



ADULT SOCIAL CARE DEBT RECOVERY POLICY

VERSION 0.1

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1. Introduction

Shropshire Council raises charges for a wide range of services across the organisation. All debts owed should be pursued according to the Corporate Debt Recovery policy January 2022.

However, it is acknowledged that debts arising from Adult Social Care cannot be pursued in the same way as sundry debt under the same policy.

This document sets out the debt recovery procedures for Adult Social Care debt.

2. Scope

- Charges under The Care Act 2014
- Respite care;
- 24 hour care in a registered care or nursing home
- Third party top ups for the above services;
- Home care support;
- Day care;
- Transport costs

3. The Care Act 2014 – Key points

When social care practitioners assess or review an individual's eligible needs, they also provide information about should a service be provided from Adult Social care a financial assessment will be carried out and an assessed personal contribution charged. At the review stage the practitioner checks that payments are being made and if a debt is accruing will discuss with the individual any concerns and how their contributions will be paid.

People can at times struggle to manage their financial situation and the practitioners will indicate possible avenues of support, consider capacity, advocacy and also best interest decisions to ensure that the appropriate level of support is available or in place.

Debt can arise where an individual fails to manage their direct payment and the individuals account is regularly audited by the reconciliation team so any challenge or difficulties are recognised at an early stage and further conversations as to avenues of support are explored.

Financial management is a difficult area for many people and clear and consistent information from each service that is involved in the provision of the assessed support is provided at each stage, so individuals are able to understand what is charged, what financial responsibilities they have and when difficulties do arise the options available to them.

The Care Act 2014 introduces a modern legal framework for the recovery of debts as a result of non- payment of care charges. This is covered in section 69 and 70 of the Care Act 2014.

The key points are:

- Taking Court action to recover a debt should be the last resort
- The local authority should act reasonably
- Possible debts should be discussed with the person receiving care

- Arrangements for debt repayments should be agreed, if possible, with the person receiving care or their representative
- Repayments should be affordable for the person receiving care
- A debt which arises after the Care Act 2014 comes into force must be recovered within **six years** of the date when the sum became due to the local authority.

4. Principles underpinning the approach to Debt

- Possible debts must be discussed with the person or their representative;
- The local authority must act reasonably;
- Arrangements for debt repayments should be agreed between the relevant parties;
- Repayments must be affordable, within a reasonable repayment period and by Direct Debit. All repayment plans will be dependent on the customer's individual circumstances;
- Court Action should only be considered after all other reasonable avenues have been exhausted.;

5. Invoicing

Financial Assessments follow a Case Management process for all cases where a first contribution is to be invoiced. This is a three-step process:

- A. An initial letter or email which states that the Financial Declaration Form (FDF) should be returned by a specific date (14 days) after the issue of the letter/email and that charges will start from the date that the care begins is sent out by the Council. If the form is not returned within 14 days a further reminder will be issued giving a further 7 days, after which a 'light touch' assessment in accordance with Regulation 10 of the Care and Support (Charging and Assessment of Resources) Regulations 2014 will be performed. This may result in a person being charged the full cost of their care and support.
- B. Details of the first invoice are included in the initial contribution letter, containing:
 - Amount of the maximum weekly contribution
 - Date the contribution starts from
 - Date that the first invoice can be expected
 - Dates that the first invoice applies from and to
 - Total amount of the first invoice
 - If the cost of care is less than the contribution, an explanation that the contribution could increase to the maximum
 - An explanation that the charge can increase or decrease based on cost or changes to services – this is specifically for non-residential charges
 - a pre-populated Direct Debit form and a pre-paid envelope is provided by Sales Ledger Team to encourage payment by this method (see 7 below)
- C. A phone call to the service user or their representative after the billing run has been exported from the Council's financial systems and ideally before the invoice has been

issued, confirming the amount charged, period covered and to ensure that the service user/financial representative understands their responsibility to pay it.

Where there is a difference between the amount invoiced and the amount notified as payable in the notification letter, this will also be explained in the phone calls. An example would be where additional care has been authorised after notification, resulting in a higher contribution.

Charges for care will be calculated and approved in the Council's Social Care finance system, this information will then interface with the Council's Finance Ledger System, and invoices produced in arrears every 4 weeks. Invoices will be sent where there is an email address in the customer Masterfile, in the absence of this information the invoice will be sent via post.

6. Payment Terms

The Council's payment terms are strictly 20 calendar days from invoice date.

7. Method of Payment

The Council accepts a range of payment methods and the list of available methods of Payment is included on the reverse of the invoice.

Our preferred method of payment is Direct Debit as this is efficient, timely and provides value for money for the Council. It is also an easy risk-free way to pay an invoice and is protected by the Direct Debit guarantee, as explained on the Direct Debit mandate. The payment methods accepted by the Council are detailed on the reverse of the sales invoice, however the Council does not accept cash or cheque payments directly. Customers wishing to pay by cash or cheque can do this at any Post Office using the barcode on the front of the sales invoice.

The council will be using and promotes a cashless model from April 2023, hence the preference for direct debits.

8. Reminder Letters

Shropshire Council operates a single reminder letter policy.

Where a customer fails to pay the charges a debt reminder letter will be issued 10 days from the due date of the invoice.

The reminder letter gives customers or their representative(s) the opportunity to discuss the reasons for non-payment and their individual circumstances with the Council within 7 days of the invoice date. The contact details are provided on the invoice.

In the instances of reminder letters for deceased service users this is identified in the Council's Finance Ledger system and an appropriate worded reminder letter is sent to the personal representative(s) of the estate.

9. Invoices in query or dispute

A debt is in dispute where the debtor believes that the charge is incorrect.

If an invoice is disputed, then the nature and reason for the dispute would need to be made in writing to the Financial Assessment Team within 14 days from the date of the invoice for the dispute to be considered. The Council will respond to the dispute within 14 days of receipt. Any disputes received outside of the 14-day timescale would not be considered unless there is an exceptional reason for being unable to dispute an invoice within the given timescale.

10. Assistance Available to Customers

The Debt Recovery team cannot offer advice on entitlement to benefits, discounts and exemptions but will direct a debtor to local organisations who can offer advice on debt management such as:

- The Money Advice Service.
- The Citizens Advice Service.
- Age Concern Advocacy.

Adult Social Care practitioners will have explained to the individual or their legal representation at assessment and review stages that there is a financial assessed contribution charged if funded care is arranged. Where an individual believes this is not an amount they can afford, a financial reassessment and evidence of additional disability related expenditure can be presented to be considered. Practitioners continue to discuss with individuals the charging policy, legal framework for charges and that all charges need to be paid as invoiced.

11. Instalment Plans

The Corporate Debt Recovery team have sole responsibility to agree payment beyond the Council's repayment terms or instalments as repayment of sundry debt. Where customers evidence that payment of outstanding debt due to the Council cannot be paid in full this will be considered on merit on a case-by-case basis.

The requirement will be discussed with the customer, or their representative(s) and the instalment plan mutually agreed with respect to ongoing charges for care. The preferred method of payment would be Direct Debit should the customer have the facility to do so.

A letter will be issued detailing the customers agreed payment plan, if the customer falls behind with payments a reminder will be issued 10 days after the due date of the instalment. Should the customer default with their instalment plan on more than 2 occasions the amount becomes payable in full immediately and the ability to pay by instalments is removed.

12. Referral of Debt to Recovery Agent (DRA)

The local authority must act reasonably in terms of debt recovery, and therefore possible reasons for non-payment must be taken into consideration before referral to the Council's Debt Recovery Agent (DRA).

Checks carried out will include:

- Ensuring the invoice address is accurate
- Dispute resolution
- Capacity check

If after these checks have been completed the Debt Recovery Officer is satisfied that the invoice remains outstanding on a basis of 'Can pay won't pay', the account is then referred to the DRA.

The DRA will then make further attempts to contact the service user and/or representative using information provided to them by Shropshire Council via email, post and telephone.

If all methods of communication have been exhausted by the DRA and payments still not forthcoming this is then returned to Shropshire Council for a decision on further action required.

13. Referral of Debt for Legal Action

After all the other options have been exhausted, and the debt remains unpaid, the local authority may seek to recover the money through the County Court.

Before any legal proceedings are commenced the Debt Recovery Officer will again assess the proportionality of any further recovery action through the Court in line with Care Act guidance. This could include, credit checks, and further discussions with service areas.

Following these checks and if the Debt Recovery Officer is satisfied the amount is still outstanding on a basis of 'Can pay won't pay', Court proceedings can commence.

The Assistant Director – Adult Social Care and Housing will authorise action to be taken to recover the amount due which will include the Adult Social Care legal referral form which would be for consideration through the County Court and or High Court.

Under exceptional circumstances and if applicable, Shropshire Council may consider taking possession of the property and forcing its sale to discharge the debt. Any decision to force sale of a property has to be approved by the Executive Director of People Directorate.

14. Recovery of Debt – Deceased Service Users

Once notification of a date of death of a service user is received, the Debt Recovery team will notify the personal representative(s) of the balance due from the estate in a timely manner, in writing by either email or post and within the 6 year statute limitation period under the Care Act 2014.

The Council will suspend Debt Recovery on accounts where notification is received from the personal representative(s) that Grant of Probate/Letters of administration are being applied for.

The following will require approval by the Executive Director of People Directorate:

- In the absence of a personal representative(s) of the estate and providing it would be economically viable to do so, in accordance with the Civil Procedure Rules 19.8, Shropshire Council will bring a claim against 'the estate of' the deceased and apply to the court for an order appointing them to represent the estate of the deceased in the claim followed by the sale of property, if applicable.
- In circumstances where there is a personal representative(s) of the estate but they are refusing to co-operate/administer the estate and providing it would be economically viable to do so, in accordance with the Civil Procedure Rules 19.8 Shropshire Council will bring a claim against 'the personal representatives' of the deceased.

15. Deferred Payment Agreements (DPA)

Where a service user is in a permanent residential placement, who own a property but have capital under the threshold, they have the option to apply for a DPA. This is when a legal charge is registered against the property land title and the cost of care is deferred against the property until such time that the property is sold or the service user passes away.

The charges will defer in the Council's Social Care finance system and upon date of death or sale of the property an invoice is raised manually using the Council's Finance Ledger system, for the cost of the deferred amount of care plus interest (if applicable), and once paid the legal charge is removed.

A personal representative(s) has 90 days from date of death in which to repay the deferred amount due from the estate. After the 90 day period if Shropshire Council concludes that the personal representative(s) is not taking active steps to repay the debt Shropshire Council will enter into proceedings to reclaim the amount owed. As detailed in point 14 above.

16. Can Pay/Won't Pay

Where a service user has been assessed as having sufficient income to enable payment of invoices raised but is refusing to pay, and the checks as specified in paragraph 12. and 13. above have been completed, then consideration will be given as to the next steps to take. As a general rule the Council will take any necessary action to recover the sums due to it unless it would not be economically viable to do so. Consideration will also be given to what the result of such action would achieve to remedy payment of accrued arrears as well as the reasoning why such repayments have been refused including consideration of the Council's safeguarding policy and of chapter 14 of the Care and support statutory guidance.

Shropshire Council will need to take action to prevent non-payment of ongoing/future invoices which will be discussed and approved by the Executive Director of People Directorate.

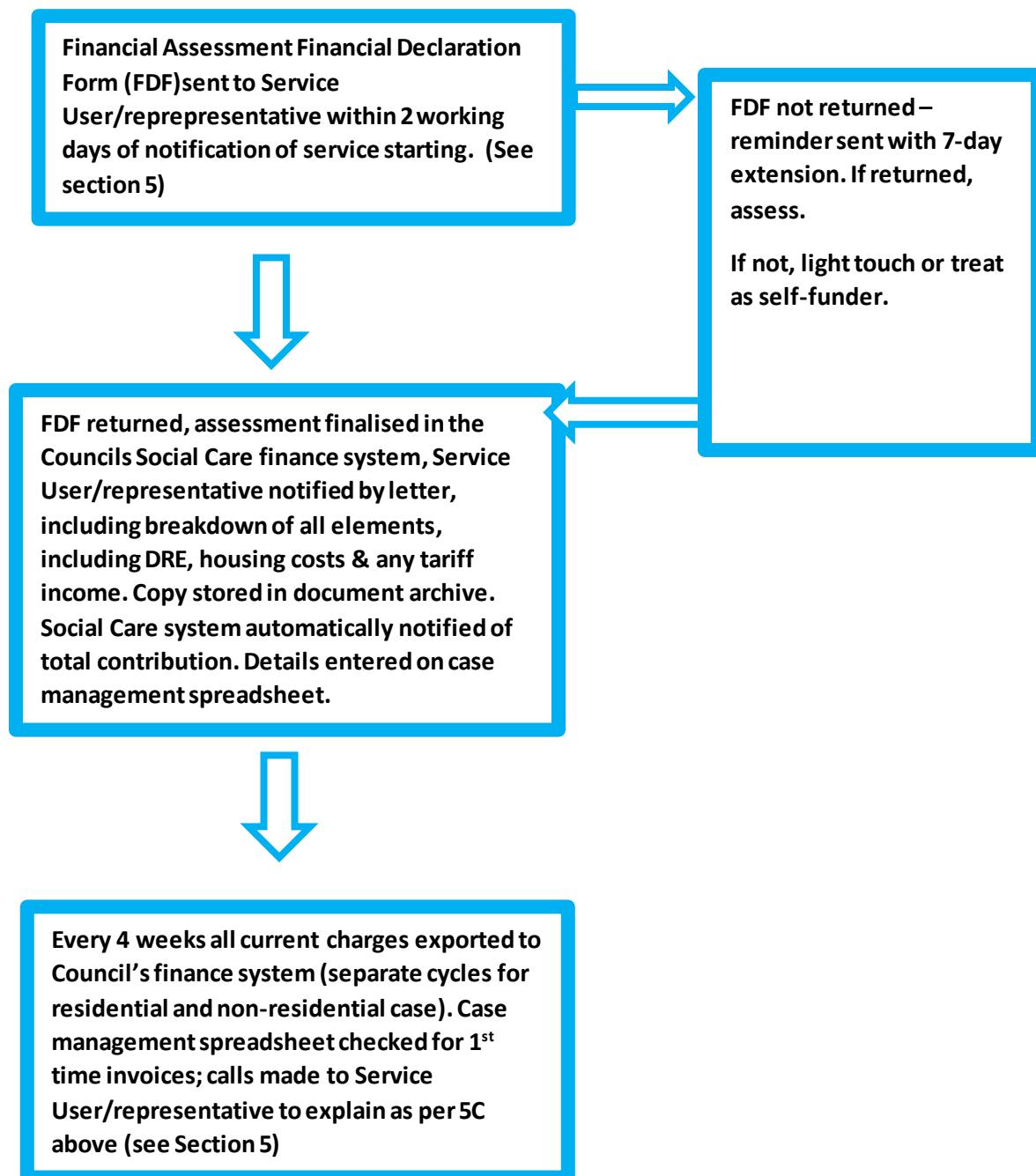
17. Can Pay/Won't Pay – Power of Attorney/Deputy

Upon a review of the reasoning of why a payment has been refused in consideration of the provisions of paragraph 16 above including any potential safeguarding assessment and information arises that may or does suggest or indicate that the adult may be subject to suspected forms of financial abuse, including undue influence or a misuse of power, please refer to the Statutory Guidance Framework: Controlling or Coercive Behaviour in an Intimate or Family Relationship. Such forms of financial control include but are not limited to powers of attorney.

Where the Council, following such a review are on notice of potential financial abuse, and capacity and vulnerability are evident due consideration should be given to the Council's safeguarding policy and its obligations and statutory duties including but not limited to referrals to Office of the Public Guardian. Where such factors mentioned above are evident or exist further consideration, taking into account the circumstances, should be given in respect the effectiveness of the recovery of outstanding payments from the affected adult.

Appendix A

Charging Process



Appendix B

Debt Recovery Flowchart

