

# **Merthyr Tydfil County Borough Council**

## **Financial Assessment and Charging**



Cyngor Bwrdeistref Sirol  
**MERTHYR TUDFUL**  

---

**MERTHYR TYDFIL**  
County Borough Council

## **Deferred Payment Arrangement Policy**

**April 2024 and ongoing**

## **1. Introduction**

- 1.1 This Policy details how a Deferred Payment Agreement (DPA) will be operated by Merthyr Tydfil County Borough Council from April 2024 and ongoing.
- 1.2 When a person enters full-time care their fees can be paid either by using their income and capital or Local Authority funding and is usually a mixture of these sources.
- 1.3 Where a person entering full-time care has property these are taken into account when deciding their contribution to their care (see Section 3 below and Residential Charging) Once the decision on charging has been made we can, and must in certain circumstances, offer a DPA.
- 1.4 A DPA allows a person to accrue the charges for their full-time care against a charge on their property or land, avoiding the need to sell the asset to fund their care. This can be used either as a 'bridging loan' until the property or land is sold during their lifetime or can be used long term to fund their full-time care, until they die. The fees will then be paid out of their estate. A DPA payment builds up a debt – which is cleared when the capital tied up in any assets released. This can be done by selling any property or land at a later date or from another source if available.
- 1.5 The Local Authority will ensure that those considering a DPA are advised to consider seeking independent financial advice before entering into a DPA.

## **2. Legal context**

- 2.1 The Social Services and Well-Being Act Wales 2014 (Part 5 section 68 and Part 4 & 5 of The Codes of Practice annex D) requires Local Authorities to offer DPA's to allow those entering full-time care to defer the sale of their main or only property where it is needed to fund care fees.
- 2.2 The regulations require that a Local Authority offers a DPA to people meeting certain eligibility criteria (see section 3 below). These agreements can be retained until the person dies, with the amount repayable from their estate, but can also be offered to persons who decide to sell their property whilst still alive (the DPA providing "bridging finance").

## **3. Eligibility criteria**

- 3.1 The Local Authority will offer a DPA payment to those who meet the following eligibility criteria:
  - Anyone whose needs are to be met by the provision of full-time care in a 24h care setting and
  - Anyone who has less than (or equal to) £50,000 in assets excluding the value of their property and
  - Anyone whose property is not disregarded, for example it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support

- Anyone whose property is not disregarded, for example it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support

### 3.2 The additional criteria are:

- a) The person must have a legal or beneficial interest in the property.
- b) There should be no outstanding mortgage on the property. In exceptional circumstances the Council will accept a mortgaged property if, it is believed, the equity in the property is above the capital threshold and is sufficient to pay the fees costs for a period of at least 12 months.
- c) The adult or someone legally authorised to deal with the adults financial affairs must consent to the agreement.
- d) The DPA must be signed by a person with mental capacity, as defined by the Mental Capacity Act, to make the decision or someone legally authorised to deal with the adults' financial affairs (see section 8 for more information on mental capacity and deputyship).
- e) If accepting a property as security, it's title must be registered with the Land Registry so the Council can place a charge on the property. A property with an unregistered title will not be accepted.
- f) If the property is subsequently disregarded, and the person qualifies for local authority support as a consequence, then the DPA will be frozen.

## 4. Refusing a DPA

- 4.1 The Local Authority will refuse a DPA if we are unable to obtain a legal charge, by way of mortgage, on the property (e.g. unregistered title or prior mortgage on the property).
- 4.2 A DPA will be refused where a person lacks mental capacity and there is no court appointed Deputy (Property and Affairs) or other person legally authorised to make such a decision.
- 4.3 Where someone is seeking a top up, the Local Authority must consider their request, but retains discretion over whether or not to agree (see Residential Charging re 'additional payments').
- 4.4 We will also refuse a DPA where a person does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property.

## **5. Information and Charges**

- 5.1 The Local Authority will ensure that persons considering entering full time care are made aware of the ability to defer charges against their property for their care. The Local Authority will provide this information during the person's first 12 weeks in 24h care, the period of '12 week property disregard' when the value of the property is not taken into account.
- 5.2 The Local Authority will provide a twice yearly statement of the outstanding debt to the person(s) entering into the DPA. A statement can be requested at any time and this will be provided within 30 days of request.
- 5.3 When the maximum amount to be deferred is due to be reached within 6 months the Local Authority will give the person(s) entering into the DPA notice of this and advise that a meeting to discuss the future cost and funding of care is required.
- 5.4 The person or their representative will be advised of the costs of entering into a DPA. These are detailed in the Residential Charging. There is a one-off fee to set up the DPA.
- 5.5 If the Local Authority has to instigate the enforced sale procedure / court proceedings in order to recover our debt, any costs incurred by the Local Authority will be added to the overall debt.
- 5.6 The Local Authority will advise those considering a DPA to consider seeking independent financial advice (see section 1.5).

## **6. Renting the Property Out**

- 6.1 Where a property is rented out, the Local Authority will require copies of any tenancy agreements that are in place or put in place and would expect this to be via a Standard Occupation Contract.
- 6.2 Rental income will be used in the financial assessment for charging for residential care. This will increase the weekly contribution paid towards care from the total income which will in effect reduce the debt accruing. An additional disregard may be applied in the financial assessment to allow for property maintenance, landlords insurance etc.

## **7. Types of Property Ownership**

- 7.1 Where there are co-owners of a property either as tenants in common or jointly owned property, all parties must agree with and sign the DPA.

## **8. The Mental Capacity Act 2005**

- 8.1 The Mental Capacity Act 2005 (MCA) applies to care, treatment and support of people aged 16 years and over, in England and Wales, who are unable to make some or all decisions for themselves. Staff working with people who lack capacity must have regard to the Mental Capacity Act.

- 8.2 The Local Authority can only enter into a DPA with someone who has got the mental capacity to understand this, or the person legally authorised to deal with that person's financial affairs. This may be a Deputyship, Lasting Power of Attorney or Enduring Power of Attorney which has been registered at the Court of Protection or in some circumstances a specific order from the Court of Protection. The Local Authority requires a certified copy of the document for our records.
- 8.3 Where there is no legal authority yet in place but where someone is applying for it, the Local Authority will pay the provider and invoice the person who is applying for Deputyship. A letter of undertaking to pay the care fees will need to be signed by the person seeking the deputyship.
- 8.4 Where no-one is available to apply for Deputyship, the Local Authority will consider applying for Deputyship (see the Client Financial Affairs Policy).

## **9. Securing the DPA**

- 9.1 The Social Services and Well-Being (Wales) Act 2014 Codes of Practice Part 4 & 5 annex D states that we may refuse a DPA unless we can obtain adequate security for the payment of the deferred amount.
- 9.3 Where a property is owned outright with no mortgage or other charge on it we will secure a first legal mortgage against the property on the Land Register. Where the property is jointly owned, all parties will have to agree to the charge being placed.
- 9.4 The Local Authority may accept a property with an existing mortgage or other charge, as security where there is at least 12 months' worth of funding in the equity. The Local Authority must be provided with an up to date statement from the lender of the debt outstanding. Consent from the existing mortgage / lender may need to be sought to secure a second charge against the property.
- 9.5 Equity is defined as:
- the value of a person's share in the property, less
  - any charge on the property, less
  - 10%, less
  - £50,000 (£50,000 being the current capital limit, this may change on an annual basis).
- 9.6 An independent valuation on the property from an estate agent must be provided at the time of applying for a DPA. If the valuation is disputed by the Local Authority then a separate valuation may be obtained and the average of these valuations will be considered.
- 9.7 The Local Authority may value the property annually, where the revaluation is disputed by the owner then an independent valuation in line with 9.6 above can be sought at the owner's expense.

## **10. Ending the DPA**

10.1 A DPA will end in the following circumstances:

- a) At any time by the person(s) who entered into the DPA by repaying the full amount due;
- b) When the property (or other form of security) is sold and the authority is repaid;
- c) When the person dies and the amount is repaid to the LA from their estate.

10.2 Debt will stop accruing against the DPA when the equity limit is reached; the person(s) entering into the DPA will be informed on the 6 monthly statement when the equity level is likely to be reached. The Department of Works and Pensions (DWP) will be informed of the changes in circumstances so that a benefits review can be undertaken where Severe Disability Premium and other Disability benefits are in payment.

10.3 Where a property is being sold, the Local Authority requires 14 days' notice of the completion date where possible. The net sale price will be used to calculate the final debt due; the net sale price being the actual sale price less associated fees.

10.4 Upon the person's death, the Local Authority will inform the Executor of the estate of the final debt within 28 days. Where the debt is not repaid within 90 days, it will be subject to the Debt Management Process (see Residential Charging).

10.5 The Local Authority will issue an invoice for the total debt once the DPA ends. The legal charge on the property will not be removed until the debt is repaid in full.

10.6 If someone decides not to continue accruing their care charges against the DPA and can pay the charge from another source instead they can request this in writing. The legal charge on the property will not be removed until the debt is repaid in full.

10.7 If any invoice is not paid any debt will then follow the Sundry Debt Policy which is included in the Corporate Debt Recovery policy.

## **11. Personal Expenditure Allowance**

11.1 We will consider a variation of the standard minimum income amount upon request and evidence of requirement in order to maintain property.

## **12. Review**

12.1 This policy will be reviewed annually and changes made where there is a need to do so or when there is a change in legislation.