

Adult Social Care

Deferred Payment Policy

Glossary

Policy	Is a document that explains how Wiltshire Council will make decisions about a particular area or areas. Policies are used to make it clear to everyone what they can expect from Wiltshire Council.
Consultation	Is when the Council shares its ideas about a proposal to gather the views of communities and people who may be affected if the changes are agreed. Wiltshire Council will consider feedback gathered during the process and may make changes before submitting the proposal to elected members who make decisions.
Care Act (2014) Regulations and Guidance	This is the law that sets out how local authorities must deliver care and support services in England. The draft policies have been developed so as to comply with the requirements of the Act, The Care and Support (Preventing Needs for Care and Support) Regulations 2014 and the Care and Support Statutory Guidance
Wellbeing	<p>This concept is central to the Care Act and must inform all of a local authority's activities. There is no one definition of wellbeing and it is a broad concept. Considerations of wellbeing will take the following into account;</p> <ul style="list-style-type: none"> •Personal dignity •Physical and mental health and emotion well-being •Protection from abuse •Control by the individual over day-to-day life •Participation in work, education, training, or recreation •Social and economic well-being •Domestic, family and personal •Suitability of living accommodation •The individual's contribution to society
Carer	A carer is someone (aged 18 or over) who helps another person in their day to day life, usually a relative or friend, who could not manage without that support. This is not the same as someone who provides care professionally or through a voluntary organisation
Eligible Needs	Care and Support needs that meet the criteria set out in the Care Act and as such must be met by the Council based on your financial situation
Information	Means the communication of knowledge and facts regarding care and support and preventative services, facilities and services as described in the Care and Support Statutory Guidance paragraph 2.40
Advice	Means helping a person to identify choices and/or providing an

	opinion or recommendation regarding a course of action in relation to care and support.
Duty	This means that the Council is legally required to do what it sets out in the legislation.
Discretionary Power	These are powers Wiltshire Council can choose to use but are not legally required to do so.

Policy Cover Information

Policy number		Version number		Status	Final
Implementation lead	All adult social care commissioners			Implementation date	October 2015
Policy approved by	Wiltshire Council Cabinet			Date approved	October 2015
Next review date	April 2018				

Policy Control Sheet

Policy title	Adult Care Deferred Payments policy
Purpose of policy	To explain how Wiltshire Council will deliver the duty to prevent, reduce and delay needs set out in the Care Act.
Policy author(s)	
Lead Director	James Cawley, Strategy & Commissioning
Target audience	Frontline staff and members of the public
This policy supersedes	N/A
This policy should be read alongside	Charging Policy Adult Care General Policy Statement Adult Care Personalisation Policy
Monitoring and review lead	Adult Care Community Commissioning
First year review date	April 2018
Subsequent review date	
Internet link	http://www.wiltshire.gov.uk/adult-care-policies

This policy can be made available in a range of accessible formats if required.

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This policy has been drafted in accordance with the statutory guidance and regulations under the Care Act 2014.

1 Summary

1.1 This policy sets out the following;

- (i) those situations where the council will usually enter into a Deferred Payment Agreement (the “DPA”) under the Care Act 2014 (“the Act”)
- (ii) persons who may be entitled to an offer of a DPA
- (iii) the procedure and details of the DPA

1.2 The duties and powers to offer a DPA is to be found in Sections 34 – 36 of “the Act” and the Care and Support (Deferred Payment) Regulations 2014 (“the Regulations”).

1.3 Subject to the terms of this policy, the Act and the Regulations a DPA will be agreed to assist the adult with payment of care costs.

1.4 The policy only relates to care in a residential or nursing home and supported living placements.

1.5 Supported living is defined in the Regulations under regulation 3(2) as:

‘accommodation which is not a care home and is—

- a. in premises which are specifically designed or adapted for occupation by adults with needs for care and support to enable them to live as independently as possible; or*
- b. provided—*
 - i. in premises which are intended for occupation by adults with needs for care and support (whether or not the premises are specifically designed or adapted for that purpose); and*
 - ii. in circumstances in which personal care is available if required. For the purposes of paragraph (1)(b)(ii), personal care may be provided by a person other than the person who provides the accommodation*
- c. The accommodation does not include premises*
 - i. in respect of which the adult is for the time being entitled to dispose of the fee simple, whether or not with the consent of other joint owners; or*
 - ii. which the adult occupies other than under a licence or tenancy agreement. “tenancy” means a tenancy which is not a long tenancy.’*

2 Background

2.1 The Act establishes a universal scheme to enable adults to defer the payments of their care and support costs and is aimed to ensure anyone who

requires residential care should not be forced to sell their property in their lifetime to pay for that care. Wiltshire Council already offers such a scheme for residential care, so this policy has been updated following the introduction of the Act. The scheme has now been extended for care delivered through supported living.

- 2.2 An adult may enter into a DPA with the council which will enable the council to reclaim the outstanding payments it has made on the adults behalf at a later date either when the property is sold by the adult or his/her estate or where the DPA is otherwise ended. Subject to the limits as described below in Section 5 it is up to the adult to decide when to sell their property. It is important to note that entering into a DPA does not “write off” the debt but defers the liability to pay to a later date.

3 12 Weeks Disregard

- 3.1 Where an adult becomes a permanent resident in a care home and the value of their non-housing assets (main residence only) is below the upper capital limit the value of any property he/ she would normally occupy as his only or main residence will be disregarded from the financial assessment for the first twelve weeks of a permanent stay. The council will therefore pay the net care costs (gross cost less client contribution and third party top) to the care home for this 12 week period. The adult will be required to pay an assessed contribution towards their care costs during this period and may also be required to make a third party top up, where the costs are above the council's agreed funding rates .
- 3.2 Where an application for a DPA is successful this will commence after the initial twelve week disregard period subject to adequate security being in place.
- 3.3 Where an adult already resides in a care home or supported living environment as a self-funder, and subsequently becomes eligible for local authority assistance, the property will only be disregarded (not taken into account during the financial assessment) if there has been a sudden and unexpected change in finances, the council will give consideration to exercise their discretion to apply the disregard.

4. Eligibility

- 4.1 From April 2015 the option of a DPA will usually be offered to anyone who meets all the following criteria;
- (i) Anyone whose needs are to be met by the provision of care in a care home or through supported living. This is determined when someone is assessed as having eligible needs which the council decides should be met through a care home placement or supported living;

- (ii) Who owns a legal or beneficial interest in a property which is his/her main or only property;
 - (iii) Who has less than the upper capital limit in assets excluding the value of their main property;
 - (iv) Whose property is taken into account in the financial assessment, i.e. it 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
 - (v) Who can provide adequate security for the debt (by way of a legal mortgage or land registry charge over their property)
 - (vi) Who agrees with the terms and conditions set out in the DPA
- 4.2 If the adult lacks mental capacity to enter into a DPA, a deputy for property and affairs or Lasting Power of Attorney for finance may enter into the DPA on their behalf.
- 4.3 The deferred amount will be agreed between the council and adult, or their representative, and set out in the DPA. This will be reviewed annually or where there has been a change of financial circumstances.
- 4.4 DPAs will be offered to adults who decide not to sell their property and to those who decide to sell their property. The procedures and security required are the same, the only difference being that where the property is being sold, this will generally require a short term or 'bridging' loan.

5. Conditions

- 5.1 When a person requests a DPA, a financial assessment will be carried out, or reviewed, to determine the amount of contribution the adult is liable to pay towards their care costs.
- 5.2 Where an adult wishes to enter into a DPA they or their representative must complete an application form.
- 5.3 The council will arrange for a valuation of the property. An adult may request an independent assessment of the value of the property. The costs of any valuation will be payable by the adult (see Chapter 10 of this policy).
- 5.4 The council will usually offer a DPA in accordance with the "equity limit". The equity limit will leave some equity remaining in the property – this will both act as a buffer to cover any subsequent interest which continues to accrue, and will provide a small 'cushion' in case of small variations in value of the security. This is set at 80% of the adult's share of the equity value of the property. The equity value is the equivalent of the adult's value share of the property minus 10% for future selling costs, minus the lower capital limit.
- 5.5 If there is no agreement between the council and the adult about the value of the beneficial interest they hold in the property (and hence no equity limit can be calculated) the council will treat the person as funded by the council until

agreement is made. The adult will be informed that when the valuation is agreed and DPA entered into any loan will be backdated, with the care home provider receiving a backdated payment if the council's rate is lower than the self-funding rate (if applicable).

- 5.6 The council will review the DPA and care provision when the amount deferred reaches 70% of the equity value of the property to ascertain whether the DPA remains the best way to meet the care costs. The property will be re-valued at this time to assess any potential change in the value (and consequently the adult's 'equity limit' will be reassessed in turn).
- 5.7 The council will expect the property to be adequately maintained and insured during the period of the DPA
- 5.8 The council will usually require the adult to obtain the council's consent before allowing someone to move into the property after the DPA has been made. In these circumstances the council will usually require written consent from the person which places the debt owed to the council above any beneficial interest they may accrue in the property.
- 5.9 The council will charge interest at Government set rates per annum and require payment of administrative costs
- 5.10 The council will provide a statement every six months stating the amount of costs deferred, interest and administrative charges accrued to date, the total amount due and the equity remaining in the property, along with an estimate of the date the 80% equity limit will be reached. The council will also provide a statement on request within 28 days.
- 5.11 Any adult wishing to enter into a DPA is strongly advised to seek independent financial and legal advice. The adult will need to acknowledge that the council has advised them to seek independent financial and legal advice.
- 5.12 The adult must notify the council of any changes to their circumstances that would affect the DPA or value of the property; this includes renting out the property.
- 5.13 The contract for care is between the adult and the care provider. The person must make the council aware of any changes to care home fees during the duration of the DPA and provide the council with a copy of the terms and conditions agreed between the adult and the home. The council will make payments direct to the care homes less the adult's assessed contributions towards their care and third party top up unless the adult opts to receive the payment direct.
- 5.14 The adult must inform the council if they decide to rent their property. 100% of the gross rental income, less allowable costs, will be taken into account in the adult's financial assessment.

5.15 An adult may contribute to their care costs from payments by a third party (including any contributions available from a financial product) or from their savings. Contributing extra to the care costs is of benefit to an adult as it reduces the amount they are deferring.

6. Security

6.1 The council must ensure there is adequate security in place before it will enter into a DPA. The council will accept a first legal charge over a property owned by the adult. The council has discretion to decide what else may constitute adequate security for DPA's in cases where a first legal charge cannot be secured. The council will consider other forms of security on a case by case basis, but the council has full discretion in individual cases to refuse a DPA if it is not satisfied that adequate security can be provided. The council will consider the risk that the deferred payment will not be repaid and will have regard to its duty to protect public money when making decisions on adequate security.

6.2 The council's legal team will draw up a legal document to be signed by the person before the commencement of the DPA

6.3 Where a property is jointly owned a DPA can only be offered with the agreement and consent of all joint owners. All owners will need to be signatories to the charge agreement (CH1) and the DPA

6.4 No Payments will be made by the Council for the care until the security in the form of a first legal charge is registered at the Land Registry. If a care provider issues a request for payment prior to the charge being in place, an exceptions process will be raised, on a case by case basis, and where the delay is no fault of the customer, payments will be made to the provider pending the legal charge being in place.

6.5 If the property is unregistered the adult will arrange at their expense for first registration of the property at HM Land Registry before the Council will enter into a DPA.

7 Refusal to offer a deferred payment

7.1 The Council will usually refuse to offer a DPA where;

- it is unable to secure a first legal charge on the property
- the person wishes to defer a larger amount than they are able to provide security for
- the person's property is uninsured or uninsurable
- the person does not agree to the terms and conditions of the DPA or does not return the DPA

8. Refusal to defer further payments_

- 8.1 The council may refuse to defer any further payments;
- (i) Where a person has reached the equity limit they are allowed to defer
 - (ii) Where a person becomes eligible for local authority or health funding to pay for their care
 - (iii) Where the property becomes disregarded for any reason
 - (iv) Where a person no longer has a need for care
 - (v) where a person has breached certain terms of the DPA as set out in the DPA
- 8.2 The council will give no less than 30 days notice of the date when further deferred payments will cease and will provide an indication of how care costs will be met in the future. Depending on the circumstances the adult may either receive Local Authority support in meeting the costs of their care or may be required to meet the future costs from their income and non-housing assets
- 8.3 The council cannot allow additional amounts to be deferred beyond the equity limit, and will refuse to defer care costs beyond this. However, interest will still accrue beyond this point, and administrative charges can still be deferred.
- 8.4 When the adult is approaching or reaches the point at which they have deferred 80% of the value of their property, the council will review with them the cost of their care, discuss when they might be eligible for any means tested support, discuss the implications for any top-up they might currently have, and consider jointly the best way for them to meet their needs.

9. Termination of the DPA

- 9.1 The DPA may be terminated in the following ways;
- (i) Voluntarily by the adult or someone acting on their behalf, repaying the full amount due;
 - (ii) On sale of property;
 - (iii) When the person dies; or
 - (iv) If the person receives a capital sum that takes them over the funding thresholds
- 9.2 Where the payments end because the 80% equity limit is reached, the council will arrange for a valuation every 3 years after the end of the DPA whilst the deferred payment amount remains unpaid.
- 9.3 The specified time for repayment of the deferred amount and any interest and administration costs accrued is the sooner of:

- a) the date of sale or disposal of the property in respect of which the council has a first legal charge or
 - b) 90 days after the death of the adult with whom the DPA is made or such longer time as the council may permit. After this 90 day period, if the Council conclude that active steps to repay the debt are not being taken, for example if the sale is not progressing and the council have actively sought to resolve the situation (or the council conclude that the executor is wilfully obstructing sale of the property), the council may enter into legal proceedings to reclaim the amount due to us.
- 9.4 In whichever circumstance a DPA is terminated, the full amount due to the council must be repaid to cover all costs accrued under the DPA, and the adult (and/or the third party where appropriate) will be provided with a full breakdown of how the amount due has been calculated. Once the amount has been paid, the council will provide the individual with confirmation that the DPA has been concluded
- 9.5 The council will cancel its first legal charge over the property upon receipt of the full amount due.

10. Fees and Charges

- 10.1 The council will charge fees for arranging the deferred payment and costs incurred during the term of the DPA. The fees include Land Registry fees for registering the first legal charge, costs and time incurred by the legal team in administering the DPA and the costs of valuing (and re-valuing) the property. It will not include general back office costs for finance staff.
- 10.2 Administration charges will reflect the set- up and ongoing costs incurred in arranging the deferred payment.
- 10.3 The council will charge interest on the amount deferred. Interest will be charged at the nationally-set maximum interest rate set by government and will continue until the deferred amount is repaid in full. The national maximum interest rate will be reviewed every six months (in January and June) by the Office for Budget Responsibility to reflect the cost of Government borrowing. Full details of interest charges will be set out in the DPA. Interest will not be compound interest
- 10.4 Administration charges and interest accrued will be detailed in the six monthly statements and will be added to the amount deferred to be repaid at the end of the DPA. A person can request to pay administration charges separately.
- 10.5 Any additional requests for items such as valuations will be subject to a fee. These can be paid at the time of the request, or can be added to the DPA.

11. Further Information and advice

11.1 Easy read documents (brail/other languages/LD) are available.

11.2 Further information and an application pack are available from:

- the Wiltshire Council Information Portal: [Your Care Your Support Wiltshire](#)
- the Care Act Team via communitycommissioning@wiltshire.gov.uk, or
- Wiltshire Council customer advisors, phone: 0300 456 0111