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**Financial considerations regarding: Residential Care**

This document is for Adult Care and Community Wellbeing only.

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# **KEY POINTS**

* The council must be able to make at least one care and accommodation offer that can meet the person’s needs at the council’s expected cost. If not, the council will need to amend the personal budget to match the cost of suitable care and accommodation. A customer and / or representative can exercise their right to choose a care home whose accommodation exceeds the council’s expected cost by entering into a first or third party top-up arrangement to fund the more expensive accommodation.
* Ensure that the customer (or their representative) and whoever is paying the top-up understands the costs and implications if they cannot sustain the top-up agreement.
* If Deferred Payments are declined, practitioners should advise the customer and / or representative to enquire with the provider what the self-funding rates will be to determine whether this is sustainable for them.
* As a local authority we must always advise the customer / representative to seek independent and / or legal advice with regards to the Deferred Payment Agreement.
* Detail all actions / discussions on the customer’s record and follow up more complex conversations in written form, providing the customer with factsheets as appropriate.

# **Residential Charges**

For charging purposes, there are two types of care home stays:

* Temporary – where there is an intention to return home and the stay is unlikely to exceed 52 weeks or, in exceptional circumstances, substantially exceed 52 weeks;
* Permanent.

When being financially assessed for a temporary stay, the value of the person’s main or only home is not included in the calculations. Their income and earnings will be treated in the same way as for permanent residents, but allowances for additional expenses will apply to maintain their home during their stay. Such expenses may include, but are not limited to, mortgage or rent, service charges, water rates and building insurance premiums. If a partner/spouse remains in the property additional expenses will be proportioned. Any other capital assets will be treated in the same way as for permanent residents.

If the person is moving into a care home on a permanent basis, the value of their home will be taken into account, unless a qualifying relative continues to live in the home. Qualifying relatives are defined as follows:

* husband, wife, partner or former partner, except where they were estranged since before the person went into a care home
* a relative aged 60
* a lone parent who is the person’s estranged or divorced partner
* a relative under 60 who is incapacitated, receives certain disability allowances.
* a child under 18 for whom person is financially responsible

Currently the care home will collect the person’s assessed charge and any first or third party top-ups. The council will pay the remaining cost of care directly to the care home.

# **First & Third Party Top-Ups**

Lincolnshire County Council publishes the expected costs for each category of care within a residential or nursing home (please see [Adult Charging Policy](https://www.lincolnshire.gov.uk/directory-record/61699/adult-care-charging-policy)). Where the cost of the care and accommodation home is above the expected cost, then a top-up may apply.

In most cases, a top-up will be paid by a third party who is willing and able to pay the difference between the council’s usual cost and the actual cost of the home.

The council must make at least one care and accommodation offer that can meet the person’s needs at the council’s expected cost. If not, the council will need to amend the personal budget to match the cost of suitable care and accommodation. A customer and / or representatives can exercise their right to choose a care home whose accommodation exceeds the councils expected cost by entering into a first or third party top-up arrangement to fund the more expensive accommodation.

The only three circumstances when a person can legally pay their own top-up are:

* During the 12-week property disregard period
* When they have joined (or are applying to join) the deferred payment scheme
* If they are subject to Section 117 Mental Health Act aftercare

This is called a “First Party Top-Up” and is either paid from the person’s own funds or added to the accruing debt.

Where a care home intends to charge a third party top-up, practitioners must ensure the customer and their representatives are made fully aware of what the agreement entails and the ongoing responsibilities for making the payments. It may be appropriate for them to seek independent legal advice at this stage.

Practitioners must ensure whoever has agreed to sign the top-up agreement is aware that rates may go up or down on an annual basis and placements may be at risk if payments are not made.

Care homes are not allowed to charge more than the price stated in their Schedule of Charges but, practitioners, customers and their representatives may negotiate a lower top-up or for the top-up to be waived. The Contracting Team will tell you the maximum top-up that can be charged by the care home for a specific room. The room number will be required as charges vary from room to room.

It is the practitioner’s responsibility to ensure that the customer (or their representative) and whoever is paying the top-up understands the costs. Practitioners must also ensure the First or Third Party Top Up agreement form is signed and completed prior to placement or within 5 working days of an emergency admission.

A copy of the completed form is held on the person’s record and sent to: CommercialTeamPeopleServices@lincolnshire.gov.uk.

[Third Party Flow Chart](https://lincolnshirecc.sharepoint.com/sites/ACCW2/Shared%20Documents/Forms/AllItems.aspx?id=%2Fsites%2FACCW2%2FShared%20Documents%2FAdult%20Care%20and%20Community%20Wellbeing%20content%2FDocument%20library%20%28AC%20Manual%20etc%29%2FForms%20Library%20%28AC%20Manual%29%2FThird%20Party%20Flow%20Chart%2Epdf&parent=%2Fsites%2FACCW2%2FShared%20Documents%2FAdult%20Care%20and%20Community%20Wellbeing%20content%2FDocument%20library%20%28AC%20Manual%20etc%29%2FForms%20Library%20%28AC%20Manual%29) (Lincolnshire County Council Intranet)

[Third Party Agreement Checklist](https://lincolnshirecc.sharepoint.com/%3Aw%3A/r/sites/ACCW2/Shared%20Documents/Adult%20Care%20and%20Community%20Wellbeing%20content/Document%20library%20%28APPP%20etc%29/Forms%20Library%20%28APPP%29/Third%20party%20agreement%20checklist.docx?d=w03bbcdef3ffa4d18b98f4d07f4a512d4&csf=1&web=1&e=H7IO5L) (Lincolnshire County Council Intranet)

[Annex A: Choice of accommodation and additional payments](https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#AnnexA)

# **Property Disregard**

Property disregard applies to customers moving into permanent care having had a care needs assessment and a care home is appropriate to meet their needs and risk.

If the person currently owns their own property and has less than £23,250 in savings, they may be entitled to a 12-week property disregard.

This means the property value is not included as an asset when calculating their contributions for the first 12 weeks of permanent care.

They may not be eligible for the 12-week disregard facility if they did not live in their property prior to going into long term residential care or are a previous self-funder. The disregard period comes to an end if the property is sold during this period and the proceeds are considered as capital.

This time can also be used to decide if they wish to join the Deferred Payments Scheme through a Deferred Payment Agreement or self-fund their care.

If the person does not choose to apply for a Deferred Payment Agreement then they will be self-funding when the 12-week property disregard ends and they will need to contract with the home directly.  If Deferred Payments are declined, practitioners should advise the customer and/or representative to enquire with the provider what the self-funding rates will be to determine whether this is sustainable for them.

# **Deferred Payments**

Also see the [Adult Care Charging Policy](https://www.lincolnshire.gov.uk/downloads/file/1839/adult-care-non-residential-contributions-policy) and [Deferred Payments Factsheet](https://trixcms.antser.com/api/assets/lincolnshireadults/09403fd1-5586-443e-9df5-eff7fc86638e/factsheet-deferred-payments.pdf).

Under the Universal Deferred Payment Scheme, should the customer choose to join, a Deferred Payment Agreement can take place. This means that after the twelve week property disregard period, the council may be able to lend the cost of care. Interest will accrue throughout the loan and until repayment is made. There is also a one off set up fee of £600 and other disbursement fees which can also be deferred.

People who are considering long term care and their representatives must be made aware of the Universal Deferred Payments Scheme at the earliest opportunity. Practitioners should provide a copy of the [Deferred Payments Agreement Guidance](https://trixcms.antser.com/api/assets/lincolnshireadults/71a359f0-5002-4b8f-85d0-a56cf384bad8/deferred-payments-agreement-guidance.pdf), Deferred Payments Factsheet, Deferred Payments Agreement Fees and Deferred Payment Applications to people who are being financially assessed for long term residential care.

There are two types of Deferred Payment Agreement:

1. **Traditional DPA** – this is used where we, the council, have arranged the persons care and pay the care home directly at the council’s contracted rate, deferring the persons payments owed to the council to a later date;
2. **Loan DPA** – this is used where the person has made their own care arrangements and contract directly with the provider at the cost agreed between them and the provider. In these circumstances the council loan the person the cost of their care in instalments and they pay the care provider. There is no 12 week disregard period in these circumstances as the council is not charging the person for their care.

Practitioners are advised to familiarise themselves with the areas below:

* the payment for care and support is “deferred” and not ‘written off’ – the costs of the provision of care and support will have to be repaid by the customer (or a third party on their behalf) at a later date;
* under the Deferred Payment Agreement (DPA), the council will lend the customer the cost of care so they do not have to sell their house immediately. The customer, or their estate upon them passing away, will need to repay LCC when the house is sold or there is no longer a need for residential care.

Other key areas to be aware of include:

* the customer must own a property;
* Deferred Payments enables the customer to defer the cost of their care fees during their lifetime;
* the Deferred Payment usually ceases when the property has been sold or at the death of the customer;
* a person must be ordinarily resident in Lincolnshire to qualify even if they have property in another county;
* a charge for administration / management is required, along with disbursement costs with HM Land Registry. Legal Services Lincolnshire will write to the person and/or their representative to confirm the disbursement charges before they enter into the agreement;
* interest is charged throughout the loan while repayment is arranged;
* the interest rate changes twice yearly and is linked to government decisions (determined by the Office of Budget Responsibility);
* a legal charge registered with the HM Land Registry will be applied to the property;
* where a property is jointly owned then the deferred payment applies to the customer’s share of the property, however all co-owners will need to sign the DPA;
* the customer will need to provide valuations of the property and evidence of it being insured while the Deferred Payment Agreement is in place;
* the local authority must be informed of any change in circumstance regarding the property e.g. rental income, value;
* there should be no outstanding mortgage or loan on the property;
* the customer may apply for an allowance to assist with the maintenance of the property;
* if the customer lacks capacity to deal with their finance, property and affairs, they will need an authorised legal representative to act for them;
* letters of intent may be available for those needing Lasting or Enduring Power of Attorney or Deputyship, but which is not yet in place;
* Until the council moves from a position of paying providers net to paying them gross the customers assessed contribution will need to be paid directly to the provider;
* DPA can apply for a leasehold property but depends on the type of leasehold and length of leasehold remaining.

As a local authority we must always advise the customer/representative to seek independent and / or legal advice with regards to the Deferred Payment Agreement.

If you need further advice on Deferred Payments email fin\_payments@lincolnshire.gov.uk including ‘F.A.O. the Payments Team DPA’ in the subject line.

# **Deferred Payment Loan**

Loan deferred payment agreements were introduced as part of the Government commitment to ensure that “people should not be forced to sell their home in their lifetime to pay care home bills.” It is designed to help those who have been assessed as having to pay full cost for their residential care but cannot afford to pay full cost because their capital is tied up in their home.

* the payment for care and support is ‘deferred’ and not ‘written off’ and is repaid by the individual (or a third party on their behalf) at a later date;
* under the Deferred Payment Agreement (DPA), the council will lend the cost of care and accommodation so they do not have to sell their property immediately;
* the customer, or their estate upon the customer passing away, will need to repay Lincolnshire County Council when the house is sold or there is no longer a need for residential care.

The local authority must offer a DPA to people who meet the qualifying criteria but do not require the local authority to arrange care on their behalf i.e. people who self-fund their own care. In this situation, local authorities can offer both types of DPA: a ‘traditional’ type where it holds the contract with the care home to meet the individual’s needs or a ‘loan-type’ DPA where the person contracts with the care home and is loaned the money by the local authority to pay the care home directly.

When considering the approach as to when or whether to offer loan or traditional type deferred payment agreement, the local authority should have regard to their duties under the Care Act, including their duties under the well-being principle and their market duties. Local authorities cannot refuse to enter into a loan-type deferred payment agreement if the qualifying criteria has been met and the individual requests it.

For more information regarding Deferred Payments, refer to [Chapter 9 in the Care Act Care and Support Statutory Guidance.](https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#Chapter9)

**Traditional type versus loan type Deferred Payment**

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| **Traditional Type Deferred Payment** | **Loan Type Deferred Payment** |
| Ordinarily resident in Lincolnshire. | Ordinarily resident in Lincolnshire. |
| Individual has £23,250 or less in assets other than their main or only home. No outstanding mortgage on the property. | Individual has £23,250 or less in assets other than their main or only home. No outstanding mortgage on the property. |
| Care Act assessment has confirmed need for long term residential or nursing care. | Care Act assessment has confirmed need for long term residential or nursing care. |
| All owners / co-owners must agree to a Legal Charge being placed on the property and all sign the Deferred Payment Agreement. | All owners/co-owners must agree to a Legal Charge being placed on the property and all sign the Deferred Payment Agreement. |
| LCC contracts on customer’s behalf and pays the home the LCC contracted rate. | Service user/representative contracts directly with the provider. The amount loaned is the cost of the care home’s private rate. |
| May be eligible for 12 week property disregard. | There is no 12 week property disregard period. |
| Pay a financially assessed contribution toward the care. | Do not pay a financially assessed contribution unless choose to use rent / income to reduce the debt accruing. |
| Entitled to a Disposable Income Allowance to help toward cost of maintaining and insuring home. | Not entitled to Disposable Income Allowance.  Maintenance and insurance of home is at own expense. |
| First / Third Party Top Up may be applicable. May be able to add to the deferred amount. | No Third Party Top Up applies. |
| If choose to rent out house the income will be taken into account in the financial assessment to pay your assessed contribution. | First payment is made after date legal charge is secured. |

# **Nil Assessments**

A Nil can be applied if there is no legal representative in place and the person has no capacity to instruct management of their finances, with no-one who has access to finances. This is a temporary arrangement whilst the full financial assessment is being made. A debt will be accruing with Lincolnshire County Council. The following must be satisfied:

* an identified person is applying to:
	+ act as DWP appointee;
	+ act as Court of Protection (COP) deputy for Property & Finances. An OPG 100 search is required to ensure an application has / is being made. Send an email to AdultCareFinance@lincolnshire.gov.uk  to request a search;
* the practitioner has informed the person / representative that there will be a debt accruing at full cost of care pending the full financial assessment; this will then be revised once the actual assessed contribution is known. Detail all actions/discussions on the customer’s record;
* name and address of the person applying to be the legal representative has been provided for invoicing purposes;
* authorisation is required with the reason recorded and included in full on the Purchase Service Request (PSR). Complete the relevant section on the PSR covering all the points as to why a Nil is being requested.

The only other time a nil will be considered is in exceptional circumstances where the financial assessment has not been completed within 28 days. In these circumstances the council will pay the full cost of care to the care home, and then when the full financial assessment is completed the person’s contribution will be backdated to the start of their care.

# **Unpaid Customer Contributions to Residential Care**

* Where a customer has not paid their contribution, the provider should notify the Commercial Team. The home will need to provide all the appropriate documentation and evidence that they have followed the process outlined in the [Framework Agreement between the Provider and Adult Care](https://trixcms.antser.com/api/assets/lincolnshireadults/87ba0138-73e5-493c-89bf-343a585622ea/residential-framework-agreement-2022.pdf).
* The Commercial Team and the Adult Care Finance Team will liaise with area teams to try to obtain evidence and resolve any issues.
* The Adult Care Finance Team will pay the provider and raise a debt against the customer where necessary. The paperwork for this will be forwarded to the Lead Practitioner or Area Manager for authorisation.
* Where this has previously been unresolved, the Lead Practitioner or practitioner will investigate the reason for non-payment and work with the customer to resolve it involving Safeguarding / Financial Resolution Group where appropriate.
* If a case will take longer than 21 days to resolve, the Lead Practitioner will make a request to the Area Manager for a Nil Assessment to be authorised and raised, and request for a debt to accrue to ensure the provider is paid whilst the matter is resolved.

Please note: Ongoing non-payment is a serious issue that can destabilise care homes and will provide a deficit in Adult Care income targets and will, therefore, reduce the expenditure budget available for services.