

Client Financial Affairs Debt Recovery Policy

Version	Version 3 approved
Issue date	April 2015
Review date	April 2016 or before as needed
Staff Affected	Client Financial Affairs Team, Corporate Debtors, Social Care teams, Legal Services
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Procedure no	AS 4/06
Revised	Steve Bird 26 th July 2016 V3

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Always refer to documents stored here when applying policy and procedure.

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1. Purpose

The purpose of this policy is to provide staff with guidance on how to deal with recovery of sundry debtors' accounts raised on SAP following the implementation of the Care Act 2014.

The recovery of debts from those who are receiving care and support is a sensitive issue given the potentially vulnerable nature of the client group and local authority's ultimate responsibility to meet needs. There could also be a variety of reasons why the person has not paid the assessed charge, for example, there could be issues around diminishing capacity, an administrative error or they may have needed to enter hospital meaning they may not have been able to notify the local authority of the change in circumstances or are not easily able to arrange payments. Given this, local authorities will want to bear in mind the following principles when approaching the recovery of debts:

The overall objectives of this policy are:

- Possible debts must be discussed with the person or their representative
- To take all reasonable measures to prevent debts occurring and escalating
- arrangements for debt repayments should be agreed between the relevant parties
- repayments must be affordable
- court action should only be considered after all other reasonable avenues have been exhausted
- To assist clients and third parties to maximise their income and tackle debt by providing effective welfare advice
- To treat clients and third parties as individuals and respond to their differing needs in order to provide the assistance required.
- To promptly and effectively recover debt, and to take enforcement [action at the appropriate time](#)
- To ensure invoicing is accurate an audit trail of communication is maintained
- To be compliant with the Care Act 2015: Recovery of debts.

2. Related Documents

Internal

- Corporate Credit Management Policy v4 (Welfare and Exchequer)
- Kirklees Council Financial Procedure Rules
- CFA Write off procedure
- CFA Deprivation of Assets procedure
- CFA Deferred Payment Agreement procedure

External

Statutory link to recovery guidance annex D

<https://www.gov.uk/guidance/care-and-support-statutory-guidance/annexes>

- The Care Act 2014
- Equality Act 2010
- Disability Discrimination Act 2005

- Data Protection Act 1998
- Human Rights Act 1998
- The Mental Health Act 1983
- Mental Capacity Act 2005

3. Scope of Policy

This policy deals with the collection and recovery of monies owed for the following services:

- Sundry Debtor Accounts – repayment of client contribution for the services received such as nursing care, residential care, self-directed support, Carephones, re-charging for kennelling and ad-hoc requests (where instructions from outside the service for unpaid social care charges at point of delivery.)
- Clinical Commissioning Group re-charges
- Direct Payments.
- Re-charge of client contributions which should have been paid to the Care Home (Net Recovery cases)
- Home reclamation of overpayments of fees.
- Other debt falling due to be collected by CFA or W&E Recovery.

This Policy applies also to:

- The recovery of monies owed where it has been established that deprivation of assets has occurred.
- The recovery of monies owed against a deferred payment agreement.
- The recovery of monies where there has been a misrepresentation or a failure to disclose information that leads to money being owed to the Council.

4. Definitions & abbreviations

CA	The abbreviation used for the Care Act
SDS	The abbreviation used for Self-Directed Support
CCG	The abbreviation used for Clinical Commissioning Group
DP	The abbreviation used for Direct Payments
DPA	The abbreviation used for a Deferred Payment Agreement
PoA	The abbreviation used for a Power of Attorney
CoP	The abbreviation used for a Court of Protection

5. Policy Statement

6.1 Introduction

Effective debt control is essential so that Kirklees Council can fulfil its contractual and legal obligations to our Customers and Service Providers.

As a responsible Council, with a commitment to early intervention and prevention, it is important that we do not allow customers to accrue, unchecked, large debts; and that we provide a range of advice and support services aimed at promoting economic and financial wellbeing.

Whilst acknowledging that legal action to recover monies owed is sometimes unavoidable, this action is only taken following the issue of an invoice, reminder a summons and attempts will always be made to obtain payment based on the client's circumstances. The recovery action should be fair and reasonable.

The policy is supported by procedures which will offer staff step-by-step guidance on how to deal with debt recovery.

6.2 Debt prevention measures

Drawing on recognised good practice and the Care Act 2014 principles underpinning the approach to debt recovery, we will take the following steps to minimise the risk of arrears and to deal with them effectively when they do occur.

- We will explain at the outset to the person or their representative that care and support is a chargeable service and that where the person has been assessed as being able to afford to do so, they will be required to contribute to the cost of that care.
- We will explain that where a customer has been assessed as being able to contribute to their care, that they or their representative will receive invoices to charge them.
- We will agree to whom invoices are to be sent, and if the person wishes, their agreement and authority will be obtained for the use of an agent.
- We will make early contact with customers or their representative in arrears and within a predetermined timescale;
- We will establish whether the customer has mental capacity to make financial decisions through referral and/or communications with Social Work teams
- We will provide flexible payment options and make it easy for service users to pay charges and any other debts;
- We will provide clear and concise information to customers about debt recovery;
- We will offer a range of ways for customers to contact us about their accounts either by phone, in person, in writing or electronically;
- We will carry out a financial assessment to ensure that residential care and care charges are affordable and to identify any support needs that customers and carers may have;
- We will aim to issue Financial Reassessment Statements annually to all customers;
- Our front line staff will demonstrate a wide range of knowledge about the full range of enquiries they receive regarding charging and invoices, managing debt and reducing arrears;
- We will provide our literature, where requested, in different languages, or in Braille or audio versions;
- We will actively encourage customers to take ownership of any difficulties with non-payment of invoices.
- We will signpost our customers to specialist money, debt, independent financial advice and welfare benefit advice agencies;
- We will respond quickly to crisis events that are known to precipitate debt problems;
- We will approach debt recovery in a way that is firm but fair, taking into account possible impact on a customer's wellbeing.

- We will only seek legal recovery of debt through County Courts once all other non-legal remedies have been taken to recover the debt.

6.3 Debt recovery

As a first port of call, the Council must offer a person the option of a deferred payment agreement (DPA) in order to recover debt wherever the person could be offered a DPA,(is eligible) and can only make an application to the court should the person refuse.

The Care Act gives Councils some discretion in offering DPA's to others who don't meet the criteria. The Council can offer DPAs to people in residential care who do not meet the criteria.

For example:

- If someone would like to use wealth tied up in their home to fund reasonable top-ups
- If someone has other accessible means to help them meet the cost of their care and support
- If a person is narrowly not eligible e.g. because they have slightly more than the asset threshold

For further information on DPA's and eligibility staff should refer to the Councils' DPA Policy

The Council will ensure that:

- The Council will not actively chase monies where the amount of the debt is small (less than £50) and the costs of recovery would be disproportionate,
- Client Financial Affairs, Corporate debtors and Social work staff will receive appropriate levels of training to ensure that they understand and are able to implement/and or support the Debt Recovery Procedure;
- Early personal contact will be made with customer's to establish the reason for the non-payment;
- Agreements to clear or reduce arrears will only made once the customer's financial situation is fully understood;
- For All customers in arrears we will aim to undertake a check on their financial situation and if necessary refer cases for debt counselling with Advice Kirklees (Citizen Advice and law centre)
- Where a customer has mental capacity to make financial decisions we will ensure we have considered all options available. These will include negotiating an agreement, mediation and arbitration.
- Where the Council is satisfied an intentional deprivation of assets has occurred to avoid or reduce charges for care and support, the appropriate charges will be applied accordingly and the procedure for debt recovery followed.

Where assets have been transferred to a third party or parties, they will be charged the difference between what the Council would have charged and did charge the person receiving care. The third party will not be liable to pay anything which exceeds the benefit they have received from the transfer.

If a person has transferred funds to more than one third party, each of those people is liable to pay the Council the difference between what it would have

charged or did charge the person receiving care in proportion to the amount they received.

- Recovery procedures will be designed to be fair to avoid post legal debt recovery via the County Court process.
- Training on recovery process will be provided to social working teams highlighting the importance of accurate recording and invoicing which is critical for good customer service, collection and recovery
- Quality monitoring will be undertaken of cases reaching recovery stage in order to feedback good practice to social working teams and service users. Feedback to Adults EMT and individual staff level.
- The Council will be compliant with the Care Act (as amended) timescales for debt recovery. For debts prior to April 1st 2015 the Council will apply a limit of 3 years to recover monies owed. For debts accrued from the 1st April 2015 onwards the Council will apply a timescale of 6 years to recover monies owed.

In both circumstances the timescale applies from the date the debt became due to the Council. Unless recovery proceedings have been issued within these timeframes, debt will need to be progressed to write off. A letter will be sent requesting payment, and where these debts remain unpaid then cases will be passed to the Senior Manager CFA for WO approval.

- The Council currently issues 2 reminders prior to issuing a summons for legal recovery action; it is intended that this process will be phased out and the council will move to one reminder, the service will issue communications and update the web site when this change occurs.
- Where possible telephone collection will be attempted to collect debts above £250 i.e. homecare

6.4 Vulnerable Clients

- Action against customers in arrears needs to be proportionate with the level of debt, taking into account historical factors and personal circumstances.
- In some cases, customers may need support through crisis periods to prevent their situations becoming worse.
- Officers work in a multi-agency framework when managing accounts drawing upon all resources available, whilst complying with current Data Protection legislation and guidance.
- Where we have relevant mental capacity assessments on file, and where there are appointed attorneys, deputies or friends/family to support we will involve them in financial decision making in order to reduce the likelihood of debt, and where it does occur, make it easier to recover.
- Where a customer has been assessed as lacking capacity and they have no attorney or deputy and it is proportional to pursue the debt we will apply to the CoP unless there is family that can/will make the application to become a deputy.
- Where a customer has diminishing or lack of mental capacity we will not send letters demanding payment to them. We will establish who has the legal authority to make financial decisions on their behalf and engage with that person.

6.5 Legal action

Kirklees Council will take legal action and proceed cases to County Court under the following circumstances:

1. Where a DPA has been offered and refused and all other reasonable avenues to recover debt have been exhausted
See statutory guidance on recovery of debts and DPA policy:-insert link <https://www.gov.uk/guidance/care-and-support-statutory-guidance/annexes>
2. Where a customer has been assessed as having capacity and all attempts to engage with them to set up and keep to payment agreements, attempts to engage with mediation and or arbitration have failed.
3. Where Deprivation of Assets has occurred and it has not been possible to reach agreement with the client or the transferee of said asset to repay the value of deprivation.
4. Where the amount owed is significant enough to warrant further recovery action and all attempts to recovery by other methods have failed. **The final decision to proceed to court will be the responsibility of Client Financial Affairs, advice from legal should be undertaken where appropriate.**
5. Where it appears reasonable to undertake recovery action.
6. Where a customer has passed away and it appears to the Council that there are sufficient funds available to pay any outstanding debt, then these debts should be recovered from the Executors of the deceased person i.e. from the estate.

6.6 Recovery of costs associated with the debt recovery process.

The Council will seek to recover costs associated with debt recovery in order to operate as near as possible a cost neutral recovery service.

For 2015/2016 the Council will continue to seek recovery of legal fees in addition to the debt owed.

The Council will recover other costs it is legally entitled to pursue for cases where a person is deemed to pay under the charging policy ;or misrepresents or has failed to disclose information required under the financial assessment (whether fraudulently or otherwise)

Where appropriate this policy will be amended as part of policy monitoring.

7. Key Performance Indicators

The setting and monitoring of Key Performance Indicators (KPIs) is an essential element of judging the effectiveness of our Debt Recovery Procedure.

The following KPIs will form part of staff's individual annual targets and are reported monthly to Resources Directorate Management team and Adults Executive Management Team. *Please note these are illustrative and may change over time*

- Average number of days taken by customers to pay their invoice (Corporate)
- % of people/invoices paying by direct debit
- % Debt collected (New compared to Debt raised)
- Debt clawed back from direct payment
- Debt Amount written off
- Outstanding Debt

8. Appendices: Legal Framework

Legislation	Main powers and relevance to recovery of debts
<p data-bbox="126 191 607 222"><i>The Care Act 2014 (As amended)</i></p> <p data-bbox="126 226 808 405">The Care Act 2014 introduces a modern legal framework for the recovery of any debts that may have accrued as a result of a local authority meeting a person's eligible care and support needs</p> <p data-bbox="126 443 777 548"><i>Please note this is not designed to be an exhaustive list and legislation may change over time</i></p>	<p data-bbox="824 191 1528 222">Section 69 – Recovery of charges, interest etc.</p> <p data-bbox="824 226 1560 296">1) Any sum due to a local authority under the Part is recoverable by the authority as a debt due to it.</p> <p data-bbox="824 300 1560 443">2) But subsection (1) does not apply in a case where a deferred payment agreement could, in accordance with regulation under section 34 (1), be entered into, unless-</p> <p data-bbox="824 447 1560 552">(a) The local authority has sought to enter into such an agreement with the adult from whom the sum is due, and.</p> <p data-bbox="824 556 1187 588">(b) The adult has refused.</p> <p data-bbox="824 592 1435 623">3) A sum is recoverable under this section-</p> <p data-bbox="824 627 1560 770">(a) in a case in which the sum becomes due to the local authority on or after the commencement of this section, within six years of the date and the sum becomes due;</p> <p data-bbox="824 774 1560 844">(b) In any other case, within three years of the date on which it becomes due.</p> <p data-bbox="824 848 1560 1029">4) Where a person misrepresents or fails to disclose (whether fraudulently or otherwise) to a local authority any material in connection with the provisions of this Part, the following sums are due to the authority from the person -</p> <p data-bbox="824 1033 1560 1102">(a) any expenditure incurred by the authority as a result of the misrepresentation or failure and</p> <p data-bbox="824 1106 1560 1176">5) the costs incurred by a local authority in recovering or seeking to recover a sum due to it</p> <p data-bbox="824 1180 1097 1211">6) Regulations may</p> <p data-bbox="824 1215 1560 1320">(a) make provision for determining the date on which a sum becomes due to a local authority for the purpose of this section</p> <p data-bbox="824 1325 1560 1430">(b) Specify cases or circumstances in which a sum due to a local authority under this Part is not recoverable by it under this section</p> <p data-bbox="824 1434 1560 1539">(c) specify cases or circumstances in which a local authority may charge interest on a sum due to it under this part</p> <p data-bbox="824 1543 1560 1575">(d) where interest is chargeable, provide that it-</p> <p data-bbox="824 1579 1560 1684">(i) must be charged at a rate that exceeds the rate specified in or determined in accordance with regulations, or</p> <p data-bbox="824 1688 1560 1793">(ii) May not be charged at a rate that exceeds the rate specified or determined in accordance with the regulations.</p> <p data-bbox="824 1797 1560 1829">Section 70 – Transfer of assets to avoid charges</p> <p data-bbox="824 1833 1560 1938">This section applies in a case where an adult's needs have been or are being met by a local authority under sections 18 to 20 and where—</p> <p data-bbox="824 1942 1560 1974">(a) The adult has transferred an asset to another</p>

	<p>person (a “transferee”)</p> <p>(b) The transfer was undertaken with the intention of avoiding charges for having the adult’s needs met, and.</p> <p>(c) Either the consideration for the transfer was less than the value of the asset or there was no consideration for the transfer. .</p> <p>(2) The transferee is liable to pay to the local authority an amount equal to the difference between—</p> <p>(a) The amount the authority would have charged the adult were it not for the transfer of the asset, and</p> <p>(b) The amount it did in fact charge the adult. .</p> <p>(3) But the transferee is not liable to pay to the authority an amount which exceeds the benefit accruing to the transferee from the transfer. .</p> <p>(4) Where an asset has been transferred to more than one transferee, the liability of each transferee is in proportion to the benefit accruing to that transferee from the transfer. .</p> <p>(5) “Asset” means anything which may be taken into account for the purposes of a financial assessment.</p> <p>.</p> <p>(6) The value of an asset (other than cash) is the amount which would have been realised if it had been sold on the open market by a willing seller at the time of the transfer, with a deduction for—</p> <p>(a) The amount of any incumbrancer on the asset, and.</p> <p>(b) A reasonable amount in respect of the expenses of the sale. .</p> <p>(7) Regulations may specify cases or circumstances in which liability under subsection (2) does not arise.</p>
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