

3 MARCH 2021



ADULT SOCIAL CARE DEBT

Purpose of report: To update the Adults and Health Select Committee on Surrey County Council's Adult Social Care Debt position as at the end of December 2020.

Introduction:

1. Under the Care Act 2014, when a local authority arranges care and support to meet a person's eligible needs, the local authority may ask the person to pay a contribution towards the cost of providing that support, subject to an assessment of the person's financial circumstances. The current regulations include powers to charge for residential and nursing care as well as the power to charge for care and support provided in the community. If a local authority decides to adopt a charging policy, the regulations provide a broad framework for charging which must be followed.
2. Income from charging is an essential contribution to Adult Social Care's [ASC] budget to support the delivery of services to help people live and age well. The budgeted income from charging for the previous financial year April 2019 to March 2020 was £60.7 million. The actual income raised was £61.9m. This equated to 15.1% of ASC's total gross expenditure on care packages to support people's assessed eligible needs¹. The initial budgeted income for 2020/21 was £61.7m but the current projected income figure for 20/21 ASC is £57.6m. This reduction in income is a consequence of the pandemic and is explained in more detail in paragraphs 21-26 below.

The charging and collection process

3. The financial assessment, charging and collection process is undertaken by the Financial Assessment Team in ASC. The social care practitioner makes a referral to the team when it has been identified that the person is likely to

¹ It should be noted that the majority of assessed charges billed relate to Older People care packages (£48.9m of the total £61.9m assessed charges income in 2019/20). The amount of gross care package expenditure recovered through assessed charges is therefore much higher for care for Older People (29% in 2019/20) than other care groups (5.3% in 2019/20).

receive a chargeable service from ASC. The Financial Assessment team will usually offer a face to face visit to complete the financial assessment, as well as identify any missing benefit entitlements. Face to face visits have been significantly reduced in the last 11 months, however, we introduced an online financial assessment tool in 2017 and have encouraged people to use this option. The tool enables the person, their family or other representative to submit the assessment securely online and upload any necessary evidence. We are receiving between 160-200 a month online forms, equivalent to around 40% of the total number of new financial assessments.

4. The Financial Assessment team has access to the Department of Work and Pensions database CIS [Customer Information System] to support the financial assessment process. CIS holds details of the benefits paid to people. By accessing CIS, the team can gather financial information to complete financial assessments more rapidly. The team can also identify people who will not have to contribute towards their care and support due to low income and can then reduce the level of evidence needed from some people at an early stage in the assessment process.
5. Timeliness of assessments is an important part of the procedure to ensure that where possible, people are informed in advance of receiving support, whether or not they are required to contribute towards the cost of any chargeable care and the amount of that contribution. Only a small number of people are automatically exempt from charging for residential and nursing care arranged by Adult Social Care in accordance with regulations. However, around 47% of people receive their care and support at home free of charge because the assessment determines they have insufficient available income for charging purposes.
6. Charges are raised in the Adult Social Care finance system, known as Controcc and passed across to the corporate finance system, SAP, where an account is set up for the individual. The Business Operations Team, part of Orbis, is responsible for sending out the statements and banking payments. The responsibility for chasing outstanding debt transferred to Adult Social Care in 2018.
7. Reminders for non-payment are issued promptly in accordance with the following dunning (debt-recovery) cycle. Table 5 in Appendix A shows the volume of reminder letters issued by type.

Reminder letter 1 13 days

Reminder letter 2 30 days

Reminder letter 3 45 days

8. At the end of the dunning cycle, if there is no arrangement to repay the debt, the Care Act 2014 enables a local authority to make a claim to the County Court for a judgement order to recover the debt. Guidance issued under the Care Act requires a local authority to consider whether it is appropriate to recover the debt in this manner. In the period April 2020 to December 2020, 64 cases were referred to Legal Services for further recovery action or a legal view regarding the prospect of successful recovery of the debt. Further detail on the work of the Litigation Team is provided in paragraphs 17-18 below.
9. It is important to note that the majority of people pay their care charges promptly. In December 2020, the percentage of income received in comparison to the amount billed in the previous month was 105% (Appendix A Table 1 line 16) and the average amount income received over the twelve-month period was 103% (line 17). It is not possible to exactly state which period the payments in month relate to due to limitations on reporting form SAP but given that the collection figure is in excess of 100%, the income received will largely be both current income plus some debt recovery. This assumption is also reflected in the overall debt figures as detailed in paragraph 11 below, which show a reduction in unsecured debt.
10. The preferred method of collecting charges is via Direct Debit and we promote this by sending a Direct Debit instruction with every statement and reminder letter as well as discussing Direct Debit as a payment method at the outset. At the end of December 2020 64% of payments were collected by Direct Debit. This figure has remained fairly consistent over the years. For those people, who have regular care and therefore, regular bills, payment by direct debit is often preferred. However, when bills fluctuate because of changes in care, then it is understandable that people prefer to wait for adjustments to be made before settling their accounts.

ASC Debt position

11. The overall Adult Social Care debt position as at December 2020 is provided at Appendix A to this report. To illustrate the trend in debt, figures are provided for December 2018 to December 2020. The table shows that the total outstanding debt rose from £22.58m in December 2018 to £24.10m in December 2019 and then reduced to £23.86m in December 2020 (Appendix A Table 1 line 9). This is equivalent to a net increase of £1.28m over the two-year period. The level of debt due for payment, i.e. over 1 month old and excluding secured debt not yet due, is £17.87m (line 10). An aged debt analysis is provided in Appendix A - table 6 and the movement of debt is shown in table 7. However, these figures are estimated due to limitations with reporting accurate aged debt figures from the corporate finance system SAP and some assumptions have to be made

when calculating aged debt. We are investigating the options to address this issue with the replacement of SAP later this year.

12. Appendix A breaks down outstanding debt into different categories. It is important to note from this analysis that although total debt has increased by £1.28m in this period, this is due to an increase in secured debt and debt awaiting security. Total secured debt increased by £0.66m and debt awaiting security increased by £1.4m. Conversely total unsecured debt (excluding debt awaiting security) decreased by £0.79m.
13. Secured debt is debt secured with a legal charge, usually against a property. Historically, Local Authorities were able to register a legal charge to secure a debt without the agreement of the owner. This is no longer possible; the owner must now agree to the legal charge in every case. The usual route to securing a debt is through a deferred payment application i.e., a binding agreement to defer paying the debt in exchange for a legal charge on a property. The debt is settled when the property is sold. Compound interest can be charged on the debt at a national rate, currently 0.45%. Since December 2018, we have raised £172k in interest on live deferred payments and raised a further £50k in administration charges.
14. This increase in secured debt over the two-year period reflected both an increase in deferred payment applications and the conversion of some existing debt to deferred debt in keeping with the provisions of the Care Act. There were 72 Deferred Payment Agreement instructions in 2020 to the Legal Services Property Team, a reduction from 94 in 2019. This reduction is likely to be an impact of the new hospital discharge funding arrangements. Of the 72 instructions, 30 instructions are still active, that is, legal charges are not yet in place and 4 instructions are yet to be allocated. There are also 5 cases which remain active from 2019. The outstanding cases from 2019 are either chased regularly by the Property Team or there is an undertaking on file, however, the debt is yet to be secured.
15. From April 2019 to March 2020, the Legal Services Property Team have recouped £1.49m and £5,100 in legal fees for redemption matters and from April 2020 to date, the team have recouped £3.02m and £6,400 in legal fees for redemptions.
16. Write-offs of debt deemed uncollectable in the 2020/21 year to date (i.e. April 2020 to December 2020) amount to £1.37m in respect of 326 accounts. This compares to write-offs of £1.64m in 2018/19 and £1.49m in 2019/20. The write-offs were generally in respect of historic unsecured debt, with no prospect of recovery or debts deemed uneconomic to pursue.

17. As at the end of December 2020, the SCC Litigation team had 50 current referrals with a total debt value of £3.38m, an increase from £2.52m at the end of December 2019. Of these 50 cases, 29 cases related to deceased debtors. The Litigation team has had 64 matters referred in 2020. This contrasts with 34 referrals in 2019.
18. Of the 50 cases being held by the litigation legal team, 13 are currently in ongoing court proceedings. Of these 13 court cases, 10 relate to deceased debtors. The total value of the debt being litigated is £561k. Monies recovered over the past year by the team total £810k. This compares very favourably with 2019 when the team recovered £273k of historic ASC debt.
19. In addition to the above actions on larger debts, in the last six months, the Financial Assessment Team issued 17 'letters before action' for Money Claims Online, the small claims process for debts under £10k. This is a new approach for the team and will be used as a last resort when all other attempts to resolve matters have failed. Early indications are positive; of the 17 cases around half have either settled the debt, agreed a payment plan or are now engaged with the service, 2 claims are being defended and the other cases have raised concerns in relation to either the persons finances or capacity issues.
20. In March 2020, we held conversations with Judge and Priestley Solicitors who specialise in debt recovery services and intended to start a trial with them on the recovery of debt due from the estates of deceased residents with no probate. These plans were put on hold due to the pandemic and Judge and Priestley's capacity to take on new work. However, they were able to take on a small number of cases in September. We will review the progress on the existing cases in the spring and determine whether to continue with a further trial.

Impact of the Covid-19 pandemic on income and debt collection
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21. In March 2020, in response to the pandemic, the Government launched a temporary scheme whereby the NHS fully funded the cost of new and increased health and social care support to help facilitate prompt and safe hospital discharges until such time as all necessary assessments have been completed. This scheme came to an end on 31st August 2020 for new hospital discharges but was replaced by scheme 2 from 1st September, whereby the NHS fully fund the cost of post discharge recovery and care and support services for up to 6 weeks following discharge from hospital.
22. The impact of the temporary hospital discharge funding arrangements has reduced the number of people supported by ASC in 2020/21 and has led to a corresponding reduction in income and expenditure. Sadly, we have also seen

a higher number of deaths than usual, almost double in some months. Debt from estates awaiting probate in order to settle the debt has increased steadily month on month.

23. There has also been a reduction in income as a result of people cancelling their care because either they had the support of family carers or services have had to change because of the pandemic for example, the closure of day centres and other day activities. Without like for like replacement services, in some cases, people have declined to pay for alternative support.
24. The combination of these factors has resulted in a significant reduction in assessed charges income received so far and forecast for the remainder of 2020/21. As set out in the introduction, total assessed charges income in 2020/21 was forecast to be £57.6m in the end of December budget monitoring position compared to a total budget of £61.7m. £3.6m out of this £4.1m forecast shortfall relates to a reduction in assessed charges for care packages for Older People. The Older People care group has been most impacted by the new funding arrangements following hospital discharge and this is also where there has been the greatest number of deaths due to the pandemic.
25. In the 2020/21 year to date, there has been a greater reduction in care package expenditure than assessed charging income, and ASC is forecasting an underspend against its total 2020/21 base budget excluding the significant additional costs associated with pandemic.
26. A substantial proportion of the reduction in assessed charging income and reduction in care package expenditure in 2020/21 will be temporary. Clearly it is very hard to predict when society will return to more normal living from the current restrictions of the pandemic. However, we are working closely with our health partners to fully unwind temporary NHS funding of care packages following hospital discharge by the end of this financial year. Taking into account that many of these packages have and will become ASC funding responsibility, and combined with expected new demand for care, we therefore anticipate that the total number of people whose care is funded by ASC will increase back towards pre pandemic levels in 2021/22. As such we expect assessed charging income in 2021/22 to start to return to levels closer to the years prior to 2020/21, at some point, subject to any long-term changes to the Discharge to Assess model.

Conclusions:

27. The Financial Assessment team working closely with colleagues in Legal services and Corporate Finance, have together made some positive progress on the ASC debt position this year. The level of increase in debt of £1.28m over a two-year period reduction due to an increase in secured debt and debt

awaiting security and a decrease of £0.79m in unsecured debt (excluding the debt awaiting security) is very encouraging, as is, the significant increase in debt recovered by the Litigation team.

28. There are some ongoing challenges with delays in registering legal charges and in resolving cases awaiting probate. There are also unknowns around the impact of the Discharge to Assess model and whether this will be extended beyond March 2021 and if so, what this will mean for both our income and expenditure position and our ability to assess people promptly. However, there are good working relationships in place to respond to these challenges.

Recommendations:

29. The report to be noted by all members of the Select Committee.

Next steps:

30. The work with Judge and Priestley will be progressed in the spring to determine whether there is an opportunity to refer some of the more time consuming, probate and property work externally.
31. The Financial Assessment Team will continue to pursue debts below £10k through the Money Claims Online process.

Report contact

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Sources/background papers

Care Act 2014

ASC Charging policy

ASC Deferred Payment Policy

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