Customer Finances

Section 1 of The Care Act (2014) and throughout the entire act is the statutory principle of promoting individual wellbeing.

Local Authorities have a duty to ensure that **information and advice** on care and support is available to all when they need it. Timely & accurate information **regarding the financial implications of receiving care** and support through Adult Care **is critical to ensure a person can make decisions** **that maintain their individual** physical, emotional, psychological, and **economic wellbeing**.

# Guidance for Practitioners

The following is guidance to assist you when dealing with and discussing customers financial situations. The guidance provides information based on usual practice, but discretion can and should be applied in individual or exceptional circumstances.

For more detailed information please refer to Lincolnshire County Council - Adult Care Charging Policy which can be found in the [Adult Charging Policy](https://www.lincolnshire.gov.uk/downloads/file/1839/adult-care-non-residential-contributions-policy)

## Deferred Payment Agreements

### What is a Deferred Payment Agreement?

The Deferred Payment Scheme (DPS) is a requirement within the Care Act Agreement for local authorities to offer people choice about how they fund their permanent residential or nursing care.

The intention is that people who own their own home, do not have to sell it in their lifetime to fund their care home placement.

LCC offer Deferred Payment Arrangements (DPA) for people who are eligible

### Are there different types of DPA’s?

There are two types of DPAs:

1. Traditional DPA – Used when LCC have arranged the care and pay the care home directly
2. Loan DPA – Used when the person has made their own care arrangements and they contract and pay directly to the provider

#### Difference between the two types

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| --- | --- | --- | --- | --- |
|  | Traditional DPA |  | Loan DPA |  |
|  |  |  |  |  |
|  | * LCC contracts on customer’s behalf and pays the home the LCC contracted rate. * Person may be eligible for 12-week property disregard period. * Person pays a financially assessed contribution toward their care. * If person chooses to rent out property, the income will be taken into account in the financial assessment * Person is entitled to a Disposable Income Allowance to help toward cost of maintaining and insuring home. * First / Third Party Top Ups can be added to the deferred amount. * LCC commence payment to provider at the beginning of the DPA request and legal charge process |  | * Person/representative contracts directly with the provider. * The amount loaned is the cost of the care home’s private rate. * There is no 12-week property disregard period. * Person does not pay a financially assessed contribution unless they choose to do so. They can use rent / income to reduce the accruing debt. * Person is not entitled to Disposable Income Allowance. Maintenance and insurance of home is at their own expense. * First or Third-Party Top Up do not apply * LCC commence payment after date legal charge is secured. |  |
|  |  |  |  |  |

### Who is eligible for a DPA?

The person must:

* Be ordinarily resident in Lincolnshire
* Own their own property
* Be assessed by Adult Care as needing a permanent stay in a care home
* not have any other assets or savings over £23,250

#### Additional conditions that apply.

The person must:

* Agree to undertake a full financial assessment
* Agree to the LA placing a legal charge on their property
* Sign any associated deferred payment documentation
* All co-owners will be required to sign the Deferred Payment Agreement
* The DPA will only apply to the person’s share of the property

The property must not:

* Be disregarded for financial assessment purposes.
* Have any other beneficial interests, for example outstanding mortgages, loans, or equity release schemes
* Be a Park home or Mobile home

The property must:

* Remain insured and maintained
* A disposable income allowance will help with maintenance and insurance of the property. This can be up to a maximum of £144 per person

### Who can enter a DPA?

* The person themselves whilst they have the mental capacity to do so
* A financial deputy, a registered LPA or EPA for property and finances can enter into the agreement on behalf of the person

There may be circumstances where the LA applies discretion to offer a Deferred Payment where not all the criteria are met

### What is a Property Disregard?

The person’s property is unlikely to be included in their financial assessment if it is the main or only home of a **qualifying relative** while they continue to reside there

#### Definition of a qualifying relative

* The persons husband, wife, partner, or former partner, unless they were estranged before they went into a care home
* A relative aged 60 or over
* A lone parent who is the person's estranged or divorced partner
* A relative under 60 who is incapacitated and receives certain disability allowances
* A child under 18 for whom the person is financially responsible

### What is the 12-Week Property Disregard?

During the first 12-weeks of a person becoming **a permanent resident** in a care home, their property is usually disregarded for financial assessment purposes.

This is to give the person time to decide what to do with their property and how they will pay for their residential care.

The 12-week disregard period can also apply if the property disregard ends when a qualifying relative no longer occupies the home.

**NB: If the property is sold within the 12-week period, the disregard ceases to apply from the date of sale and the proceeds are counted as capital.**

#### Eligibility for a 12-week property disregard

* The person must have become a permanent resident in a residential or nursing home
* They must have had a financial assessment showing they have savings of less than £23,250
* Their property must be their main or only property
* They must have been living in the property prior to going into permanent care

#### When the property disregard does not apply

* For people who have already been in permanent care for more than 12 weeks
* For people who are applying for a Loan DPA

### Can LCC refuse a DPA?

LCC may refuse to offer a DPA even where all the eligibility criteria are met if.

* LCC cannot secure a charge on the property,
* There is insufficient equity
* The person does not agree to the terms and conditions of the agreement.

### When would LCC discontinue or terminate an existing DPA?

LCC may refuse to defer or loan any more care fees if.

* The person breaches the agreement
* The property subsequently becomes disregarded
* The equity limit has been reached

#### How is the DPA is terminated

* When the debt to LCC is paid in full
* When the property is sold and LCC have been repaid
* On the persons death, whereby the amount is repaid from their estate

### Are there any costs associated with the DPA?

There are set up fees and interest charges applied to the deferred debt of.

* An administration fee of £600
* Legal disbursements such as Land Registry Fee’s
* Compound interest on the debt in accordance with the rates set by the Office of Budget Responsibility

### Complaints received about DPA’s and what have we learnt from them

#### Complaints about DPA’s and non-compliance with the Care Act

The number of complaints about DPA’s is relatively low but they do escalate, often to the LGSCO.

This is not surprising as it involves one of a person’s most valuable assets, i.e. their family home.

The complaints received fall into the following categories

##### **Poor Advice**

* About the difference between a Traditional DPA & Loan DPA
* About 12-week property disregards
* About the councils contracted rates v’s self-funded rates

##### **Poor Communication and clarification**

* Delays in issuing the DPA Application and DPA information
* DPA Process unclear, complicated and not timely

##### **Provider Causation**

* Assumptions that CHC funded rate will continue when CHC ends
* Expectation that self-funding rate will apply due to owning property, resulting in IFAs not being signed and provider not being paid

#### What have we learnt from those complaints?

##### **Timely Information**

* Provide information as early as possible, including directing person/families to the council’s website or issue factsheets.
* Inform people of differing care rates for LCC DPA’s and DPA’s offered by provider
* Issue the DPA Application along with DPA factsheets when a LTC FA is requested

##### **Choice**

* Offer a DPA Loan to people choosing accommodation when providers will not accept the councils contracted rate.

##### **Support to the person or family rep**

Provide training & support to AC practitioners so that they can confidently

* Provide factually and timely information & advice
* Advocate on behalf of person/families
* Be at the centre of any negotiations between person/families and providers of services we have commissioned
* Support the person/family so they do not have to deal with provider disputes alone
* Understand any ex self-funded or health funded placements, analysing the placement from a starting point rather than just continue it under the original placement cost

##### **Communication**

* Be able to evidence that we had communicated regularly and clearly with people/families
* Update the councils DPA expectations via the Residential Framework Contract
* Inform the person of the date permanent LTC commenced which ordinarily will be the start of the 12-week property disregard period

##### **Recording**

Improve case note recording and summaries to

* demonstrate the persons choice about how they pay for their care
* Record action taken to enable the person to achieve their choice
* Record information given and why
* Record the date permanent LTC commenced and the start of the 12-week property disregard period

##### **Correspondence**

* Simplify the DPA process, producing a specific DPA Factsheet
* Follow more complex arrangements up in written form

##### **Seek Advice**

* Knowing where to access good quality advice
* Fully understand the information that you are sharing
* Taking the time to clarify and provide an appropriate response to more complex questions or situations

### Q&As

#### Property Valuation & Equity

###### **Q: The council will only loan up to a maximum 90% of my properties market value but how is the market value ascertained?**

**A:** The council will obtain two property valuation from local estate agents.

###### **Q: What happens if there is a dispute over the properties estimated value?**

**A:** The council will refer the case to the Valuation Office Agency (VOA) who will complete an independent valuation.

**Q**: **What happens if the property is semi derelict and cannot be insured**

**A:** A valuation of the property will be required and then a decision based on the equity value and the persons unique circumstances will be required.

###### **Q: What happens if the property is subject to an equity release scheme, or the person only owns a share of the property**

**A:** A DPA can only be offered if the council can place a legal charge on the property. The company or the joint owners will have to agree to the council’s legal charge.

* If they do not agree, a DPA cannot be offered.
* If they do agree, the persons share of the property will be calculated and the maximum 90% loan to value will apply.

###### **Q: What happens if the property is leasehold i.e a flat or Park Home**

**A:** To enter a DPA the council must be able to place a legal charge on the property.

Park homes are usually low value and not registered with HMLR and therefore it is unlikely that they will be eligible.

Flats with long leases may be eligible for a DPA and a decision based on the equity value and the persons unique circumstances will be required.

#### Qualifying Relatives & Renting My Property

###### **Q: Can I rent my property whilst I am on either the traditional or DP loan?**

**A:** Yes, you can rent your property on either of the DPA’s. You will need to gain approval from the council who would require a suitable legal tenancy agreement to be in place.

* If you are on the **traditional DPA** any rental income will be included within your income and will increase your assessed care contribution but reduce your accruing debt.
* If you have a **DP Loan**, you can voluntarily contribute towards your care to reduce your accruing debt.

**NB: In either situation the customer must take responsibility for insuring & maintaining their property.**

###### **Q: LTC has been approved for a person. She has a property and her daughter who is 60 is thinking of moving into the property. Will the property be disregarded for financial assessment purposes if daughter does move in?**

**A:** The property will not be disregarded because although daughter satisfies the definition of a qualifying relative, it was not her permanent and only home at the time of her mother entering LTC.

Mother/rep could request permission from the council to rent her property to daughter, but both would need to enter a formal tenancy agreement and we would need to be satisfied that if mother lacks capacity, these types of decisions are being made in her best interests.

#### Miscellaneous

###### **Q: I have assessed a person as being eligible for LTC, they have a property but savings less than £23,250. The persons financial rep wants to enter a DPA but they have agreed a rate with the provider higher than the councils expected cost for that level of care.**

A: If the person/rep avails themselves of the DPA the council will contract with the home on the persons behalf and fund at the expected cost only. The options available are

* Negotiations by you/contracting officer with the provider to deliver care at (or closer to) the council’s rate
* A third or first party top up agreement, so long as it is within the contract amount for that room.
* Source alternative placement that meets need within expected cost
* Apply for the DPA Loan, bearing in mind no money would be advanced for care until the legal charge is in place

**NB: If person/rep are agreeing to fund at a higher amount, inform them that the council will not automatically match this amount when person/rep/family are no longer able to do so.**

**Advise them to discuss with the home the implications when they are no longer able to self-fund their care or pay the agreed top up.**

###### **Q: I have assessed a person as being able to have their needs met in the community but son, who has LPOA for property & finances is planning to self-fund residential care for his mother. Are they eligible for the DPA and 12-week property disregard?**

**A:** A person must be assessed by the council as needing LTC to be eligible for the traditional DPA or the 12-week property disregard.

They would not be eligible for the DPA Loan either.

**NB: You would need to consider the person wishes in this decision-making process and ensure the LPOA is acting in accordance with the donor’s wishes and in their best interests**

###### **Q: LTC has just been approved for a person. They have a property but savings below £23,250. They are unlikely to apply for the DPA as they are considering selling the property. Will they still be eligible for the 12-week property disregard?**

**A:** So long as they meet the eligibility criteria for the 12-week disregard period, the property would not be included for financial assessment purposes. If they sold the property before week 12 then the proceeds from the sale will be included in the assessment

###### **Q: I have reviewed a person who has been in LTC for over 12 months. They have a accrued a full cost debt for their care fees as they have a property, but they do not have any savings to pay the fees. It looks like the DPA was discussed when they first went into care, but it didn’t progress. Can they apply for the DPA now and will they receive the 12-week disregard?**

**A:** An application for DPA can be made at any time. The usual eligibility needs to be considered and applied.

With regards to the 12-week property disregard, so long as the eligibility has been met, the property will have been disregarded from the financial assessment. If no financial assessment was completed, then this needs to be carried out and the debt re calculated.

###### **Q: A person has moved into ECH but cannot afford her assessed full cost for homecare as her capital is tied up in her property. Can she enter a DPA to pay her homecare fees?**

**A:** The DP scheme was designed for people who move into permanent residential or nursing care, removing the need for them to sell their home within their lifetime if they choose not to do so.

However, we know that the Care Act legislates that we apply a person-centred approach and therefore options based on the persons unique circumstances will need to be explored. These could include renting out their home to generate income to pay for their homecare

###### **Q: I have assessed a person as needing LTC but the LTC authorisation decision has been delayed. The financial rep has not returned the FA Form’s and I believe the property has now been sold. What should I do?**

**A:** You need to inform the rep that in the absence of a completed and returned FA the persons contribution will be calculated at full cost. You need to ask them if the property has been sold and does this take the person over the £23,250 threshold. You also need to ask how they are planning to fund the placement, reminding them that if they have capital above the threshold or choose not to have a FA, they are liable for the full cost of the placement and the provider is likely to charge a self-funding rate. Case record and consider sending a summary letter of your conversations. Depending on the outcome of these discussions you may need to end the council’s contract for this placement, informing them that the person has become a self-funder.

**NB: You would need to consider the person wishes in this decision-making process and ensure the LPOA is acting in accordance with the donor’s wishes and in their best interests**

###### **Q: What will be the set-up costs of a DPA?**

**A:**

**Deferred Payment Agreement Fees**

**Administration & Legal Fee:** £600.00

**Legal Disbursements not included in the Administration & Legal Fee**, dependent on the value of the property are below (Legal will inform separately about these costs):

**Registered Property**

|  |  |  |  |
| --- | --- | --- | --- |
| Value of Property £ | Fee £ | Search Fee £ | Disbursement Fee £ |
| 0 – 100,000 | 20.00 | 6.00 | 26.00 |
| 100,001 – 200,000 | 30.00 | 6.00 | 36.00 |
| 200,001 – 500,000 | 45.00 | 6.00 | 51.00 |
| 500,001 – 1,000,000 | 65.00 | 6.00 | 71.00 |
| 1,000,001 + | 140.00 | 6.00 | 146.00 |

The search fee includes a £3.00 fee for the official copy of register, plus a £3.00 fee for a priority search

**Unregistered Property**

|  |  |  |  |
| --- | --- | --- | --- |
| Value of Property £ | Fee £ | Search Fee £ | Disbursement Fee £ |
| 0 – 80,000 | 45.00 | 8.00 | 53.00 |
| 80,001 – 100,00 | 95.00 | 8.00 | 103.00 |
| 100,001 – 200,000 | 230.00 | 8.00 | 238.00 |
| 200,001 – 500,000 | 330.00 | 8.00 | 338.00 |
| 500,001 – 1,000,000 | 655.00 | 8.00 | 663.00 |
| 1,000,001 + | 1,105.00 | 8.00 | 1,113.00 |

**Compound Interest Rates:**

**01/07/2021 to 31/12/2021 0.75%**

**01/01/2022 to 30/06/2022 0.95%**

**01/07/2022 to 31/12/2022 1.55%**

**01/01/2023 to 30/06/2023 3.18%**

#### DPA Loans

###### **Q: The council will not advance any money until a legal charge is in place. How long is that likely to take?**

A: His Majesties Land Registry (HMLR) can take between 3 – 9 months to apply the legal charge. The customer/rep will be responsible to fund their care home fees until then. The loan will not be backdated.

#### DPA Monitoring

**Q: What action do I need to take after I have sent the person/rep the DPA application?**

A: You need to monitor the DPA progress by keeping open the case or transfer to local monitoring arrangements to;

* Contact the person/rep to ensure they have received the application and are able to complete and return it.
* Answer any questions to the best of your ability, seeking guidance from your Finance Champion, LP, LL or Serco DPA Team (usually Susan Foster).
* Check that a DPA workflow has been opened on Mosaic.
* Monitor progress of the DPA and liaise between Serco and person/Rep if additional information/evidence is requested

Serco Finance will case note when the legal charge is in place and will send an alert to the open K/W

### Additional Loan DPA information

* The person will not be entitled to a 12-week property disregard
* The loan payments are made by the Council to the person/financial representative (probably on a 4-weekly basis) and *not* directly to the care home.
* The person/financial rep then pays the care home direct.
* The person/financial rep is the person that commissions the care from whichever care home they choose.
* There is no contract in place between the Council and the care home.
* There is a loan agreement which the person/financial rep will sign, and they will also sign legal documentation to place a charge on the persons property.
* The loan is paid off when the house is sold. People do not have to sell a home to get a DPL – this like a traditional deferred payment, is in place to ensure customers do not have to sell their property during their lifetime.
* The Council is not the commissioner in these cases and therefore the person/financial rep will be paying the private rate asked for by the home and LCC will not be responsible for the care commissioned.
* Compound Interest will accrue on the loan. The interest rate which is set by the office of budget responsibility bi – annually in January & July
* There is a setup fee of £600 which covers the legal costs excluding disbursements such as land registry fees, these fees vary and legal will write out separately to advise of what these are
* Valuations of the property will be necessary to determine the loan to value ratio based on the equity within the property.
* There is no disposable income allowance however rental of the property could be considered by the person/rep to support maintenance costs.
* Approval must be given by the council for the property to be rented and a legal tenancy agreement will be required.
* A requirement of the loan is that the property is suitably insured & maintained.

**If the Loan is chosen, the resident/family need to be aware that LCC will not commence the loan or make any payments to them until the Legal paperwork is in place; Charge and Loan agreement. They therefore need to be aware they need to self-fund until this point and it can't be backdated.**

### What is my role?

* Confirm the person has capacity to manage their financial affairs, or identify their COP appointed financial representative
* Determine if the person owns property so that you can check if the guidance, fees and application are applicable.
* Explain the principles of the DPA to the person/rep and provide them with the [DPA Factsheet](https://trixcms.antser.com/api/assets/lincolnshireadults/43e86f6b-bfc4-4117-8cae-0d427c047d26/factsheet-deferred-payments.pdf)
* Answer any questions to the best of your ability, using the [DPA Guidance](https://trixcms.antser.com/api/assets/lincolnshireadults/71a359f0-5002-4b8f-85d0-a56cf384bad8/deferred-payments-agreement-guidance.pdf) in the manual, consulting with your local finance champ, supervisor/LP or AC finance colleagues if you need to

#### If person/rep wishes to pursue DPA,

* Carryout eligibility check using the check list below
* Issue the financial assessment form and the DPA application at the earliest possible point and complete the Financial Assessment Referral step on MOSAIC
* Advise the customer they will need to return the DPA application form and agree to
  + - A legal charge on the property and any costs associated with the legal charge
    - To contribute towards their care fees (as per their FA outcome)
    - Two property valuations
    - A £600 payment for legal costs plus disbursements
* Advise the person to obtain independent financial and legal advice. There are links on the factsheet
* Advise the person to obtain specialist advice if considering renting out their property
* Advise the person to contact DWP to notify of any changes and check they are in receipt of their full benefit entitlement

#### If the person declines a DPA,

* Advise them to liaise with the provider to establish the self-funding rate and its sustainability
* Record your actions and discussions to include person/rep’s views and responses on the customer’s record.
* Once LTC has been approved, complete the PSR and select the DPA option and the DPA application ***(Hyperlink)***
* Send the PSR to Serco Finance who will create a DPA workflow
* Monitor the DPA workflow and your clipboard messages until you receive conformation that the DPA is concluded or the DPA workflow ends

#### DPA Eligibility - Practitioners Checklist

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| --- | --- |
|  | |
| **Confirmation of persons DPA eligibility** | |
|  | They are an ordinarily resident in Lincolnshire |
|  | They have been assessed as needing a permanent stay in a care home |
|  | The property has **not** been disregarded for financial purposes (due to qualifying relatives) |
| **The person states** | |
|  | They do not have other assets or savings over £23,250 |
|  | They own their own property |
|  | The property is not a Park or Mobile home |
|  | The property is freehold or if it is leasehold, the person owns the lease |
|  | There are no other beneficial interests, i.e., outstanding mortgages, loans, or equity release schemes |
|  | |

### Before closing my involvement:

* Check with Serco finance that DPA is in place
* Check if referrals have been made, or are being considered by either FRG or Waiver Panel
* Check with the provider that the Personal Expenses Allowance (PEA) is being received
* Check that First/Third Party Top Up arrangements are being adhered to
* Check that the assessed client contribution is being paid (until we move to gross)
* Check that the home is still meeting the persons identified care outcomes
* Discuss with your LP your intended case closure to agree
  + Suitable monitoring arrangements for outstanding financial issues (COP, DPA, FRG Waiver etc)
  + A review period in accordance with top up or amended PB agreements
* Record a case closure summary, detailing these monitoring or review arrangements