

Adult Social Care Debt Recovery Framework

Responsible Officer: Gillian Buckley, Operational Manager Revenue and Payments

CONTENTS

SECTION	CONTENT	PAGE
1	Introduction	3
2	Responsibilities for the Framework	4
3	Legal Status	5
4	Chargeable and Non-Chargeable Services	6
4.1	Exempt Services	6
4.2	Flat Rate Charges	6
5	Financial Assessment	8
5.1	Residential Care Deferred Payment Scheme	8
5.2	Residential Care Third Party Top Ups	9
6	Direct Payments	11
6.1	Managed Accounts	11
6.2	Audit of Direct Payments	11
6.3	Recovery of Money Owed	11
7	Service User Commitment	12
8	Methods of Payment	14
9	Collection & Recovery	15
9.1	Arrangement for Payment	15
9.2	Safeguarding Referral	16
9.3	Welfare Benefit Appointeeship	16
9.4	Deprivation of Assets	16
9.5	Absconders	17
9.6	Alternative Methods of Recovery	17
9.7	Mediation	17
9.8	Arbitration	17
9.9	Negotiation	17
10	Legal Proceedings through the County Court	18
10.1	Decision to Commence Legal Proceedings	18
10.2	Mental Capacity Act 2005	18
10.3	Issue of County Court Claim	18
10.4	Enforcement	19
10.4.1	Warrant or Writ of Control	19
10.4.2	Attachment of Earnings Order	19
10.4.3	Third Part Debt Order	19
10.4.4	A Charging Order	19
11	Standards, Complaints & Where to Find More Information	20

1. Introduction

This Framework should be read in conjunction with the Council's Corporate Debt Policy, which sets out our objectives and approach to the management and collection of debt.

The Policy states the over-riding principles applying to all debt collection across the Council and is supported by a suite of practical frameworks that explain the approach and procedures for collecting debts in specific areas, i.e. Council Tax, Business Rates, Sundry Accounts, Housing Benefit Overpayments, Housing Rents; Adult Social Care and Parking Services.

2. Responsibilities for the Framework

This Framework is intended to supplement the Corporate Debt Policy. In the event that there is any difference between this framework and the Corporate Debt Policy, this framework will take precedence in respect of Adult Social Care debts.

The framework identifies the procedures to be applied to recovering income due as a result of the Council meeting an adult person's eligible care and support needs.

It relates to care and support provided in both a residential setting and in the community.

3. Legal Status

The Care Act 2014 ('the Act') provides a single legal framework for charging for care and support under Sections 14 and 17. This framework enables legal enforcement to be undertaken to recover debts where appropriate.

Powers provided under section 69 of the Act afford equal protection to both the Council and the service user.

Section 70 of the Act provides the Council with the power to recover charges from a third party where a person has transferred assets or capital in avoidance of paying charges for care and support.

For Council funded residential and community-based care, the power to charge for services is contained in:

- The Care & Support (Charging and Assessment of Resources) Regulations 2014
- Care and Support Statutory Guidance issued under the Care Act 2014

Recovery of charges is addressed within Annex D of the Care and Support Statutory Guidance.

Ultimately, the Care Act enables the Council to make a claim to the County Court for a judgement to recover debt owed after all other reasonable avenues have been exhausted.

4. Chargeable and Non-Chargeable Services

The Council operates four charging categories:-

1. Exempt services or care and support provided free of charge
2. Mean tested charging and full cost service following a financial assessment
3. Flat rate charges, i.e. telecare
4. Full cost charge for service users who do not wish to disclose their finances

4.1. Exempt Services

The Council is not allowed to charge for some types of care and support. The list below sets out what these currently are:

- Community equipment (aids and minor adaptations): this is where a person is supplied with equipment or a minor adaptation to their property, in order to support daily living so a person can stay in their home. An adaptation is minor if the cost of making the adaptation is £1,000 or less;
- Reablement service can be provided to support service users to become as independent as possible in their homes; this can be from 1 day up to a maximum period of six weeks. This could be after a stay in hospital, an illness or to prevent a hospital admission. For support services following the Reablement period, charges will be applied based on a financial assessment.
- Services provided to people suffering from Creutzfeldt Jakob Disease
- Any service or part of service which the NHS is under duty to provide. This includes Intermediate Care, Continuing Healthcare and the NHS contribution to Registered Nursing Care;
- Services which local authorities have a duty to provide through other legislation, including any specific services provided as After Care Services under Section 117 of the Mental Health Act 1983. There will be occasions when chargeable services are also provided to service users who are subject to Section 117 of the Mental Health Act 1983. This is usually when a service is in place that is not specifically related to their Section 117 status. If this is the case the service user will be advised of this in writing and a financial assessment will need to be undertaken in relation to such services.
- Assessment of needs and care planning may also not be charged for, since these processes do not constitute 'meeting needs'

4.2. Flat Rate Charges

Telecare (Rothercare) charges are currently a fixed rate service.

Invoices for fixed rate services are raised through the Council's Financial System and recovery will proceed through an automated process.

5. Financial Assessment

Once it has been identified that care and support services are required to meet a person's care and support needs, the Council will then undertake a financial assessment. This financial assessment will determine how much the service user is required to contribute towards the cost of their social care services.

The Council will provide support through the assessment process and will need a full financial disclosure from the service user to undertake this assessment, alternatively, service users who do not wish to disclose their finances will be required to pay the full cost of their care.

The financial assessment process is conducted in accordance with Care and Support Statutory Guidance

5.1. Residential Care Deferred Payment Scheme

For service users who are going into residential care (assessed in accordance with the Care Act 2014) their property may be considered as part of the financial assessment process.

The treatment of property owned by the service user will depend on whether the service user is a legal or a beneficial owner of the property. Where ownership is disputed, written evidence to prove ownership via the service user and Land Registry will be obtained and considered as part of this decision. The Council will determine the value of the property at the time of the financial assessment. This will include asking the service user and looking at the value of similar properties nearby. Where the value is disputed or there is doubt as to the value, the Council & the service user will be required to arrange for a professional valuation to support the assessment.

In some circumstances, the Council will offer the Deferred Payment Agreement (DPA) if a service user meets certain criteria governing eligibility for the scheme. Under the DPA scheme, the service user is not required to immediately sell the property they own or have a financial interest in. The Council will require a signed legal agreement that allows the Council to place a legal charge on the property and defer that part of their assessment relating to the value of their property until the property is sold or the debt is settled. Once the agreement has been signed, a Charge will be placed on their property pursuant to Regulation 4 of the Care and Support (Deferred Payment) Regulations 2014. Under the DPA scheme the Council will continue to meet the difference between the service user's assessed contribution and the full cost of the care home fees either until the home is sold or the service user leaves residential care.

The Charge will show up in future searches of the property in question and the service user's solicitor will ask the Council to remove the Charge before any sale goes through.

The Council is required to offer a person the option of a DPA in order to recover a debt if the person could be offered a DPA. Only where a service user refuses the option of a DPA or does not meet the eligibility criteria can a local authority seek to enforce the debt via an application to the County Court.

5.2. Residential Care Third Party Top Ups

If a service user chooses residential care that is more expensive than rates set by the Council, (and this is their preferred option and not because their needs cannot be met adequately in a less expensive residential home) then a third party can pay the difference. This is also known as a Third Party Top up.

Service users are not permitted to pay their own Third Party Top Up except in certain specific circumstances. A representative (third party) would enter into a legal agreement with the Council and the care home. This states that they are responsible to pay the top up fees and that any debts may be recovered from them through legal action. The Council will not agree to any Third Party Top Up arrangement unless the legal agreement has been signed and agreed.

The third party is not permitted to enter into a private arrangement with a care home contracted by the Council to pay a top up. If there are arrears on a third party top up account, the Council will commence the adult social care debt recovery process.

The Council may choose to terminate the agreement and reassess the accommodation with a view to moving the service user to a less expensive placement that, where possible, would be within the rates set by the Council.

6. Direct Payments

This is where service users receive a payment from the Council and organise their own care and support. Usually the Council will deduct the service user's contribution from the Direct Payment before the payment is made. Service users would then be expected to pay their contribution into their dedicated bank account.

A Direct Payment will not be awarded until the financial assessment has been completed.

Service users are required to keep records of how their Direct Payment has been used. Use of the Direct Payment is subject to an audit review (the timescale of which is set by the Council). As a result of the audit, any unspent monies are identified and will be required to be repaid to the Council.

A Direct Payment will not be awarded if there are arrears or debt on the service user's account and may be removed if funds are mis-used or not repaid following an audit that raises concern. Therefore, an alternative provision of care needs to be identified with the service user's case assessor or social worker until the arrears or debt is cleared.

6.1. Managed Accounts

This allows a service user to find a support service to manage the Direct Payment on their behalf. The agreement is between the service user and the support service.

6.2. Audit of Direct Payments

Direct Payment accounts will be subject to regular audit as determined by the Council. This will establish if the process is being managed and supported effectively and that financial records are being maintained. Failures or issues identified as part of the audit process will be discussed with the service user. In some circumstances this may result in a withdrawal of a Direct Payment and a transfer to another support package. Initially a recommendation will be made by the Team Manager that will be based on an assessment of all the facts provided by Auditors. A referral for a final decision will be made back to Adult Care and Integration. If agreed the service user will be notified in writing with an explanation of why the decision has been made.

6.3. Recovery of Money Owed

As part of the Audit process or other action the Council may establish that money is owed to the Council. This could be as a result of:

- The service user under-spending their agreed budget.
- The client dying, or for some other reason no longer requires the service, and as a result an overpayment has been made.
- The client not paying their agreed contribution resulting in a shortfall.
- The client overspending their agreed budget.

Where required, the Council will provide support to determine the exact amount owed, either through a close down of the account, or through the agreed process. Letters will then be sent to the service user or their representative so that any money due can be repaid. In some circumstances the Council may adjust future payments, or they may agree a payment plan.

7. Service User Commitment

The intention of the Council is to maintain a “firm but fair” approach to the collection and recovery of Social Care Charges.

We will financially assess each service user in a timely manner to ensure service users are aware of how much they must pay and when.

We will ensure that every service user undergoing a financial assessment is provided with information on maximising entitlements to benefits.

We will issue prompt and accurate bills ensuring the correct calculated assessed charge is used.

If the service user needs the support of an advocate and does not have anyone suitable to advocate on their behalf, we will appoint an advocate to help support the service user to understand the options available to them where applicable.

We will support family to obtain power of attorney/deputyship where applicable

We will liaise with social care providers where appropriate.

We will make the payment of social care charges as easy and convenient as possible by prompting a wide range of payment methods.

We will give our service user's a variety of options to contact us to discuss payment of their accounts:

- By telephone to the dedicated Council lines
- By email, in writing or through web forms on our web site
- Face to face at Riverside House

We will process changes to charges in a timely manner to ensure the service user's accounts are as up to date as possible.

We will inform service users who fall 28 days behind with their charges or payment arrangements, of the need to bring their payments up to date.

We will try to engage with the service user at every opportunity during the recovery process to discuss and make a suitable repayment arrangement and to avoid further recovery action. This includes clearly warning service users about further recovery actions that may happen and the additional costs and charges they may incur if they do not come to an earlier payment arrangement.

We will try to collect all debts owed where they are legally collectable, irrespective of age, in order that we can maximise revenue to the Council to be fair to all those taxpayers who have paid their liabilities.

We will review the appropriateness of each recovery option based on what we know about the service user's 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.

We shall take special care in pursuing debts relating to particularly vulnerable adults.

When pursuing debts relating to particularly vulnerable service users, we shall seek to involve a responsible third party who can act for the adult in the service user's best interests and check the service user consents to the arrangements.

Where appropriate, we will direct the service user to sources of debt and benefits advice.

We will regularly review accounts which are in arrears to ensure that they are subject to ongoing recovery and enforcement action.

We have a complaints procedure to enable service users to challenge us where they believe we have not acted fairly or lawfully.

We regularly review our policies and procedures. This document is reviewed annually.

8. Methods of Payment

Invoices for social care charges are issued on a 4-weekly basis.

All invoices should be issued within 4 weeks of the service period end date (this timescale is restricted by allowing for collection and administration of service provision data from independent sector providers).

All invoices are due for immediate payment upon issue.

Payments can be made by using the following ways:

- By internet using a debit or credit card at: www.rotherham.gov.uk/pay
- By phone using debit or credit card, either via our automated payment line on 01709 336003, or by speaking to a member of staff on one of the dedicated lines.
- By Post, cheques made payable to Rotherham Metropolitan Borough Council, addressed to Rotherham MBC, Riverside House, Main Street, Rotherham, S60 1AE. Details of the service user's reference number and name must be provided on the rear of the cheque. Post-dated cheques are not acceptable. Cash should not be sent by post
- By PayPoint, free of charge at any shop or store displaying the PayPoint logo or at any Post Office
- By Direct Debit
- By bank transfer, Lloyds Bank Sort Code 30-80-12 – A/C No 26467460, Please use the Client Account Reference as the reference when making the payment.

9. Collection and Recovery

The Council has a timetable for recovery action which is set with the aim of ensuring that income is maximised to enable the Council to provide services to the public of Rotherham.

If an invoice is not paid within 28 days of issue, telephone contact with the service user or their representative may commence and continue for as long as considered appropriate, in addition a reminder letter will be sent. The reminder letter provides the service user with a further 28 days in which to bring the account up to date by paying the overdue balance.

If the service user brings their payments up to date within 28 days following the issue of a reminder letter or no further action is taken.

If a payment arrangement is made providing that payment of the arrangement is maintained, then no further recovery action is taken.

If the account remains unpaid 28 days after issue of the reminder letter, the second written communication is issued.

A referral would be made to a social worker to assist to look at why the debt is occurring and if any further action is needed e.g. a mental capacity issue or a safeguarding concern

Arrangements may be made for a visiting officer to call to see the service user to agree a resolution to the arrears situation.

Should the account remain unpaid after a further 14 days the third written communication is issued.

Should the account remain unpaid after a further 14 days the Council's Legal Department will write to the service user explaining that legal proceedings are pending, the associated costs and the action that is required to avoid such proceedings

9.1. Arrangement for Payment

When agreeing an arrangement for payment we 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 can 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 we will:

- Have proper consideration for a service user's circumstances.
- Where we feel an offer of payment is too low, we will provide clear reasons why we are rejecting the offer and indicate an amount that we believe is reasonable.

- Where appropriate, allow time for benefits and debt advice through referral to advice agencies, or if the agency informs us 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 the service user's rights at every stage of the recovery process.
- Recognise where the service user has other priority debts (e.g. rent arrears or utility debts), or debts owed to other Council departments, and ensure that a fair balance is reached between claims.
- Make allowances for poorly organised service users.

We 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.

9.2. Safeguarding Referral

In some arrears cases, concerns may arise that the individual acting as financial agent 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 make a safeguarding referral to consider potential financial abuse.

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 (in cases where the service user is in residential care), and the level of co-operation/communication from the Financial Agent will also influence the decision as to whether to make a referral.

As soon as concerns of potential financial mismanagement are raised, a safeguarding referral will be made.

9.3. Welfare Benefit Appointeeship

Where a service user has an appointee who is responsible for administering the welfare benefits on their behalf and using them to pay their care charges, should they fail to undertake this duty, this will be reported back to the Pension Service/DWP with a request for benefits to be suspended whilst the appointeeship is reviewed to find a more suitable recipient.

The authority will take this action with the intention to limit the scale of the arrears and protect the service user's best interests

9.4. Deprivation of Assets

Deprivation of assets means where a service user has intentionally deprived or decreased their income or capital in order to reduce the amount they are charged towards their care.

If the council decides that a service user has deliberately deprived themselves

of assets in order to avoid or reduce a charge for care and support, we will firstly treat that service user as still having the asset for the purposes of the financial assessment and charge them accordingly.

Where the service user has transferred the asset to a third party to avoid the charge, the third party is liable to pay the Council the difference between what it would have charged the service user had the asset not been transferred and what it did charge the service user from the date of transfer.

9.5. Absconders

Sometimes a service user may leave the area with a debt still owing and without providing a forwarding address.

We may be able to trace the service user through our internal systems. If we are unable to locate the service user using in-house information, we may use a data credit company or collection agent services.

9.6. Alternative methods of recovery

Depending upon the circumstances of the case, the Council may consider the following options before considering issuing debt recovery court proceedings:

9.7. Mediation

This is where an independent third party assists The Council and the service user to reach an agreement. This could be carried out by a professional mediation service but could also be carried out by anyone who is not involved in the issue, such as a local voluntary organisation. The parties involved, not the mediator, decide the course of action.

9.8. Arbitration

This involves an independent arbitrator hearing both sides of the issue and making a decision on behalf of the parties that will resolve the issue. Arbitration is usually binding on both sides and therefore the case cannot be taken to court after the arbitrator has made a decision.

9.9. Negotiation

This could be through dealing directly with the service user or their representative to broker a solution. This can be done by the Council or in certain circumstances by an independent person.

10. Legal Proceedings through the County Court

Court action is only considered after all other reasonable avenues have been exhausted.

10.1. Decision to Commence Legal Proceedings

A County Court Judgement gives the Authority the various powers of recovery.

The Council will choose the appropriate recovery option based on what we know about the service user's circumstances, their ability to pay, their past payment history, their capacity to litigate, any physical health or age related limitations and the requirement to recover outstanding monies in a timely and efficient manner.

The decision to commence legal proceedings for recovery of an unpaid debt will be approved by the Assistant Director Adult Care and Integration. Where approval is declined, the debt will be submitted for write off.

10.2. Mental Capacity Act 2005

Where a decision is made to commence legal proceedings, consideration should be given to whether the service user has mental capacity for litigation purposes. The Mental Capacity Act provides a framework for assessing a persons' mental capacity and determining their best interests if they lack capacity to make a decision.

Where a service user lacks mental capacity to conduct or defend the litigation on their own behalf then an application should be made to the court to appoint a litigation friend.

It is the duty of a litigation friend fairly and competently to conduct proceedings on behalf of a protected party. The litigation friend must have no interest in the proceedings adverse to that of the protected party and all steps and decisions the litigation friend takes in the proceedings must be taken for the benefit of the protected party.

10.3. Issue of County Court Claim

The court will issue a claim form with details of the claim to the service user who has a set period of time to respond; this is their opportunity to explain the situation to the court.

The service user can accept that they owe the debt and they will receive an admission form with the claim form, asking about their income and outgoings. On the form they can make an offer to repay the debt in instalments.

The service user can dispute that they owe the debt and can complete a defence.

If the service user does not respond or if the court agrees that the service user owes the debt, then the court will issue an order to pay the debt.

Once a county court judgement has been obtained a notice will be sent to the service user, where no payment arrangement has been agreed, together with an

income details form requesting they supply details of their income and expenditure. The notice also contains details of what action may be taken if payment, or an arrangement for payment, is not made.

If the service user doesn't make an offer on the form, or if they make an offer that both the Council and court do not agree with, or if they do not make the offer in the required timescale, then the court may order the service user to either:

- pay the full amount in one lump sum
- pay the debt back in set monthly payments

Records of judgments are kept for 6 years unless the service user pays the full amount within a month.

10.4. Enforcement

Once a county court judgement has been issued, there are various options open to us to enforce repayment:

Approval will be sought from the Director of Adult Care and Integration prior to any enforcement action commencing.

10.4.1. Warrant or Writ of Control

A warrant or writ of control essentially enables enforcement agents or officers to take control of goods from the service user's home or business.

10.4.2. Attachment of Earnings Order

If the service user is employed, an attachment of earnings order allows for the periodic deduction of monies by the service user's employer in order to pay the debt. An application can also be made to the court for deductions from other earnings such as a pension.

10.4.3. A Third Party Debt Order

We can ask the court to freeze money in the service user's bank or building society account (or in a business account).

The court will decide if money from the account can be used to pay the debt.

10.4.4. A Charging Order

We can ask the court to charge the service user's land or property.

If the land or property is sold, they must pay this charge before the proceeds of sale are released.

11. STANDARDS, COMPLAINTS & WHERE TO FIND MORE INFORMATION

All services procured by the Council that charge for the collection of debt are required to comply with corporate standards of service. A list of these services can be found at:- <https://www.rotherham.gov.uk/downloads/download/7/tenders-and-contracts>

Any resident, business or service-user can contact us by several contact channels to either make a complaint, compliment, or comment about our services. These channels include:-

Completing the form at <https://www.rotherham.gov.uk/council/complain-council-services/1>

Writing to, or emailing us, at Revenue and Payments, Riverside House, Main Street, Rotherham, S60 1AE.

E-mail: revenueandpayments@rotherham.gov.uk

Telephoning us on 01709 823955

All contacts are then managed within the Council's corporate guidelines of responding to a Stage 1 service user complaint or comment. Further details on the process, and a copy of our complaints procedure, are available on our website at:- <https://www.rotherham.gov.uk/council/complain-council-services/2?documentId=119&categoryId=20003>

For more information relating to adult social care debt please contact: -

Revenue and Payments,

Riverside House,

Main Street,

Rotherham S60 1AE.

Telephone: 01709 823955

E-mail: revenueandpayments@rotherham.gov.uk

Website: www.rotherham.gov.uk