

CHESHIRE EAST COUNCIL

REPORT TO: Adult Social Care Scrutiny Committee

Date of Meeting: 27 Sept 2012
Report of: Dominic Oakeshott, Business Support & Challenge
Subject/Title: Adult Services Debt
Portfolio Holder: Cllr. J Clowes

1.0 Report Summary

1.1 This report seeks to inform Scrutiny Committee of current Adult Services debt levels, highlighting progress made in respect of recovery and seeks approval for debt avoidance and further recovery initiatives, to deal with debt in a more robust and proactive way.

2.0 Decision Requested

2.1 To note the current Adult Services debt position and support the plan to take a more proactive approach to debt recovery and debt avoidance practice for vulnerable customers.

2.2 To note the agreement to secure the following additional temporary resources for a 6 month period:

Job Title	Grade	FTE	Salary Costs (at start point of grade)
Debt Administrators	4	2	£20k
Visiting Officer	6	1	£12k
Total		3	£32k

2.3 The above costs are being funded from within existing budgetary provision, but the individuals aiming to not only recover their own costs but also significantly increasing the recovery of debt generally.

2.4 To note the use of the Revenue Team's low-level Bailiff action as a next step action where prompts for payment have failed. This service is currently delivered free of charge through the Revenue Team and involves letter and telephone contact only – it is felt this may provide the prompt for payment in many cases as a pre-cursor to court action.

2.5 To note the use of Small Claims Court action where debt cases are deemed suitable for final debt recovery actions. This route may result in County Court action and would therefore require legal representation at Court. Court fees are required to be paid in advance and would cost between £150 and £500 per case depending upon the legal route decided which would need to be accounted for as a non-recoverable amount and written off/be funded by the Service.

2.6 To note the action to scope and evaluate procurement of external solicitors or to develop an internal service between Legal Services and Client Finance and progress the most cost effective method, to:

- Assist with complex challenging debt cases, particularly where property is involved or where a legal representative of the customer challenges Council or National policy. This route could include enforcement of property sale in some cases and to progress probate in order to settle deceased customer debt where the customer has died intestate or where the Next of Kin is deliberately delaying or refusing to wind up the estate to settle debt.
- To develop a framework for the selection of external solicitors, to act as Deputy in cases where the customer lacks capacity to manage their own complex affairs in respect of customers with more complex property and investment finances. It is likely that the Council will continue to have a need to offer a Corporate Deputyship service for cases classified as low supervision where there is no financial benefit to a Solicitor to take on the case.
- To develop a framework for the selection of external organisation/s to act as Appointee to manage a customer's welfare benefit income where the customer is deemed incapacitated, as an alternative to Corporate Appointeeship. This process will enable the downsizing of corporate appointeeship team and will free some resources in Client Finance to invest in other developments. It is likely that the Council will need to continue to offer a Corporate Appointeeship service for cases where there are insufficient balances for the customer to pay an on-going fee to an external organisation.
- To develop a new deferred debt policy which would afford the Council control over when a deferment is offered; in cases where there is a lack of cooperation by the customer the Council would charge and pursue full cost recovery. This policy would underpin enforcement of sale of property in certain cases or small claims court action for non-payment of debt and would introduce a system of annual re-valuation of property to ensure the Council does not over-inflate deferred charges where property sales are likely to realise a lesser amount.

3.0 Reasons for Recommendations

3.1 Adults who are eligible for social care support are financially assessed to determine their weekly contribution towards care using the Department's Non-Residential Charging Policy or The Department of Health statutory guidance 'Charging for Residential Care (CRAG)'. Customers are required to pay their weekly contribution on receipt of an invoice 4-weekly in arrears or into their direct payment account 4 weekly in advance.

3.2 Where a customer is entering long term care and leaves a property which is eligible for deferment of charges, the Council is obliged to offer to defer some of the customer's charges against the property. A Deferred Payment Agreement is entered into and a legal charge set against the property to secure the Council's debt.

3.3 A summary of the outstanding overdue debt as is shown in the table below:

Debt Age Profile	1 To 30 Days £	31 To 60 Days £	61 To 90 Days	91 To 180 Days	181 To 360 Days	361 Plus Days	Total
Percentage of total Debt	7.1%	4.9%	3.7%	11.1%	16.1%	57.1%	100.0%
£/debt	138,562	96,570	73,314	216,964	314,867	1,116,559	£1,956,837

3.4 There are approximately 900 customers who have debts outstanding with the Council, and good progress is being made recovering debts, with £639,000 recovered during the first six months of the 2012/13. Overall debt levels have remained constant and have not increased during the same period, although new debts arising month by month continue to maintain overall debt levels. Work is hand to encourage customers to pay their charges as they arise aiming to prevent new long standing debt.

3.5 An important feature of Adults Social Care is that charges can be deferred against a customer's property. There are currently approximately 200 customers with around £3m of charges deferred against property. As described above taking proactive action to reduce the level of deferred charges is required and action taken within the team during the 2012/13 has already helped to recover £533k.

3.6 Debt is currently captured and reported within Client Finance once it becomes over-due (i.e.7 weeks from initial invoice) and arises as a result of a number of factors, such as;

- poor information provided to the customer on charging and payment methods. Would it be worthwhile reviewing the methods of payments people are using and encouraging them to pay by direct debit? Is there any way that we can take an on account payment pending financial assessment to reduce the potential debt figures?
- customer or their legal representative refusing to pay.
- customer capacity to manage their financial affairs is lost.
- safeguarding and deprivation of assets.
- poor commissioning practice or communication such as advising services are 'free of charge' or failure to load service interventions into systems at the start of the provision.
- late service returns from care providers which generate late or multiple customer invoices once loaded through the Council system.
- customers choosing to pay their care provider top up fees rather than pay their contribution to social care services.
- lack of debt administrative staff, legal resources and a reluctance to pursue debt through court action previously.
- lack of robust deferred debt procedures to avoid debt where a customer does not cooperate with policy.

3.7 Discussions with Corporate Finance have highlighted that debt is managed and reported elsewhere across the Council as soon as the Debt is raised and becomes due. A review is underway to align the current practice within Client Finance with that elsewhere in the Council. This will allow the activity and resource supporting current debt, mentioned below, to be better aligned alongside the activity and resource pursuing overdue debt, where the resource has traditionally been constrained.

3.8 Adult Services have many historic debt cases which have not been pursued actively due to the lack of resources and clear processes within Adult Services. Some cases will now fall into the category of statute-barred and become non-pursuable as they are over 6 years old and will need to be written-off. It is likely that the significantly older debts will, including those that are already statute barred or those nearing that point, will in effect be non-pursuable and need writing off. A review of those debts in that position is currently in hand. The action since April has been positive with over £1.1m of overdue debt being collected, the actions in this report are aimed at further reducing and recovering overdue debts whilst also taking proactive action to stop current debts becoming overdue wherever possible.

4.0 Wards Affected

4.1 All wards - the table below from the local records as at the end of August shows debt by ward, with the total differing slightly with the overall debt position reported currently.

Area	No of Clients	Total Debt
Adlington	1	£182.00
Alderley Edge	7	£3,104.55
Allostock Knutsford	1	£200.00
Alsager	5	£3,387.29
Audlem	5	£7,180.18
Bickerton	1	£13.68
Bollington	5	3,029.26
Buglawton	1	£422.16
Chelford	1	£915.66
Chorley	1	£627.59
Church Lawton	3	£3,992.65
Congleton	99	£418,710.46
Crewe	218	£560,547.22
Disley	1	£0.06
Goostrey	6	£10,434.35
Holmes Chapel	6	£18,452.43
Knutsford	28	£30,245.16
Macclesfield	153	£290,457.20
Middlewich	23	£32,867.97
Mobberley	3	£1,086.53

Nantwich	56	£136,492.92
Plumley	1	£4,649.57
Poynton	14	£24,943.06
Prestubury	3	£5,214.79
Rode Heath	1	£750.00
Sandbach	31	£35,662.73
Siddington	1	£2,043.92
Somerford	1	£701.00
Wilmslow	41	£89,157.50
Wynbunbury	1	£2,336.69
Out of area	183	£445,304.54
Total	901	£2,133,113.12

5.0 Local Ward Members

5.1 All ward members

6.0 Policy Implications including - Carbon reduction - Health

6.1 A new and robust Adult Services Debt Recovery and Write-Off Procedure has been written and launched, which has been developed within the parameters of the Corporate 'Income to Cash' Debt Policy. The initial aim is to take proactive action to encourage the early payment of charges in the first instance, recovery of debt in the second instance, before finally after exhausting all other avenues seeking approval to write off debt in an appropriate timescale.

6.2 Options within this paper require the Council to be more proactive in debt recovery actions, which may result in challenging publicity around court action against vulnerable adults.

6.3 A new and robust Deferred Debt Policy has been drafted for legal comment before ratification and launch.

7.0 Financial Implications (Director of Finance and Business Services)

7.1 Debt is managed within Adults Client Finance Service using the following resources :

Grade	Role	Annual on-costs	Comment
1 x Grade 9 (protected Gr 10)	Team Supervisor	£43,002	Overseeing debt and audit function. Primary focus on Deferred debt with little capacity for further activity.
1 x Grade 7	Team Support Officer	£29,506	
2 x Grade 4	Admin	£40,758	Dealing with approx 140 new debt cases every 4 weeks as well as prompting payment for the 800 debt cases. This is proving insufficient

			resource for current demand.
1 x Grade 8	Legal Executive	£33,893	Temporary to March 2013 with primary focus on recovery of dec'd customer debt.
		£147,159	

7.2 Adult Services are piloting the use of internal debt recovery processes using the Legal Executive resource to develop Small Claims Court Action, accessing specialist legal advice from existing legal frameworks. Results of this pilot will be analysed and should it be found necessary to procure debt recovery legal services the cost to Cheshire East Council Adult Services have been estimated as follows:

Type of Action	Est. annual numbers	Estimated debt value by category	Est. annual CEC Recovery based on 20% legal fee	Est. annual Write off anticipated
Complex & Challenging Debt	20	£180k	£144k	£36k
Enforced Sale Action	10	£250k	£200k	£50k
Probate completion	50	£100k	£80k	£20k
Small Claims Court	600	£1.5m	£1.2m	£300k
Total:	680	£2.03m	£1.6m	£406k

7.4 Adult Services currently hold a £1.6m bad debt provision and an additional £0.3m for a deferred bad debt provision. Recovery of debt will reduce the need for the current level of bad debt provision allowing additional funds to be released towards savings.

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 Local authorities can take steps to recover contributions towards care charges, and their assessment of ability to pay may take into account property or capital that has been given away for the purpose of avoiding means testing. Their enforcement options include:

- taking proceedings in the Magistrates' Court to recover sums due as a civil debt (section 56, National Assistance Act 1948).
- Imposing a charge on any property belonging to the resident with interest chargeable from the day after death (sections 22 and 24 of the Health and Social Services and Social Security Adjudication's (HASSASSA) Act 1983).
- Imposing a charge on property transferred by the resident, within six months of going to residential care or whilst receiving care services, on property transferred by the resident with the intention of avoiding contributions (section 21, HASSASSA Act 1983)

8.2 If the debt for unpaid contributions reaches £750, the local authority could start insolvency proceedings to declare the resident bankrupt. Transactions below that value may be set aside within two years, or within five years if the person made bankrupt was insolvent at the time of the transaction, which is unlikely. (See section 339-341 Insolvency Act 1986). A gift may be set aside without time limit and without

bankruptcy if the court is satisfied that the transfer was made for the purpose of putting assets beyond the reach of a potential creditor or otherwise prejudicing the creditor's interests.

8.3 This provision is exceptionally wide and the court has extensive powers to restore the position to that which it would have been, had the gift not been made.

9.0 Risk Management

9.1 Although some local authorities have threatened to use insolvency proceedings, few have actually done so, perhaps because of lack of expertise, cost or the prospect of bad publicity. The proposals contained herein seek to minimise the costs and publicity elements by adopting a staged, sensitive approach using appropriately qualified staff and legal expertise.

9.2 Client Finance Grade 9 and 7 supervisors are wholly occupied on deferred debt actions leaving little time to oversee and develop debt avoidance admin processes. Temporary Additional resource to relieve pressure has recently been agreed to assist the principle of right first time, with individuals being clear of their contribution at the outset, and issues being tackled at the earliest point.

9.3 It has been identified that there is a need to annually review accrued Deferred Debt in line with annual property valuation, to reduce the risk of over-inflating debt figures and to ensure costs and charges are correctly accounted for.

10.0 Background and Options

10.1 A range of mitigating actions have been put in place over the past 6 months to address some of this historic debt and prevent new debt from occurring, these include:

- A new and robust Debt and Write Off Policy written and launched.
- Financial Assessment Officers take responsibility to discuss payment of contributions with the customer and to encourage payment by Direct Debit. The Finance Officer will retain customer cases until the first 2 payments have been made, in an attempt to identify and address debt problems at the earliest opportunity. Is this showing any evidence of improving methods of collection?
- An audit of direct payment accounts will be introduced during the first 12 weeks after inception to ensure the direct payment is running in accordance with agreement. Vacant administrative posts within the Client Finance Debt team being filled on a temporary basis.
- Temporary Legal Executive role until March 2013 with an initial focus on deceased customer debt and in the first 3 months they have recovered £45k. This post has highlighted a need to secure external solicitor assistance to progress probate in a number of cases.
- Client Finance is working closely with Revenues Service to identify and clear older debt.
- The Department is progressing cases for write off where there is no hope of recovery.

- Client Finance have progressed a pilot of 5 cases through the existing Revenues external solicitors who have offered to provide an initial 'free of charge' service to take court action to force the sale of property in order to settle deferred debt. This pilot is currently on hold as cases passed through to the external solicitor were found to be too complex and out of scope for the pilot and so a further 5 cases are yet to be identified to test this enforced sale action route. This pilot has highlighted a need for internal or external legal guidance in complex debt case management, particularly where the authority is challenged through customer's solicitors. As such we are piloting 5 complex debt cases through small claims court action.
- Counsel opinion has been sourced for the treatment of property for charging purposes in complex and disputed circumstances. Many cases where this Counsel opinion has been applied, continue to be challenged through customer's legal representatives.
- Client Finance recognises the need to have a far more robust Deferred Debt Policy, taking account of other local authority practice to ensure we do not accept financial responsibility in cases where the customer clearly has no intention of cooperating with Council processes. This may include accessing tracing and credit rating agents.
- Client Finance has developed robust management data on debt and recovery levels but needs to do more around the levels of deferred debt and prevent new debt.
- Personalisation Policy launched with clear processes for the management of Direct Payments to ensure customer contributions are made and those with debt are deemed unsuitable to hold their own direct payment.
- All Empower accounts are under review with debt being addressed and those with debt deemed unsuitable to continue with this option.
- Strategic Commissioning have engaged consultants to review the care market fees and within this the practice of providers requiring a "top up" payment will be explored. It is likely that another recommendation will be to require care providers to collect client contributions and receive payments from the Council net of the client contribution. Client Finance will contribute to the suggestions/recommendations which will help to address issues of debt and improve communication.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer.

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