**Deferred Payment Agreement Scheme**

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1. **Introduction**
   1. National legislation states that people should not be forced to sell their home in their lifetime to pay for their care (Care Act 2014).
   2. When a person’s care costs include the value of their home in the calculation of their charge, a Deferred Payment scheme may (subject to being accepted) allow the payment of the amount due from the value of the property to be paid at a later date. This deferral of payment can help people to delay the need to sell their home and provide peace of mind, during a time that can be challenging for them and their families as they make the transition into care and support.
   3. Whilst a Deferred Payment Scheme provides flexibility, it must be reiterated that payment to the local authority, from the value of the home, would still be required from the property owner (or the person acting on their behalf in relation to their financial affairs for example a deputy or an attorney under a Property and Affairs LPA during their lifetime or an executor or administrator of their estate on death) at a later date.
2. **Purpose**
   1. The purpose of this policy is to set out Bolton Council’s approach to deferred payment agreements.
   2. This Policy has been produced in accordance with:

* The Care Act 2014
* The Care and Support (Deferred Payment Regulations 2014)
* Care and Support Statutory Guidance 2014
  1. The policy assumes that proper consideration has been given to the property being included in the assessment of a person’s care charges. Where the property is subject to a disregard from the financially assessed charge, a deferred payment agreement will not be offered.

1. **Qualifying Criteria**
   1. Where the following criteria are all met, Bolton Council must offer a deferred payment agreement:
      1. The person is assessed as having eligible needs which the council decides should be met through a permanent care home placement, or the person is arranging their own care and support and would be assessed as having eligible needs were the council to have carried out an assessment.
      2. The person is assessed as having less than or equal to £23,250 (or such other capital limit that may apply) in savings and other capital excluding the value of their home.
      3. The property is not disregarded for charging purposes.

* 1. Where the criteria have been met, **and** adequate security for the debt can be provided, Bolton Council must offer a deferred payment agreement.
  2. Bolton Council has discretion to consider applications for a deferred payment agreement where the meeting of the qualifying criteria has narrowly failed. This discretion will be considered on a case-by-case basis.
  3. Bolton Council will consider applications for a Deferred Payment Agreement for those people moving into supported living type accommodation. In such cases, the definitions set out in the legislation will apply and each case will be considered based on its circumstances. Please note that the Council has the discretion to offer a deferred payment agreement in these circumstances and will consider each application on an individual basis.
  4. Anyone who meets the eligibility criteria must also have the mental capacity to enter into a Deferred Payments Scheme themselves or where they lack capacity to enter into such agreements, they must have a person legally appointed to manage their finances (such as a Deputyship or Lasting Power of Attorney) and the relevant authority to enter such agreements on their behalf. The adult or their legal representatives will remain responsible for the Deferred Payment Scheme and for reporting any changes in circumstances.

1. **How much can be deferred?**
   1. Bolton Council will only defer the amount that the statutory guidance allows to be deferred. This is usually the weekly actual cost of care and support, minus the financially assessed charge.
   2. Where care and support costs more than the Council’s agreed levels of funding, the additional cost is known as a ‘top-up’ payment. Deferred Payment applicants can ask Bolton Council to include the top-up in the amount to be deferred.
   3. When assessing an application to join the Deferred Payment Scheme, Bolton Council will take the sustainability of the agreement into account.
   4. Where security in the form of a charge against a property has been provided, the method below can be used to determine the total amount that can be deferred:

- 90% of the property value

- Minus the lower capital limit (£14,250 at the time of writing)

- Minus the amount of any debt secured on the property.

For example:

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| Market Value of the property | £200,000 |
| 90% of the property value | £180,000 |
| Less lower capital limit | -£14,250 |
| Less outstanding mortgage | -£50,000 |
| **Maximum that can be deferred** | **£115,750** |

1. **Refusal of Deferred Payments**
   1. Bolton Council will not offer a deferred payment agreement where any of the following applies:
      1. If the council is unable to secure a first charge on the person’s property and no other adequate security can be provided.
      2. If the person is seeking a top-up which has been assessed as unsustainable for the duration of the placement.
      3. Where the person does not agree to the terms and conditions of the deferred payment agreement.
      4. In cases of joint ownership, if any of the owners (or those with beneficial interests) refuse to consent to a legal charge against the property.
   2. Once a deferred payment has been agreed, there are circumstances in which Bolton Council may refuse to defer any further charges. These include:
      1. When the individual’s total assets fall below the upper funding threshold and they become eligible for local authority support with paying for care.
      2. Where an individual is no longer eligible for care and support.
      3. If terms of the contract as set out in the legally binding Deferred Payment Agreement are breached and attempts to resolve the breach are unsuccessful.
      4. If, under the charging regulations, the property becomes disregarded for any reason.
      5. When the equity limit has been reached (see section 17 of this policy). This also applies when the value of the security has reduced resulting in the equity limit being reached earlier than expected.
      6. When a person is no longer receiving care and support.
   3. Where Bolton Council are ceasing to defer further charges, notice will be provided in writing.
2. **Information and advice**
   1. Bolton Council will provide information about the Deferred Payment Scheme through the officers in the Finance, Income & Assessment Team. The information provided will be clear and easy to read, in line with accessible information standards.
   2. Bolton Council will emphasise that we cannot offer personal financial advice. Potential applicants to the scheme are advised to seek independent financial and legal advice in relation to their obligations under the agreement.
3. **Timescales**
   1. The process of applying for, assessing & setting up a deferred payment agreement can be lengthy and time consuming. Bolton Council will keep applicants updated on the progress of their application and the finalisation of the agreement.
   2. Should the agreement take longer to put in place than the 12-week property disregard, the finance, income and assessment team will advise on what care fees will be invoiced whilst the deferred payment agreement is put in place.
   3. Routinely the deferral will commence from an agreed date after the agreement is signed and security is in place. Bolton Council may at its discretion accept an application for deferral to start up to 3 months prior to the receipt of the written application.
4. **Deciding not to sell a property and refusing a Deferred Payment**
   1. An individual may wish not to sell their property and choose not to enter the Deferred Payment Scheme. If this decision is made, the full cost of their care and support will be payable and Bolton Council will raise invoices accordingly. Failure to make payment of care fees will result in Bolton Council pursuing recovery as set out in our debt recovery process. We encourage all individuals to seek independent financial advice.
5. **Renting the property out**
   1. Where a person has decided that they wish to rent out their property after entering a deferred payment agreement with the Council, they must obtain the prior consent of the Council before making such arrangements. Please note that the adult and/or their legal representatives remain responsible for the general maintenance and condition of the property, as security for the Council, if any rental arrangements are put in place.
   2. Bolton Council will require sight of the tenancy agreement. Good practice would suggest that the person should offer a six-month, short-term assured tenancy agreement.
6. **Fees, charges and calculation.**
   1. Bolton Council will charge compound interest on any amount that is being Deferred, including any legal and administrative charges which have been included in the amount deferred in accordance with Section 9 of the Care and Support (Deferred Payment) Agreement Regulations 2014.
   2. Bolton Council will apply compound interest at the maximum rate permitted under the national regulations. The rate is based on the 15-year average gilt yield, it is fixed for a period of 6 months and may change each 1st January and 1st July. The setting of this rate will be dictated by the overall economic environment and other fiscal events.
   3. Bolton Council will calculate the compound interest daily and apply it quarterly. Interest will accrue on the amount deferred even once the ‘equity limit’ has been reached.
   4. Interest will continue to accrue after a person has died up until the point at which the Deferred amount is repaid to Bolton Council.
   5. Bolton Council will issue legal and administrative charges for all accepted Deferred Payment Agreements. This will not exceed the actual cost of making, maintaining, and discharging the arrangements of the agreement.
   6. Legal and Administrative charges can be added to the amount Deferred or may pay these separately.
7. **Valuation of Property**
   1. Bolton Council require a professional open market valuation of the property at the current market rate and may require updated valuations during the lifetime of the agreement.
   2. The purpose of the valuations is to establish available equity and the eligibility for Bolton Council subsidy.
   3. Applicants will normally make their own arrangements for the valuation, using a registered surveyor. Bolton Council reserves the right to validate the valuer’s professional standing and may decline to accept the submitted valuation in cases of dispute.
   4. Bolton Council will accept an existing valuation, undertaken no more than 12 weeks previously.
8. **Security**
   1. As part of agreeing to a deferred payment, the Council is required to have adequate security against the deferred amount. The individual or their representative is responsible for providing the evidence that they can give the Council the adequate security for the deferral.
   2. The council will accept a first legal charge registered on a property title deed held by the Land Registry Office as adequate security.
   3. Where a first legal charge is not available, the council will consider alternative security on a case-by-case basis. Any additional costs that may be incurred because of investigating or agreeing the alternative security, including any legal or valuation costs must be met by the person and cannot be added to the deferred debt.
9. **The Deferred Payment Agreement**
   1. Bolton Council requires the person applying (or their legal representative) to enter into a Legal Agreement confirming that they wish to take advantage of the Deferred Payment Scheme.
10. **Deferred Payment Statements**
    1. Every 6 months, Bolton Council will provide a statement for the Deferred Payment Account. This will detail the deferred amount, the rate at which it is growing and an estimate of the length of time the remaining assets will be sufficient to fund the care and support.
    2. Statements can also be provided upon request to the Finance, Income & Assessment Team.
    3. Invoices for the accrued debt will be issued regularly but will be placed ‘on hold’ so payment will be due, but not actively pursued.
11. **Increased Personal Expenses Allowance**
    1. After allowing for the statutory [Personal Expenses Allowance](https://www.manchesterappp.co.uk/glossary/personal-expenses-allowance/) (currently £24.90), the local authority will usually require a contribution towards care costs from the rest of a person’s income. However, under the terms of a DPA, the person has a right to retain a proportion of their income (the ‘disposable income allowance’), up to £144 per week.
    2. A person may choose to keep less of their income than the disposable income allowance. However, this must be entirely at the individual’s decision.
    3. If a person decides to rent out their property during the course of their DPA, the local authority may permit that person to retain a percentage of any rental income.
    4. A person may also contribute to their care costs from payments by a third party (including any contributions available from a financial product) or from their savings. Contributing to care costs from another source would be beneficial for a person as it would reduce the amount they are deferring (and hence reduce their overall debt to the local authority). Bolton Council will not compel a person to contribute to their deferral from these sources.
12. **Reaching the maximum Deferred amount**
    1. Bolton Council will review the Deferred Payment annually.
    2. At the point where the Deferred amount reaches the maximum, a review will be undertaken to discuss the cost of care and the viability of any ‘top-up’.
    3. When a person’s uncommitted capital (i.e. remaining equity not already loaned against the agreement plus other assets) reaches the upper funding threshold, they become eligible for subsidy. They will still be liable to pay the assessed contribution but rather than a deferred invoice for the balance of the care fees, Bolton Council will fund the difference.
    4. Interest and administrative charges will still accrue after the equity limit has been reached.
    5. The agreement is terminated when the full amount due (including care costs, interest and charges) is paid to Bolton Council.
13. **Terminating the Deferred Payment – sale of property before death**
    1. Bolton Council will cease deferring costs of care a maximum of 30 days after the sale of the property.
    2. The proceeds of the property sale as detailed on the completion statement (which includes the actual sale price) will be used for a final calculation of the debt. This will be further used to determine the remaining capital value and the person’s eligibility for funding from Bolton Council, or ability to self-fund.
    3. The accrued debt will be added to any other outstanding amount due to identify the final amount payable to Bolton Council. Interest on the deferred amount will continue to accrue until the loan is redeemed in full.
    4. The person or their representative will be notified in writing after the sale completes with the actual or provisional debt and will be informed of the date that Bolton Council will cease deferring care home fees.
    5. Bolton Council expect the debt to be cleared within 7 days of sale completion.
    6. Bolton Council will apply the maximum interest rate permitted within the regulations. If the debt is pursued through the County Court Procedure, the court may apply a higher rate of interest.
14. **Terminating the Deferred Payment – sale of property after death**
    1. Following Bolton Council being made aware of a person’s death, the accrued debt will be added to any other outstanding amounts to identify the final amount payable.
    2. Interest on the Deferred amount will continue to accrue until the loan is fully redeemed.
    3. Bolton Council will contact the executor/administrator of the estate at the earliest possible opportunity to seek information on the approximate value of estate to confirm previous financial assessment declarations.
    4. The final debt will be confirmed in writing as soon as is possible to do so.
    5. Bolton Council will apply the maximum interest rate permitted within the regulations. If the debt is pursued through the County Court Procedure, the court may apply a higher rate of interest.
    6. In the event of death, the amount due under the agreement becomes payable 90 days post death unless any other time frame is agreed with the Council in advance, on account of probate or similar considerations in relation to the estate. If there is a delay, it remains the responsibility of the executor/administrator to keep the Council fully informed in this regard.
15. **Reviews, appeals and complaints.**
    1. You have the right to ask Bolton Council to review your financial assessment, or any decision made relating to your application for a Deferred Payment.
    2. You have the right to appeal if, following the outcome of the review you remain unsatisfied with the outcome and any rationale that has been provided.
    3. You also have the right to follow Bolton Councils complaints procedure.