

ADULT SOCIAL CARE DEBT RECOVERY POLICY

Slough Borough Council

2022/23
Version 2

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Introduction and Legal Status

This policy provides a fair, clear and consistent framework for debt recovery relating to the contributions towards Adult Social Care in Slough, as set out within section 14 of the Care Act 2014. This policy should be **read in conjunction with the Financial Charging and Contributions Policy 2022-23**.

Legal Status

The Care Act 2014 introduces a modern legal framework for the recovery of any debts that may have accrued as a result of the Council meeting a person's eligible care and support needs. Powers provided under Section 69 of the Care Act provide equal protection to both the Council and the person. 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.

Whilst Slough Borough Council would wish to avoid County Court Claims, the Care Act enables the Council to make a claim to the County Court for a judgement in order to recover the debt. As a first step, however, the Council must and will offer a person the option of a deferred payment in order to recover the debt wherever a person could be offered a DPA and can and will only make an application to the court should this be refused.

Principles of Debt Recovery

The recovery of debts from those who are receiving care and support is a sensitive issue given the potentially vulnerable nature of the service users in need of care and support, and the Council's ultimate responsibility to meet eligible care and support needs as set out within the Care Act.

The Council fully recognises that there could be a number of reasons why a service user has not paid an assessed charge. Given this, Council officers will bear in mind the following principles when approaching the recovery of debts:

- Possible debts must be discussed with the person or their representative where consent has been given or the person lacks capacity. The Council will give its service users a variety of options to discuss payment of their accounts: by telephone to the dedicated Financial Assessment team, by email, in writing or through web forms on the web site, and face to face at Observatory House.
- The Council must act reasonably and will review the appropriateness of each recovery option based on what is known about the service users circumstances, their ability to pay, their past payment history, their mental capacity or any other physical health or age related limitations and the requirement to recover outstanding monies in a timely and efficient manner.
- Arrangements for debt repayments should be agreed between the relevant parties where possible. And repayments must be affordable.
- Where appropriate, the Council will direct the service user to sources of debt and benefits advice.
- Court action should only be considered after all other reasonable avenues have been exhausted.

Assistance to Service Users

The Council recognises that some people do not pay their social care charges because of genuine financial or other difficulties. Although the Council will take a 'firm but fair' approach to recovery

and enforcement, it is the Council's policy also to offer help and support to all service users who are experiencing difficulties paying at every stage of the collection and recovery process.

Wherever possible, therefore, the Council will try to achieve a long term solution, rather than just recovering money that is owed now, so that the service users is better able to manage their finances in the future and meet their future liabilities. The Council recognises that some service users experience genuine hardship because of financial problems. It is the Council's intention, wherever possible, not to add to that hardship through collection and recovery (recognising that service users do have to pay what they are liable for), but to provide the service user with help and support to resolve their finances. The Council will particularly try to help and support service users in the following ways:

- Offering a range of payment dates and payment methods to enable service users to be able to easier maintain payments.
- Trying to resolve debt problems at the earliest opportunity, without letting them get out of control, by advising service users as soon as possible that charges are overdue, and encouraging use of direct debits to avoid debt accruing.
- Signposting service users towards relevant assistance, including advice agencies.
- When agreeing an arrangement for payment, asking that the service user pays an amount equal to their current weekly charge, plus an affordable amount in respect of any arrears. This ensures that the service user is able to maintain their payments and prevent the overall debt from increasing. Where this is not possible due to a recent change, a temporary arrangement will be made with an appropriate date for its review.
- Providing time for benefits and debt advice through referral to advice agencies, or if the agency informs the Council that the service user is receiving advice from them.
- Having proper consideration for a service users circumstances and financial situation, including other priority debts, when taking recovery action and planning for payment.
- Providing clear reasons why the Council is rejecting an offer of payment which is felt to be too low, indicating an amount that the Council believe is reasonable.
- Respecting and protecting service users rights at every stage of the recovery process.
- Accepting that in some exceptional circumstances, no payment scheme is affordable.
- Advising service users of their possible entitlement to any benefits, discounts, or exemptions.
- Working as co-operatively as possible with advice agencies. For example, wherever possible and appropriate, at the request of an advice agency the Council will agree to put a hold on any recovery action for an agreed period to enable the service user to receive specialist advice which will help them make a sustainable payment arrangement.

Charging for Services and Payment Procedures

The Care Act 2014 and its associated statutory guidance grants local authorities a degree of discretion when it comes to charging for social care.

- Homecare including Specialised Dementia Service
- Day Opportunities/Care
- Shared Housing Arrangement
- Shared Lives Scheme
- Replacement Care or Short-Term placements
- Care provided in a residential/nursing home
- Care provided in a residential college (including students subject to an EHCP)

- A Direct Payment (this is paid net of the assessed contribution)
- Telecare and careline services

Unless advised otherwise, payments of the assessed contribution will be paid directly to the Local Authority and an invoice will be received every 4 weeks.

Exemptions from Social Care Charging

The following exemptions apply to the policy and people will not be charged for care in the following circumstances:

- People suffering from Creutzfeldt Jacob Disease (CJD)
- Services provided under Section 117 of the Mental Health Act 1983
- People who are receiving funding under Continuing Health Care (CHC)
- Short-Term or Interim Services lasting 6 weeks or less
- Children and young people under 18 years of age
- Payment or Service to Carers

Payment Procedures

The Local Authority offers a range of methods to pay their contribution towards services. Details of these methods are included on the back of the bill sent to service users each month, however the preferred payment method for the council is direct debit / standing order. There are other methods when this is not deemed appropriate by the individual including:

- Debit and Credit Card Payments
- Telephone/Online banking

Debt Recovery

If the service user does not pay their assessed contribution either in full or in part and the invoice remains unpaid following reminder letters and wider communications with a service user and/or their representative, the Council's debt recovery procedures will be instigated in accordance with the requirements set out in the Care and Support Statutory Guidance. This may result in legal action and extra costs to the service user.

The Council recognises that it is bound by the public law principle of acting reasonably at all times, as well as the wellbeing principle set out in the Care Act. Given this, the Council will consider all other reasonable avenues before utilising the powers provided under the Act.

The debt recovery process will involve the issue of reminder notices where invoices remain unpaid and discussing the debt with the client or their representative. Social Workers will be made aware of the debt and will become involved if appropriate to the ongoing wellbeing of the client or where the client is not responding to the Financial Assessment Team.

The Financial Assessment Team will support clients to agree an affordable repayment plan with respect to ongoing costs. The Council pledges to approach debt recovery in a reasonable and sensitive manner and will only take court action as a last resort.

Where a debt has accrued, and a person could be offered a Deferred Payment Agreement prior to legal action, then the Council will offer this option as set out in Section 69(2) of the Care Act 2014.

Before pursuing any course of action, the Council will consider whether it is appropriate to recover the debt. Although it has the power to do so, and in the majority of cases will do so, there may be occasions when recovery is not pursued, this is detailed within the Writing Off Debt section below.

Timing of Debt Recovery

The point at which a debt becomes due to the Council is the due date stated on the Council's invoice. **Invoices are raised every 4 weeks following the receipt of care, giving service users 28 days to make payment.**

After invoices have been issued, the following debt recover process will be actioned:

1. If, after 14 days of generating an invoice payment still has not been received, service users are sent a first reminder notice.
2. If, after 28 days of generating a first reminder notice payment still has not been received, a second reminder notice will be issued.
3. If, after 14 days of generating a second reminder notice payment still has not been received, service users will be contacted by the Financial Assessment Team via telephone.
4. 3 attempts will be made to contact service users by any means before a final notice is issued and a pre-legal letter is sent.

The time period to recover debts is **six years** from the date when the sum would become due to the Council. Where a debt is taking some time to be recovered, provided legal proceedings have been issued within the limitation period, enforcement can continue. The age of a debt is not usually a reason itself to consider writing off a debt and the Council may issue proceedings to protect its interest and avoid a limitation period passing. Arranging for Payment of Debt owing to the Council

When agreeing an arrangement for payment the Council will always ask that the service user pays an amount equal to their current weekly charge, plus an affordable amount in respect of any arrears.

This ensures that the service user is able to maintain their payments and prevent the overall debt from increasing. Where this is not possible due to a recent change, a temporary arrangement will be made with an appropriate date for its review.

When making the arrangement the council will:

- Have proper consideration for a service users circumstances.
- Provide clear reasons why the Council rejects an offer where repayment is felt to be too low and indicate an amount that the Council believes is reasonable.
- Where appropriate, allow time for benefits and debt advice through referral to advice agencies, or if the agency informs the Council that the service user is receiving advice from them.
- Accept that, in some exceptional circumstances, no payment scheme is affordable, and a temporary deferral of payment can be agreed.
- Respect and protect service users rights at every stage of the recovery process.
- Recognise where the service user has other priority debts (e.g., rent arrears or utility debts), and ensure that a fair balance is reached between claims.

The Council will always try to resolve debt problems at the earliest opportunity, without letting them get out of control by advising service users, or taking appropriate action, as soon as possible after an arrangement payment is missed.

Deferred Payments

Where a debt has accrued and a person could be offered a deferred payment agreement, the Council will offer the person, or their attorney or deputy, the option of repaying the debt through a DPA as set out in Section 69(2) of the Care Act 2014. This is available where the person owns

property and the equity in the property is sufficient to cover the debt. Under this arrangement the person is not required to immediately sell their property.

A person could be offered a DPA if they are receiving care in a care home or are renting an extra care property, and the person has a form of security adequate to cover the DPA (usually a property). The Council is only required to offer the DPA for the amount of the accrued debt and is not obliged to defer any future costs.

However, the Council will consider allowing the person to defer further payments so as to avoid any further accrual of debt. This option is likely to be attractive to a person as the maximum interest rate for DPAs is set by regulations and is lower than the maximum amount the County Court can apply and will avoid the costs of legal action being added on to the debt.

The person must enter into a legal agreement that allows the Council to place a legal charge on the property.

Only where a person refuses the option of a DPA or does not meet the eligibility criteria can the Council seek to enforce the debt via an application to the County Court. The Council will therefore make sure a refusal, along with the reason, is recorded appropriately.

Diminishing or Lack of Mental Capacity

A debt may have accrued as a result of diminishing or a lack of mental capacity. Practitioners will carry out a decision specific capacity assessment where there is a diagnosis of mental impairment or mental disorder, or where the person's engagement with care planning shows they may lack capacity to make some decisions.

The Council will adhere to the guidance of the Mental Capacity Act 2005. Where people lacks capacity and there is documentary evidence to support this, and where they have appointed attorneys or deputies to make financial decisions for them, the Council will involve this representative in any financial decision making.

Where a person has an attorney for property and financial affairs or a deputy, these roles give the attorney or deputy the legal authority to make financial decisions on behalf of the person. The Council can discuss all the previously listed debt recovery options with the attorney or deputy. If debt accrues when a person has an deputy or attorney acting for them, the Council will consider whether this individual is exercising their duties appropriately and may in appropriate cases refer the matter to the Office of the Public Guardian to ensure that payments are made promptly and decisions taken in the person's best interests. In addition, if the deputy or attorney is in receipt of benefits, the Council may request that the DWP suspend benefits whilst the Council reviews the case.

If a person who lacks capacity does not have a deputy or attorney, the Council may apply to be appointed as deputy and will manage the person's property and financial affairs. If the person does not own property or have savings, the DWP may appoint the Council as appointee for the purpose of payment of benefits.

Safeguarding Referrals

In some arrears cases, concerns may arise that the a person acting as attorney, appointee or deputy and responsible for paying the charges on behalf of the service user is not administering the finances appropriately. In cases such as this it will be appropriate to refer the case to Safeguarding Adults Team as potential financial abuse. Each arrears case will be considered on an individual basis before

a referral is made; only when it has been clearly established that the attorney or deputy has the ability to pay but is refusing to cooperate with all the Council's attempts to enforce this will a referral be made.

An arrears visit will always be undertaken as part of this process to establish if there is a clear intention to avoid paying the charges and other factors such as whether any payments have been made, if the personal expenses allowance is being paid to the service user, and the level co-operation/communication from the attorney or deputy will also influence the decision.

Issue of County Court Claim

Where all other reasonable avenues have been exhausted, the Council may decide to proceed to the County Court in order to recover the debt owed. The Court will require the Council to prove the legal basis for the claim.

Issue of claim and other processes, including enforcement, attract a court fee. The level of the fee will vary depending on the amount that is being sought and depending on whether the claim is issued online or by paper. Whilst there is an upfront cost to the Council to meet this fee, **if an order or judgement is made in favour of the Council, the Court may add the fee and costs to the debt recoverable.**

Once the Court has issued the claim, a Notice of Issue will be sent to the Council and a copy of the claim to the person the Council is seeking to recover the debt from. The person will then have the options of admitting the full amount of the claim, or defending the claim. If no response is received to the claim, or if the person admits part or the whole amount of the claim, and the Council accepts the part admission, the Court can be requested to enter judgement against the person. The Council may then commence enforcement proceedings if the person does not pay the judgement.

If the claim is defended or the person does not accept the part admission, the claim will proceed to the next stage.

Approval will be referred to the senior officer in accordance with scheme of delegation prior to any enforcement action commencing.

Enforcement Options

Once the Council has obtained a money judgement from the County Court, it can decide how to enforce this. There is no limitation period for enforcement and in appropriate circumstances the Council may agree not to enforce a debt for a period of time.

Enforcement methods include:

- Warrant of execution or writ of control leading to bailiff action
- Attachment to earnings, benefits or pension
- Third party debt order to freeze assets or bank accounts
- Charging order against a person's land or property – this provides security for the debt, but in specific cases, the Council may apply for an order to sell the property
- Bankruptcy – in specific cases the insolvency practitioner may recover debts from third parties where an asset has been transferred or sold as less than market value with the intention of putting those assets out of reach of a creditor

The legal costs of pursuing enforcement action will be added to the debt and interest will also be payable.

Writing off a Debt

The Council will only consider writing off debts where they are deemed to be uncollectable, e.g., in circumstances where the Council is unable to trace the service user, where they have passed away (although the Council will normally look to collect any outstanding amounts from the deceased's estate), if it is considered uneconomical to pursue the debt further or where the Executive Director People (Adults) has decided that legal action is not appropriate. The age of the debt is not usually a reason itself to consider write off.

All agreed debt write-off will be completed in accordance with the Adult Social Care's Scheme of Delegation, and the Council's financial regulations

Recovery of debts arising as a result of fraud or inaccurate information

As part of the financial assessment process, individuals must provide information on their income and assets. A declaration must be signed confirming the accuracy of the information. If it later transpires that the information is inaccurate, the case will be referred to the corporate anti-fraud team. The Council will take steps to re-calculate the financial assessment based on the correct information and will send an invoice with any charges due. The Council will also consider whether an offence has been committed and whether a prosecution should be commenced.

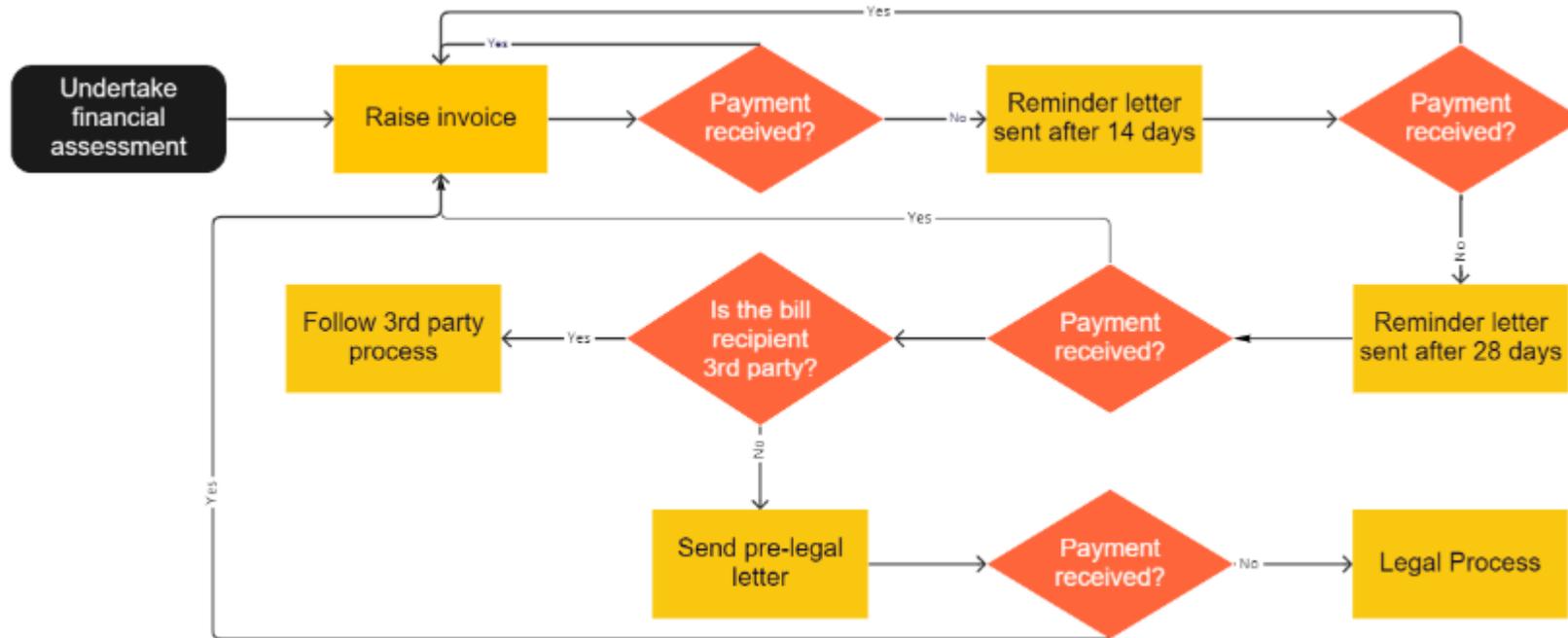
The corporate anti-fraud team will also investigate any concerns that a person has deliberately deprived themselves of assets or income with a view to removing these from consideration in the financial assessment process.

A referral may also be made to the corporate anti-fraud team if there is a concern that a third party has abused their position to obtain a financial benefit. Financial abuse is a form of fraud and will be investigated accordingly and proceedings issued where appropriate.

Complaints

The Council has a complaints policy which is available on its website. An individual can complaint about the way in which the Council has used its powers to collect debt. If a person is dissatisfied with the outcome of the complaint, they can contact the Local Government and Social Care Ombudsman.

Appendix 1 – Invoicing and Debt Recovery Process Chart



Appendix 2 – 3rd Party Bill Recipient Process

