



**DEFERRED PAYMENT AGREEMENTS
POLICY**

**FOR
UNIVERSAL DEFERRED PAYMENT
AGREEMENT SCHEME
&
CYC DEFERRED PAYMENT AGREEMENT
SCHEME**

From 01/04/2015

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1. Introduction

1.1 A deferred payment agreement is a legally binding agreement under which the City of York Council will lend money to customers to allow them to defer or delay paying some or all of the cost of their care and support until a later date. Deferring payment can help people to delay the need to sell their home, and provides peace of mind during a time that can be challenging (or even a crisis point) for them as they make the transition into care.

1.2 Deferred payment agreements will ultimately cease or be terminated due to factors described later in this policy. The amount deferred will become due for repayment at a point in time.

1.3 People can choose to use deferred payment agreements as 'bridging loans' should they have decided to sell their property, or for long term loans to delay or avoid having to sell their home in their lifetime.

1.4 City of York Council offers deferred payment agreements through two schemes:

- (a) Universal Deferred Payment Agreement Scheme
- (b) City of York Council Deferred Payment Agreement Scheme

2. Eligibility criteria

2.1 City of York Council **must** offer a deferred payment agreement under the universal deferred payment agreement scheme to people that meet the following eligibility criteria:

- Anyone whose needs are to be met by the provision of care in a care home. This is determined when someone is assessed as having eligible needs which the local authority decided should be met through as care home placement. This should comply with choice of accommodation regulations and care and support planning guidance and so take reasonable account of a customers preferences;
- People have less than (or equal to) the higher capital limit excluding the value of their home (i.e. in savings and other non-housing assets).

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- Their home is not otherwise occupied by a **spouse, civil partner or dependent relative** as defined in regulations on charging for care and support, and is therefore disregarded from the financial assessment;
- They are able to provide adequate security in the form of a first legal mortgage charge over their property.

2.2 City of York council will seek to offer a deferred payment agreement under the City of York Council (CYC) deferred payment agreement scheme to people that are unable to meet the eligibility criteria for the universal deferred payment agreement scheme. The City of York Council scheme is intended to offer greater flexibility in regards to security arrangements and requests should be considered on the following basis:

- Where meeting care costs would leave someone with very few accessible assets (this might include assets which cannot quickly or easily be liquidated or converted into cash);
- Where someone would like to use the wealth tied up in their home to fund more than their core care costs and purchase affordable and sustainable top-ups;
- Whether someone has any other accessible means to help them meet the cost of their care and support (e.g. valuable assets such as artwork, jewellery etc);
- Where a person is narrowly ineligible for the universal deferred payment agreement scheme, because they have slightly in excess of the higher capital limit, and the likelihood is that the customer would reach this threshold in the near future.
- That the council retains discretion over the acceptance of security and the level of loans to be offered under the CYC scheme.

2.3 The council will undertake a financial assessment to determine the level of income and capital the customer has, and is able to contribute towards their care and support costs.

2.4 The council has discretion to consider requests for deferred payment agreements under the CYC scheme for customers that have care and support provided in supported living accommodation. This discretion can only be exercised where the customer intends to retain their former home and pay the associated care and accommodation

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rental costs from their deferred payment. Deferred payment agreements cannot be entered into to finance mortgage payments on supported living accommodation. For the purpose of this policy, supported living accommodation means accommodation which is not a care home, but is intended for occupation by adults, under licence or tenancy agreement, and where personal care is available if required.

2.5 The council may be notified of price increases for care and accommodation from time to time. Where a customer is using a deferred payment to fund all of their care and support costs (with the exception of their income contribution if applicable), the amount deferred will increase by the amount required by the care provider. The council will notify customers as soon as possible of any changes to the amount being deferred.

2.6 Where a customer is using a deferred payment to fund a top-up, then the council may incur part of any price increase within the local authority rate. Should the increase be greater than the local authority is willing to pay, then the customer will be responsible for the additional cost. The council will notify customers as soon as possible of any changes to the amount being deferred.

2.7 In all cases, the council will apply a sustainability threshold of 32 months, when determining the affordability of care and support through a deferred payment agreement. This means that the amount of equity offered to determine the 'upper limit' must cover care costs for at least 32 month. This threshold is based on local data covering the average length of stays in care homes in York. This threshold will be reviewed from time to time, with the prevailing threshold being used at the start of, and throughout the lifetime of a deferred payment agreement.

3. Interest charge and fees

3.1 The Care Act 2014 gives local authorities the power to charge interest on deferred payment agreements at a rate not exceeding the national maximum interest rate, set by central government. This interest rate will be reviewed every 6 months (on 1st January and 1st July) and charged on a compound basis.

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3.2 The applicable rate charged by the council for both deferred payment agreement schemes will be published on the council website at www.york.gov.uk as they are updated.

3.3 Interest will continue to accrue on any loan until such time as the amount due is repaid in full. This includes where the maximum deferred payment agreement limit has been reached, or where the customer has died. Customers can make arrangement to pay the interest as is becomes due, rather than add it to the accruing debt.

3.4 The rate of interest can go up as well as down during the lifetime of a deferred payment agreement.

3.5 The Care Act 2014 provides local authorities with the power to charge an administration fee to cover all administration, legal and valuation costs incurred by offering and maintaining deferred payment agreements. The council's administration fees are published at www.york.gov.uk and will be charged at the outset of the loan for setting up the agreement in all circumstances. Additional fees will be charged annually, upon cessation and termination of the agreement Fees can be added to the loan and will be liable for compounded interest charges. Alternatively, customers may choose to pay administration fees in full.

4. 12 week property disregard

4.1 The value of a customer's main or only home will be disregarded from the financial assessment for a maximum of 12 weeks, where the customer has savings and non-housing assets below or equal to the higher capital limit. This disregard can however, only be applied in the following circumstances:

- when a customer first enters a care home as a permanent resident;
- when a property disregard other than the 12 weeks property disregard unexpectedly ends because the qualifying relative has died or move into a care home.

5. Universal deferred payment agreement scheme

5.1 The council has a statutory duty to offer a deferred payment agreement where a customer meets the eligibility criteria for the

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national scheme. The customer will be provided with details of the scheme as part of the care and support planning service.

5.2 Where a customer requests a deferred payment agreement, the council will aim to have the agreement in place within the 12 week disregard period (where applicable) or within 12 weeks of the customer requesting a deferred payment agreement where the disregard is not applicable.

5.3 The deferred payment agreement will clearly set out the following information:

- terms to explain how the interest will be calculated and that it will be compounded if it is to be added to the deferred amount;
- information as to administrative costs for arranging a deferred payment agreement;
- terms to explain how the customer may exercise his or her right to terminate the agreement, (including notification to the council where the customer decides to sell the property) which should explain the process for and consequences of terminating the agreement and specify what notice should be given;
- terms to explain the circumstances in which council might refuse to defer further fees (either when it is required to stop deferring, for example if the person has already deferred up to their 'equity limit', or when it has powers to stop deferring, such as when a person qualifies for local authority support in paying for their care);
- that the local authority will secure their debt either by placing a legal (Land Registry) charge against the property;
- a term requiring the local authority to provide the person with a written statement every six months and within 28 days of request by the person, setting out how much the person owes to the authority and the cost to them of repaying the debt;
- a term which explains that the maximum amount which may be deferred is the equity limit and that this is likely to vary over time (subject to the re-valuation of security and/or changes in the cost of care and support);
- a term which requires the local authority to give the adult 30 days written notice of the date on which they are likely to reach the equity limit;
- a term which requires the adult to obtain the consent of the local authority for any person to occupy the property;

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- an explanation that the council will stop deferring its charges and making advances under a loan agreement if the person no longer receives care and support in a care home or supported living accommodation or if the local authority no longer considers that the adult's needs should be met in such accommodation.
- a term that where a property is unregistered with the Land Registry, the customer must firstly register the property;
- the means of redress if either party feels that the other has broken the terms of the agreement;
- an explanation of the consequences of taking out a deferred payment agreement, for the person and their property, and including anyone who may reside at the property;
- what the deferred loan can be spent on;
- the process by which the council can require a re-valuation of the security;
- the customers' responsibilities regarding the maintenance and insurance of their home, and the requirement to advise the council of any change of circumstance to their income (e.g. should the property be rented out), or changes to their care requirements;
- the process for requesting a variation to the agreement;
- who should be contacted in the event of the customers' death to assist the local authority in reclaiming the amount deferred – this would normally be the executor identified in the customers' will;
- that the local authority is indemnified against circumstances when someone might gain a beneficial interest in the property after the agreement has been made, and the customers' responsibility to notify the council if this is the case;
- that the customer has taken relevant independent financial advice, understands fully the agreement they are entering into and has had the opportunity to ask questions, which have been answered in full, and that the customer is entering into the agreement of their own free will.

5.4 In addition to the deferred payment agreement, the council has a statutory duty to provide information and advice regarding deferred payment agreements in advance of the customer entering such an agreement. Information will be provided to customers when they are considering whether to enter into a deferred payment agreement.

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5.5 Customers with income in excess of £144 per week will be asked to contribute income above this amount towards the cost of care and support services. £144 per week is the Disposable Income Allowance, which customers with deferred payment agreements are required to retain in order to maintain and insure their properties. This amount may vary over time and the up to date level is available at www.york.gov.uk.

6 City of York Council deferred payment agreement scheme

6.1 The council has the discretion to offer a deferred payment agreement scheme to customers' that wish to enter into a deferred payment agreement but do not meet the criteria of the universal deferred payment agreement scheme.

6.2 The council will consider all reasonable requests for customers' to use their assets to defer care and support costs where adequate security can be provided. In all cases, security must be in place before any sums can be deferred.

6.3 Adequate security may take the form of, but is not limited to:

- second or other legal mortgage charge over a property where there is sufficient equity after calculating the interest and amount due for repayment against preferred charges;
- legal charge over land registered to the customer (unregistered land must be registered at the land registry before any agreement can be entered into);
- a legal charge over land upon which an uninsurable property is situated, where the land has a sufficient high value;
- a loan being guaranteed by a third party subject to the third party offering appropriate security, such as a legal charge on their property;
- a solicitor's letter of undertaking
- a legal agreement being in place for loan proceeds to be repaid from the sale of a valuable object or jewellery, subject to adequate loss insurance being in place;
- a legal agreement being in place to repay the amount from the proceeds of a life insurance policy

6.4 The deferred payment agreement will set out all of the information listed in section 5.3 of this policy.

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6.7 Customers choosing to rent out their property can retain a maximum of 20% of the net rental income (i.e. after payment of letting/agency fees) to maintain the property to a high standard. Customers can choose how much they wish to retain between 0% and 20%. All remaining rental income will be included within the financial assessment to determine the customers' income contribution towards the cost of care and support.

7 Refusal of a deferred payment agreement or further lending against an existing agreement

7.1 The Care Act 2014 provides local authorities with the power to refuse deferred payment agreements. This provision is intended to provide local authorities with a reasonable safeguard against default or non-repayment of debt. The council can refuse to enter into a deferred payment agreement in the following circumstances:

- the security offered is a property over which the local authority is unable to secure a legal mortgage charge;
- where a customer requests a larger amount than they can provide security for (a deferred payment agreement must still be offered for the maximum sum the local authority can defer up to);
- where a legal charge can be taken, however the property or asset is uninsurable;
- where a customer does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property.

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7.2 Where a deferred payment agreement is already in place, the council has discretion whether it allows additional money to be deferred where the 'upper limit' of deferral has been reached. All deferred payment agreements will be reviewed at the point when the amount deferred is 70% of the value of the security. Where the deferred payment continues to meet the customer's needs, the following circumstances will be taken into consideration when making the decision for extra lending are:

- whether the current value of the asset is greater than at the start of the deferment and as such, the additional equity could be used to defer additional care and support fees (where the asset value is less, then no additional deferment will be allowed);
- where a spouse or dependent relative has moved into the property after the agreement was made, meaning that the customer is eligible for local authority support and the deferred payment agreement should cease
- where a relative who was living in the property at the time of the agreement subsequently becomes a dependent relative, then further deferrals may be refused beyond this point.

8 How much can be deferred – 'upper limit'

8.1 The Care Act 2014 specifies how much local authorities must defer against the value of property or assets. In all cases the following calculation will determine the 'upper limit':

$$\text{Capital} + (\text{Property/Asset Value} - 10\%) - \pounds 14250 = \text{Upper Limit}$$

8.2 The Care Act 2014 requires that the property/assets offered as security will be revalued on an annual basis; therefore the 'upper limit' may change from time to time. As such, the 'upper limit' may increase or decrease accordingly. Customers will be advised of the re-valuation and change to the 'upper limit' in an annual basis.

9 Termination of deferred payment agreements

9.1 A deferred payment agreement can be terminated in 3 ways

- voluntarily, by the customer or their representative, by repaying the full amount due during the customers' lifetime. In this case the council will relinquish its legal charge on the security;

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- by repayment from the sale of the property or item on which the loan is secured. In this case the council will require notification early in the sale process and will arrange for the charge to be relinquished as part of the completion of the sale;
- upon the death of the customer. Interest will continue to accrue until the debt is repaid in full.

9.2 Where the agreement terminates upon the death of the customer, the council will contact the executor after 14 days to provide a breakdown of the total amount that is deferred and the rate at which interest is accruing. The executor is required by the agreement to take steps to repay the debt within 90 days of the customers' death. This would normally mean that they have started sale proceedings where probate has been granted.

9.3 If, after 90 days, the executor appears not to be taking steps towards repayment, the council will commence legal proceedings to recover the debt.

9.4 Confirmation will be provided in all cases when the amount due has been fully repaid, that the legal charge against the property has been removed (or in cases of other security, that the legal agreement has been ended and the security is free to be disbursed as the customer or their executor sees fit) , and all matters relating to the agreement have been concluded.