Debt Recovery Policy for Adult Social Care

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# Purpose of the Policy

This policy covers the collection of adult social care debt and describes the approach that the council will take in carrying out its function. The intention of the council in agreeing this policy is to achieve the prompt collection of all sums of money it is due, while ensuring that a fair, proportionate and consistent approach is taken to the recovery of sums that are not paid when due.

The Audit Commission’s report on “Charging for Care” states that income collected from charges can be used to protect services, extend access, and promote the independence and wellbeing of clients.

The council is committed to using the most effective recovery methods available.

This policy will ensure that recovery action is consistent and complies with legislation and best practice.

The intention is that the policy will remain in place until the underlying legislation changes. However, the policy will also be reviewed whenever there is a change to procedures, regulations, or costs to ensure it remains valid, effective, and relevant

# Legal and Policy Framework

## The Care Act 2014

The Care Act 2014 places a duty on the council to arrange care and support for people assessed as having eligible needs. The council also has a power to meet certain non-eligible needs.

Capital limits, specified in regulations issued under the Care Act 2014, set the levels of capital (excluding any capital that has been disregarded) that a person can have whilst qualifying for financial support from the council.

A person with assets above the upper capital limit is responsible for the full cost of their care in a care home. A person with assets between the capital limits will pay what they can afford from their income, plus a means-tested contribution from their assets (calculated as £1 per week for every £250 of capital between the capital limits). A person with assets below the lower capital limit will pay only what they can afford from their income.

The council will apply the nationally set capital limits for the purposes of Financial Assessment.

The council will take all capital assets into account except those specifically disregarded under the regulations.

Sections 14 and 17 of the Care Act 2014 provide a legal framework for charging for care and support for Local Authority funded residential and non-residential care. These sections, along with the Care and Support Statutory Guidance, provide a single legal framework for charging for adult social care. The Care Act states that the council has discretion to choose whether or not to charge under section 14 of the Care Act following a service user’s or carer’s care and support needs assessment. The council may charge except where it is required to arrange care and support free of charge. Where the council decides to charge, it must follow the Care and Support (Charging and Assessment of Resources) Regulations and have regard to the Care and Support Statutory Guidance issued under the Care Act 2014. The council may only charge up to the costs they incur when contracting for care.

The Care Act 2014 also provides a framework for the recovery of debts as a result of non-payment of care charges. Section 69 of the Care Act provides a power to the council to recover debts owed to it. This power provides protection to both the local authority and the individual as it gives the individual the opportunity to seek alternative means for payment. Section 70 of the Care Act also provides the council with the power to recover charges from a third party where a person has transferred assets to them in order to avoid paying charges for care and support.

The way in which any outstanding charges are recoverable is covered by the Pre-action Protocol for Debt Claims under the Civil Procedure Rules (see: [Practice Direction – Pre-Action Conduct](http://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct#1.1) guidance published by the Ministry of Justice). Charges should be recovered as a civil debt through the County Court, assuming all other avenues for payment have been explored with the individual first.

## Adult and Social Care Policy

In accordance with the Care Act 2014, certain types of service will be provided free of charge. However, the council will charge for the following services as below:

Care provided in residential or nursing homes including:

* Respite care
* 24-hour care in a registered care/nursing home
* First and third-party top-up fees for the above services

Care provided in a non-residential care setting including (but not limited to):

* Home care services
* Day Care
* Supported Living
* Respite care
* Adult Shared Lives Placements
* Transport
* Direct Payments

Where charges are appropriate, the council will charge up to the full cost of the service it provides and will not charge more than the cost it incurs. Individuals will only be asked to pay what they can afford towards their care cost, subject to financial assessment.

The Equality Act 2010

The council has a statutory equality duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, pursuant to section 149(1) of the Equality Act 2010.

Anti-discriminatory practice is fundamental to the ethical basis of care provision and critical to the protection of people's dignity. The Equality Act 2010 protects those receiving care and the workers that provide it from being treated unfairly because of any characteristics that are protected under the legislation.

Acting in accordance with this policy will help to ensure that the collection of debts due is conducted in a consistent and objective manner that will reduce the risk of inadvertent discrimination against persons with protected characteristics.

## Mental Capacity Act 2005

Under section 1(2) of the Mental Capacity Act 2005, all clients will be assumed to have capacity and able to make relevant decisions for themselves unless it has been established by assessment that they lack capacity. In addition, under section 1(3), all practical steps ought to be taken to ensure that a client is supported to make their own decisions. If a client is assessed as lacking capacity in relation to decisions regarding their property and financial affairs, it is important that their representative is involved in those decisions.

## Retention Policy

All documentation that supports the client’s contribution will be retained for at least 6 years in case the client or their representative defends any legal recovery action.

# Financial Assessments

A financial assessment is undertaken to determine how much, if anything, the client is required to contribute towards the cost of their care and residential services.

## Assessing the client’s ability to pay

The council should clearly discuss with the service user or their representative at the outset that care and support is a chargeable service and provide information to explain this.

A financial assessment should be completed, and the service user/representative notified in writing of the outcome of the assessment, including how charges will be invoiced, the frequency of bills and payment methods.

As part of the assessment process the council should find out if the service user has someone to help with their finances or, if they lack mental capacity, whether there is a Power of Attorney or Court of Protection deputyship order in place for property and financial affairs. As well as supporting the service user, this is for the purpose of identifying the correct person to send invoices to for payment of care charges. Where the person lacking capacity has no Power of Attorney or deputy order in place and has substantial debts, then an application for a deputyship order will be required. The application needs to be made to the Court of Protection.

## Deferred Payments Agreement Scheme

Under sections 34 to 36 of the Care Act 2014, the council has a duty to offer a Deferred Payment Agreement (DPA), to prevent people from being forced to sell their home in their lifetime to pay for care costs. For service users in residential care, who own a property but currently have capital below £23,250, the council must consider offering a DPA provided certain conditions are met:

* Anyone whose needs are to be met by the provision of care in a care home (as defined in the Care and Support (Deferred Payments) Regulations 2014
* Anyone who has less than (or equal to) £23,250 in assets excluding the value of their home
* Anyone who has not had their home disregarded from the financial assessment carried out under Section 17 of the Care Act.

Under this scheme, the council will require a signed legal agreement allowing a legal charge to be registered against the property (provided that there is sufficient equity in the property to underwrite the loan). This will allow the part of the assessed charge relating to the value of the property to be deferred until the property is sold. Once the agreement is signed, a charge will be placed on the person’s property which will show on future land searches.

When the property is to be sold, the council will expect the service user (or their representative) to confirm all outstanding care fees will be paid from the proceeds of the property sale before any charge on the property can be removed.

## Top Up fees

Top-up payments must be made where a client chooses more expensive residential or nursing care than the council is offering as part of their assessed eligible needs.

### Third-party top-up fees

If a client chooses residential care provision that is more expensive than the rate set by the council, a third-party such as family or charity can pay the difference in the amount.

Clients are not allowed to pay this top-up fee. The third-party enters into a legal agreement with the council. This states that they are responsible for paying this fee and that any debts can be recovered from them by way of legal action. As part of this process, the council will seek assurance that the third party has the means to make and sustain the payments (for the duration of the service user’s stay in the care home) and that they are fully aware of their responsibilities and the potential consequence of non-payment.

If there are arrears on a third-party account, the council may choose to terminate the third-party agreement and reassess the accommodation with a view to moving the client to a less expensive placement, if suitable.

Third-party agreements will be reviewed every year as part of the annual care review process.

### First-party top-up fees

Where a service user chooses residential care provision that is more expensive than the rate set by the council, and they have entered into a DPA (‘deferred payment agreement’) they can enter into a First-Party top-up agreement from the 13th week of residential care.

This allows them to defer the top-up from the 13th week of care and which can only be deferred up the time that their equity limit is reached.

Where a service user has care provided under Section117 of the Mental Health Act 1983, only care and support services directly related to the reason for the section 117 aftercare will be provided free of charge. Where an individual chooses to pay for more residential or nursing care, they can enter into a First-Party top-up agreement from the first day of residential care.

# Principles for Debt Recovery

Where a debt arises, and where all other reasonable avenues for recovery have first been exhausted, the council may wish to proceed to the county court in order to recover the debt owed. Firstly, the individual or their legal representative , where applicable, is be given an opportunity to engage in mediation or other suitable alternative dispute resolution with the council to discuss payment of the debt prior to proceedings being commenced.

The recovery of debts from those who are receiving care and support is a sensitive issue given the potentially vulnerable nature of the client - and the council’s ultimate responsibility to meet their needs under the Care Act 2014. It must be remembered that there could be a variety of reasons why the client has not paid their assessed charge and the council should always consider whether it is appropriate to take steps to recover the debt, even though it has the power to do so. It may be that in some cases a debt may have accrued as a result of a service user’s diminishing or lack of mental capacity. In such cases, the council may need to involve the safeguarding team and/or await legal authority if the Council has been advised that a deputyship application is in progress

The council should also bear in mind that they are bound by the public law principle of acting reasonably at all times and must act in accordance with human rights legislation, as well as the wellbeing principle set out in section 1 of the Care Act 2014. Therefore, it is important that court proceedings are only considered after all other reasonable avenues to obtain payment of the debt have been exhausted.

If a claim does end up in court, it is likely that the court will consider what efforts were made to resolve the debt issue without the need for proceedings.

Officers will need to bear in mind the following principles when approaching the recovery of debts, especially when dealing with vulnerable clients and their representatives:

* Effective initial communication with service users around chargeable services.
* Effective and efficient collection of all money due, whilst ensuring that the client’s financial circumstances and mental capacity are considered.
* Prevention of arrears by prompt billing and collection of money due, affordable repayment plans and early intervention.
* Debts must be discussed with the client or their representative.
* The council must act reasonably.
* Repayment plans should be agreed between the relevant parties and must be affordable.
* The council will consider how different approaches could impact on a client’s wellbeing.

Legal advice may be sought should issues arise in respect of payment from the deceased’s estate.

# Debt Recovery Process

It is important that the individual or their legal representative are approached to engage fully with the Council and comply with any information requests. Where possible, they should ensure that the Council is made aware of the potential timescales, if there are likely to be any delays in payment.

As part of the debt recovery process, clients - should be encouraged to discuss the reasons for non-payment of debts and their individual circumstances with the council in order that a repayment plan can be agreed. Failure to pay charges by deadlines will result in debt reminder letters being sent to the client. Failure to pay by the deadline will result in possible enforcement action, as below.

## Overdue invoice reminder

An overdue invoice will be issued after 15 days where a client does not pay the charges detailed in their invoice.

## First Reminder

This is issued 29 days after the invoice issued date where clients still haven’t paid the amount due or agreed a repayment plan. The client is given the chance to pay, or agree an arrangement, by a certain date.

## Final reminder

This is issued after 45 days after the invoice issued date where clients still haven’t paid the amount due or agreed a repayment plan. The client is given the chance to pay, or agree an arrangement, by a certain date.

## Further action

Failure to pay by the deadline stated in the final reminder will result in the council trying to make contact by telephone on at least two occasions to discuss a repayment plan. If there is failure to pay or make contact, then an officer will send a letter requesting contact.

In the event of no contact after all the above has been attempted, the council will send a final letter to advise that this matter has been referred to the Legal team. This will result in a pre-action protocol letter being sent. Failure to respond to this letter within 30 days, will result in court action.

# County Court Judgments (CCJs)

## County Court Judgment

**If all other reasonable options for debt recovery have been exhausted, the council may decide to proceed to the County Court to recover the outstanding balance. A County Court Judgment (‘CCJ’) is a type of court order that may be registered against a person who fails to repay money they owe.**

Before a CCJis sought, a letter will be sent to the client or their representative with details of the debts and what the consequences of this action are.

Where a CCJ is obtained, the judgment will be posted to the person by the court and will explain:

* how much they owe
* how to pay
* and when payment is required

If the council does seek a CCJ, the court will charge a fee which is appropriate to the debt. In addition to this, the council’s legal team will charge hourly fees for preparing the case and attending court.

## Actions that can be taken once a CCJ is obtained, and the debt remains unpaid, or a repayment plan has not been agreed.

### Third-party debt orders

A further court order can be applied for which allows the council to seek funds owed by a third party direct from the third party.

If the council does seek a third-party debt order, the court will charge an additional fee for which the service user will be liable. In addition to this, the council’s legal team will charge an hourly rate for preparing the case and attending court. These additional costs will be added to the debt outstanding and included in the application for the third-party debt order.

### ****Attachment**** of earnings

The council may also seek an Attachment of Earnings Order. This order can be sent to an employer to ask them to deduct amounts regularly from a person’s wages until the debt is cleared.

### ****Charging Order****

This is an order that places a charge on a property to secure the debt and to ensure that a debt is paid from the proceeds when it is sold. The council can also enforce the sale of a property to realise this debt in certain circumstances.

If the council does seek a charging order the court will charge a fee for which the service user will be liable. In addition to this, the council’s legal team will charge an hourly rate for preparing the case and attending court. These additional costs plus interest will be added to the debt outstanding and will be included in the application for the charging order.

A further application needs to be made to the court to obtain an order for sale to enforce the charging order.

There is an option for bailiffs to be used in certain circumstances, but this should be as a last resort. If the use of bailiffs is considered, further legal advice should be sought.

## Authorisation

The decision to refer a case for an application for a CCJ and further action will be made by the Finance and Legal Protection Panel.

# Write offs

In certain circumstances a debt may need to be written off and there are several reasons why debt may become irrecoverable. These include cases where:

* The customer has absconded and cannot be traced
* The customer has died and there are no funds available in the estate i.e. the estate is insolvent.
* The debt is too old to recover
* The balance is small, and the recovery costs would make the debt uneconomical to collect.
* It is not cost effective to continue recovery action
* The customer is experiencing severe financial hardship
* The individual (or their companies) has become insolvent

There are also cases where there are overpayments on accounts that cannot be refunded. This is because either the customer has moved without providing a forwarding address, or they have died, and the beneficiaries have not been found.

## Process for Authorisation (Cases under £2,500)

For Adults debt, permission will be sought from the Head of Service whose section raised the invoice(s).

For non-residential debt, every case will be checked and approved by the Accounts Receivable Manager.

For residential debt, every case is checked by the Financial Services Manager and Head of Finance.

## Process for Authorisation (Cases between £2,500 and £5,000)

For Adults debt, permission will be sought from the Head of Service whose section raised the invoice(s).

For non-residential debt, every case will be checked and approved by the Accounts Receivable Manager.

For residential debt, every case is checked by the Financial Services Manager and the Section 151 Officer approves.

## Process for Authorisation (Cases over £5,000)

Write-offs are co-ordinated by the Assistant Head of Revenues and Benefits who escalates for Executive Member approval.

# Debt Recovery Process