



Adult Social Care and Health

Debt Management Procedure

Version 4

Version: 4 FOI Status: Public	Debt Management Procedure Derbyshire County Council Adult Social Care	Originally Issued: March 2016 Issued: July 2023 Review Due: July 2025 Author: Ben Marsh
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Contents

Contents	1
Procedure	2
Legal Basis	2
Clients Experiencing Difficulty in Making Payment of their Contribution When Contributions are Not Paid	3
Approval History	5

If you would like to make any comments, amendments, additions etc please email
ASCH.adultcare.policy@derbyshire.gov.uk

Please note the following procedures are linked to this procedures document:

- Co-Funding for Non-Residential Care Services
- Disputed Financial Assessment Procedure
- Financial Contribution Review Procedure
- Compensation for Personal Injury
- Contribution Levels and Capital Bandings

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Procedure

Debt management is a crucial aspect of the county council's financial obligations in relation to the administration of public funds.

The collection of assessed contributions is crucial to Adult Care to help maintain and develop services for vulnerable people.

The reasons that debts occur can be many and varied and Adult Social Cares Debt Management Procedure has been designed to support clients who find themselves in financial difficulties, through a supportive and incremental route which will take account the client's circumstances.

Only where no reasonable agreement can be reached for payment of outstanding monies will court action be considered

Legal Basis

Legal Basis

Sections 14 and 17 of the Care Act provides local authorities with a single framework for charging for care and support. It enables a local authority to decide whether or not to charge a person when it is arranging to meet a person's care and support needs, or a carer's support needs.

Where a local authority arranges care and support to meet a person's needs, it may charge the adult, except where the local authority is required to arrange care and support free of charge.

Section 69 of the Care Act provides any sum due to a local authority is recoverable by the authority as a debt due to it.

However, sub section (1) does not apply in a case where a deferred payment agreement could, in accordance with regulations under section 34 (1), be entered into, unless-

- the local authority has sought to enter into such an agreement with the adult from whom the sum is due, and
- the adult has refused.

A sum is recoverable under Section 69

- in a case in which the sum becomes due to the local authority on or after the commencement of this section, within six years of the date the sum becomes due
- in any other case, within three years of the date on which it becomes due. Where a person misrepresented or fails to disclose (whether fraudulently or otherwise) to a local authority any material fact in connection with the provisions of this Part, the following sums are due to the authority from the person
- any expenditure incurred by the authority as a result of the misrepresentation or failure, and
- any sum recoverable under this section which the authority has not recovered as a

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-------------------------------------	---	--

result of the misrepresentation or failure

The costs incurred by a local authority in recovering or seeking a sum due to it under this Part are recoverable by the authority as a debt due to it.

Section 69(2) of the Care Act specifies that where a debt has accrued and a person could be offered a deferred payment agreement (DPA) the local authority must offer the person or their attorney or deputy the option of repaying the debt through a DPA. Section 70 of the Care 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.

Section 423 of the Insolvency Act 1986 provides the local authority with additional routes to recover debts where a person has transferred or sold their assets to a third party that is at a price lower than the market value with the intention of putting those assets out of reach or prejudicing the interest of someone who may wish to bring a claim against that person.

Clients Experiencing Difficulty in Making Payment of their Contribution

Clients who are experiencing, or who due to a change in circumstances feel that they may have difficulty in making payment of their assessed contribution, should make immediate contact with the Fairer Contributions Team (FCT).

As part of an informal process, the FCT will consider the information and discuss with the client and/or their representative possible solutions which may include:

- assisting client to ensure that all due benefits, allowances and income used in the determination of contribution are in payment (including those recently applied for)
- a full detailed financial assessment in line with the basic principles and limits in accordance with the Fairer Charging and Fairer Contributions Guidance
- instalment payments for outstanding arrears
- alternative collection methods i.e. transfer from Net to Gross, differing payment frequency e.g. 4 weekly to weekly
- a waiver on the grounds of exceptional financial hardship

Where the client is making their contribution directly to their Personal Budget i.e. a direct payment, then the FCT will contact the client's care coordinator to inform them of the reduced income available for the purchase of support.

When Contributions are Not Paid

Stage 1

This initial formal stage of the Debt Management Procedure will be instigated where there is no identified resolution within the informal process above, or where there are

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-------------------------------------	---	--

2 or more invoice payments outstanding or where a single regular automated payment is not received e.g. a Direct Debit payment.

Initial internal checks will be undertaken by the FCT, which will include

- has client been notified of charge?
- has the service been provided?
- is the client not currently receiving service(s) e.g. suspend as in hospital?
- are they awaiting the outcome of an appeal/complaint?
- have arrears of charges arisen in the past – why/when/how resolved? (this may mean acceleration to later stages of this procedure if problems are repeatedly encountered i.e. promises to pay that never materialise)
- discussion with care co-ordinator and/or service provider (if appropriate and not breaching confidentiality)

Where the investigation of the above has not identified a reason as to why payment of the contribution(s) has not been made, the FCT will make contact directly with the client, or their representative, to ascertain:

- has payment been made (and may have been allocated to the wrong client)
- has payment been made, but only very recently (so has not credited the clients account yet)
- that the client thinks the payment has been made but there may be a problem with the bank instruction (e.g. bank account type cannot operate a Direct Debit)
- the reason why payment has not been made and when it can be expected
- where payment cannot be made the reason why and whether a revised financial determination is required or a waiver application may be appropriate
- is this a one off situation, and that ongoing contributions will be paid in full but the arrears will be collected by instalments

Any agreement reached between the client and the FCT, as to actions to be taken, will be notified to the client in writing along with the agreed timescales

Stage 2

If after 28 days payment or the actions agreed in stage 1 have not occurred, the Finance Officer (or their deputy), will review the actions and agreements taken to date.

The Finance Officer (or their Deputy), will make appropriate contact with the client or their representative to discuss the non-payment of contributions, or agreed actions, and endeavour to negotiate a satisfactory solution.

The client or their representative will be formally notified that should agreement not be able to be negotiated then stage 3 formal action, will be instigated.

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Stage 3

If payment or actions agreed in stage 2 have not occurred within the agreed timescales, the Principal Finance Officer (or their Deputy) will review the case.

The Principal Finance Officer, or their Deputy, having considered the case will make a decision as to:

- requesting the case is revisited at Stage 2 for additional communication, discussions, information or negotiation
- contact is made by the Principal Finance Officer, or their Deputy, with the client or their representative to discuss and clarify the case
- the client, or their representative, is notified that should the stage 2 agreement not be adhered to with 14 days, the case will be referred to the county council's legal services department for commencement of formal recovery action.

Stage 4

After 14 days if the debt is still outstanding and if there has been no communication from the client, or their representative, to explain why payment has not, or cannot, be paid or agreements made have not been adhered to, the Principal Finance Officer, or their Deputy, will instruct the county council's legal services department to commence County Court action.

Approval History

Approval and Authorisation History

Authored by Andrew Bartle	Finance Manager	March 2016
Approved by Graham Woodhouse	Service Director	March 2016
Authorised by Quality Assurance Group	Quality Assurance	March 2016

Change History

V2	August 2014	Andrew Bartle	Merging of FCT into CATS team to produce FACT team
V3	March 2016	Andrew Bartle	Updates
V3.1	Feb 2018	Andrew Bartle	Updates
V4	July 2023	Ben Marsh	Review