



City of Westminster Cabinet Member Report

Decision Maker:	Cabinet Member for Finance and Council Reform
Date:	15 March 2024
Classification:	General Release
Title:	Debt Recovery of Adult Social Care (ASC) Care Contribution Debt
Wards Affected:	All
Key Decision:	Yes
Policy Context:	Fairer Council
Financial Summary:	The losses arising from unpaid debt can be met from the provisions made in the accounts, the strategy seeks to relieve pressures on the provisions and increase Adult Social Care cash income to support further care services.
Report of:	Executive Director of Finance and Resources

1. Executive Summary

- 1.1 Unpaid care contributions have always been the largest aged sundry debtor group. The Council has historically pursued ASC client contribution debt up to, but not including civil court action directly against the client (service user). Some clients liable to contribute towards the care they receive, are knowingly not paying debts, comfortable in the knowledge that the Council will not take legal proceedings against them.
- 1.2 The annual billing to ASC clients in respect of their care contributions is approximately £6.7m. Aged ASC debt (ie over a year old) at 31/03/2023 was £2.27m which represented 79% of total aged sundry debt across the council.

2. Recommendation

- 2.1 That where there is no impediment to the client making payment; and where efforts to encourage the client to engage and settle debts have been exhausted, legal action be undertaken to pursue debt through the County Court, subject to the joint agreement of the respective Executive Directors for Finance & Resources and Adult Social Care & Public Health or their delegated representatives (Director of Revenues & Benefits / Bi-Borough Director Adult Social Care).

3. Reasons for Decision

- 2.1 The Council will have exhausted the prescribed routes to encourage ASC Care clients to engage with it to settle their unpaid care contributions. The contributions will have been assessed in line with the Care Act at the point the client seeks care services from the Council. There will be no other option other than to take legal proceedings or to write off as a bad debt.
- 2.2 The consequence on the Council of writing off debt due simply due to service users' refusal to pay can be far reaching and adversely impact the Council's ability to continue to provide Adult Social Care services. The Council cannot and would not cease providing services to bad debtors simply due to their refusal to pay their assessed contributions. The Council also has a duty of fairness to all ASC clients assessed to contribute towards their care, to ensure all clients pay their contributions, and not only those clients who willingly co-operate and pay their invoices.

4. Background

- 1.1 The Care Act 2014 provides a framework for local authorities to assess the financial contribution each client may be required to make in receiving Council care services. The assessments are carried out by the ASC Financial Assessment Team and follow a standard template that ensures the accuracy of the resultant financial assessment.
- 1.2 The financial assessments are based on income, capital above a threshold and necessary outgoings, including any additional expenditure required to manage a disability, known as Disability Related Expenditure (DRE) which is agreed by the Care Manager. The Financial Assessments are designed to be affordable based on individual financial circumstances and in line with the Care Act.
- 1.3 A review of ASC aged debts was undertaken with a view to understanding the underlying causes for the high volume and value of aged debt. This resulted in a review covering the end-to-end ASC processes, including, and commencing with, the first contact by the client requesting care services.
- 1.4 A number of recommendations were raised and those implemented include:
 - Better informing of clients (service users) and their families at the outset, at the point of seeking care support from the Council, that care contributions will be due unless assessed otherwise; better information disseminated by way of leaflets and better designed care forms (completed by the Care Managers)
 - Improved Financial Assessment forms that seek to ensure all relevant and accurate client information is captured and that basic details are checked again before setting up the client charging form
 - Protocols agreed with the Financial Assessment Team to ensure estimated assessments for full cost charges are issued only after reasonable efforts to elicit co-operation from the service user.

2 Current situation

- 2.1 Many aged debt cases reach an agreed way forward after significant effort by the ASC Debt Recovery Team. However, there are a growing number of clients who will not engage or propose reasonable debt repayment plans. In those cases, ASC Care Management is consulted to understand any obstacles to clients engaging with the ASC Debt Recovery Team and settling debts. Subject to any other factors, where refusal to pay is simply a client's decision, the only option to move forward is court action to secure the debt via an order against the debtor.
- 2.2 Obtaining a County Court Judgement is likely to trigger payment or agreement to a payment arrangement. However, if necessary, the judgement can be enforced, e.g. the debt can be escalated to High Court for a charge to be made against a property or an insolvency action could be commenced.
- 2.3 We have previously canvassed opinion amongst local authority ASC Debt Recovery Teams on whether their local authorities take legal action against service users directly for non-payment of debt. We received 13 responses, 7 of which were from London Boroughs. Of the respondents, all bar one took legal action and the remaining one local authority is reviewing its strategy to propose the same.

6 Proposal

- 6.1 For outstanding ASC debts, where care managers deem there are no mitigating factors preventing debt from being collected, the client refuses to engage with debt recovery officers or with a reasonable payment plan, *and all protocols designed to elicit engagement and payment have been followed and failed*, that civil debt recovery action will be commenced through the County Court process.
- 6.2 It is proposed that for each case proposed for legal action, the following steps will have been followed:
 - All dunning (recovery) bespoke letters and phone calls have been made (attempted)/ issued, ie demonstration that sufficient attempts at contact have been made.
 - Where the client does not engage, there is consultation with ASC Care Teams, to understand any impediment to responding to correspondence/ making payment, including whether the client potentially lacks capacity (in which case a referral will be made to Safeguarding).
 - Attempts to engage with the Next of Kin (NoK), where the client has authorised the NoK to be involved in their care decisions and financial matters.
 - The client does respond but refuses to pay, the client will be offered mediation where all attempts to encourage payment have failed.
 - Where all efforts have failed, where there is no impediment and the client simply refuses to pay or engage:

- the Head of Service for the Financial Assessment Team and internal Legal will be consulted to confirm legal action i.e., referral to County Court can be made.
- the managers of the care management team will be consulted with the proposed action of last resort.
- the decision to pursue court action will require joint agreement from the Executive Director of Finance and Resources and the Executive Director for Adult Social Care & Public Health or their deputies (Director of Revenues & Benefits and Bi Borough Director Social Care).

6.3 Civil debt recovery (submission to County Court) will be undertaken by the Council's internal legal teams.

6.4 We estimate that we could have between 5 - 10 cases per year where we would have no remaining options other than to take legal proceedings against the service user themselves.

7 Legal Implications

7.1 The Care Act introduced a new 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. New powers were provided under Section 69 of the Act that provides equal protection to both the local authority and the person. Section 70 of the Act provides a local authority 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.

7.2 Local authorities must 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 the Act. Given this, a local authority will wish to consider all other reasonable avenues before issuing County Court proceedings. The Council should have regard to the [Practice Direction – Pre-Action Conduct](#) guidance published by the Ministry of Justice in this regard. It needs to properly consider alternatives to issuing legal proceedings in all cases. These include:

Mediation, where an independent third party assists those involved to reach an agreement. This can be carried out by a professional mediation service but can also be carried out by anyone who is not involved in the issue, such as an independent social worker or a local voluntary organisation. It is important to understand that it is the people involved, not the mediator, who decide the course of action;

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. Local authorities should be aware that arbitration is usually binding on both sides and therefore cannot usually take the case to court after the arbitrator has made a decision.

7.3 The Cabinet Member Terms of Reference delegate the powers of this decision to the Cabinet Member. In accordance with Paragraph 33.12 of the Council's Access to Information Procedure, this proposed key decision was entered in the Forward Plan on 28 March 2023 and the necessary 28 clear days' notice has been given. A period of five clear days - the call-in period – must elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

8 Financial Implications

8.1 The relevant court action will initially be undertaken by the Council's Legal Services and the cost of the service will be a debit to the Support and Control cost centre budget, with the aim that any legal costs are also recovered from the client.

8.2 Any additional income collected under this process will reduce the level of debt provision held by the Council and therefore will release additional income to the Council's General Fund.

8.3 ASC clients are the Council's largest sundry debtor group, with approximately 1100 clients being invoiced monthly, for a total of approx. £560k p/m, around £6.7m p/a. The debt is consistently the single highest group of aged sundry debtors over a year old by volume and value.

8.4 The table below shows the total sundry debt for each of the last three years and the amount of ASC debt within each year's total. Although the debt appears to be reducing in absolute terms, there have been debt write offs of approx £891k in 2021/22 and £254k in 2022/23. Of the total write offs for both years, £769k was due to depleted estates for deceased clients..

8.5 The risk of not taking legal action is that the ASC client service user community share their successes of non-payment, increasing the risk that currently compliant service users withdraw co-operation and payment.

		Total debt £	ASC as % of total	Over year old debt £	ASC as % yr. old
As at 31/03/2020	All debtors	£27,728,361		£3,262,896	
	ASC debt	£3,901,805	14%	£2,319,580	71%
As at 31/03/2021	All debtors	£26,604,821		£5,898,099	
	ASC debt	£4,360,745	16%	£3,170,721	54%
As at 31/03/2022	All debtors	£32,385,559		£4,552,655	
	ASC debt	£5,195,316	16%	£2,740,281	60%
As at 31/03/2023	All debtors	£23,899,700		£2,876,545	
	ASC debt	£4,835,749	20%	£2,261,879	79%

8.6 It can be seen from the above table that our current restricted recovery processes for ASC debt is resulting in a disproportionate percentage of ASC debt remaining outstanding compared with all other sundry debt. Currently 79% of the total debt over a year old relates to ASC debt. It is hoped that the proposed change to the ASC debt recovery process as outlined in this report will significantly improve the position.

9 Carbon Impact

9.1.1 There will be no carbon impact.

10 Outstanding Issues

10.1 There are no outstanding issues.

If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:

Martin Hinckley, Director of Revenues and Benefits

APPENDICES

Appendix 1 – Example cases

BACKGROUND PAPERS

None

For completion by the **Cabinet Member for Finance and Council Reform**

Declaration of Interest

I have no interest to declare in respect of this report.

Signed: _____ Date: 15 March 2024

NAME: **Councillor David Boothroyd**

State nature of interest if any

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(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled.

Debt Recovery of Adult Social Care (ASC) Care Contribution Debt

Signed

Cabinet Member for Finance and Council Reform

Date ...15 March 2024.....

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal & Democratic Services, Executive Director for Finance and Council Reform and, if there are resources implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.