

What is a Deferred Payment Agreement?

The Deferred Payment Agreement

The deferred payment agreement is part of a scheme designed to help you if you have been assessed as having to pay the full cost of your residential care, but cannot afford to pay the full weekly charge. This is because most of your capital is usually tied up in your home.

The deferred payment mechanism is a process to ensure that you do not have to sell your home, should you not wish to do so, in order to fund your placement in a care home. Effectively the agreement offers you a loan from Lincolnshire County Council ("the Council"), using your home as security. It is a deferred payment because the money the Council pays is deferred, meaning that the money has to be repaid to the Council at a future date.

To apply for a deferred payment, you must meet the eligibility criteria and in most cases this will mean a Care Act Assessment and financial assessment will need to be completed. These assessments take time to arrange and complete, therefore it is recommended that as your savings reach £30,000 you may wish to contact Customer Service Centre on 01522 782155 to ask for a referral. You will not actually be entitled to the deferred payment until your capital, other than the value of your house is less than or equal to £23,250.

Types of Deferred Payment Agreement

There are two types of Deferred Payment Agreement.

The first, a more traditional type, is where the Council pays the care home or supported living accommodation directly and defers the charges due to the Council from you to a future date. You will pay a weekly contribution to the cost of your care that you have been assessed as being able to pay from your income or other savings.

The second, often referred to as the "loan" type is where you pay the care provider direct for your care but the Council loans to you the cost of your care in instalments less any contributions you decide to make from other sources. The Council are not meeting your needs in this case – you are responsible for negotiating and making your own care arrangements. The Council's role is the provision of the loan in order for you to make your own arrangements.

In both types of cases, the deferred payment builds up as a debt which is cleared when the money tied up in your home is released. For some people that may be on

death (paid from your estate) while for others they may simply want a shorter term loan.

What type of deferred payment agreement you chose will be dependent on your individual circumstances. You may for instance want to live in a home that the Council are unable to contract with. In those circumstances you will be able to receive a loan to allow you to contract with the home directly and to receive instalments from the Council which you will use to pay your care home directly. You should however be aware that if you are contracting with the home yourself, it is likely that the home will charge a different rate to that of the Council's expected rate. You will be able to discuss your needs with the Council, however you should take independent financial and legal advice to help you decide which course of action will be financially better for you.

The following summarises the main differences to the two types

1. Traditional Type

- Where the Council exercises its discretion under s.19 of the Care Act 2014 to meet your needs, the Council will contract on your behalf and pay the home the Council's agreed rate under the terms of its contract with the home
- You may be eligible for a 12 week disregard. This means that your house is disregarded in your financial assessment for a period of 12 weeks in order for you to consider how best to meet your care home fees.
- You will have a financial assessment which will determine what you can afford to pay in accordance with the regulations. You will need to pay a financially assessed contribution towards your care
- You will be entitled to a Disposable Income Allowance to help towards costs of maintaining and insuring your home
- If you choose a placement which incurs a top-up, this means the placement is more expensive than the Council would normally expect to pay, however you may be able to add the top up to the deferred amount
- You may choose to rent out your home, if you do this you will be expected to use the rental income to increase the amount you pay each week, thus reducing the weekly payments made by the Council and minimising the eventual deferred payment debt.

2. Loan Type

- The Council is not responsible for meeting your needs. You will make your own care arrangements and contract directly with the provider. The Council in this case will only be responsible for providing the finance in the form of a loan to you in which to meet your own needs.
- The amount loaned and paid in instalments to you is the cost of the care home providers rate which you will have negotiated with the home. It is likely to be the home's self-funding rate.

- There is no 12 week disregard period as the Council is not charging you for your care.
- There is no Disposable Income Allowance, you will need to use your income to maintain and insure the home
- You may choose to rent out your home and use the income to reduce the debt accruing
- The first payment to you will only be after the date the legal charge is secured on the property.

For both types there will be a needs assessment so as to establish that you have needs which are to be met by the provision of care in a care home and, a financial assessment will be completed to show that you meet the financial criteria, these take time to arrange and so it is recommended that as your savings reach £30,000 you may wish to contact Customer Service Centre on 01522 782155 to ask for a referral.

Eligibility for a deferred payment agreement for both types

For you to be able to apply for a deferred payment, you need to meet the following criteria:

- You must be ordinarily resident in Lincolnshire
- You must have been assessed by Adult Care as needing permanent residential or nursing care. Adult Care would assess this as you needing long term residential care. When you are arranging your own care and support and the Council has not performed an assessment, this condition is satisfied when someone would be assessed as having eligible needs were the Council to have carried out such an assessment
- You do not have any other assets or savings over £23,250, apart from the value of your main or only home. This figure may change annually each April.
- You must undertake a financial assessment
- You must agree to the Council placing a legal charge on your property
- You must sign any associated deferred payment documentation
- All co-owners of the property must agree to the charge being placed on the property. All co-owners will be required to sign the deferred payment agreement and the necessary documentation to secure the charge with the Land Registry.
- There should be no outstanding mortgage on the property

If your property has been disregarded from the financial assessment, you will not be eligible for a deferred payment.

If you lack capacity and require a financial deputy or attorney

Your financial deputy or your attorney can enter into the deferred payment agreement on your behalf. If you granted a Lasting Power of Attorney for finance or an Enduring Power of Attorney before you lost capacity and this has been registered with the Office of the Public Guardian, your attorney will be able to sign on your

behalf. For "Loan Type" deferred payments to commence, legal authority must already be in place.

Where you have already lost capacity to manage your financial affairs and there is no one who has the legal authority to deal with your property and affairs, it is expected that a relative or solicitor will apply to the Court of Protection to become your financial deputy. This will give the applicant the power to deal with your property and affairs and to make decisions as to whether to enter into a deferred payment agreement on your behalf.

In the case of a loan whilst your attorney's application is with the court, they will not be granted a deferred payment agreement on your behalf. For traditional type deferred payments, the Council will during this time fund your care on your behalf.

Repayment of any sums paid by the Council during this interim period will be due in full when the deputyship or LPA is awarded. The person applying for legal authority will be asked to sign a letter of intent to apply for the Order and to repay monies paid out by the Council before the granting of the Order giving them authority to manage your affairs. Once the order is granted, your deputy will be required to sign the deferred payment agreement. If the agreement is not signed and no other alternative arrangements are put in place to pay for your care, a debt will start to accrue. If the debt remains outstanding, court proceedings for the repayment of the debt will be instigated.

Where it is considered that any deputy or attorney is not acting in your best interests a referral will be made to Council's safeguarding team. This may result in an Office of Public Guardian investigation and the removal of your deputy's authority to act on your behalf.

12 Week Property Disregard – "Traditional" only

A 12 week disregard can only be applied to the "Traditional" deferred payment agreement and there are some circumstances when you will not be eligible for a 12 week disregard.

If you are eligible which will be determined at financial assessment, the value of your main or only property will be disregarded from the financial assessment for a maximum of 12 weeks. The 12 week period usually starts from the date you move into a permanent residential or nursing home. The purpose of the 12 week disregard is to allow you space to make decisions as to how to meet your contribution to the cost of any eligible care.

Interest charges

With the implementation of the Care Act 2014, the law permits the local authority to charge interest on a compound basis for the duration of the deferred payment agreement. This applies to both types of deferred payment agreement.

The maximum rate will be subject to review and may change every year biannually on the 1st January and the 1st July in accordance with the rates set by the Office of Budget Responsibility.

Please see separate sheet entitled Deferred Payment Agreement Fees for details of interest charges.

Your agreement with Lincolnshire County Council

By signing the deferred payment agreement, you are entering into a legal contract with the Council. The Council then places what is called a 'legal charge' on your property to secure the loan.

The agreement covers both the responsibilities of the Council and your responsibilities, one of which is to make sure that your home is insured and maintained.

As part of the "traditional" deferred payment agreement there is an allowance that can be used towards the cost of maintaining your home, this is called Disposable Income Allowance and will be determined as part of the financial assessment.

Payment for the "loan" deferred payment will be made four weeks in advance and you will need to ensure you pay the home within 14 days of the 1st payment being made to you by the Council.

For "loan" deferred payments where there is an increase in the weekly cost, you must provide written evidence to the Council if you require an increase in the monthly loan amount.

You will receive statements at least biannually advising you how your charge is being calculated and what the outstanding sum on your deferred payment account is. There will be a review at 50% and then when you are approaching 70% deferral amount you will be asked for an updated valuation to ensure you can continue with the deferred payment agreement.

The agreement will come to an end either on repayment of the debt in full during your lifetime or from your estate when you die. If the deferred payment is terminated through a person's death, the loan becomes payable 90 days later. The interest on the loan continues to accrue until the debt is repaid.

Costs associated with the deferred payment agreement

With the implementation of the Care Act 2014, the law allows local authorities to charge an administration fee. This fee reflects the actual costs involved in setting up, maintaining and closing a deferred payment agreement.

The Council will charge an administrative fee along with legal disbursements, such as Land Registry fees. (see [Additional Information](#)).

If you decide to go ahead with the deferred payment agreement, Legal Services Lincolnshire will write to you separately to confirm the disbursement charges before you enter into the agreement.

Advantages of using the deferred payment agreement

The deferred payment agreement means that people should not be forced to sell their home in their lifetime to pay for their care if they do not wish to do so. When a person enters into a deferred payment, they can 'defer' (delay paying) the full costs of their care and support until a later date.

In some cases a person may choose a setting that is more expensive than the amount identified in their personal budget. In such cases where entering a "traditional" deferred payment, an arrangement will need to be made as to how the difference will be made up. This is known as a 'top up' and reflects the difference between Council's contracted rate and the actual cost.

Top ups can be made by the person themselves in limited circumstances. A person may choose to utilise a top up where they are subject to a 12 week disregard or where they have chosen to take advantage of the deferred payment agreement. These top ups are known as first party top ups.

A third party top up is where a person other than the resident has agreed to pay the top up. If there is an existing agreement for a third party 'top up' and you decide to take advantage of the 'traditional' deferred payment agreement, you can add the cost of the 'top up' payments to the deferred amount, only if the Council agree that there is enough equity in your home and that the 'top up' is sustainable.

You should take independent financial and legal advice to help you decide which course of action will be financially better for you.

Alternative options

You do not have to enter into the deferred payment agreement. You may choose to pay the full cost of your care from your available income, savings or assets, or a family member may choose to pay some or all of this for you.

You may decide to rent out your property, which could give you enough income to cover the full cost of your care. There are advantages to this as you may not accrue a debt, or be liable for interest and administrative charges and your property will be occupied.

There are also various financial products which may be suitable for your personal circumstances.

You should take independent financial and legal advice to help you decide which course of action will be financially better for you.

Refusal by Lincolnshire County Council

There are some circumstances in which the Council may refuse to offer a deferred payment where:

- The eligibility criteria set above is not met
- You lack capacity, there is no one legally appointed to act on your behalf and suitable arrangements cannot be put in place to rectify this
- the property is uninsurable
- You or your legal representative refuse to agree to the terms and conditions of the deferred payment agreement
- The Council is unable to secure a first legal charge

Where a top up is sought, the council may need to consider a maximum amount that is sustainable. Where the Council considers that the top up is unsustainable the deferred payment may be declined.

To apply to enter deferred payment for both types

In order to apply to enter deferred payment agreement, you must:

- Meet the eligibility criteria as set out above
- If the property is not registered at HM Land Registry, you must arrange for it to be registered at your own expense. Alternatively, Legal Services Lincolnshire will complete the registration to enable the charge to be applied to your property and will charge you for this
- Have mental capacity to agree to a deferred payment agreement or have a person with legal authority to act for you and who is willing to agree to enter into the deferred payment agreement, e.g. an attorney or a financial deputy
- Complete an application form

Whilst in the agreement

Whilst in the agreement, you will also need to meet the following criteria:

- Provide two formal valuations at the start of the agreement.
- A review will take place at 50% of the equity to ensure there have been no significant changes in valuation.
- When the deferred amount reaches 70%, you will be asked to provide a further valuation to ensure you can continue with the agreement
- In times of falling property values, you may be requested to arrange additional valuations of the property, and thereafter at annual intervals, until there is sufficient improvement in the property market
- Where requested and valuations are not provided, the Council will undertake its own valuations and pass on the associated costs to you
- To have a responsible person willing and able to ensure that necessary maintenance is carried out on the property to retain its value. You are liable for any such expenses.

- To insure your property at your expense and provide a copy of your insurance certificate annually to the Council for the duration of the deferred payment agreement
- To pay any client contribution (only applicable for the "Traditional type") in a timely and regular manner directly to the home. If you fail to pay the client contribution on a regular basis the council reserves the right to add this amount to the deferred amount and interest will be charged
- there can be no other beneficial interests on the property, for example outstanding mortgages or equity release schemes, unless this is approved by the Council prior to entering the agreement

Circumstances in which the Council may stop deferring care costs or making payments under a loan –type agreement

There are also circumstances in which the Council may refuse to defer or loan any more charges as follows

- when your total assets fall below the level of the means test and you become eligible for the Council's support
- where you no longer have a need for care in a care home
- Where you breach certain terms of your agreement and attempts to resolve the issue have been unsuccessful
- Where your property becomes disregarded under the charging regulations and you become eligible for Council support
- Where you have reached the maximum amount that can be loaned against your home.

The Council cannot demand repayment at this stage as repayment will be subject to the termination clauses in the agreement itself.

Whilst in the agreement, Lincolnshire County Council will provide written updates at least twice yearly providing the balance due. This will include interest accrued and an estimation of the remaining deferment period.

Please note: acceptance of any application under the agreement is subject to:

- You meeting the eligibility criteria
- Lincolnshire County Council being able to obtain adequate security against your property

If you wish to apply to join the scheme

If, after taking independent financial and legal advice, you decide to enter a deferred payment agreement, please contact Lincolnshire County Council by phoning 01522 782155 or by emailing Fin_Payments@lincolnshire.gov.uk.

Additional information

<p>Lincolnshire County Council Web: www.lincolnshire.gov.uk/adultsocialcare www.lincolnshire.gov.uk/mychoicemycare Tel: 01522 782155</p>	<p>Money Advice Service Web: www.moneyadviceservice.org.uk Tel: 0300 500 5000</p>
<p>Paying for Care Information Service Web: www.payingforcare.org Tel: 0808 2089 994</p>	<p>Society of Later Life Advisers Web: www.societyoflaterlifeadvisers.co.uk Tel: 0845 303 2909</p>
<p>The Law Society Web: solicitors.lawsociety.org.uk Tel: 020 7320 5650</p>	<p>Association of Independent Financial Advisors Web: www.unbiased.co.uk Tel: 0330 1000 755</p>
<p>Citizens Advice Bureau Web: www.citizensadvice.org.uk</p>	<p>Age UK Web: www.ageuk.org.uk Tel: 0800 169 6565</p>
<p>Mencap direct Web: www.mencap.org.uk Tel: 0808 808 1111 020 7608 3254</p>	<p>Disability Lincs Web: disabilitylincs.org.uk Tel: 01522 870602 or 01522 870333 Email: enquiries@disabilitylincs.org.uk</p>