

Property, or Other Security, & Deferring Payment of Care Fees

We would strongly recommend that you seek independent Financial and/or Legal advice before entering into a deferred payment agreement.

Please read this leaflet if you are entering into a care home environment for the first time, or where you have been paying the full cost of your care home fees (i.e. from capital held over £23,250), and you own or have a shared interest in the ownership of a property. For additional information or guidance please see the policy document or the Care Act guidance.

If you own a property, the value of the property may be taken into account in our assessment. This leaflet is designed to assist you in considering the financial implications and options available to you. Swindon Borough Council would strongly recommend that you seek independent Financial and/or Legal advice before entering into a Deferred Payment Arrangement (referred to as DPA)

What is a Deferred Payment Agreement (DPA)

A DPA is a loan which would be secured against a property or other asset as agreed by Swindon Borough Council. There is no requirement for that property or asset to be sold within your lifetime. You will be required to sign a Legal agreement. You will be required to make a contribution towards the cost of your care, as per the financial assessment, from your income. Fees and interest will be incurred. Please read on for further information:

Disregarded Properties

The value of a property may be disregarded where you are residing in a care home for a “temporary” period, OR where a property continues to be occupied by:

- your partner, former partner, civil partner (except where estranged or divorced)
- a lone parent who is your estranged or divorced partner
- a relative who is aged 60 or over OR your child aged under 16 OR someone who is incapacitated

12 Week Disregard (applies where the property isn't already disregarded as above)

Subject to qualifying conditions, individuals moving to residential accommodation on a permanent basis, for the first time, may be eligible for a 12 week property disregard. During the 12 week period, the value of a property which was occupied as your main and only home, immediately prior to moving to residential accommodation, would be disregarded. A financial assessment would then be considered to determine the correct contribution you are required to pay towards the cost of your care. See our general guide to paying for care in a care home” for further information on the financial assessment process.

If during the 12 week disregard period your total capital & assets (excluding the value of the disregarded property) exceed £23,250 you will be assessed as liable to pay the full cost of your care. Should your total capital & assets (excluding the value of the disregarded property) fall below £23,250 at any time during the 12 week disregard period, you would be granted the balance of the 12 week disregard period. A financial assessment would be required to verify the date your capital reduced and to confirm the correct client contribution you would be required to pay.

For example: an individual moves for the first time to permanent residential accommodation and the 12 week property disregard is awarded. They hold capital in excess of £23,250 and are deemed as liable to pay the full cost of their care. After 3 weeks the capital reduces below £23,250. The individual would therefore be entitled to 9 weeks property disregard (i.e. the balance of the original 12 weeks).

Please be advised that the 12 week disregard will end immediately if the individual's total non-property assets increase above £23,250 for any reason, and they will become liable for the full cost of their care. For example, where a 12 week disregard started 10th March 2022 and a property sale completes on 18th April 2022, the property disregard would end with effect from 17th April 2022 and the individual would be liable for the full cost of their care with effect from 18th April 2022.

Mandatory Deferred Payment Arrangement (DPA) Qualifying Criteria

In order to qualify for a mandatory DPA you must meet the following criteria:

- you must have eligible care needs, which are to be met by the provision of care in a care home
- you must have less than or equal to £23,250 in assets, excluding the property AND
- your property must NOT fall into a disregarded category
- there must be sufficient equity in the property for a DPA to be sustainable
- the property ownership must be correctly registered with the land registry
- Swindon Borough Council must be able to secure a first legal charge against the property with the Land Registry

Security

Swindon Borough Council must be able to secure any deferred fees, paid on your behalf, either by placing a Legal Charge against your property or accepting an alternative form of security (i.e. a Life Assurance policy)

Refusal of a Deferred Payment Application

Swindon Borough Council **may** refuse a Deferred Payment Application or cease to defer any further care fees where:-

- The Council does not agree that your ongoing care needs are best met in a residential care or nursing home setting

- the Council is unable to secure a first Legal Charge against the asset for any reason (for example the property ownership is not correctly registered, there is already a legal charge registered to secure a debt)
- your capital assets, including your property, are less than £23,250 or the equity available from the property is deemed as insufficient for a DPA to be sustained
- the property equity limit has been reached. This is the value of your share of the property, minus 10%, minus £14,250
- a person no longer needs residential care
- a person does not agree to SBCs' terms and conditions or breaches certain terms of the contract
- a person wishes to defer a higher amount than is reasonably sustainable given the equity available (i.e. top up fees)
- the property later falls under a disregard category for any reason and you qualify for Local Authority funding

Should you fail to provide the information required to complete the deferred payment application within the time limits set by the Council, the Council will deem that you have refused its offer of a deferred payment agreement. If you then require a deferred payment at a later date, this would only be considered under the discretion of the Council.

Documentation Required

In order for a Deferred Payment application to be considered, the following information will be required:-

- A completed DPA application form
- Proof of identity for the care home resident
- Proof of identity for the person acting as Attorney or Deputy
- The original Power of Attorney or Deputyship document (this would be returned) or a "certified" copy if you are not willing to allow us to have the original for a short period

Other information will also be required such as confirmation of the disposable income allowance, how fees and interest will be paid, any rental income from the property, evidence that the property is adequately insured and any other information the Local Authority deem necessary in respect of an application

Disposable Income Allowance

Where a 12 week disregard applies, the financial assessment will be completed allowing a personal expense allowance (see above), plus any other expenses we agree in respect of the property. From week 13 you are able to decide the level of disposable income you require, currently up to a maximum of £144 per week (or your total weekly income if this is lower than £144).

In cases where a 12 week disregard does not apply, you are required to confirm the level of disposable income you require from the beginning of the DPA.

In making your decision, please be aware that by reducing the weekly disposable income you will keep the weekly deferred payment to a minimum. However, we would strongly recommend that you seek independent financial advice with regard to this matter

Income From Rent

You may choose to rent your property. Net income received from rent will be included in the financial assessment. You should seek independent advice to help you decide whether renting the property is the right choice for you.

Your Responsibilities

You are required to ensure that the property is fully insured and maintained throughout the life of the DPA. Evidence that you have adequately insured and maintained the property will be required. You must notify the insurance company that the property is unoccupied or if the property is tenanted as this may affect your cover. You must notify us immediately of any changes, for example if a previously empty property later become occupied or is rented, if a property is sold or if a previously disregarded property no longer falls into a disregard category.

Top Up

Please see “Top Up” Leaflet” for further information. Please note that if you have applied for a Deferred Payment Arrangement you can also ask for any top up to be added to the loan. Please confirm as soon as possible how you would like to pay any top up amount. Be advised that any top up applicable for any 12 week property disregard period must be paid and cannot be added to the deferred payment debt.

Administration Fees and Interest (all figures are subject to review)

Interest will be charged at the relevant rate for the relevant period, compounded on a daily basis. Interest rates will be reviewed and new rates applied from January & July of each year.

In addition, administration fees are charged to include a “one off” set up fee at the beginning of the DPA and an annual maintenance fee charged on the anniversary of the DPA document being signed.

Please note: You can choose to add the administration fees and interest to the DPA and these will be subject to compound interest. Alternatively, you can opt to pay these separately. Interest will continue to accrue on the DPA until the debt is repaid in full. Please notify us as soon as possible how you would like to pay these fees.

Maintenance & Review of a DPA

Swindon Borough Council will monitor the DPA and provide you with statements (half yearly from the date you sign a deferred payment agreement) to show:-

- The total amount deferred and how this has been calculated
- The fees and interest added to the DPA
- A projection of when the equity may be depleted

In addition, Swindon Borough Council will monitor the DPA value to ensure that it does not exceed the “equity limit” which is your share of the property value minus 10% minus £14250. We would look to review the sustainability of a DPA at appropriate intervals

Termination of a DPA

A DPA will be terminated in the following circumstances:-

- If the equity limit is reached
- If the property is sold
- If the owner no longer requires care in a care home environment
- On the death of the care home resident
- If you provide 30 days written notice that you no longer require a DPA

Payment of a DPA

You are required to make payment of the amount due in the following circumstances:-

- Immediately following the sale of the property
- 90 days after the death of the care home resident (Swindon Borough Council may use its discretion to extend this time limit where active steps are being taken to repay the DPA, i.e. marketing the property)
- On receipt of the final invoice when you have requested the termination of the DPA

NOTE: fees and interest will continue to accrue until the debt is repaid in full

Solicitors Undertaking

Swindon Borough Council would usually only offer finance care costs if a deferred payment agreement has been entered into, secured by a legal charge against the individual’s property. However, if the property is being sold and sale completion is imminent, Swindon Borough Council may exercise discretion to accept a Solicitors Undertaking as security for a Deferred Payment.

NOTE: This leaflet is designed to act as a guide only. All figures included in this leaflet are correct as at April 2022 and are subject to an annual review (usually April of each year). Last updated 11/04/22