

Deferred Payment Agreement – Eligibility

Adult Social Care, Bristol City Council

Eligibility - Legal definition

The Care Act 2014 (sections 34 and 35) requires local authorities to offer a Deferred Payment Agreement to allow people to defer the sale of their home if the sale is needed to fund care fees. The Care and Support Deferred Payment Regulations 2014 set out the legal framework and the responsibility of the local authority in greater detail.

The definition of **HOME** is in the Care Act, 2014 sections 34 and 35 (a) – ‘the property which the adult occupies as his or her only or main residence (or in a property which the adult used to occupy as such)’.

Eligibility Criteria

The criteria below will be considered when assessing eligibility for a deferred payment agreement:

1. A person whose Care Act eligible assessed needs are to be met by the provision of a service in a care home. This applies when the person is assessed as having eligible needs which the local authority determines should be met with a care home placement. The arrangement should comply with choice of accommodation regulations and care and support planning guidance and so take reasonable account of a person’s preferences.
2. A person who has less than (or equal to) the upper funding threshold figure in assets (currently £23,250 in 2023 but this figure can change, and it is known as the upper capital limit). This excludes the value of the home.
3. A person whose home is not disregarded in the calculation of the charge for their care home placement . For example this would be if it is occupied by a spouse or dependent relative as defined in the regulations on charging for care and support.
4. The person must have a beneficial financial interest in the property. There should be no outstanding mortgage on the property. Unless the balance of the equity (the beneficial financial interest) is sufficient to cover the cost of the amount being deferred.

5. The person, or their legal representative, must consent to the agreement. The Deferred Payment Agreement must be signed by a person with capacity to make the decision or their legal representative.

6. When accepting a property as security, Bristol City Council must be able to place a Land Registry charge on the property; and it must be the first charge. If the property has not been registered, the person or their agent must complete registration before making application for a Deferred Payment Agreement.

Conditions that are taken into consideration:-

- Bristol City Council will usually expect the person to have at least 6 years' worth of value in the property to consider offering a deferred payment. Unless it is being requested as a bridging loan arrangement pending sale of the property.
- Bristol City Council may consider other forms of security rather than a charge on the person's property. These are Solicitor's undertaking or a Guarantor. No other security will be permitted.
- Bristol City Council will refuse an application for a Deferred Payment Agreement if it is not satisfied that its interest is secure. The security provided must satisfy Bristol City Council that it could gain ownership of the asset and/or recover the deferred amount on the death of the person or on the sale of the property.
- If a spouse or dependent relative moves into the property following entry into the deferred payment scheme, the local authority will review eligibility. Also in these circumstances Bristol City Council will not extend the property disregard that can apply to a spouse or relative unless exceptional circumstances apply.
- If the property is disregarded and later the person qualifies for local authority support then the deferred payment is put on hold, but interest and costs will continue to accrue. Bristol City Council will issue an invoice for the amount that has been deferred and regular invoices thereafter for the accruing interest and costs.
- Bristol City Council will ask the person to complete an application for the scheme. Bristol City Council will refuse a deferred payment where a person does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property and to provide notification about occupants.
- Bristol City Council will refuse a deferred payment application if it cannot obtain a legal charge by way of mortgage on the property (first charge, only); or security by Solicitor's undertaking or a Guarantor.

- Bristol City Council will refuse a deferred payment application if the person lacks capacity and there is no registered Power of Attorney or Court appointed deputy to make such a decision on their behalf.
- Bristol City Council may refuse a deferred payment where someone is seeking a top up. Bristol City Council will be guided by consideration of sustainability i.e. if there is sufficient equity in the property to sustain the top-up.
- A person who does not want to sell their property, and chooses not to take advantage of the scheme, will be deemed to be able to pay the full cost of their care and will be invoiced as such. Non-payment of the invoices will be dealt with via Bristol City Council's debt recovery process.
- The Deferred Payments Regulations set the maximum interest rate that can be charged on deferred payments. This maximum rate is fixed for periods of six months and changes every 1 January and 1 July. Bristol City Council will apply interest at the Government maximum rate. This is Compound interest based on the 15 year average gilt yield as set out by the Office for Budget Responsibility in the Economic and Fiscal outlook report plus a default component of 0.15%.
- Bristol City Council will pass on 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. This will reflect the actual costs incurred.
- It is necessary for the person or a legal representative to sign a document confirming that they wish to take advantage of the Deferred Payment Agreement and that all implications have been explained. A formal Legal Agreement must be agreed with the Legal Department, Bristol City Council.

Bristol City Council – Deferred payment costs:-

There is a setup fee – which is revised annually.
 There is an annual charge – which is revised annually.
 Interest rate - Compound interest. The interest rates can be obtained from the Client and Carer Finance team.

Bristol City Council recommends that anyone considering a Deferred Payment Agreement obtains independent financial advice.

Bristol City Council, Client and Carer Finance team

Email: ccfstriageteam@bristol.gov.uk - Tel: 0117 9037706

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