Appendix I – The Case Management Team Contact Details

Details for the Case Management Team are:

Email address:

caseman.enquiries@manchester.gov.uk

Postal address:

Case Management Team
Revenues and Benefits Unit,
Benefits Service
PO Box 3
Manchester
M15 5BA

Telephone:

0161 234 5383

We will treat all information you disclose to us with the strictest confidence and will only use the information for the purposes for which it was disclosed to us. The Council is under a duty to protect the public funds it administers, and to this end may share the information you have provided on this agreement with other bodies responsible for auditing or administering public funds for the prevention and detection of fraud. The Council can data match internally or with other organisations and is currently required to participate in the Audit Commissions National Fraud Initiative (NFI) data match exercise. Further information on this can be obtained from: <http://www.audit-commission.gov.uk/national-fraud-initiative/>.

Where specific figures are quoted in this document they reflect the current position. Any change to the relevant legislation may mean that some figures will change.

