SURREY
COUNTY COUNCIL

Adult Social Care Select Committee
11 April 2013

Social Care Debt Update

Purpose of the report: Scrutiny of Services and Performance Management

The Adult Social Care Select Committee have requested updates every other meeting on social care debt management, but requested an additional report for the April 2013 meeting.

Introduction and Summary:

1. This report gives an update on social care charge raising practice and debt management. Both areas of activity aim to maximise income and reduce the level of uncollected social care debt. Updates are provided on actions being taken.

2. There was an increase during January (from £5.27m to £5.75m) in the headline figure of collectible debt outstanding (excluding that subject to legal action), though the position did not worsen in February. This increases the relevance of review programmes aimed at improving how the processes work:
   - Internal Audit are undertaking a review of the end to end process for assessments, raising charges, billing and collection. This is part of the 2012/13 audit programme, but it has recently been clarified that the work, which has just started will in fact take place in the 2013/14 financial year. It will document the systems and controls in place in the Financial Assessment & Benefits and Credit Control Teams and assess their effectiveness, providing both a 'health check' and a potential basis on which to consider any other improvements needed. That will include, for example, assessments, the promptness with which charges are raised, the way in which they are monitored, and collection processes. The Terms of Reference for the review are attached at Appendix 1.
   - ASC have initiated a Business Process Review of the social care assessment process – which feeds into financial assessment – linked to a Rapid Improvement Event with the report back event set for 12 April.

- A separate Rapid Improvement Event is being arranged for the first quarter of 2013/14, and will focus more specifically on the process leading from initial referral for social care to invoicing the client, seeking any improvements which can speed that up.
- The highest value new debts over the past year have been identified and analysis is ongoing to assess the circumstances in which these arose, as raising high charges retrospectively inevitably causes problems for collection.

3. The overall position is, therefore, of concern and so, as set out above, various review processes are being put in place.

Progress Update: Raising charges and Benefits Maximisation

4. The Financial Assessments and Benefits Service continues to bring into effect some of the benefits of moving to SWIFT financials:

- From February 2013, we were able to offer net direct payments to new direct payment recipients. This means that the assessment must happen early to enable the assessed charge to be deducted up-front with no risk of debt accruing on these accounts. We will be offering this optional facility to existing recipients in advance of the next quarter payment.

- We continue to undertake regular reconciliation between the provision of care and the financial assessment record to identify missing financial assessments and minimise backdating of charges. However, the reconciliations have highlighted an ongoing issue around the authorization process. As previously advised, an authorised provision of care must be recorded in the system before the financial assessment can be completed, delays in authorisations lead to a delay in completion of the assessment and the backdating of charges, and will have a corresponding impact on debt levels. The Business Process Review Group will be looking at the current authorisation process over the coming weeks to improve existing practice and reduce the delays.

- We are using the automatic facility in SWIFT to undertake the annual review of residential charges. The new benefit rates from 8 April 2013 have been applied to client records; people will be notified of the new charges and given the opportunity to provide any further change in circumstances. The first statement run for the 2013/14 financial year will reflect the new benefit rates, minimising the need for backdated adjustments.

5. The priority for 2013/14 is to move on from systems work to track the performance indicators for the FAB service, notably on benefits maximization and promptness of financial assessment.

6. A mail shot promotion for payment by direct debit was included in the February statement run and as a result 58 existing customers have changed their payment method. We will collect charges from 2,700 customers in March; the volume of collections in February was 2,640.

7. As previously stated, the SWIFT reconciliation process has identified new income for the council. This income relates to clients who have commenced receiving residential social care but have not been previously charged and as such this has a major impact from a debt recovery perspective. Clients are reluctant to pay high value retrospective bills, and inevitably, this leads directly to an increase in the value of the outstanding debt.

8. The number and time spent handling queries on financial issues and liaising with ASC colleagues to resolve them has increased. In response, a review of the Credit Control resource is underway. Experienced collection officers will be allocated to assist with these FAB/ASC related queries, to improve the timeliness of their decisions on cases and to concentrate on collection tasks. There may also be a shift of resource from general to care debt as part of this process given that it tends to be the most complex debt to deal with successfully. In addition, a team training event concentrating on telephone collection techniques took place on 15th March which was well received by staff.

9. Members were previously informed that the shared service centre (SSC) were examining the feasibility of piloting the pursuit of care debt under £5,000 through the 'small claims' track with selected cases being undertaken by SSC staff. SSC have now consulted with Legal Services (also in light of the value threshold for small claims rising from £5,000 to £10,000 from 1 April) and it has been agreed that care debt cases would generally prove too costly, complex and sensitive to be collected in this way.

10. The SSC Debt Recovery Officer has highlighted significant factors that contribute to the complexity of social care debt recovery:

    - the mental capacity of the client; so that it often becomes necessary to involve the Court of Protection or the Official Solicitor who then appoints a 'litigation friend';
    - the status of client's representative; as it does not automatically follow that they are personally liable for the debt, but they may have otherwise 'benefited' from use of the client's funds so may still be involved in a different way.
    - the risk of reputational damage to the Council if claims are issued inappropriately or at too early a stage.

    The above factors complicate the 'pre-action' stages, as well as the claim itself, adding to the time and costs attached to pursuing a case.

11. In particular, the 'small claims track' is designed for cases of low value where there are limited legal or factual issues in dispute, and so recovery of any costs incurred in bringing a claim is strictly limited. Care debt claims are currently issued by Legal Services only once they are satisfied on full compliance with the 'Protocol for Pre-Action Conduct' and, as they involve recovery of a "statutory charge", the claim itself requires a detailed explanation of the assessment and charging process, as well as pertinent aspects of the individual case history. This often requires complex drafting skills, with some cases requiring input from specialist counsel. After being issued, cases are then allocated as either "Fast Track" or Multi Track' cases, and Legal Services (and indeed the opposing party) can seek to influence track allocation by the Court based on both the value and the issues / complexity of the case. Legal costs may be recovered under either Track (but Fast Track is more limited than the Multi Track). By way of illustration, after a fully contested trial, the Council was awarded its legal costs in one case, amounting to £27,000. Equally, in obtaining a 'default judgment' (where no response the claim was received) and placing a charging order on a property, Legal Services were able to recover almost £2,000 in costs. Many negotiated settlements after issue also result in an agreed contribution being paid towards the Council's legal costs.

12. Evidently there are issues of complexity, political sensitivity and financial risk, as well as the inability to recover costs, to balance against any potential for achieving additional income. Legal Services would not support a 'Pilot' based on those risks, and which would potentially result in cases being referred to Legal Services after complexities arise which are outside the skills of SSC staff to deal with but which Legal Services may then have limited ability to influence. It has therefore been agreed that the focus of SSC staff will instead be given to resolving financial issues/queries (see para 7 above) which, in turn, should bring forward more referrals to Legal Services under the existing process, which Legal Services have the capacity to resource.

13. Since March 2012 to date care debt collected totaled **£35.23m** compared to **£35.22m** charges raised - showing a **100%** collection rate on that billed.

14. Since the last report total **unsecured debt has increased from £7.14m to £7.38m** as a result of a £0.52m reduction in unsecured legal debt currently in progress, offset by a £0.28m increase in other unsecured debt. **Secured debt has decreased from £7.36m to £7.26m** as a number of legal charges against property have been redeemed.

15. The latest figures show that during February 2013, **63.16%** of payments were received by direct debit **(**down 1.91 on the 65.07% rate reported to the Committee in February). Our target of 65% in the 2012/13 financial year is therefore being met, and this target appears likely to remain appropriate for 2013/14.

16. Currently **87.76%** of unsecured social care debt is less than two years old compared to February 2012 when the position stood at **90.27%**. Although

the February 2012 position was a little higher, that reflected a specific aged debt exercise carried out around that time. Moreover, there are always fluctuations during the year.

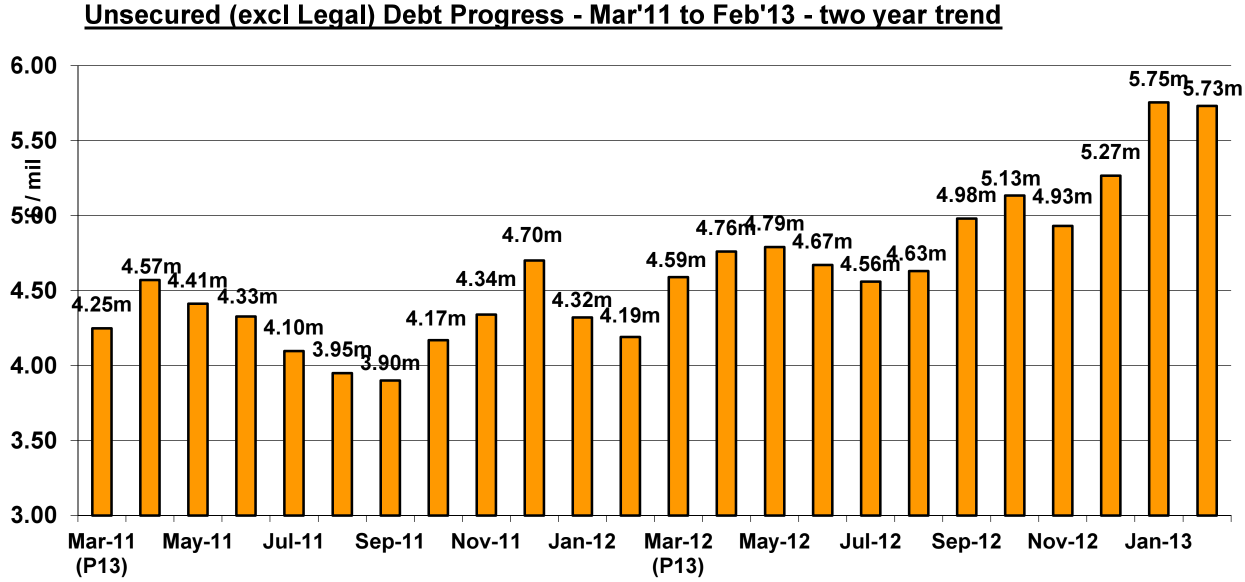
17. We continue to promote awareness and take-up of our "e" billing option amongst clients who pay by direct debit or electronically (eg by BACS or via the Council's website). Over 21% of clients currently receive their bill by email.

Debt Position

18. New debt of £3.05m was raised in February. The total debt on the system may be summarised as follows:

	£m
Less than 30 days old (including new charges raised, not yet overdue, not otherwise covered by this report)	**3.05**
Less than 30 days old, not yet overdue, but cleared (not otherwise covered by this report)	**0.09**
Secured debt	**7.26**
Unsecured debt	**7.38**
Total	**17.60**

19. Unsecured Social Care Debt currently stands at **£7.38m** of which **£1.65m** is classified as referred to Legal Services and remains as open cases (NB: A further £240k of debt classified secured against property and £9k of charges less than 30 days is also attributable to open cases with Legal Services, giving the overall balance of £1.9m referred to below within "Legal Update"). As at 28th February, 154 accounts (with balances over £75) have been written off in 2012/13, to a value of £428,692.This leaves a further collectable debt of **£5.73m** of which **£5.02m** is less than two years old.

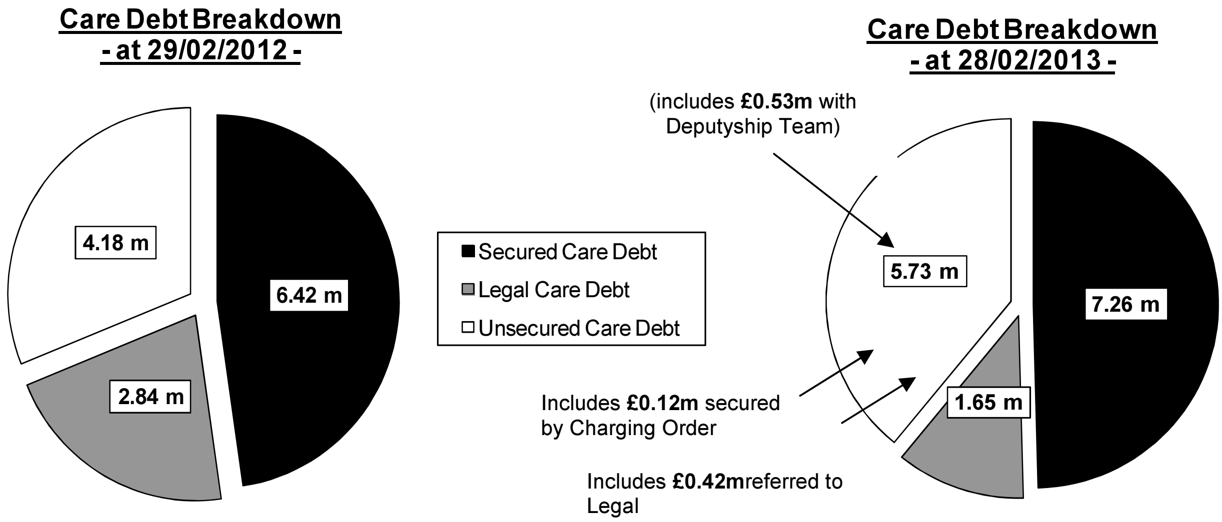


20. Of the collectible debt, £0.63m is monitored by the Adults Deputyship Team. The majority of the outstanding debt, £0.47m relates to just 11 accounts, two of which are pending probate, seven of which are with the Court of Protection pending the appointment of a Deputy or pending an application to the Court, one is under investigation to establish the person's true financial person and one account is being reverted to the control of the person now that she has gained capacity to manage her own financial affairs. Of the collectible debt, £0.63m is monitored by the Adults Deputyship Team. The majority of the outstanding debt , £0.60m relates to 14 accounts; 4 accounts (£150k) of which are with the Court of Protection or pending an application, 2 accounts (£40k) a solicitor has been appointed to deal with the person's finances, 2 accounts (£112k) pending the sale of a property, 1 account has been paid (£18k) and 5 accounts (£280k) are under investigation to establish the person's true financial person.

A further **£7.26m** is currently secured against property.

Debt Profile – February 2012 to February 2013 Comparison

21. The following graph demonstrates how the profile of social care debt has changed over the period.



Legal Action Cases Update to 28 February 2013

22. Since May 2008, 182 cases have been referred for legal action amounting to £4.9m at the date of referral. 55 cases are "open" with a current debt value of £1.9m.

23. £2.38m has been recovered and "banked" (£2.21m net of costs), with further sums due under instalment arrangements, secured by charging order, or otherwise agreed to be paid and not "in dispute":

Paid: £000	Due by Instalments £000	Secured by Charging Order £000	Not in dispute: £000	**TOTAL (Gross) £000**	**TOTAL (Net) £000**
2,376	39	163	540	**3,118**	**2,957**

In summary, £3.12m gross (£2.96m net) has been banked, secured or agreed to be paid.

Conclusions:

Financial and value for money implications

24. The more debt that is recovered, the less provision for bad debt ASC will need to make, therefore spending more on service users. It is vital that the County Council can continue to satisfy, to the best of its ability, the demands placed upon it and good debt-raising practice together with timely debt-management makes a major and positive contribution. The recent adverse trend is a cause for concern, and has led to the review actions set out in this report.

Equalities Implications

25. Charging for all Adults Care services is assessed against the ability to pay or contribute. This is a consistent process and is applied fairly, based on national guidance and local discretionary policy.

Risk Management Implications

26. Risk is mitigated by the maintenance of financial provisions in the Council's balance sheet, in the event of an estimated percentage of non-payments. Appropriate measures are now in place, which seek to eliminate and minimise as many risks as possible by continual process improvement, accountability and high-standards of administration.

Implications for the Council's Priorities or Community Strategy

27. Debt management is a high priority for the Council and this subject is now addressed in a more concerted manner at both member and officer levels particularly given the current pressures.

Next steps:

28. Members will be updated at future meetings on the outcome of the various review processes set out in paragraph 2 of this report. The Select Committee will continue to review progress at future meetings.

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Sources/background papers: SAP Reports