*Deferred payments - sample legal agreement*

**Background information for local authorities** *(delete from final / public copies of agreement)*

This sample agreement was prepared by the Department of Health, with input from the policy lead for deferred payments, the authors of the legislation, local authorities, and further expert advice provided by external legal counsel with specialist expertise in consumer contract law and mortgage contracts. Whilst developing the policy , we have also engaged with the Consumer Markets Authority’s ‘unfair contract terms’ team to seek advice; and whilst neither organisation provides positive affirmation of the legality of any contract as a matter of principle, we have sought to give effect to their comments with a view to making the agreement’s provisions fair and reasonable.

The agreement is provided as an illustrative aid for local authorities, which they may want to use in part or full when formulating their own agreements, and **local authorities must engage with (and rely on advice provided by) their own legal teams when deciding whether to use part or all of this agreement and when preparing and finalising their agreements**. The agreement will need customising and amending to reflect each authority’s specific policies about deferred payments and their requirements. Local authorities retain ultimate legal responsibility for any agreements they enter into and should satisfy themselves as to whether it is fit for purpose and appropriate for their needs. They must also remember that it is not just the words of an agreement which are relevant to the question of fairness but their entire conduct.

The agreement is prepared on the basis that the deferred payment agreement is one which the local authority enters into because it is *required* to do so (under regulation 2 of the Care and Support (Deferred Payment) Regulations 2014); although it also contains provisions for cases where the local authority has also agreed to defer additional costs on top of the costs of care and support provision which the local authority considers to be necessary to meet the adult’s needs (often referred to as “top ups”).This version has been prepared to reflect the case where a local authority contracts with a care home and is deferring charging fees.

It assumes that the security for the agreement is real property which is owned and occupied only by the borrower as the borrower’s only home, that the local authority will charge administration costs, that interest will be charged at a rate which is equal to (and not less than) the costs of funding the loan and that the borrower will be required to contribute all their weekly income (except the disposable income allowance of £144) towards the cost of care.

Throughout this agreement, we have formatted particular sections which will require consideration and amendment with different colours:

sections formatted in blue require filling in (for example the borrower’s personal details);

sections formatted in green identify provisions concerning some of the discretionary elements of the policy, and so reflect matters which the authority may decide not to include - including provisions which it would not use if the agreement is one to which the above assumptions do not apply (for example in cases where the authority does not require the borrower to contribute from income, sections 2.6 to 2.8 would be omitted); and finally

sections formatted in red (if used) would require a choice from two or more sets of optional words.

There are also a number of footnotes which are to aid local authorities in understanding the agreement, which should be deleted before the contract is shared with individuals.

The numbering (and cross-referencing within the agreement) should automatically update to reflect any changes or movements, though authorities are advised to check and confirm this prior to finalising their agreements.

*Last revised April 2015*

*CARE ACT 2014*

*SAMPLE DEFERRED PAYMENT AGREEMENT*

[*INSERT NAME OF LOCAL AUTHORITY*]

AND

[*INSERT NAME OF ADULT RECIPIENT OF CARE*]

[PROPERTY: *INSERT ADDRESS AND REGISTERED TITLE NUMBER OF PROPERTY ON WHICH AGREEMENT IS TO BE SECURED*]

This Agreement is made between [*insert name of local authority*] (“the local authority”), of [*insert address of local authority*] and [*insert name of adult recipient of care*] (“you”, “the borrower”), of [*insert address of adult recipient of care*].

1. Interpretation
	1. In this agreement, the following words have the following meanings:

 **Accommodation:** the care home identified in Schedule 1, as it may be amended in accordance with term 2.5 below;

**Agreement:** the terms set out in this document and numbered 1 to 15, Schedule 1 and, where you are agreeing to make periodical interest payments, Schedule 2;

**Care Charges:** those charges for care and/or support which are specified by description and [*insert either* weekly/monthly or other period] amount in Schedule 1, as they may be amended in accordance with any of terms 2.5, 2.6 or 2.8 below;

**Costs:** the local authority’s reasonable administrative costs reasonably incurred in respect of this Agreement, which are payable under term 4 below, estimates for some of which are given in Schedule 1 on page 14;

 **Debt:** the balance from time to time of the Loan which has not yet been repaid, together with any interest and Costs already charged and not yet paid;

**Loan:** the total amount of Care Charges which have been deferred, and the words “lend”, “lending” and “lent” are used in this Agreement to describe the act of deferring a Care Charge or Care Charges payable to the local authority.

**Lending Limit:** the limit on lending as set out in Schedule 1 (see also term 2.2);

 **Property:** the property and any other assets identified on page 1 of this Agreement;

 **Rate of Interest:** the rate of interest stated in Schedule 1, as it may be varied under term 3.4.

* 1. Where a reference is made in this Agreement to any legislation or legislative provision, it includes reference to that provision as it may from time to time be amended, extended or re-enacted.
	2. Where the context allows or requires, words in the singular include the plural and words in the plural include the singular.
	3. Where a reference is made in this Agreement to your income, it means your income as calculated in accordance with regulations made under section 17 of the Care Act 2014.
1. How the Loan will be made
	1. The local authority agrees, subject to the Lending Limit [and to the limits related to income, as set out in 2.6 to 2.8 below], to lend amounts to you, the borrower. Each amount will be subject to a maximum of the [insert either: weekly/monthly or such other period as has been agreed] Care Charge specified in Schedule 1 or, if less, the [insert either: weekly/monthly or such other period as has been agreed] care charge which is actually payable and which meets the Description of Care Charges in Schedule 1. The Loan will be made by deferring your obligation to pay Care Charges which are payable to the local authority. The details of the Accommodation and the Care Charges are set out in Schedule 1 at the end of this Agreement, together with the Lending Limit.
	2. If the Debt would exceed the Lending Limit as a result of the local authority lending an amount that it would otherwise be due to lend for Care Charges, the local authority will not lend that amount. This means, for example, that if 90% of the value of the Property, less the amount of any indebtedness secured over the Property by a charge with priority over the local authority’s security and less £14,250, is £70,000, and your Debt is already a total of £70,000, you will not be lent any more unless or until the value of the Property increases. However, where, due to a fall in the value of the Property, the Debt comes to exceed the Lending Limit on a date which falls after the date on which the local authority last lent an amount in respect of Care Charges and on or before the date on which it is next due to lend an amount in respect of Care Charges, the local authority will lend on that next occasion even though lending on that occasion will result in the Debt further exceeding the Lending Limit. After that, the local authority will not lend any further amount unless or until the value of the Property increases.[[1]](#footnote-1)
	3. You may, at any time, pay the Care Charges, or part of the Care Charges, yourself, when they become payable, in which case you must give advance notice to the local authority of the amount you are going to pay separately (“your contribution”), specifying whether your contribution is to be made on only one occasion or on a specified number of occasions or on each occasion when a Care Charge becomes payable until further notice.
	4. The local authority will not be required to change the frequency with which, or the amounts in which, it lends under this Agreement any sooner than the fourteenth day after the local authority receives notice of any change in the frequency with which or the amounts which, as applicable, you are charged, or which you require the local authority to lend under this Agreement.
	5. If you move from the Accommodation into another care home or supported living accommodation, that new accommodation will be substituted as the Accommodation, and the care charges payable in respect of the new Accommodation (or if less that part of those new care charges which are equal to the existing Care Charges) will be substituted as the Care Charges provided that the care charges in respect of the new Accommodation meet the description which is given of the Care Charges in the Schedule or, where they do not meet that description, the local authority is either required under the Care Act 2014 to agree to lend in respect of those care charges or permitted to do so under the Care Act 2014 and willing to do so and the times for payment of the Care Charges will be substituted for the times shown in the Schedule once at least fourteen days’ notice of those times has been given to the local authority.
	6. The amount of the [insert either: weekly/monthly or such other period as has been agreed (e.g. quarterly)] Care Charge for which the local authority is to lend, as set out in Schedule 1, takes into account the fact that your income exceeds £144 per week and the fact that the local authority requires you to contribute to the payment of each [insert either: weekly/monthly or such other period as has been agreed] care charge, as it falls due, the amount by which your income exceeds £144 in that [insert either : that week/in each week within that month or such other period as has been agreed]. The [insert either: weekly/monthly or such other period as has been agreed] Care Charge for which the local authority will lend will be increased by an amount which is equivalent to any reduction in your income up to the maximum of the [insert either: weekly/monthly or such other period as has been agreed] care charge which is actually payable and which meets the Description of Care Charges in Schedule 1, and subject to the Lending Limit.
	7. The local authority may, upon giving you at least 30 days’ written notice within 30 days after:

 (a) it comes to the attention of the local authority that your income has exceeded £144 in any week while this Agreement is subsisting, or

 (b) where, at or since the date of this Agreement, your income has already exceeded £144 per week, it comes to the attention of the local authority that your income has further exceeded £144 in any week while this Agreement is subsisting,

 require you to repay the amount, if any, by which that part of the Loan already provided under this Agreement for Care Charges in respect of that week exceeded the difference between the care charges actually payable and the amount by which your income exceeded £144 in that week.

* 1. The local authority may, upon giving you at least 30 days’ written notice within 30 days after it comes to the attention of the local authority that your income is to exceed, or further exceed, £144 in any week while this Agreement is subsisting, reduce the amount that it will lend in respect of the care charges for each subsequent week that your income is so to exceed £144 by the amount by which your income is so to exceed £144 in that week and the amount of the Care Charge specified in Schedule 1 will be amended accordingly.
	2. The local authority will not lend any further amount under this Agreement, even where the total amount of the Debt already provided is less than the Lending Limit, at any time when:
		1. you are no longer receiving care and support in a care home or in supported living accommodation;
		2. in the reasonable view of the local authority your needs should no longer be met by the provision of care and support in a care home or in supported living accommodation;
		3. [the Property can no longer be insured against all usual risks, unless there are reasonable grounds for concluding that the site value of the Property, disregarding any building on the property, is adequate security for the Debt, together with such further lending as is to be provided].
		4. [If your financial resources in terms of capital and as calculated for the purposes of the financial assessment carried out under section 17 of the Care Act 2014 are not more than the sum specified in regulation 12 of the Care and Support (Charging and Assessment of Resources) Regulations 2014 (currently £23,250) and since the date of this Agreement the Property has become occupied by your partner or by your child who is under 18, or by another member of your family who is aged over 60 or who is incapacitated or by a relative of yours who is aged over 60 or who is incapacitated and for the purposes of assessing your financial resources in terms of capital the local authority has decided to disregard the value of the Property.][[2]](#footnote-2)
	3. The local authority will give you at least 30 days’ written notice of the date on which the Lending Limit will be reached unless it is not reasonably practicable to do so because, for example, the Lending Limit is reached by reason of a fall in the value of the Property.
1. Interest
	1. Interest will be [insert: charged daily at the daily equivalent of the Rate of Interest or: insert whatever method of calculation and charging is to apply].
	2. [Interest will be paid in accordance with Schedule 2, unless or until you give the local authority at least [14] days’ written notice that you wish to have the interest added to the Debt instead of paying it. If you do so, you may return to paying interest at any time by giving the local authority at least [14] days’ written notice that you wish to do so.][[3]](#footnote-3)
	3. Interest will be added to the Debt each month, on the date when an amount is lent to you for Care Charges, unless the interest is paid before that date.
	4. The local authority may vary the Rate of Interest so as to reflect, in a proportionate and reasonable way any change in the cost of funding the Loan (or so much of such a change as the local authority may choose should be reflected in a variation to the Rate of Interest), upon giving you at least 14 days’ written notice if the Rate of Interest is to be increased or without notice if the Rate of Interest is to be reduced, provided that:
		1. the Rate of Interest may never exceed the maximum rate which the local authority is permitted to charge by regulations made under the Care Act 2014; and
		2. if the local authority exercises its power to increase the Rate of Interest, it will also subsequently exercise its power so as to reduce the Rate of Interest so as to reflect, in a proportionate and reasonable way, any reduction in the cost of funding the Loan which occurs after such increase or increases in the rate of interest.[[4]](#footnote-4)
2. Costs and Interest on Costs
	1. You must pay the Costs, estimates for some of which are set out in Schedule 1 on page 14.
	2. [insert either: The Costs you have to pay will be the actual reasonable costs incurred in respect of this Agreement or: The Costs you have to pay in relation to ascertaining the value of the Property, registration of the legal charge, perfection of the security, discharging the security and for the purpose of ensuring compliance with the Agreement will be the actual reasonable costs incurred, and any other Costs you have to pay will be the average cost, or average costs, to the local authority incurred in relation to deferred payment agreements generally.][[5]](#footnote-5)
	3. A copy of the local authority’s current tariff of charges will be provided to you with this Agreement. The local authority will give you notice of any changes to the tariff of charges by sending you a copy of the tariff whenever it is changed, and you may obtain a copy of the current tariff of charges on request at any time.
	4. The local authority will give you notice of any Costs incurred by the local authority and if you do not reimburse the amount of those costs to the local authority within 28 days after such notice is given, the amount of those costs will be added to the Debt and interest will be charged on the amount of those costs in accordance with term 3 above in respect of the period starting on the 29th day after notice of the costs was given to you until payment to the local authority.
3. Repayment
	1. The Debt is to be repaid to the local authority on the earliest of the following dates:
		1. the date of any sale or other disposal of the Property;
		2. 90 days after your date of death.
	2. If the local authority provides any part of the Loan under this Agreement upon the mistaken assumption that it is required to provide that part of the Loan when in fact it is not and when you ought reasonably to realise that the local authority is not required to provide that part of the Loan (because, for example, you are no longer living in the Accommodation) that part of the Loan will be immediately repayable to the local authority, together with interest calculated in accordance with term 3 above.
	3. If the local authority provides any part of the Loan under this Agreement upon the mistaken assumption that it is required to provide that part of the Loan when in fact it is not and when it is not the case that you ought reasonably to realise that the local authority is not required to provide that part of the Loan, that part of the Loan will be repayable to the local authority, together with interest calculated in accordance with term 3 above, upon the local authority giving you not less than three months’ notice to repay it.
4. Security
	1. The local authority’s rights to repayment and to be paid interest and Costs under this Agreement are to be secured by a legal charge over the Property.
5. [Possession and use of the Property
	1. The Property must not be let or occupied by any person without the local authority’s prior written consent, which will not be unreasonably withheld provided that the property is to be occupied upon an assured shorthold tenancy which enables an order for possession to be obtained, after the expiry of an initial term of no more than 6 months, upon one month’s written notice].
6. [Insurance and maintenance of the Property
	1. If satisfactory evidence is not provided to the local authority that the Property is adequately insured against all usual risks, the local authority may itself insure the Property under an appropriate policy of insurance and against all usual risks unless there are reasonable grounds for concluding that the site value of the Property, disregarding any building on the property, is adequate security for the Debt, together with a reasonable amount by which it is anticipated that the Debt will increase in the foreseeable future.
	2. The local authority will give you notice of any Costs reasonably incurred by the local authority in so insuring the Property and if the borrower does not reimburse the amount of those Costs to the local authority within 28 days after such notice is given, the amount of those Costs will be added to the Debt and interest will be charged on the amount of those Costs in accordance with term 3 above in respect of the period starting on the 29th day after notice of the Costs is given to you, or, if later than the 29th day after advance notice is given that such an item, or items, of Costs will be incurred, the date on which such item, or each such item of Costs is incurred .
	3. The local authority, or any appropriately qualified person acting on behalf of the local authority, may, no more than once a year, and upon giving at least 14 days’ notice to the borrower or other owner of the Property, inspect the Property for the purposes of ascertaining whether the Property is being maintained in reasonable condition and/or whether there are works of maintenance and/or repair which should be undertaken to the Property in order to preserve or restore its value.
	4. The local authority, or any appropriately qualified person acting on behalf of the local authority, may, upon giving not less than 14 days’ notice to you, carry out such works of maintenance and/or repair as the local authority reasonably considers should be undertaken to the Property in order to preserve or restore its value at or to a value which is adequate security for the Debt, together with a reasonable amount by which it is anticipated that the Debt will increase in the foreseeable future; provided that no more than 56 days and not less than 28 days before, you were given notice by the local authority (or any appropriately qualified person acting on behalf of the local authority) requesting that you carry out or have those works carried out, and those works have not been carried out to the reasonable satisfaction of the local authority or the appropriately qualified person.
	5. In the event that the local authority has reasonable grounds to believe that works of maintenance and/or repair are or may be required as a matter of urgency, the notice requirements under 8.3 and 8.4 above are to be replaced with a requirement to take reasonable steps to notify you as soon as reasonably practicable.
	6. The local authority will give you notice of any reasonable Costs reasonably incurred by the local authority in relation to the maintenance and/or repair of the Property and if you do not reimburse the amount of those Costs to the local authority within 28 days after such notice is given, the amount of those Costs will be added to the Debt and interest will be charged on the amount of those Costs in accordance with term 3 above in respect of the period starting on the 29th day after notice of the Costs was given to you until payment to the local authority.]
7. [Valuations
	1. If at any time the local authority has reasonable grounds for concluding that the Debt exceeds [50%] of the value of the Property, the local authority may take reasonable steps to ascertain the value of the property and in particular instruct a suitably qualified valuer to inspect the Property and to provide a report to the local authority on the market value of the Property.
	2. The local authority will give you notice of any reasonable Costs reasonably incurred by the local authority in obtaining a valuation report or otherwise ascertaining the value of the Property and if you do not reimburse the amount of those Costs to the local authority within 28 days after such notice is given, the amount of those Costs will be added to the Debt and interest will be charged on the amount of those Costs in accordance with term 3 above in respect of the period starting on the 29th day after notice of the Costs was given to you until payment to the local authority.]
8. Keeping the local authority informed
	1. You must inform the local authority as soon as reasonably practicable if any of the following happens:
		1. your income exceeds, or is expected to exceed, £144 in any week or, where your income has already exceeded £144 per week, it further exceeds, or is expected to further exceed, £144 in any week;
		2. there is any change to the amount or frequency of your Care Charges;
		3. you have not paid any Care Charge in full when it has become due (other than any which is payable to the local authority or which the local authority is to pay on your behalf under this Agreement);
		4. you cease to live in a care home or supported living accommodation;
		5. there is a change to your needs for care and support the effect of which is that you may no longer require your needs to be met by the provision of the Accommodation;
		6. a decision is taken to sell or otherwise dispose of the Property [or any of it].
	2. [You must, whenever asked to do so by the local authority, provide evidence to the local authority, as soon as reasonably practicable, that the Property is adequately insured against all usual risks. The local authority will not request the provision of such evidence during a period in respect of which evidence has already been provided to the local authority that the Property is adequately covered by an insurance policy, provided that evidence has also been provided to the local authority that the premium and insurance premium tax payable for that policy have been paid.]
9. Ending this Agreement
	1. This Agreement has no fixed duration.
	2. You may bring the Agreement to an end at any time by giving reasonable written notice to the local authority and paying the whole of the Debt.
	3. If you do not bring the Agreement to an end early under 11.2 above, the Agreement will come to an end when the Debt is paid in accordance with term 5 above.
10. Statements
	1. The local authority will provide you with a written statement, informing the you of the amount which you would have to pay to the local authority if you were to bring the Agreement to an end on the date on which the statement is sent or such later date as has been requested by you, and the amount of interest and Costs which have accrued since the Agreement was made:
		1. at the end of the period of six months beginning with the date of this Agreement;
		2. every six months after the date of the first statement; and
		3. within 28 days of a request to the local authority for such a statement made by you or on your behalf.
11. How notices or statements are to be given
	1. Any notice or statement which the local authority is to give, or may give, to you under this Agreement is to be given by sending the notice by first class prepaid post to you at the Accommodation or to such other person and at such address as has been agreed between the Local Authority and you from time to time.
	2. Any notice which you give to the local authority under this Agreement is to be given by contacting [insert details for oral contact] or by sending the notice by first class prepaid post to [insert contact details].
	3. Any notice or statement which is sent by first class prepaid post is to be treated as having been served on the second day after it is posted, excluding Sundays and public holidays.
12. Applicable law
	1. The interpretation, validity and performance of this Agreement shall be governed by the law of England and Wales.
13. Variation
	1. Any variation to this Agreement must be in writing and signed both by the borrower and on behalf of the local authority.

**Borrower’s signature**

**Please read this Agreement carefully, including all the terms set out above, the information set out below and the terms and information set out in the Schedules at the end of the Agreement. Only sign below if you understand and accept those terms and information.**

Signed by the borrower:

Date of signature by the borrower:

Signed on behalf of the local authority:

Name of person signing:

Position of person signing:

Date of signature on behalf of the local authority and date of Agreement:

**Missing payments**

If you do not make payment when it falls due, legal proceedings may be issued against you for a judgment for the amount you owe [and/or for possession of the Property]. It could also make it more difficult or expensive for you to obtain credit in the future.

**Complaints**

If you or any guarantor is dissatisfied with any action or omission on the part of the local authority under or in connection with this Agreement, in the first instance please write to [*insert appropriate local authority contact details*] or telephone [*insert appropriate local authority contact details*]. If your complaint is not resolved by the local authority to your satisfaction, you may have a right of appeal to [*insert details of rights to appeal*].

**SCHEDULE 1**

**Accommodation:** [*Insert name and address of care home or supported living accommodation*]

**Description of Care Charges:** [*insert either:* charges which the local authority considers to be necessary to meet the borrower’s needs while the borrower is living in the Accommodation *or:* charges include, in addition to the charges which the local authority considers to be necessary to meet the borrower’s needs, the following charges which are being incurred to meet the borrower’s preferences: [*insert details of the additional costs and the preferences to which they relate*]].

**[Weekly/Monthly] Care Charge:** £[ ]

The Care Charges specified above are those Care Charges for which the Loan is to be provided by the local authority under this Agreement. The total payable for your care and support while the borrower is living in the Accommodation may be more than the Care Charges shown above.

**Date when first Care Charge to which this agreement relates will be incurred:** [ ]

**Lending Limit:** [the lower of:

(1) ]90% of the market or surrender value of the Property less:

 (a) the total amount of any indebtedness secured on that asset, or those assets, by security which has priority over the local authority’s security, and

 (b) £14,250[; and

(2) *insert maximum amount which the parties have agreed may be lent*].

**Rate of Interest:** [ ]% subject to variation under term 3 on page 6.

**[Estimated Costs:** £[ ] for making the agreement; £[ ] for [registering the legal charge/perfecting the security]; £[ ] for [cancelling registration of the legal charge/discharging the security upon repayment of all sums payable under this Agreement.]]

**SCHEDULE 2**

*[Insert agreed terms as to the payment of interest, such as the day of the month on which interest is to be paid, a monthly amount that is to be paid or the manner in which that amount is to be determined bearing in mind that the interest accruing each month will gradually increase as more Care Charges are deferred or more money is lent to pay Care Charges. If the interest payments are to be fixed, they may result in interest being paid in advance (where the fixed payment exceeds the amount accruing in each period) or in interest being debited to the account notwithstanding the periodic payment of interest (where the fixed payment is less than the amount accruing in each period). In either situation, it should be made clear to the borrower what is happening, so that the borrower knows if he is paying interest before it has been incurred and so that he knows if he is not covering all the interest, so that some interest is being added to the Debt on which interest will then be charged.]*

1. Local Authorities may wish to note this does not preclude the authority from adding interest and administrative costs to the Loan after the Lending Limit has been reached [↑](#footnote-ref-1)
2. Especially if the loan includes a top up element local authorities will have to consider if this is appropriate and fair. [↑](#footnote-ref-2)
3. This is for cases where the borrower wishes to pay the interest separately. [↑](#footnote-ref-3)
4. This assumes that the Rate of Interest charged by the local authority at the commencement of the Loan is equal to the cost of funding the loan. [↑](#footnote-ref-4)
5. 4.2 is not required if the Authority does not make a charge for administrative costs [↑](#footnote-ref-5)