



Cyngor Castell-nedd Port Talbot  
Neath Port Talbot Council

# **Adult Services Debt Management and Recovery Policy**

## **August 2019**

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## 1. Introduction and Background

Under the Social Services and Well-being (Wales) Act 2014 ('the Act'), and the Regulations and Codes of Practice issued under the Act, Neath Port Talbot Council ('the Council') has a charging policy under which it charges, in the manner and to the extent prescribed by regulations and guidance, for the provision of care and support to those in need in the County Borough.

In the interests of good financial management and accountability, the Council needs to demonstrate to our residents, clients, elected members and council tax payers that it collects all sums due as a result of the Council meeting a person's eligible care and support needs, from whatever source, as effectively and efficiently as possible.

This policy describes the approach that the Council will take in managing and recovering sums due to the Council in respect of residential and non-residential care and support.

Effective financial management is fundamental to being able to fund the quality of services the Council provides. The best method of debt collection is the prevention of debt arising and this policy covers both prevention and recovery.

***The policy should be read in conjunction with NPTCBC's Financial Protocol, and Residential and Non-Residential Care Charging Policy.***

### 1.1 Key principles of the policy

This policy will adhere to the following principles:

- Under the Council's Charging Policy every service user who has been assessed as being liable and able to pay towards the cost of their support will be required to pay a charge
- Prevention of debt and arrears; prompt billing, collection of money due, affordable repayment plans and early intervention when a service user is in arrears
- Where a debt has been incurred by a service user, proper investigation of how it has arisen, and consideration both of the extent to which recovery is appropriate and of all reasonable means of recovery
- Provision of a legal framework to enable legal enforcement, where necessary, to recover debts.

## **2. Legal and Policy Framework**

This policy provides a framework for the recovery of debts where appropriate.

This policy complies with the Social Services and Wellbeing (Wales) Act 2014 and the Part 4&5 Code of Practice (Charging and Financial Assessment) Annex F, dealing with the recovery of debt and deprivation of assets. No part of it is intended to conflict with the duties placed upon the Council by those documents.

Section 59 of the Act provides local authorities with the power to impose charges for care and residential services.

The general provisions governing a local authority's recovery of a debt, including from a third party where a person has transferred assets to them in order to avoid paying charges for care and support, are set out in Section 70 of the Act which deals with the recovery of charges generally, Section 71, which deals with the creation of a "charge" over an interest in land, and Section 72, which deals with the specific issue of the transfer of assets. The Code of Practice sets out duties concerning investigation into how a debt has arisen and how it might be repaid.

### **2.1 Supporting policies**

#### **Equalities**

Application of this policy is in accordance with the Council's Strategic Equality Plan. The Council will take into account individual access, communication and support needs to support equality of access and service delivery.

#### **Mental Capacity Act 2005**

Application of this policy is in accordance with the Mental Capacity Act 2005. As a matter of law, all service users are assumed to have capacity unless it is established that they lack capacity. In addition, all practical steps will be taken to ensure that a service user is supported to arrive at their own decisions.

#### **Residential and Non-residential Care Charging Policy**

Application of this policy is in accordance with the legal requirements of the Act, the regulations made under that Act, and Parts 4 & 5 (Charging and Financial Assessments) Code of Practice which allow the Council to use its discretion under the Act to impose a charge, or set a contribution, towards the costs of

social care/services, and will do so, in line with the requirements of the Act, and how that charge should be calculated.

### **Care and Support (Deferred Payment) (Wales) Regulations 2015**

Application of this policy is in accordance with the Care and Support (Deferred Payments) (Wales) Regulations 2015, whereby a service user who has an interest in an eligible property and meets the requirements of the Regulations must be offered the choice of meeting part or all of the cost of care and support through a Deferred Payment Agreement (DPA).

### **3. Financial Assessments**

An assessment of the service user's ability to pay for chargeable services, is undertaken by a member of the Financial Assessments Team. The overarching principle is that people who are asked to pay a charge, must only be required to pay what they can afford in accordance with regulations, and they must not be charged more than the actual cost incurred in providing/arranging their care and support. See **NPTCBC's Residential and Non-Residential Care Charging Policy for further details.**

### **4. Prevention of debt**

The best method of debt collection is the prevention of debt arising in the first place. In order to facilitate this we will promote the use of direct debits as the preferred method of payment for Adult Social Care and support services. With regards to Residential Care, assessed client contributions will generally be collected by the care provider. A Deferred Payment Agreement (with regards to Residential Care) can be offered to clients where a property is included in the financial assessment, and the requirements of the Regulations are met (**see NPTCBC's Deferred Payments Policy for further details**).

### **5. Debt recovery**

All people receiving care and support services are financially assessed to ascertain what they should pay towards the cost of provision and the charges made should be within the means of a service user to pay. Therefore there should be no reason for invoices to be unpaid. However, service users may be elderly, vulnerable or lack capacity to understand charges, so every unpaid invoice needs to be investigated to understand the reason for non-payment. The investigation will include one or more of the following:

- contacting the service user or their representative in order to understand the reason for non-payment, if any;
- examination of the original financial assessment to ascertain the accuracy of the charges; and
- contact with care managers, social workers and other individuals who may have a relationship with the service user

The investigation will enable the Council to gain a complete picture of the circumstances surrounding non-payment. If it is concluded that the service user has the ability to pay a charge and there are no exceptional extenuating circumstances, recovery of the debt will normally be sought.

When considering whether and how to instigate debt recovery, the Council will explore the range of options available to recover the debt. This is to ensure that the appropriate method is chosen without undue expense to the Council or undue impact on the service user concerned. This is particularly important should a debt ultimately become subject to court proceedings as the Court will want to consider what alternative courses of action have been taken by the Council before Court action was sought. This could include, but are not limited to:

- issue of reminders
- negotiation of deferred/instalment payment plan
- commencement of legal proceedings

### **5.1 Referral to the Safeguarding Team**

At any point during the income/debt collection process, concerns may arise that an individual acting as financial representative and responsible for paying the charges on behalf of the service user may not be administering the finances appropriately. In cases such as this it will be appropriate to refer the case to the Adults Safeguarding & Quality Team for the investigation of any potential financial abuse.

Each arrears case will be considered on an individual basis before a referral is made.

## **6. Legal proceedings through the County Court**

Under Parts 4 & 5 of the Code of Practice (Charging and Financial Assessment) Annex F Recovery of Debt and Deprivation of Assets, court proceedings should be considered a last resort and only after having exhausted all other reasonable options.

### **6.1 Decision to commence legal proceedings**

The decision to commence legal proceedings for the recovery of an unpaid debt, and the proportion to be recovered, will be taken by the Head of Adult Services or Senior Officers nominated by him or her from time to time. Where approval is declined, the debt will be submitted for write off. Any court proceedings issued on behalf of the Council must be issued in conjunction with and in the name of the Head of Legal Services.

### **6.2 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 2005 provides a framework for assessing a person's mental capacity and determining their best interests if they lack capacity to make a decision.

### **6.3 Enforcement Options**

Once a County Court Judgment has been obtained, the Council will consider all enforcement options available through the legal process, including:

- Warrant of execution leading to bailiff action undertaken by NPTCBC approved debt collection agency
- Attachment of Earnings Order
- Charging Order
- Petition for Bankruptcy
- Third party debt order

### **6.4 Circumstances where repayment has stopped**

Where terms for repayment have been agreed with a service user as an alternative to court proceedings, or where the Council has obtained a court judgment, and the service user (or their representative) has complied with the

terms but then stops making payments, the Council will investigate the reason for this. Dependent upon the outcome of the investigation, a variation on the amount to be repaid or in the rate of repayment may be appropriate.

Reassessment of how much the service user (or their representative) should be required to pay may also arise if there has been a change in circumstances. In the absence, however, of any good reason for payments having ceased, and of sensible proposals to re-start, then the Council will generally seek to enforce payment through court action as per the original judgement and timeline, and/or consider alternative means of enforcement.

## **7. Debt Write Off**

The Head of Adult Services will recommend the write-off of sums where recovery is unlikely or is not considered cost effective. Debt identified for write off will be in accordance with the Council's write off procedure.

Any such debts written off will be funded from the Adult Services budget.

All write-off recommendations will be reported by the Head of Finance to the Cabinet (Finance) Sub Committee.

## **8. Responsibilities**

### Financial Assessments Team

- Calculate the service user's liability to pay a charge for services
- Signpost service users to applicable support services (e.g. to ensure available income is maximised)
- Contact service users or their representative to determine why payment has not been received
- Where appropriate visiting officer to meet with service users (including Joint Visits with Care Management) to discuss non-payment, clearly stating that failure to pay the outstanding amount due may result in legal proceedings to recover the debt
- Refer debts to Social Services for agreement on further action

### Care Management Team

- Signpost service users to applicable support services (e.g. to ensure available income is maximised)
- Attend joint meetings with visiting officer

### Senior Management Team

- Having considered the facts in individual cases, make the decision on actions for debt recovery including possible legal action
- Recommend the write-off of sums where recovery is unlikely or may not be considered cost effective

### Corporate Services - Legal

- Advise on all legal issues arising in respect of pursuing outstanding debt
- Upon authorisation and receipt of instruction together with the necessary evidence, to commence legal action to recover outstanding debt.
- In respect of probate matters, upon authorisation to instruct specialist lawyers to commence legal action to administer the estate of the deceased

### Corporate Finance – Debtors Team

- Issue invoices, reminders/final demand notices
- Provide payment advice to service users and their representatives
- Review all debts over 90 days overdue
- Set up any Instalment Plans and monitor continuation of these payments

## **9.1 Retention of supporting documents**

All documentation which supports the client's contribution will be retained manually and/or electronically for at least six years in case the service user or their representative defends any legal recovery action.

## **9.2 Policy review**

This policy will be reviewed biennially.

## **9.3 Glossary**

- Care Co-ordinator / Care Manager / Social Worker / Community Wellbeing Officer – person appointed by Social Services to coordinate/undertake care needs assessments, financial assessments and care packages for individuals presenting with social care need
- Client / individual / service user – person who has an assessed social care need
- NPTCBC – Neath Port Talbot County Borough Council (or 'the Council' or 'local authority' or 'Social Services')

## Appendix A - Debt Recovery Process Flowchart

