Permanent Residential Financial Assessment

City of York Council exercises its power under the Care Act 2014 to charge customers for some care and support services. The Care and Support Statutory Guidance, issued by the Department of Health, provides Councils in England with a charging framework. Within the charging framework, there are differing means tested assessments that work out how much you will be asked to contribute.

The means tested assessment is a requirement for all customers with capital (excluding a property) of less than the Higher Capital Limit. Details of the current higher capital limit can be found in the Schedule of fees, charges, allowances and rates.

There are 3 different means tested assessments:

- Non-Residential Care
- Temporary/Emergency Residential Care
- Permanent Residential Care

You will be assessed by a Benefits and Contributions Adviser. They will have been asked to contact you by social services to undertake the appropriate means tested assessment. They will also check you are getting all of the benefits you are entitled to. Following your assessment, you will be provided with a written record and calculation breakdown.

Some care services may cost more than we have agreed to pay. For example, if you require care in a care home, you may prefer a more expensive room. Any extra costs or non-eligible care costs can be paid for through top-up payments. A fact sheet is available about top-ups.

If you lack capacity to undertake a financial assessment, we can approach anyone that has a registered Enduring Power of Attorney or a Lasting Power of Attorney for either Property and Financial Affairs, or Health and Welfare. The financial assessment can also be completed by your DWP appointee.

If you have a DWP appointee and own a property, we recommend that you seek legal advice regarding Lasting Power of Attorney for property and financial affairs. If you lack capacity then family members, friends or solicitors can apply to be your Property & Financial Affairs Deputy.

We have a duty to ensure that if you do not have capacity to manage your finances, and there is no one capable, willing or able to do this for you, then the Council may apply for both appointeeship and financial deputyship and make decisions on your behalf. We will decide whether acting as your Deputy may be a conflict of interest. Where this is the case, we will apply to the Court of Protection for a Panel Deputy (normally a solicitor) to be appointed to represent you. We make a charge for providing appointee and deputyship services. Deputyship fees are set by the Court of Protection.

This following information is about the assessment you will have if you are permanently living in a care home.

The financial assessment for permanent care takes account of your income and capital. The financial assessment will take into account the value of any property you own providing you are the owner of the property and no one else lives there that is related to you. The Care Act gives local authorities guidance as to when and when not to include property in a financial assessment.

If you own a property, its value is not included within the assessment for up to the first 12 weeks you are in permanent care. This is known as the 12 week property disregard. This is available to you if meet the eligibility criteria and we are supporting your move into a care home. At the end of the 12 week disregard period, the value of your property values is taken into account within your financial assessment.

If you rent your home and have to end a tenancy, and your rent is not covered by housing benefit, the rent you pay will be taken into account in your financial assessment.

If you own a property and are paying a mortgage, the mortgage will be taken into account in your financial assessment. We also take account of any home and contents insurance you may be paying.

Any stay in a care home longer than 4 weeks affects your entitlement to benefits when some of the cost is met by us. Your entitlement may end sooner if you were in hospital immediately before going into care. You need to advise the DWP when you are staying permanently in a care home.

The contribution you make from your income towards care in a care home is included within the budget the council makes available for your care and support costs. The cost of care that the council has assessed as relevant for your needs is known as the local authority rate.

If you have capital in excess of the Higher Capital Limit, you will not be eligible for any support towards care costs from us. You will pay the full cost of your care.

The 12-week property disregard

When you are in a care home you are entitled to retain a nominal amount of income each week, known as Personal Expenditure Allowance (PEA). This amount is reviewed and set annually by the Department of Health.

If you have capital of less than the higher capital limit, and own a property that only you live in, then you may be entitled to a 12 week property disregard for the first 12 weeks you live in a care home on a permanent basis.

The purpose of the 12 week property disregard is to allow you time to decide how your property asset will help you fund your care costs in the future.

The Benefits and Contributions Adviser carrying out your financial assessment will tell you whether or not you qualify for this disregard

If you decide to sell your home, it may be sold before the end of the 12-week property disregard. In this case, you will no longer have a property, and your capital will likely exceed the Higher Capital Limit. You will become responsible for paying your own care costs from the date your property sells.

At the end of the 12-weeks you will be required to pay the full cost of your care. You do not need to sell your property: you may choose to rent it out or apply for a Deferred Payment Agreement to cover your ongoing care costs. You can seek other sources of funding to pay for your care.

The Council has discretion to apply the 12 week disregard when you are already in permanent care if there is a sudden or unexpected change in your financial circumstances.

If you have a high weekly income, it may be financially beneficial for you not to take the offer of the 12 week property disregard. Any element of Council funding means that you are not entitled to receive Attendance Allowance after 28 days. If you are able to pay for your care in full from your income, then it is advisable to decline the offer of a 12 week property disregard, and to continue to claim Attendance Allowance throughout. The Benefits and Contributions Adviser will be able to advise if this scenario applies to you.

Deferred Payment Agreement Schemes

A Deferred Payment Agreement is a legally binding agreement between you and the Council. We will defer some of your care costs against the value of your property. If you do not have a property but have a substantial asset that you want use that as security then we may be able to offer you a Deferred Payment. A Deferred Payment is a loan.

Any Deferred Payment will have to be repaid. This could be from the sale of the asset or from the asset being used to secure another loan that repays us. You can pay the loan back at any time and from another source if you want to.

You will be expected to pay a weekly contribution towards your care from your income. We will pay the remaining care costs – this is the deferred amount. A Deferred Payment Agreement may, but does not have to follow the 12-week property disregard.

If you are moving into a care home on a permanent basis, then a Deferred Payment can be made available in 2 different ways.

1) The council will pay the full cost of your care to the care home, and will collect a contribution from you, from your income. The council will continue to be responsible for ensuring your needs are met by the care home;
2) The council can pay the ‘deferred’ amount direct to you for you to pay the care home. The council will assess that you are eligible to meet the criteria for deferred payments but will have no other responsibilities beyond making payment to you and managing your deferred payment.

There are two types of Deferred Payment Agreement schemes, which have differing criteria.

i) **The Universal Deferred Payment Agreement Scheme** operates across all Councils in England to enable you to delay paying your care and support costs when you live in a care home permanently.

You will be eligible for the Universal Deferred Payment Agreement Scheme if you meet the following criteria:

- your care and support needs can only be met in a care home;
- your capital, excluding the value of your home, is less than the Higher Capital Limit;
- your property cannot be disregarded for the purpose of the financial assessment (for example, it is not occupied by a spouse or a dependant);
- you are able to provide adequate security for the loan in the form of a first legal mortgage charge on the property.

ii) **The City of York Council Deferred Payment Agreement** is the local scheme offered by City of York Council.

You will be eligible for the CYC Deferred Payment Agreement Scheme if you do not meet the criteria for the Universal Deferred Payment Agreement Scheme, but meet the following criteria:

- your care and support needs can only be met in a care home;
- your capital, excluding the value of your home, is less than or close to the Higher Capital Limit;
- your property cannot be disregarded for the purpose of the financial assessment (for example, it is not occupied by a spouse or a dependant);
- you are able to provide adequate security for the loan, other than a first legal mortgage charge.

Adequate security could be a second legal mortgage charge on your property or a Letter of Undertaking from your Solicitor. However your circumstances will be considered and discussed.

If you do not have a property, the City of York Council is regulated by the Financial Conduct Authority to offer Deferred Payment Agreements, which can be secured against assets other than property and land. This includes assets such as life policies, valuable jewellery or art.

If you are moving into Sheltered Accommodation with Extra Care or Supported Living, you can request a deferred payment towards your care and accommodation costs, providing you intend to retain your former home. Deferred Payment Agreements cannot be used to finance mortgage payments on Sheltered Accommodation with Extra Care or Supported Living accommodation.

The Benefits and Contributions Advisor will explain Deferred Payments to you. They will decide whether you appear eligible to be offered a deferred payment. They will provide you with an estimate of how much can be deferred towards your future care costs. At the end of the meeting you will be left with some decision forms. One of these forms needs to be returned to us. These forms will confirm whether you want to accept or decline our offer of a deferred payment.

It is your decision whether you accept or decline the offer of a deferred payment. You have a number of other options that you wish to consider such as:

- A family member pays the costs you cannot afford above your weekly income;
- You rent out your property providing sufficient income to cover any remaining care costs;
- You have a pre-purchased insurance product or care needs annuity that provides a weekly income towards your care costs;
- You may get a better finance offer from another lender or financial institution.

In all cases we recommend that you should seek independent financial advice before making any decisions about paying for your future care. We can put you in touch with later life advisers that can help you plan to meet your future care costs.

We charge for the legal and administrative work involved in setting up and monitoring Deferred Payment Agreements. The set up cost covers us fully checking your eligibility for a deferred payment. We will undertake:

- Land Registry searches;
- obtain an independent property valuation;
- obtain insurance certificates from you;
- liaise with your solicitor.

Once all of the searches are complete, we will make a formal offer of a Deferred Payment and send the agreement to your solicitor.

You can choose to pay the set up costs immediately or add them to your Deferred Payment.

The loan will have compound interest charged on a daily basis. Interest will apply from the first day your care costs are paid by us. The maximum interest rate that can be charged is fixed by the government. This is reviewed every 6 months and changes are applied on 1st January and 1st July. You will be notified in advance of the applicable rate for the next six months. You will receive a statement every six months showing how your charge is being calculated, and the total amount you owe to the Council.

Information regarding current costs can be found at **Schedule of Fees, Charges, Allowances and Rates.**

After taking advice, if you decide to apply for a deferred payment, you will need to sign and return the application form. We will then carry out a land registry check and request an independent valuation of your property by a member of the Royal Institute of Chartered Surveyors (RICS). If you are offering another type of security, then we will arrange for an independent valuation to be undertaken.

After your property has been valued, you will receive a personalised illustration of how much you can borrow and how long we can defer charges for you. You will need to instruct a solicitor to witness you signing the Deferred Payment Agreement and legal charge documentation, at an additional cost to you.

If your property is not registered with the Land Registry, we may need to see the Title Deeds before offering you a deferred payment. If your deeds are held by a solicitor, the solicitor can advise us in advance of whom the title belongs to so that preparatory work can commence.

Occasionally, we may require sight of the Title Deeds for your property. If the title is in someone else's name, we would require you to seek legal advice regarding bringing the title up to date. We cannot enter into a Deferred Payment Agreement until the title is correct. You will be responsible for any additional costs charged by your legal adviser.

If the property or land that is being offered as security is registered to a couple and one member of the couple has passed away, we would require the Co-Owner's Death Certificate if his or her name is still on the Title Deed.

If the property or land that is being offered as security is registered to you and another member of your family or another person, we would require all parties to sign the acceptance form. This provides us with an initial acknowledgement that all parties with a beneficial interest in the property are in agreement for your share of the property to be used towards your care costs.

If the property or land that is being offered as security is owned and registered as tenants in common, each tenant owns a defined share of the property. Shares can belong to two or more people. The total of all shares will add up to 100%. Each person can dispose of their share however they choose. Access to the Deferred Payment Scheme will require the original charge as tenants in common to be deferred and all parties having to agree to the Council having a legal charge over the property.

Your property may be registered with a restriction. Restrictions can specify conditions under which a property can be sold, or may refer to conditions which must continue to pass through successive titles. We will advise you of any restrictions which prevent you entering into a Deferred Payment Agreement, or may require getting additional consent for the property or land to be used as security.

If you are offering another type of security then we will want to see evidence that you are the legal owner of that security. This could be in the form of a receipt or provenance, or a will should you have inherited the security.

How much could you borrow?

The maximum amount you can borrow is calculated as
Asset Value minus 10%, plus existing capital minus £14,250 = Maximum amount of borrowing. This is known as the 'Upper Limit' of the Deferred Payment Agreement.

How long you can defer the charges for (known as 'sustainability') depends on whether your care costs can be covered for a minimum of 32 months (139 weeks). If you decide to live in a care home that you cannot afford, we have the right to decline a Deferred Payment Agreement at the higher amount. We will however offer you a loan that can be sustained. In all cases, we will provide you with the detailed explanation and clear illustration of how the Deferred Payment Agreement will work in your circumstances.

If you are happy to enter into the Deferred Payment Agreement, you will be sent a copy to sign. The agreement will cover both the responsibilities of the Council and your responsibilities, one of which is to make sure that your home is insured and maintained. If you incur expenses in maintaining or renting out your home while you are in a care home, some of these will be allowed for in the amount that you are assessed as contributing each week from your capital and income.

How can the Deferred Payment Agreement be terminated and the debt repaid?

You can end the agreement at any time, for example if you sell your home or asset the loan becomes payable immediately. Otherwise the agreement ends on your death, and the loan becomes payable 90 days later. If we discover that the terms and conditions of the agreement have been breached, we can end the agreement. This decision would be communicated to you in writing, 30 days before taking effect.

The debt can be repaid from sources other than the proceeds of sale. It can also be repaid by a third party. Interest and charges will continue to be added until debt is fully repaid.

If your debt is to be repaid after your death, it is the responsibility of the Executor(s) to arrange for the repayment of the Deferred Payment Agreement. The total amount, including compound interest and charges has to be repaid to us from your estate, a life assurance policy or paid by a third party.

Your beneficiaries may wish to settle the loan by other means of repayment, for example, they may mortgage the property in their names to repay the loan to us. We must accept an alternative means of payment, provided the payment covers the full amount due.

If you have a Deferred Payment Agreement, we may need to make arrangements with your executor regarding repayment of the loan.

How do you continue to pay for your care when you reach the 'Upper Limit' of the Deferred Payment Agreement?

We will contact you when the amount of the loan reaches 70% of the upper limit. We will give you an estimate of the date when you will become eligible for Council funding. We will check your income and capital and let you know what your contribution will be. You will be assessed by a social worker and told how much the local authority will pay towards your care. This will include the contribution you are able to make from your income. If the cost of the care home is more than the amount we will pay, you will need to decide how the additional cost can be met.

You need to consider the future very carefully when you move into a care home when you are paying the full cost yourself. We recommend that you reach an agreement with the care home when you move in that they will accept Council funding rates in the future. Any agreement should be in writing.

If the care home requires an additional payment in the future, then a third party may agree to make top-up payments for you. Where this is the case, that person will be asked to sign an agreement acknowledging the amount they will have to pay.

If the care home will not accept Council funding rates and there is no one able to pay a top-up payment for you then you may be moved to cheaper accommodation when you are eligible for Council funded care.

If you have decided that you want to keep your property and get an income from it, the amount you receive, together with your other income may not cover the cost of your care. The council can offer you a Deferred Payment Agreement.

Once you have signed the Deferred Payment Agreement, you will be entitled to increase the income you retain.

Disposable Income Allowance – this is additional income you can keep once your Deferred Payment Agreement has been signed. You will be asked about how much of your income you would like to keep. There is a maximum income you can keep which is reviewed annually and set by the Department of Health. This does not include any income automatically disregarded from your financial assessment, or any rental income you may receive.

When you rent out your property, we will let you retain a maximum of 20% of the net rental income you receive.

Net Rental Income – this is the money you receive after you have paid for letting or agents fees. The money you keep should be used to maintain your property to a high standard. You can choose how much you wish to retain between 0% and 20%.

All of remaining rental income will be included within the financial assessment to determine your income contribution towards the cost of care and support.

Whether you rent out your property or leave it empty, it is your responsibility to insure and maintain your property to a high standard. You are required to advise us of any change to your rental income (such as a period where your property is untenanted), or if you decide to sell your property.