



Adult Social Care and Health

Deferred Payment Agreement Policy

Version 2

Version: 2 FOI Status: Public	Derbyshire County Council Adult Social Care Deferred Payment Agreement	Originally Issued: November 2015 V2 Issued: November 2022 Review Due: November 2024 Author: Mandy Brown
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If you would like to make any comments, amendments, additions, etc, please email ASCH.AdultCare.Policy@derbyshire.gov.uk

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1. Legal Framework

- 1.1 [The Care Act \(2014\) \(section 34 -36\)](#) require local authorities to offer deferred payment agreements (DPAs) to allow people to defer the sale of their home where it is needed to fund care fees.
- 1.2 [The Care and Support \(Deferred Payment\) Regulations 2014](#) and subsequent amendments set out the legal framework and local authorities' responsibilities in greater detail. The new legal duties apply from 1 April 2015.
- 1.3 The Care Act and regulations allow eligible residents in care homes the option of deferring either some or all of their care costs which may include the deferment of top-up fees.
- 1.4 Top-ups are costs raised when someone chooses a home which charges more than the amount which the county council might expect to have to pay to meet an individual's assessed care needs. Top-ups are due to the county council under Section 30 of the Care Act or costs for the provision of the type of care referred to in Section 34(3) (a) of the Care Act.

2. Policy Aims and Objectives

- 2.1 When a person enters residential care, depending on resources, their fees can be paid using a combination of their income, capital, and county council funding.
- 2.2 Where a person entering residential care has a property or land which is included in their financial assessment, the county council can (and in some circumstances must) offer a DPA.
- 2.3 The purpose of the DPA is to give people the option to retain ownership of their property and not be forced into selling it to fund their care.
- 2.4 The DPA allows people (or their representatives) to enter into a legal agreement enabling them to defer all or part of their care and support costs until a later date. The accrued debt is settled from the person's estate or sooner if funds are available.
- 2.5 The DPA policy is intended to offer flexibility, giving people greater choice over how and when they pay their care costs whilst providing the county council with security over the accrued debt.

3. Principles of the Universal Deferred Payments Agreement

Eligibility criteria

- 3.1 For a DPA to be offered people must meet the eligibility criteria of the council's DPA policy.
- 3.2 The eligibility criteria of the Derbyshire DPA scheme are:
 - people whose eligible care needs are met by the provision of care in a registered care home setting*

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- people who have less than or equal to the upper capital limit of £23,250 in assets excluding the value of their home (i.e. savings, investments and other property) as detailed in Annex B “Treatment of Capital” of The Department of Health (DOH) Care and Support Statutory Guidance
- people whose home is not disregarded under an alternative provision as defined in the regulations on charging for care and support

(*This is determined when someone is assessed as having eligible needs which the county council decides should be met through a care home placement. This should comply with choice of accommodation regulations and care and support planning guidance and so take reasonable account of a person’s preferences. Registered care homes are those registered with the Care Quality Commission (CQC)).

3.3 People meeting the criteria governing eligibility for a DPA must also be able to provide adequate security for the debt.

3.4 Additionally:

- they must have a legal or beneficial interest in the property
- there should be no outstanding mortgage on the property (or if accepting a mortgaged property, the outstanding amount must leave sufficient equity to meet the criteria for self-funding and agreement of the first mortgage will be required)
- they or their legal representative must consent to the agreement
- they must have mental capacity (as defined by the Mental Capacity Act 2005) to understand and sign the agreement or it may be signed by someone legally authorised to deal with their financial affairs
- the scheme applies to people who are ordinarily resident in Derbyshire as defined by the relevant provisions of the Care Act, sections 39 – 41 and accompanying statutory guidance
- all parties must consider the viability of the DPA dependent on the amount to be deferred and the available equity in the property

3.5 A DPA is not automatically available to people in other care settings such as supported living and extra care schemes. However, the council will use its discretion and consider requests for a DPA in such care settings on an individual basis.

3.6 In deciding whether to use its discretion to offer a DPA, the council will have regard to, but is not limited to:

- the amount of deferment requested
- the anticipated period of the DPA, having regard for the applicant’s intentions to repay any deferred amounts; and
- the security being offered

3.7 In using its discretion whether to offer a DPA in other care settings, the council retains the right to refuse a DPA where it considers it appropriate to do so.

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Types of deferred payments

- 3.8 Deferred payment agreements can take two forms:
1. the local authority pays the care home directly and defers the charges due it from the individual (Type 1)
 2. the individual pays the care provider for their care and the local authority loans them the cost of care in instalments, less any contributions the individual is assessed to make from other sources (Type 2)
- 3.9 When offering a DPA the council will have consideration for which type of agreement is most appropriate for the individual but will have regard to its duties under the Care Act and the individual's preferences.

4. Refusal by the County Council for a DPA

- 4.1 Even where the person meets the DPA eligibility criteria, the county council retains the right to refuse a DPA in the following circumstances:
- where the county council is unable to secure a first charge on the persons property
 - where the person is seeking to defer a top-up
 - where the person does not agree to the terms and conditions of the DPA
 - where the individual lacks capacity and there is no legally appointed representative authorised to make such a decision
 - where the amount of equity in the property renders a DPA unviable

5. Mental Capacity

- 5.1 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.
- 5.2 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, everyone who is employed in health and social care are legally required to 'have regard' to the MCA Code of Practice.
- 5.3 Where someone is unable to enter into a DPA due to a lack of capacity and has no legally appointed representative, the person assisting with their affairs should consider an application to the Court of Protection to obtain a deputyship order and ensure the best interest decision making process is observed. As a last resort, and only where no other option is available, the county council will make an application for deputyship.
- 5.4 For applicants who lack capacity to make decisions regarding entering into a DPA the council will accept instructions from someone with enduring power of attorney (EPA), lasting power of attorney (LPA) or deputyship, where they have the power to

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do so, but will also have regard to any potential conflicts of interest.

- 5.5 Where necessary the relevant EPA, LPA order must have been registered with the Office of the Public Guardian (OPG) before it can be used, and the council can take instruction from the representative/applicant. Deputies can act on behalf of the individual as soon they are officially appointed.
- 5.6 Where no legal authority is yet in place, but someone has applied to act, the council will require the applicant to sign an undertaking to enter into a DPA or repay the care fees once the order is granted. To support any future claim if non-payment occurs, the council will issue regular invoices or statements to the applicant for the cost of care received by the individual.

6. Information and Advice

- 6.1 Those people who may be eligible for a DPA will receive information on the scheme under the council's general responsibility to provide information and advice.

This information will include the following:

- people considering entering residential care are made aware of the ability to defer charges against their property for their care
- when entering in to a DPA the council will levy fees to cover costs incurred - a set-up and maintenance fee will apply – see schedule of charges on Appendix A for current costs and charges
- interest will be applied from the day the loan begins having regard for the 12-week property disregard which will be allowed where appropriate

- 6.2 There is a further requirement to inform people wishing to take advantage of the scheme that they should consider seeking independent financial advice from a suitably qualified individual or organisation.

7. Individuals who Refuse the Offer of a DPA or to Sell their property

- 7.1 If an eligible person does not wish to sell their property but chooses not to take advantage of the DPA scheme they will be liable for the full cost of their care and will be invoiced as such.
- 7.2 Non-payment of invoices will be dealt with via the council's debt recovery processes. Where formal debt recovery processes are undertaken the council retains the right to recover all legal and administrative costs. Interest on the debt will be charged at higher county court rate.
- 7.3 Where someone indicates they neither wish to sell their property nor enter into a DPA, they will again be directed to obtain independent financial advice.
- 7.4 The council may also withdraw from funding as it considers the person has available resources above the funding threshold.

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8. Fees and Charges

- 8.1 The DPA applicant will be responsible for all fees incurred in the creation of the DPA. These fees may include, but are not limited to:
- Land Registry fees including official searches, obtaining copies of title documents, checks to verify the registration of the property, transfers and all associated Land Registry charges and any identity checks required
 - undertaking relevant postage, printing, and telecommunications
 - costs of administration time spent by those providing the service
 - costs of valuation and re-valuation of the property, subject to agreement
 - costs of removal of Land Registry legal charges against the property
 - overheads, including where appropriate (shares of) payroll, audit, management costs and legal services
- 8.2 The current fee for the creation and maintenance of a DPA is detailed at [Appendix A](#). This is a one-off fee to cover administrative, legal and Land Registry fees for the lifetime of the DPA. Payment of the fee is required on creation to the DPA.
- 8.3 Where a DPA applicant does not have sufficient available funds to meet the associated administrative costs, fees, and charges then the county council may consider including these costs in the amount loaned under the DPA.
- 8.4 Any deferred application costs and fees will incur interest charges in line with the weekly deferred payment amount.

9. Property/Land Ownership

- 9.1 In deciding whether to offer someone a DPA the council must have regard to the ownership status of the property or land being offered as security.
- 9.2 Property and land ownership can be held in various ways and dependent upon the person's particular status as an owner, this may mean that the council cannot offer, or may consider refusing, a DPA.
- 9.3 Ownership types:

Sole ownership

Where a person owns their property outright, without co-owners.

The council considers this to be the most acceptable form of security and will usually offer a DPA providing the remaining eligibility requirements are met and none of the conditions to refuse a DPA apply.

Jointly owned property

All co-owners effectively own 100% of the property while they are alive and 0% of it if they die leaving a surviving co-owner.

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To access the DPA scheme all parties must give formal consent to a legal charge being placed on the property as security for the DPA.

Tenants in common

If a property is owned as tenants in common, each party owns a defined share. This can be 2 or more persons, but the total shares will add up to 100%. Each person can dispose of their share however they choose but to obtain a DPA, all owners must give their formal consent to a legal charge being placed on the property as security for the DPA.

Unregistered property or land

Before entering into a DPA any property or land offered as security must be registered with the Land Registry. The county council may agree the offer of a DPA in principle prior to registration but will require the Land Registry title number before it will enter into any formal agreement.

- 9.4 To support any future claim if non-payment of charges occurs, the county council will issue regular invoices to the individual, or their representative, for the cost of care they have received plus notice of accrued fees, charges, and interest.

10. Property Valuations

- 10.1 It is expected that the DPA applicant will arrange for a formal valuation of the property, and they will be liable for any costs associated with this formal valuation.
- 10.2 Where a DPA fails before the creation of the Land Registry charge, the applicant will be liable to meet any administrative costs, fees or charges incurred by the council up to the that point.
- 10.3 Whilst the council may, in principle, be able to confirm that a DPA may be available to the person concerned, the exact details of the deferred amounts cannot be agreed until receipt of the valuation information.
- 10.4 The council reserves the right to undertake its own valuation where it considers the figure supplied is not an accurate reflection of the property value.
- 10.5 Where the council uses its discretion to obtain a valuation and the resultant value is more than 10% different to the applicant's figure, the council and applicant must agree on a final valuation before a DPA can be offered.
- 10.6 If the DPA applicant disagrees with the valuation of the council they will have the opportunity to request a further independent valuation, however they will be liable for any costs this incurs.
- 10.7 DPA applicants who are unable to arrange for a formal valuation of their property can request the council to arrange this on their behalf. In such circumstances the DPA applicant will be liable for all the costs of obtaining this. These costs will still be

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due to be paid even if the DPA is not entered into.

11. Equity Limits

- 11.1 For the purpose of the DPA the amount of equity calculated in the property is known as the equity limit.
- 11.2 The equity limit will be set at the value of the property minus ten percent, minus the lower capital limit for charging purposes and any existing debt secured on the property. The current lower capital limits can be found [Appendix B](#).
- 11.3 Once the equity limit has been determined the council will offer a maximum loan to value ratio of 70% i.e., the maximum amount, including interest charges that can be deferred under the terms of the DPA.
- 11.4 Once the loan to value limit of 70% of the equity limit has been reached, the council will review the financial viability of continuing to defer any further amounts.
- 11.5 In using this discretion, the council will have regard for:
- the value of the remaining equity in the property
 - the value of any on-going deferred top-up payment
 - the value of any deferred income
- 11.6 If the council considers it is no longer financially viable to defer any future care fees, the terms of the DPA for this maximum equity value being reached will apply.
- 11.7 The applicant will be notified in writing of the reasons for the refusal to allow additional care fees to be deferred.
- 11.8 If the applicant disagrees with the council's decision to end deferring care charges, they will have the opportunity to make written representation to the Head of Client Financial Services (HoCFS), or their representative. The applicant will be required to give full details of why they feel there are grounds to continue to defer care costs, along with details of the amounts they wish to continue to defer under the DPA.
- 11.9 The HoCFS will review the financial sustainability of the care home placement. If in the HoCFS professional view it is no longer financially viable to continue deferring care charges, no further amounts will be deferred. In these circumstances interest charges will continue to be added to the outstanding amount on a weekly basis.
- 11.10 If the HoCFS professional view is that either there remains sufficient equity and/or that reducing any other deferred amounts other than the element in respect of the property would allow a further period of deferment, the HoCFS will confirm the maximum amounts and duration of the extended deferment before the DPA needs to be reviewed again.

12. Interest Charges

- 12.1 The council will charge interest on any amount deferred, including deferred

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administration charges. This is to cover the cost of lending, the associated risks of lending and the risk of default.

- 12.2 The council will charge the same interest rate for all DPAs, and this will be in accordance with the nationally set maximum interest rate.
- 12.3 The national maximum interest will be reviewed every 6 months on the 1st of January and 1st July to track the market gilts rate specified in the most recently published report by the Office of Budget Responsibility.
- 12.4 The final interest rate to be charged is derived by adding 0.15% to the gilt yield rate.
- 12.5 The report by the Office of Budget Responsibility is currently published in the Economic and Fiscal Outlook, which is usually published twice-yearly alongside the Budget and Autumn Statement.
- 12.6 The council will apply changes in the national maximum rate to any DPAs that are currently in place from the appropriate date.
- 12.7 In line with the calculation of care charges due, the relevant interest charges levied under the DPA will be added the current total deferred amount on a weekly basis.

13. How much can be Deferred

- 13.1 In determining the amount of care fees which may be deferred under the terms of the DPA the council will need to consider whether the applicant can provide adequate security.
- 13.2 The council considers that adequate security for the DPA will be obtained by the registering of a first legal charge with the Land Registry against the property.
- 13.3 If the applicant either initially, or subsequently, wishes to defer a top-up payment, the council will need to consider whether the amount or size of the deferral requested is sustainable given the equity available.
- 13.4 The council will consider 4 factors which will dictate how much it will allow a DPA applicant to defer:
 1. the amount of equity they have available
 2. the amount that they are required to contribute towards their care costs from other sources, including income and any contribution from savings, a financial product or third party (including rental income)
 3. the total care costs an applicant will face, including any top-ups they might be seeking to defer
 4. the amount of statutory disposable income allowance (up to a maximum of £144 per week) claimed by the applicant.

14. During the 12 Week Property Disregard Period

- 14.1 A DPA does not come into effect until the end of the 12-week property disregard

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period and the council is not obliged to defer charges during this time. However, there may be circumstances where the council will use its discretion and allow additional amounts to be secured under the DPA. For example, where the applicant has chosen a home which charges a top up and the council is satisfied that:

- they have insufficient available capital to discharge the top up
- no other person is available as third-party payee
- there is sufficient equity in the property for the proposal to be viable

14.2 Requests to secure additional amounts under the DPA will be considered on an individual basis and the council retains the right to refuse requests which it does not consider reasonable or viable.

15. Obtaining Security

15.1 The council considers adequate security to mean the securing of a first legal mortgage charge against a property on the Land Register.

15.2 In cases where a DPA is requested against a jointly owned property, all owners must consent and be in agreement to a charge being placed on the property.

15.3 In instances where all joint owners of a property consent, they will all be required to be signatories to the charge agreement and the co-owner(s) will need to agree to not object to the sale of the property for the purpose of repaying the debt due to the council.

15.4 The council will require a similar consent to the above from any other person who has a beneficial interest in the property and a charge being created against the property.

15.5 Only in exceptional circumstances will the council accept security in any form other than property but will consider each case on its own merits.

15.6 Where the council considers any other forms of security offered to be inadequate, it reserves the right to refuse the offer of a DPA.

16. Sustainability of a DPA

16.1 When deciding on the amount to be deferred the council will have regard for the following factors:

- the likely period the applicant would require a DPA (i.e., if they intend to use it as a 'bridging loan' whilst actively marketing the property for sale)
- the equity available
- the sustainability of a person's contributions from their savings (if applicable)
- the flexibility to meet future care needs
- the period of time a person would be able to defer their care costs for

16.2 When considering sustainability, the council will consider the likelihood of the

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person reaching any of the income/capital thresholds and at what point they may begin to qualify for council support in paying for their care.

- 16.3 Where a DPA includes a top-up payment, once the DPA equity limit is reached, the council has the right to cease deferring the top-up amount.
- 16.4 If the council considers it is no longer financially sustainable to defer any top-up payment the person concerned will need to find an alternative way for the top-up payment to be made or be prepared for a change in their care package.
- 16.5 The council, in considering the sustainability of a DPA, will need to have regard to any potential future care and support needs that someone might face.
- 16.6 The council will need to consider how much flexibility to allow for changes in circumstances, including possible increases in care needs, when deciding how much to allow someone to defer.
- 16.7 When the council and DPA applicant reach an agreement as to how much to defer, this will be included in the DPA contract.
- 16.8 The council will, at its discretion, review the amount that is being deferred and monitor the loan regularly as the deferred amount approaches the equity limit.
- 16.9 Should the council consider the continued sustainability of a DPA is in jeopardy, or that the maximum equity limit has been reached, the relevant term(s) of the DPA contract will be invoked.

17. Revaluation of Assets

- 17.1 The council will require a revaluation of a person's property once the amount deferred exceeds 50% of the security/equity limit and periodically thereafter.
- 17.2 If the property value has either increased or decreased, the equity limit will be reviewed along with the amount deferred.
- 17.3 In the event of a national/regional fall in property values the council reserves the right to undertake a revaluation, even if the deferred amount has not exceeded 50% of the current equity limit.
- 17.4 The applicant will be required to meet the costs associated with any revaluations, although these can be included in the current deferred amount if completed by the council, if the loan to value ratio limit has not been reached.

18. Making the Agreement

- 18.1 Where agreement between the council and applicant is reached, on receipt of the required information, the council will aim to have the agreement finalised and in place by the end of the 12-week property disregard period (where applicable), or within 12 weeks of the applicant approaching the council regarding a DPA in other circumstances.

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18.2 Prior to the drawing up of the agreement the council and the applicant will jointly need to make decisions and consider:

- the care and support package
- the amount they intend to defer
- the security they intend to use

18.1 Once agreement, in principle, has been reached the council will transfer the details agreed into a DPA, taking the form of a legal contract between the applicant and the council.

18.2 The council will provide the applicant with a copy of the DPA contract and give them reasonable time to read and consider the agreement, including time for them to query any clauses and discuss the agreement further with the council or their financial advisor.

19. DPA Contracts

19.1 The DPA will clearly set out all terms, conditions, and information necessary to enable the person to ascertain their rights and obligations under the agreement.

19.2 This contractual information will include, but is not limited to:

- terms to explain how the interest will be calculated and that it will be compounded on a weekly basis
- information on the costs they might be liable for
- terms to explain how they may exercise their right to terminate the agreement
- terms to explain the circumstances in which the council might refuse to defer further fees
- that the council will secure its debt either by placing a legal charge against the property with the Land Registry, or by some other means specified
- a term requiring the council to provide a written statement every 6 months to the individual, and within 28 days if requested by them, setting out how much they owe the council and the cost of them repaying the debt
- a term which explains the maximum amount that can be deferred is the equity limit and that this is likely to vary over time
- a term that requires the council to give the individual 30 days' written notice of the date on which they are likely to reach the equity limit
- a term that requires the individual to obtain the consent of the council for any person to occupy the property
- an explanation that the council will stop deferring its charges (but not interest) and making further advances under a DPA if the individual no longer receives care and support in a care home, or if the council no longer considers the persons needs should be met in such accommodation

19.3 The contact/agreement will also stipulate:

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- the value of any accrued or possible administrative charges
- the means of redress if either party feels the other has broken the terms of the agreement
- the individual's responsibility regarding maintenance and insurance of their home
- the individual's responsibility to notify the council of any change in their income, capital, place of residence or care and support
- the person's responsibility to notify the council if they intend to rent or sell their property and if someone has gained, or may gain, a beneficial interest in the property
- the council's responsibility to give 30 days' written notice if it intends to cease to defer charges under the agreement
- an explanation of the consequences of taking out a DPA for an individual and their property, including anybody who may reside in the property
- the equity limit of their security and the scope for this to change upon revaluation of the security used for the DPA
- the process for varying any part of the agreement
- the process by which the county council can require a re-valuation of an individual's chosen form of security

19.4 The council will ensure the applicant has received adequate information on options for paying for care, they understand how the DPA works and understand the agreement they are entering into.

19.5 A term reflecting this understanding will be entered into the agreement as the applicant will be required to sign or clearly and verifiably affirm this.

20. Council Responsibilities During the Period of a DPA

20.1 The council will provide 6 monthly update statements to DPA recipients.

20.2 The DPA statement will include information to-date on:

- the amount of fees deferred
- administrative/cost charges accrued
- interest charges accrued
- the total amount due
- the equity remaining

20.3 The 6 monthly statements will also set out:

- the amount deferred during previous periods
- the total amount deferred to date
- a projection of the period of time before the equity limit is reached

20.4 In addition, the individual may request an interim statement of liability giving the council 28 days' notice.

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- 20.5 Where a DPA is to be ended by the repayment of all deferred charges to the council, usually by a property sale, a forecast statement will be produced with a final redemption figure based on the expected sale completion date.
- 20.6 In the event the expected completion date changes the council will recalculate the final DPA amount due providing sufficient notice is given.
- 20.7 Where it is not possible to recalculate the final redemption figure prior to the intended redemption date, the council will finalise charges at the earliest opportunity and will refund any overpaid amount from payments received.
- 20.8 The council also reserves the right to issue a final separate invoice for any underpaid amount due the circumstances in 19.07, because of earlier default or a delay in the sale completion.

21. individuals Responsibilities During the Period of a DPA

- 21.1 The DPA contract will set out various contractual requirements on the DPA applicant as well as the council.
- 21.2 The general terms of the DPA contract are set out below:
- if the council exercises its right to require the DPA applicant to contribute from income (this will be included in the legal agreement provisions requiring them to notify the council of any changes in their income)
 - the requirement of the individual to notify the council of any changes in their need for care and support (these changes may mean the council must or may be entitled to stop deferring any further amounts or vary the amount)
 - the requirement of the individual to notify the council if they believe there has been a change in circumstances by which the property against which the DPA is placed subsequently falls into a category to be disregarded for charging purposes
 - the requirement to ensure appropriate arrangements are in place to insure and maintain the property whilst they are in care (specifically, arrangements must be in place to ensure the property is regularly maintained and there is adequate insurance for the property, particularly where it is left empty and that the terms of the insurer are met)
 - the requirement for the individual to obtain the council's consent before allowing someone to move into the property after the agreement has been made (the council may require written consent that the debt owed is above any beneficial interest the occupant may acquire in the property)
 - the requirement of the individual to notify the council if they intend to release further equity from the property, such as equity release, mortgage or extend an existing agreement with a lender (in these circumstances the council will recalculate the equity in the property and this may mean that the council must or may be entitled to stop deferring any further amounts or vary the amount)
- 21.3 Whilst the general terms of a DPA contract are detailed above, the council reserves the right to vary or add further conditions where it considers it necessary to do so.

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- 21.4 Individuals opting for a type 2 DPA must provide the council with evidence confirming the care home charges have been paid and are not in arrears. Evidence must be submitted at no less than 6 monthly intervals or within 14 days of a request from the council for evidence of payment to be provided.
- 21.5 Failure to provide evidence within the specified time will result in the DPA being stopped and all monies loaned, including outstanding charges and interest, will become immediately due for repayment to the council.
- 21.6 Where the council requires repayment of loaned monies, charges, and interest as detailed in 20.5, and payment is not received within 28 days of the demand, then the council will instigate formal debt recovery procedures which could include county court applications. Any additional charges and fees incurred by the county council in recovering the full amount due under the DPA will be recoverable from the individual.

22. Cessation of Deferral

- 22.1 There are circumstances when the council may stop deferring care costs.
- 22.2 Circumstances in which the council may refuse to defer any more charges include (but are not limited to)
- the individual's total assets fall below the level of the means-test and they become eligible for council support in paying for their care
 - where someone no longer has need for care in a care home
 - if an individual breaches certain predefined terms of their DPA contract and the council's attempts to resolve the breach are unsuccessful
 - if, under the charging regulations, the property becomes disregarded for any reason and the individual subsequently qualifies for council support in paying for their care
 - the maximum loan to value ratio has been reached
 - the council considers the continuation of the deferred amount to be unsustainable

23. Termination of DPA

- 23.1 The DPA can be terminated in 3 ways:
- at any time by the individual, or someone acting on their behalf, repaying the full amount due (this can happen during a person's lifetime or when the agreement is terminated by the DPA holder's death)
 - when the property (or in exceptional circumstances - other forms of security) is sold and the council is repaid
 - when the person dies, and the amount is repaid to the council from their estate
- 23.2 The termination of the DPA requires the full amount due, including all care costs, any administrative, valuation or legal fees charged, and any interest accrued, to be repaid to the council.

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- 22.3 Where an individual decides to sell their home, they must notify the council at the outset of the marketing/sales process. They must repay the council from the sale proceeds and the council must relinquish its charge on the property.
- 23.4 There may be circumstances when someone decides to repay the amount due to the council from another source, or a third-party elect to repay the amount due on behalf of the individual.
- 23.5 In either of these eventualities the council must be notified in writing of the intention and will subsequently relinquish the charge on the property on receipt of the **full amount** due.
- 23.6 If the DPA is terminated due to the individual's death, the amount due to the council must either be paid **in full** from the estate or by a third party.
- 23.7 If the DPA is terminated through the person's death, the amount owed to the council under the DPA falls due 90 days after their demise.
- 23.8 The council will usually wait at least 2 weeks following someone's death before approaching the executor with a full breakdown of the total amount deferred, including any deferred costs, fees, and interest charges.
- 23.9 It is acknowledged that the executor, or family member, may wish to approach the council prior to the two-week period ending and wish to resolve the outstanding amount.
- 23.10 The responsibility for arranging for repayment of the amount due (in the case of payment from the estate) falls to the executor of the person's will.
- 23.11 The individual, representative or executor will be provided with a full breakdown of how the amount due has been calculated.
- 23.12 Interest will continue to accrue on the amount owed to the council after the individual's death and until the amount due to the council is repaid **in full**.
- 23.13 Following the individual's death, if after 90 days the council concludes that active steps to repay the debt are not being taken, where appropriate, it will consider legal proceedings to reclaim the amount due.
- 23.14 Examples of when the council may consider instigating legal recovery proceedings may include, but are not limited to:
- the property sale is not progressing, and the council has actively sought to resolve the situation
 - the council concludes the executor is willfully obstructing the sale of the property
 - the executor fails or refuses to administer the estate
- 23.15 Under whichever circumstance the DPA is terminated, the full amount due to the council must be repaid to cover all costs under the agreement.

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23.16 Once the full amount has been repaid, the council will provide confirmation that the DPA has been concluded and confirm that the legal charge against the property has been removed.

23.17 Where formal debt recovery proceedings are pursued via the courts, the individual will be liable for associated legal costs and where applicable, court fees and interest which may be higher than the rate charged by the council.

24. Continuing Healthcare

24.1 Should someone be granted for NHS continuing healthcare funding subsequent to making a DPA, the agreement will remain in place until one of the conditions for termination is met.

24.2 However, they may continue to contribute from income and/or capital to the council as these resources will remain available. Making ongoing payments will reduce the outstanding debt which will be of advantage to them in simultaneously reducing the debt and interest charges due.

24.3 The council will continue to charge interest until the debt is cleared.

25. Appeals

25.1 The decision on the outcome of a DPA application can be appealed. The grounds for appeal could include:

- the decision to refuse the application failed to take into account all available and relevant information
- there are eligible care costs which the council has failed to consider

25.2 Requests for an appeal should be made within 20 working days of notification of a failed application. Details of why the appellant feels the decision to refuse a DPA is wrong must be submitted with the appeal.

25.3 Where the appellant remains dissatisfied with the outcome of an appeal, they must provide information on why they believe the decision to be incorrect. The decision whether to uphold the outcome of the appeal will be made by the Head of Client Financial Services for Adult Social Care.

25.4 Where the appellant believes the financial assessment process has not been correctly adhered to, representation should be made under the disputed financial assessment process.

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Appendix A

Schedule of fees and charges

There is a one-off fee for the creation of the DPA and maintenance of the loan throughout the lifetime of the agreement. The fee covers, but is not restricted to, the items listed below.

Total fee payable £750 inclusive of:

- Land Registry fees/charges administration fees
- Legal services fees/professional fees and services

Additional fees may be incurred for the following items:

Valuation fee	at cost where commissioned
Re-valuation fee	at cost where commissioned
Insurance policy/property maintenance	at cost where commissioned*

* Council deputyship cases only

Individual applicants/recipients will receive prior notice of any charges to be levied in respect of the above additional items in order that they may seek alternative quotes or procure services directly.

Interest charges

Interest charges are reviewed every 6 months on 1st January and 1st July and are set by the Office for Budget Responsibility. Interest is compounded on a weekly basis.

Appendix B

Capital thresholds for funding as detailed in [The Department of Health \(DOH\) Care and Support Statutory Guidance, Annex B "Treatment of Capital"](#).

[Care Act and Support Statutory Guidance section 8.11 – 8.12 Capital limits](#)

(April 2022/23)

Upper Capital Threshold £23,250

Lower Capital Threshold £14,250

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Approval and Authorisation History

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Name	Job Title	Date
Authored by Andrew Bartle	Planning and Project Manager (Finance)	November 2015
Approved by Graham Woodhouse	Head of Finance	November 2015
Authorised by Quality Assurance Group		November 2015

Change History

Version	Date	Name	Reason
Version 1	November 2015	Andrew Bartle	New policy following implementation Of the Care Act 2014
Version 1.1	October 2018	Mandy Brown	Update following introduction of loan Type DPA
Version 2	November 2022	Mandy Brown	Review and update with minor amendments