

MEDWAY COUNCIL

UNIVERSAL DEFERRED PAYMENTS SCHEME

AND

MEDWAY COUNCIL LOCAL DEFERRED PAYMENT SCHEME

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**The Universal Deferred Payments Scheme**

1. **Legal Status**
   1. The Care Act 2014 (sections 34 and 35) requires Medway Council to offer Deferred Payments Agreements to allow persons to defer the sale of their home where it is needed to fund care fees. The Care and Support (Deferred Payment) Regulations 2014 set out the legal framework and Medway Council’s responsibilities in greater detail. The new legal duties came into force on 1st April 2015.
   2. The regulations require Medway Council to offer deferred payments to people meeting certain eligibility criteria (see section two below). These agreements can be retained until the person dies, with the amount repayable from their estate, but can also be offered to persons who decide to sell their home whilst still alive (the deferred payment providing “bridging finance”).

1.3 The Care Act and regulations also allow the deferred payment scheme to be offered to persons who have incurred debt in relation to their care home fees.

1.4The regulations also allow Medway Council to offer the deferred payment scheme for extra care housing and supported living, but not for people receiving care in their own home.

1.5 Medway Council are also allowed further discretion to offer the deferred payment scheme where otherwise a person might be required to sell their home to pay for care.

1. **Eligibility Criteria**

**The regulations specify that Medway Council must offer a deferred payment to people who meet the three eligibility criteria set out below:**

2.1 Anyone whose needs are to be met by the provision of care in a care home1;

2.2 Anyone who has less than (or equal to) £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets); and

2.3 Anyone whose home is not disregarded, for example it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and

1 This is determined when someone is assessed as having eligible needs which the local authority 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.

support (i.e. someone whose home is taken into account in the local authority financial assessment and so might need to be sold).

**Additionally:**

* 1. The person must have a beneficial interest in the property.

2.5 There should be no outstanding mortgage on the property (or if accepting a mortgaged property, the outstanding amount must leave sufficient value to meet the criteria for self-funding). If there is an outstanding mortgage the application must be approved by Adult Social Care.

* 1. The adult or their legal representative must consent to the agreement.

2.7 The deferred payment must be signed by a person with capacity to make the decision or their legal representative. See section nine for more information on mental capacity and deputyship.

2.8 If accepting a property as security, Medway Council is advised to ensure it is able to place a Land Registry charge on the property.

2.9 We may exercise our discretion to take other forms of security rather than the person’s property.

2.10 We have the discretion to refuse a deferred payment agreement if it is not satisfied that its interest is secure (aside from where it is able to secure a first legal mortgage charge, which it must accept as adequate security). Whatever security is provided, we have to be satisfied that we can gain ownership of this asset on the death or sale of the object.

2.11If a spouse or dependent relative moves into the property following entry into the deferred payment scheme, we should review eligibility.

2.12 If the property is subsequently disregarded (and the person qualifies for MC support as a consequence) then the deferred payment is frozen and interest will continue to accrue.

2.13 The property must be insured.

2.14The property must be registered with the land registry.

1. **MEDWAY COUNCIL LOCAL SCHEME**

3.1MC has the discretion to offer a deferred payment local scheme to service users who do not meet the criteria of the National Scheme.

* 1. MC will consider all requests providing there is adequate security.

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

* Legal charge on land or shares
* An uninsurable property but the land has a high value
* A 3rd party who offers to secure the DP against their own property
* If assets are given away to 3rd parties a DP can be secured against their assets.
* Debts that have arisen through non payment of care charges may be secured under the local scheme.
* Applications for the local scheme must be approved by Adult Social Care

1. **Permission to refuse a deferred payment agreement**

4.1 Medway Council can refuse a deferred payment if they cannot obtain a legal charge by way of mortgage on the property.

4.2 Medway Council can refuse a deferred payment if the person lacks capacity and there is no appointed deputy to make such a decision.

4.3 Medway Council may also refuse a deferred payment where someone is seeking a top up2; and/or where a person does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property.

1. **Information for cared-for persons**

5.1 Medway Council must ensure that persons considering entering residential care are made aware of the ability to defer charges against their property for their care. This needs to fit in with Medway’s general responsibility on information and advice.

* 1. Medway must advise the person or their representative that there is an administration charge when entering into a DPA. See section eight below for more guidance.
  2. Medway must advise the person or their representative, that interest will be applied from day one of the agreement. The 12 week property disregard must be allowed where appropriate. See section 14 below.
  3. Medway should advise the person of the criteria, both for the national and local schemes, that is attached to eligibility for the Deferred Payment Scheme.
  4. There is a further requirement to advise people wishing to take advantage of the scheme that they may wish to seek independent financial advice and this should also be incorporated into the information leaflet.

1. **Deciding not to sell and refusing a DPA**
   1. If the person does not want to sell their property and also chooses not to take advantage of the scheme, they should be deemed to be able to pay the full cost of their care and should be invoiced as such.
   2. If they then fail to pay their invoices this should be dealt with via the local authority’s debt process.
   3. The person should again be directed to an independent financial advisor upon indicating that this is their decision.

2 In these situations, a local authority should still seek to offer a deferred payment agreement but should be guided by considerations of sustainability (or reflects their core care costs without any top-ups) and agree a deferral. The person can then choose whether they wish to agree.

1. **Renting the property out**
   1. Best practice would be to encourage persons to rent their Property (though ultimately any decision on rental must be their own).
   2. A copy of the tenancy agreement must be shown to Medway Council if arranged privately. They must enter a six month short term assured tenancy.
2. **Interest charges; calculation; fees**
   1. The Deferred Payments regulations set the maximum interest rate that can be charged on deferred payments. The rate is fixed for periods of six months, and changes every 1 January and 1 July.
   2. As the guidance and regulations set out, the maximum interest rate for deferred payments is based on the cost of government borrowing - more formally, the 15-year average gilt yield, as set out by the Office for Budget Responsibility twice a year in their Economic and Fiscal Outlook report.
   3. The penultimate row of table 4.1 sets out the gilt yield rate, and the final interest rate is derived by adding the gilt yield rate for the year in which the period starts to the default component (0.15%).
   4. On the basis of the current gilt rates at the time of publishing (as set out in the document linked-to above, for financial year 2014/15, this is 2.5%), the interest rate will be 2.65% (when the default component is added in). This rate will be applicable from the scheme’s launch on 1 April until 30 June 2015. From the 1st July the rate will be 2.25% with the default rate component included.
   5. Compound interest will be applied to the account every 4 weeks.
   6. The following costs are to be include in the administration charge
      1. costs of postage; printing and photocopying in relation to the agreement;
      2. staffing costs;
      3. Land registry fees;
      4. Legal costs;
      5. Valuation fees and Land search fees.
   7. The set-up fee should be an average of the above costs.
   8. Costs incurred during and at the end of the agreement, including any costs associated with revaluing the property, the cost of providing statements, and any charges incurred in removing a legal charge from a property.
   9. Costs are as the attached..
3. **Types of property ownership**
   1. *Sole ownership*
      1. This situation arises where a person owns their property outright, with no other owners. This is the most straight-forward case to handle and requires no special treatment.
   2. *Jointly owned property*
      1. This situation arises where all co-owners effectively own 100% of the property while they are alive and 0% of it if they die leaving a survivor. This means that if two people own a property as Joint Tenants and one of them dies, the survivor automatically becomes the sole 100% owner of the property and the deceased (and the deceased's estate) owns 0%. This means that the deceased cannot leave the property in his/her Will - as he/she no longer owns any interest in it.
      2. To access the deferred payment scheme all parties will have to agree to the charge being placed on the property.
   3. *Tenants in Common*
      1. This situation can arise where a property falls under tenants in common - an increasingly frequent situation where each party owns a defined share, this can be two or more persons, but the total shares will add up to 100%. Each person can dispose of their share however they choose.
      2. To access the Deferred Payment Scheme this will require the original charge (tenants in common) to be deferred and all parties having to agree to your authority having a charge on the property.
   4. *Unregistered land*
      1. On occasion you will come across a property that is not registered with the Land Registry. Before entering into a deferred payment agreement the

property will need to be registered. The person, or their representative will need to have the property registered before they can use the DPA.

*9.5 Refusal to accept a Deferred Payment*

9.5.1 Refusal of a deferred payment agreement does not mean the property cannot be taken into account, it just means the deferred payment scheme cannot be accessed. It is crucial that the person or their representative is made aware of the implications - i.e. that they will still be charged the full cost of their care (if assessed as being able to do so). They should be referred to Independent Financial Advisors (IFAs) as to what is the best option for them going forward.

9.5.2 They must sign to say they have been offered and have declined a deferred payment and understand that they must make alternative arrangements to pay the full cost of their care and should they fail to do so their case will be referred to the courts and interest will then be at 8%.

* + 1. To support the future claim if non-payment occurs regular invoices should be sent to the person or their representative for the care they have received.

1. **Mental Capacity Act**
   1. *Definition*
      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. Staff working with people who lack capacity must have regard to the Mental Capacity Act.
      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, **all staff who are employed in health and social care are legally required to ‘have regard’ to the MCA Code of Practice.**
   2. *Where the person lacks the ability to enter into a Deferred Payment*
      1. This situation might arise where a person is unable to enter into a deferred payment agreement, due to lack of capacity; and there is no one empowered to support them. The good practice recommendation is that their family or a representative and as a last resort Medway Council should make application to obtain a Deputyship order for Property & Finance to support their best interests being observed.
      2. Whilst this is being obtained Medway Council should pay the provider and send regular invoices detailing the charges to be paid to the person applying for deputyship. If the deputyship is obtained and the responsible party has not paid you or entered into a DPA, Medway Council will need to obtain a court order for the debt.
      3. It is recommended that a letter of undertaking to pay the care fees is signed by the person applying for the deputyship order.
   3. *Enduring Powers of Attorney (EPA)*
      1. These only cover property and affairs, and remain valid as long as they were drawn up before 1st October 2007. No new EPAs can be created since October 2007 when Lasting Powers of Attorney were introduced. Details of the law and policies covering EPAs can be found via the Office of the Public Guardian (OPG).
   4. *Lasting Powers of Attorney*
      1. People over the age of 18 can formally appoint one or more people as Lasting Powers of Attorney (LPAs) to look after their personal welfare, and/or their property affairs. This allows persons to plan ahead for a time when they may not have capacity to make certain decisions.
      2. The person making the LPA is known in legal terms as the donor, and the power they are giving to another person is the Lasting Power of Attorney. The person appointed is then called an attorney. The LPA gives the attorney the authority to make decisions on the donor’s behalf. Attorneys acting under an LPA have a legal duty to have regard to the guidance in the Mental Health Act Code of Practice and act in the person’s best interests.
      3. An LPA must be registered with the Office of the Public Guardian (OPG) before it can be used. An unregistered LPA does not give the attorney any legal powers to make a decision for the donor. Staff can check the register if they are unsure about the validity of an LPA. Contact details for the OPG can be found on their website.
   5. *Deputyship*
      1. A Deputy may be appointed by the Court of Protection when there is no one else who could act on behalf of the person lacking capacity to manage their financial affairs and/ or personal welfare decisions.
      2. A deputy can be a representative for the person or Medway Council or a solicitor.
2. **Valuation of Property / Securing the DPA**
   1. The Care Act 2014 section 34 subsection 4 states that:

*“Regulations under subsection (1) may, in particular prohibit a local authority from entering into, or permit it to refuse to enter into a deferred payment agreement unless it obtains adequate security for the payment of the adults deferred amount.”*

* 1. The Care & Support (Deferred Payments) Regulations 2014 states (section 4 subsection 1a) that a local authority:

*must obtain adequate security for the payment of the adults deferred amount*

* 1. The regulations also make clear that a local authority **must** accept a first legal mortgage charge as adequate security. That is to say, if the person owns the property outright without a mortgage or another charge on it, the local authority must accept it as adequate security.
  2. The purpose of the valuation is initially to establish whether the available equity is greater than the upper capital limit which will make the resident self- funding; however the value of the property will also inform the limit on the amount of equity the person can draw. This must be set at:

*Value of the person’s share in property – 10% - £14,250*

* 1. When assessing whether the property is greater than the upper capital limit, an allowance of 10% of the estimated value should be allowed for sale costs to give a net estimated value. (This has already been taken into account in the above calculation of the equity limit). NB when eventually sold the actual costs of sale should be deducted when assessing capital.
  2. Where appropriate, the valuation will be net of any outstanding loan/mortgage on the property and of any repayment requirements of the property if it was purchased through “Right to Buy”.
  3. It is established best practice that the discount is the minimum percentage of ownership attributed to the person. The value is at current market value and not that of the original purchase.
  4. It is advisable to always obtains a first legal mortgage charge to maintain adequate security.
  5. There are a variety of methods to determine the valuation which can be summarised as follows:
* Asking the person and/or Family
* Local knowledge/newspapers
* Internet sites
* In-house Valuers
* Estate Agents
* Land registry for previous sale price
* DWP who may have valued a property for benefit purposes
  1. It is good practice to confirm the approximate value that is being taken into account in their financial assessment with the person.
  2. An updated valuation should be obtained annually, it is suggested this is in line with their entry into care.

11.12 A professional valuer should be asked to provide a current market valuation of the property in all cases of dispute.

1. **The Land Search Process**
   1. It is recommended that you open an online account with the Land Registry who will allocate a “key number” for charging purposes.
   2. If the response to the enquiry is that the property is registered and in the sole name of the person, you should follow the process as detailed below
   3. If the response is that the property is registered in joint names then agreement to register a charge must be obtained by all parties, to enable entry to the deferred payment scheme.
2. **The Legal Agreement**
   1. It is necessary for the person or a legal representative to sign an agreement confirming that they wish to take advantage of the DPS and that all implications have been explained.
   2. The complete process, timescales must be provided to the person in writing.
3. **Deferred Payments and the 12 Week Disregard**
   1. If it would be necessary to sell the property immediately to fund the care, i.e. any other available resources are below the upper capital limit (£23,250), then a 12 week property disregard will be automatic and the DPS will be available subject to the appropriate eligibility criteria.
   2. If there are sufficient resources in excess of the upper capital limit (£23250), to fund care for any period, no matter how short, access to the DPS can be

given at the time that capital reduces to the upper capital limit and it would be necessary to sell the property. Although normal procedures are that the DPS would not apply till the money fell below £23250, however, we can use this time to discuss the availability of the deferred payment scheme; and authorities do have discretionary powers to offer a deferred payment to people with more than the upper capital limit.

* 1. Persons already in residential care who may need to access local authority funding are not entitled to the 12 week property disregard.
  2. However, if the request to access MC support is made due to a sudden and unexpected change we have the discretion to allow a 12 week property disregard. All discretionary allowances need to be made to Adult Social Care.
  3. MC aims to transfer people to the DPS by week 13, to ensure a smooth transition between 12 week disregard and DPS, where appropriate.
  4. It is expected that the CCFAO will discuss usage, insurance and maintenance of their property whilst in the deferred payment scheme.

1. **Periodic Statement of Accrued Debt**
   1. The person should be informed at regular intervals of the current level of the outstanding debt, reminded of the rate at which it is growing and given an estimate of the length of time their remaining assets will be sufficient to fund the full cost of their care. These statements will be sent every year as a minimum..
   2. It is suggested that this information should be provided for the person at a minimum of annual intervals on the anniversary of the date of permanent admission or on the date of annual re-assessment if this is different.
   3. In times of an economic downturn it is possible that property values will go down, possibly significantly, and this could impact on the self-funding period. Regular valuations of the property should be undertaken it is suggested annually.
   4. Following the implementation of the Care Act 2014 and its impact on charging a regular check of the current value in calculating self funding status and the estimated remaining equity becomes even more important.
2. **Re-valuation of Property**
   1. This should be carried out annually, preferably at an appropriate time to provide information for the process described in 15 above.
   2. The method of carrying out a re-valuation of the property will be same as that described in section 11 above.
3. **Benefits entitlement**
   1. As a self-funder the person is likely to be entitled to and should apply for Attendance Allowance or Personal independence Payments. They may already be in receipt of the Disabled Living Allowance (care component).
   2. The legal representative is responsible for notifying the Department for Work and Pensions of any changes to circumstances.
4. **When the Deferred Payment ends (due to depletion of equity)**
   1. When the remaining equity value reduces to the lower capital limit the following process should be followed. A re-valuation of the property is required (see previously) though it is more likely that a professional valuation should be considered if this has not been done previously.
   2. A copy of the charging order, or a letter from the authority’s legal department acknowledging the authorities interest in the property, is also required.
   3. An account or letter detailing the amount of debt currently accrued against the property should be produced.
   4. Supporting Documents should then be submitted with an Income Support/Pension Credit claim form to the appropriate Benefits Office, either the Local Pensions Service or Jobseeker Plus.
   5. When completing the Income Support/Pension Credit Claim form the final “Comments” box should be annotated with the following wording or similar.

*Mr/Mrs (name) is the owner of the property detailed on this form. Although the property is not being actively marketed for sale the value of his/her equity in the property is now [£16,000] and I should be grateful if you would regard this as a valid claim for Income Support. Evidence is attached that confirms the value of the current equity i.e. a current valuation , a copy of the Charging Order in favour of (name ) local authority ( or a letter from the legal*

*department of the (name ) local Authority ) and confirmation of the current debt accrued against the value of the property”.*

* 1. When completing the Pension Credit claim form there is not a capital limit as such, but a similar statement showing the equity value remaining in the property after taking into account the accrued debt to the authority would be necessary.
  2. As the accrued debt continues to increase it will be necessary to seek a review, by the appropriate Benefits Office, of the level of Income Support/Pension Credit being paid. At these times the Benefits Offices will require verification of the level of debt accrued to date and may , depending on the length of time since the initial claim was submitted and the nature of the property market i.e. whether prices remain static , require a re-valuation of the property
  3. In the event of an Income Support/Pension Credit claim being rejected on the grounds that the property is not being marketed for sale a request for reconsideration should be made immediately that the refusal of benefit notification is received.

1. **Increased Personal Expenses Allowance for Property Maintenance / Insurance**
   1. You can require a contribution from income to meet the costs of the person’s care (the remaining care fees being the amount deferred); but the person must be left with a prescribed minimum allowance, currently £144.00
   2. The general personal expenses allowance (PEA) received by every person placed in residential care by the local authority may not be enough to cover the maintenance of the property.
   3. The costs involved in maintaining the property e.g. insurance and repairs must be met by the person. The Department of Health guidelines and regulations state that an amount of £144 per week should be allowed to be retained by the person towards the upkeep of their property, if they want it. This is called the Disposable Income Allowance. A person could choose to keep less than this per week; and you may wish to discuss the person’s needs with them when arranging the deferred payment. If they choose to retain less than the £144.00, this must be documented in their letter.
   4. On leaving the deferred payment scheme (or if the deferred payment becomes frozen) the PEA reverts back to the normal figure currently £24.90 per week.
2. **Calculation of equity limit**
   1. When identifying what equity the person should have left in their property, it should be noted that you must leave the lower capital threshold currently

£14,250 together with 10% of the property value intact in order to defray any costs incurred with the sale or settlement of the estate. This is known as the lending limit.

1. **Notification on reaching the maximum deferred amount**
   1. When the deferred debt is reaching the maximum amount that can be deferred the regulations state that the local authority must give 30 days’ notice. However, good practice would advise that you should do this sooner and it is suggested that 6 months is a more appropriate length of time, with a review when the debt reaches 50% and 75%of the lending limit.
   2. At this time the local authority should be discussing cost of care with the person, in particular what might happen to any top ups or the need to consider movement to another care home/room if they are unable to make other arrangements.
2. **Terminating the deferred payment - sale of property before Death**
   1. If the person has placed the property for sale from admission or chooses to sell at a subsequent date the accrued debt must be repaid upon the sale in order to remove the charge.
   2. Sale of the property is one of the agreed reasons for termination of the agreement. This will terminate the Deferred Payment Agreement and the service user will become self-funding. The person must give 30 days’ notice in writing of any such decision.
   3. The actual sale price should be used for a final calculation of the debt and if appropriate, to identify when self-funding status ended. All admin, legal costs and interest must be added to the account for the final calculation. If MC have been responsible for the property insurance and valuations then these figures must also be added.
3. **Terminating the deferred payment - sale of property after Death**
   1. Calculating the Debt – the accrued debt should be added to any other outstanding amount due to identify the final debt that is payable. This must include all admin charges, legal costs and interest. If MC have been responsible for the property insurance and valuations then these figures must also be added.
   2. Lodging a Claim – the Executor of the estate should be notified 14 days after the death, with the actual or provisional debt. At this stage it would be reasonable to seek information on the approximate value of the estate to confirm previous financial assessment declarations. It would also be good practice to explain that the debt is due from 90 days after death.
   3. They should also be informed that interest continues to be incurred at the existing rate until the property is sold.
   4. Notifying Final Debt – If it has not already been notified the final debt should be confirmed in writing no later than 4 weeks after death.
   5. Debt Collection – If the debt has not been cleared within 4 weeks of the expiry of the 90 day period a reminder should be sent confirming the rate of growth of the debt and requesting a progress report. If no response is received you should follow your local authority’s debt policy for next steps.
   6. Calculating the Interest – The interest rate able to be charged is that as detailed in the Care and Support (Assessment) Regulations 2014. Note that if you are pursuing the amount owed as a debt through the County Court procedure, this may attract a higher rate of interest. Further guidance is in the debt guidance.
4. **Removing the Charge**
   1. A charge will take between 7 and 10 days to remove. In order for a property to be sold it may be necessary for the person’s Solicitor to give the Local Authority a written undertaking that they will discharge the debt. The Local Authority can then give the Solicitor an undertaking that the charge will be removed. This will ensure that the sale can go ahead.
   2. The charge is removed by completing form K11 to the Land Registry. The fee is currently £1.00.
   3. The Land Registry will send form K22 notifying the Authority that the charge has been removed.
5. **Continuing Healthcare**
   1. The deferred payment cannot cease just because full continuing health care funding is awarded and no funding is due from the local authority. It is good practice to ask for voluntary payments to continue, wherever possible, pointing out that this will reduce the amount of the accrued debt set against the value of the property.
   2. The local authority will continue to charge interest until the debt is cleared.