

3 March 2022



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 2021.

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 ability 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 budget to support the delivery of services to help people live and age well. The income raised in the financial year 2020/21 was £55.7m. The budgeted income from charging for the financial year April 2021 to March 2022 is £59.35m. The current projected income figure for 21/22 is £62.4m, a likely increase of £6.7m on the previous year and indicative of a return to pre-pandemic income levels.

The charging and collection process

3. The financial assessment, charging and collection process is undertaken by the Financial Assessment Team in Adult Social Care. The social care practitioner makes a referral to the team when it has been identified that the person is likely to receive a chargeable service from Adult Social Care or in the case of the Discharge to Assess pathway, there is a possibility that the person may have ongoing eligible needs under the Care Act. We offer 4 options for completing assessments, an online financial assessment tool, face to face visits, telephone assessments and the completion of a hard-copy financial assessment form by post.
4. The online financial assessment form is a popular option. It provides a secure means for those who wish to complete the assessment online and upload any evidence. The online tool is available outside of usual office hours. In February

2022 we launched new “web chat” functionality to offer people assistance in completing the form and will be trialling the chat over extended office hours.

5. The Financial Assessment team has access to the Department of Work and Pensions database “Searchlight”. Searchlight holds details of the welfare benefits paid to people. By accessing the system, the team can identify people who will not have to contribute towards their care and support due to low income and can undertake a more proportionate assessment, enabling us to exclude people from charging at an early stage in the assessment process.
6. Timeliness of assessments is an important part of the process 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 care and support arranged by Adult Social Care in accordance with regulations (e.g. people receiving after care services under section 117 of the Mental Health Act and people with Creutzfeldt-Jakob Disease). Most people have to undergo a financial assessment. Around 47% of people who receive their care and support at home, do not have to pay a contribution because the assessment determines they have insufficient available income for charging purposes. The majority of people in residential and nursing care, unless exempt, do have to pay towards their care. Further details of the assessment process are attached for information in Appendix A.
7. Charges are raised in the Adult Social Care finance system, Controcc and passed across to SAP where an account is set up for the individual. In 2022, SAP will be replaced with the Council’s new financial system, Unit 4 and we are working with the implementation team to facilitate a smooth transition to the new system.
8. 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 2021 64% of payments were collected by Direct Debit.
9. Reminders for non-payment are issued promptly in accordance with the following dunning (debt-recovery) cycle.
 - Reminder letter 1 13 days
 - Reminder letter 2 30 days
 - Reminder letter 3 45 days
10. 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 and to take all appropriate steps to engage with the person and, if possible, reach an agreement with them, taking account of the person’s

circumstances. For example, to assist individuals supported by ASC's Mental Health service, the team engage with the relevant social workers and in some cases an independent advocate can be appointed to help the person understand the options available to them. Further, new arrangements came into effect from 2021 which give people receiving mental health crisis treatment a Breathing Space. A breathing space creates time for the individual to conclude their treatment, without being chased for payment and without interest or fees being added to the debt. More information on this scheme is provided at Appendix B.

11. In December 2021, the Financial Assessment Team trialled the use of SMS (text) messaging using the secure gov.uk notify service. The initial trial involved messaging reminders to people who had a financial assessment visit or telephone assessment booked or who had indicated their intention to complete an online assessment. The trial was an effective way of communicating reminders to people and following the successful trial, we are exploring extending the use of SMS messaging to payment reminders in the coming months including providing a direct link to make online payment of overdue social care charges. This could enhance the current process and attract the attention of debtors in real time. However, this approach needs to be balanced with the person's known wishes and cannot be used indiscriminately. We will need an automatic opt out function before this can go live.

ASC Debt position

12. The overall Adult Social Care debt position at the end of December 2021 is provided at Appendix C to this report. The table shows that the total outstanding debt rose from £23.86m in December 2020 to £25.34m in December 2021, of which £7.66m is under binding agreements to defer and is not yet due.
13. Appendix C breaks down the outstanding debt into different categories. It is important to note from this analysis, that although total debt has increased by £1.51m, the total due debt more than 1 month old has reduced from £17.87m to £17.68m, a reduction of £0.19m.
14. 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 0.95%.

15. There were 106 Deferred Payment Agreement instructions sent to the Legal Services Property Team in 2021, an increase of 72 from 2020. Of the 106 instructions, 52 instructions are still active, that is, legal charges are not yet in place and 19 instructions are currently with Land Registry. All instructions have been allocated and are progressing. From 2 January 2022 to 25 January 2022, a further 6 instructions have been sent to the Property Team. The Legal Services Property Team have recouped over £4m in deferred charges in 2021 and £8,000 in legal fees in relation to redemption matters.
16. Write-offs of debt deemed uncollectable in the 2021/22 year to date (i.e. April 2021 to December 2021) amount to £1.34m in respect of 320 accounts. This compares to write-offs of £1.6m in the full year 2020/21. 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 2021, the SCC Litigation team had 40 current referrals with a total debt value of £2.08m, a decrease from £3.38m at the end of December 2020. Of these 40 cases, 24 cases related to deceased debtors. The Litigation team has had 52 matters referred in 2022. This contrasts with 64 referrals in 2020.
18. Of the 40 cases being held by the litigation legal team, 5 are currently in ongoing court proceedings. Of these 5 court cases, 4 relate to deceased debtors. The total value of the debt being litigated is £241k. Monies recovered over the past year by the team total £1.175m. This compares favourably with 2020 when the team recovered £810k of historic ASC debt.
19. The Financial Assessment Team continue to issue 'letters before action' for Money Claims Online, the small claims process for debts under £10k. This is used as a last resort when all other attempts to resolve matters have failed and there is non-engagement with the council. In 2021, 6 letters before action were issued and all recipients engaged following receipt of the letter, of whom 3 settled the outstanding debt.
20. A trial with Judge and Priestley Solicitors has focussed on the recovery of debt due from the estates of deceased residents where there is no grant of probate. As at the end of December 2021, 14 referrals totalling £0.25m have been investigated by Judge and Priestley Solicitors. There are 11 debtors with sufficient assets to recover £0.16m, and £0.06m with no prospect of recovery. Having validated that no one is eligible and willing to administer these estates, the Council can now make applications to administer the estates and allocate available assets towards these debts.
21. Judge and Priestley operate a phased risk sharing approach, with a fixed investigation fee of £150 plus VAT, plus disbursements. This is the only cost to the Council where a determination has been made that an estate is uneconomical to administer. Where there are sufficient sums to allow all creditors to be paid, the solicitors charge an hourly rate which is subject to an assessment by the court, and their costs are settled from the estate. Where there are insufficient funds to pay all of the costs and disbursements incurred in

dealing with the matter as well as all other creditors, the solicitors reduce their fees on a proportionate basis to the percentage debt recovered by ASC and other creditors.

22. As at the end of December 2021, £2.49m of unsecured debt was due from the estates of 269 residents. Of this, £1.03m is subject to an application for a Grant of Probate. The remaining £1.46m is under query, to establish whether anyone is willing to administer the estate. The intention is to continue with this work, but with the referral process itself being resource intensive, the focus will be on higher value cases rather than high volumes.

Impact of the Discharge to Assess pathway on income and debt collection

23. 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 had been completed. This approach is referred to as Discharge to Assess (often abbreviated to D2A) and was introduced to enable people to be assessed outside of an acute hospital setting, and after the person has benefitted from a period of recovery either in their own home or in another setting.
24. The funding arrangements for that scheme came to an end on 31st August 2020 but it was replaced with a new scheme 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. The 6-week period was subsequently reduced to 4 weeks.
25. The current funding arrangements of up to 4 weeks fully funded NHS care are subject to review at the end of March 2022. However, the model of Discharge to Assess is in keeping with the strengths-based assessment approach adopted by Adult Social Care and is likely to continue in some form, subject to the funding arrangements. One consequence of this approach though, is an increase in the number of financial assessments. To illustrate the additional work generated through the discharge to assess pathway, the total number of new financial assessments from January to December 2020 was 5734. The total number of financial assessments for the same period in 2021 was 9,811.
26. Delaying the financial assessment until after all assessments have been completed (which would remove some people from the need for a financial assessment), is unlikely to be popular with the majority of residents as people generally wish to understand the cost of care before their ongoing care and support arrangements are put in place. It would also likely result in assessment and charging delays, leading to additional debt. This does mean that there is an added administrative burden on the Financial assessment teams at this time.

27. We hope to address the additional administration by improving our online financial assessment process and will be working to enhance this option with the help of the live web chat mentioned in paragraph 4.
28. In November 2021, the Department of Health and Social Care published details of the proposed Adults Social Care charging reforms to come into effect on 1st October 2023. The proposals are subject to consultation but if agreed would introduce a lifetime cap on care costs of £86,000, though people living in a care home would still be required to pay their own “daily living costs”. The proposals also change the lower and upper capital threshold limits and would extend the right to self-funders to request the local authority to commission a care home placement on their behalf. These proposals have far-reaching implications for Adult Social Care and inevitably, will also have an impact on social care debt. A working group has been established to plan for the implementation of the reforms.

Conclusions:

29. The reduction in total due debt greater than 1 month old of £0.19m though small, is against a backdrop of a significant increase in income in 21/22 and a substantial increase in workload for the Financial Assessment Teams and for colleagues in Legal services. We need to continue to encourage prompt payment and the SMS messaging trial mentioned in paragraph 11, will help with supporting people to pay online.
30. The trial with Judge and Priestley on collecting debt due from estates is promising and we will continue with this arrangement but with a focus on the higher value debts.
31. There are challenges for the service with the high number of financial assessments resulting from the Discharge to Assess model and more financial assessments likely if the funding reforms continue as proposed. We aim to mitigate the impact of the additional assessments where possible, by improving the online process and encouraging take-up of this service.

Recommendations:

32. That a detailed report on the funding reforms be brought to a future meeting of the Adults and Health Select Committee.

Next steps:

33. To progress the live web chat and SMS messaging to encourage prompt financial assessments and payments online.

34. To progress the recovery of higher value deceased debt through the use of Judge and Priestley.

35. To continue to improve the online financial assessment offer.

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Sources/background papers

Care Act 2014

[Adult social care charging reform: further details - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

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