



**Western Health
and Social Care Trust**

**DEBT MANAGEMENT AND RECOVERY POLICY
RESIDENTIAL AND NURSING HOMES CLIENTS (V2)**

November 2015

Title	Debt Management and Recovery Procedures	
Author(s)	Tom Flanagan, Finance Department	
Ownership	Lesley Mitchell, Director of Finance and Contracting	
Approval by:	Committee /Board :	Approval Date:
	CMT FMG	27 August 2015
	Trust Board	5 November 2015
Reference Number	Fin01/015	
Implementation Date	5 November 2015	
Review Date	5 November 2018	
Links to Other Policies, Procedures, Guidelines or Protocols		

Date	Version	Comments
27 August 2015	V.1	V.1 was taken to CMT FMG, who recommended that it be amended to reflect Policy status and therefore would require Trust Board approval.
5 November 2015	V.2	V.2 includes the amendments recommended by CMT FMG and is the version taken to Trust Board on 5 November 2015 for approval.

CONTENTS

	Page
1. INTRODUCTION	1
2. LEGAL AND POLICY FRAMEWORK	1
3. FINANCIAL ASSESSMENT	2
4. INDEPENDENT HOMES – CLIENT CONTRIBUTIONS	2
5. PROPERTY	3
6. THIRD PARTY TOP-UPS	3
7. INVOICING AND PAYMENT OPTIONS	4
8. RECOVERY ACTION FOR UNPAID CHARGES	4
9. REFERRAL TO ADULT SAFEGUARDING TEAM	6
10. BENEFIT APPOINTEESHIP	6
11. MENTAL CAPACITY	6
12. LIMITATION PERIOD FOR RECOVERING DEBTS	7
13. ENFORCING THE JUDGEMENT	7
14. INTEREST CHARGES	8
15. TRUST SCRUTINY COMMITTEE	8
16. EQUALITY STATEMENT	8
17. SIGNATORIES	8
18. APPENDIX 1 – BASIC DEBT RECOVERY FLOWCHART	9

1.0 INTRODUCTION

The purpose of this document is to set out consistent and effective processes for the collection, recovery and enforcement of residential and nursing home charges owed to the Western Health and Social Care Trust.

Effective financial management is critical to the Trust's ability to fund the range and level of services delivered. The best method of debt collection is prevention – ensuring that debt does not arise in the first instance.

This document covers both the prevention and recovery of debt.

Key Principles:

- Collection of all money due; quickly, efficiently and economically taking into account the financial circumstances and mental capacity of the service user.
- Prevention of debt and arrears; by prompt billing and collection of money due, affordable repayment plans and early intervention when a service user is in arrears.
- Ensuring the principles protecting the rights of vulnerable service users is fundamental to all actions taken. Where there are issues of financial mismanagement or exploitation, appropriate investigations are carried out under the Trust's Adult Safeguarding Policy.
- Provision of a legal framework to enable legal enforcement (where necessary) to recover debts.
- Compliance with the Trust's Standing Financial Instructions and Standing Orders.

HSC (ECCU) 1/2010 clearly states that “the financial circumstances of individuals should never be used as the reason for failing to offer assessment of need or, as appropriate, access to the care management process”.

2.0 LEGAL AND POLICY FRAMEWORK

This document provides a framework to enable legal enforcement to be undertaken to recover debts where appropriate.

The main powers and responsibilities that HSC Trusts have to charge for residential and nursing care placements are described in the following legislation:

- Health & Personal Social Services (Northern Ireland) Order 1972.
- The Health & Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993.

The 1972 Order requires the Trust to charge a service user for personal social services provided in residential care or nursing home accommodation arranged by the Trust.

The DHSSPS Charging for Residential Accommodation guide (CRAG) explains the application of the regulations.

The 1993 Regulations are the only authoritative statement of the law.

Failure to pay cannot be grounds for the termination of a service but charges are recoverable as civil debt.

3.0 FINANCIAL ASSESSMENT

As part of the Trust's social care assessment to determine if there is a need for social care services to be provided, the Trust will undertake a financial assessment.

The financial assessment will determine how much the service user is required to contribute towards the cost of the residential or nursing home placement.

The Trust will provide support to the service user through the assessment process and will need a full financial disclosure to undertake this assessment.

The financial assessment process for service users will be conducted in accordance with the Charging for Residential Accommodation Guide (CRAG).

4.0 INDEPENDENT HOMES – CLIENTS CONTRIBUTIONS

The Trust is an in-house provider of residential care – statutory homes. It also purchases residential and nursing care places from the independent sector.

It is the general practice in the Trust to pay the cost of residential or nursing care services net of the service user's assessed charge to the home. The service provider is required to collect the assessed charge directly from the service user.

The Regional Contract states that when a service user defaults in payment of their assessed contribution, the Trust will take responsibility for the 4 weeks prior to receipt of notification.

The Trust will pay gross at the appropriate rate to the home until such time as the service user resumes payment of the client contribution amount. Thereafter, payment by the Trust to the Home will revert to the Trust's contribution payment.

In cases of default, the Trust has to recover the outstanding debt from the service user or their representative. Finance will request immediate payment from the representative or legal proceedings will be initiated. Care managers involvement will be required when service user is paying the contribution.

5.0 PROPERTY

Service users entering residential care, assessed in accordance with CRAG, in some circumstances will have their property and land considered as part of the financial assessment process.

The treatment of property owned by the service user receiving care will depend on whether he/she is a legal or beneficial owner. The Trust will carry out searches to determine legal title to property, primarily through on-line LandWeb searches hosted by DHSSPS Land and Property Services.

In cases when a significant element of the weekly charge is based on property, the Trust will seek independent valuations of the property.

The service user will not be required to immediately sell their property but will be made aware that the Trust will accrue a debt against the property until the property is sold or the debt settled.

In these cases, the Trust may ask the service user to agree to a voluntary charge being placed against the property. This is a formal legal agreement that is drafted in each case by BSO DLS who will in turn register the charge with Land Registry. There are some standard costs associated with this process.

Once registered, the charge will show up in future property searches and providing that the outstanding care charges are paid from the proceeds of the property sale, the charge will be removed from the property.

If a service user refuses to agree to a voluntary arrangement, the Trust can still place a legal charge but this can only occur when legal proceedings have been taken to recover the outstanding debt.

6.0 THIRD PARTY TOP-UPS

When a service user chooses a residential care home that is more expensive than those rates set by the HSCB, the additional cost must be met by a third party such as a family member, friend or voluntary body. The Third Party must be both willing and able to meet the cost.

Care managed service users are not permitted to make additional payments from their own resources, including personal allowance.

Where the Trust is asked to pay a defaulted third party contribution, a review of the service users placement will take place as soon as is reasonable practicable. The review may result in the service user moving to less expensive accommodation.

7.0 INVOICING AND PAYMENT OPTIONS

The Financial Assessments Department is responsible for despatching residential care invoices throughout the year.

Residential care invoices are issued on a monthly basis and are issued within 5 working days from the end of the month.

All invoices, excluding property debt invoices, are due for immediate payment upon issue.

As noted in 3.2, the Trust request independent sector providers of residential care to collect the charges on its behalf as part of the terms and conditions of the contract between the provider and the Trust.

The Regional Contract states that when a service user defaults in payment of their assessed contribution, the Trust will take responsibility for the 4 weeks prior to receipt of notification.

The provider is also expected to take reasonable steps to recover unpaid charges in advance of the Trust assuming responsibility for the debt.

7.1 Ways to Pay

Service users can make payment to the Trust by the following means:

- Cheque
- Bank Transfer
- Standing Order
- Credit / Debit Card
- Direct Debit – under development

8.0 RECOVERY ACTION FOR UNPAID CHARGES

The following principles will be following in the Trust's approach to debt recovery:

- Whenever possible, outstanding debt must be discussed with the service user or their representative;
- The Trust must act reasonably;
- Arrangements for debt repayments should be agreed between the relevant parties;
- Repayments must be affordable;
- Court action must only be considered after all other reasonable avenues have been exhausted.

8.1 Approaches to Legal Proceedings

The approach to legal recovery of unpaid charges will to a large extent depend on whether the service user has financial capacity and on the status of other representatives who have signed the undertaking to pay declaration or been nominated as a representative.

8.1.1 Service User

Even though a service user has financial capacity, the Trust will not consider initiating legal proceedings to recover debt without the approval of the appropriate Service Directorate Assistant Director

8.1.2 Power of Attorney, Enduring Power of Attorney, Controllers and Others

When an individual has been appointed as Power of Attorney, Enduring Power of Attorney or Controller, they are signing the undertaking to pay on behalf of the service user and not in a personal capacity. They can only be pursued personally if they have mismanaged the resident's finances resulting in non-payment of charges and thus are in breach of their duties. Non-payment by Controllers is referred to the Office of Care and Protection for action.

It must be made clear to any other individual signing the undertaking to pay that they are undertaking a personal liability to pay charges to the Trust in respect of the service user's placement.

In all the above cases Finance will make the Care Manager aware that legal proceedings are being initiated to recover outstanding debt however the approval of an Assistant Director will not be required to move to this stage if considered appropriate.

8.2 General Process

- The Trust will issue two reminder / debt follow up letters to the service user or their representative after 30 and 60 days.
- In cases where a representative has signed the undertaking to pay, the Trust will then issue a pre-litigation letter in 75 days and will initiate legal proceedings if payment is not made within 10 working days.
- In cases where the service user manages their own financial affairs, Finance will ask care management to explore if there are any reasons for non-payment of charges due. If this does not lead to recovery or no reasonable explanation for non-payment is received, Finance will refer the case to the appropriate Assistant Director for approval to initiate legal proceedings to recover the debt.

If permission is not given, Finance will refer the case to the Assistant Director of Finance for further consideration.

- When a service user has been discharged from care, the same checks will be carried out. In these cases, Finance will ask the appropriate Assistant Director for permission to pursue the outstanding debt via legal process.
- Finance will keep Care Managers advised of these issues in line with RQIA recommendations regarding the management of residents' monies.

See Appendix 1

9.0 REFERRAL TO ADULT SAFEGUARDING TEAM

In some arrears cases, concerns may arise that the individual acting as financial agent and responsible for paying the charges on behalf of the service user is not administering the finances appropriately.

In cases such as this it will be appropriate to refer the case to the Trust's Adult Safeguarding Team as potential financial abuse.

Each arrears case will be considered on an individual basis before a referral is made. Only when it has been clearly established that the financial agent has the ability to pay, but is refusing to cooperate that a referral will be made.

10.0 BENEFIT APPOINTEESHIP

Appointees are responsible for administering the welfare benefits on a service user's behalf and using them to pay their accommodation charges.

When an appointee fails to undertake this duty, the Trust will report this to the Social Security Agency with a request for benefits to be suspended.

Appointeeship will be reviewed with the option to find a more suitable recipient.

The Trust will take this action with the intention to limit the scale of the arrears and protect the service user's best interests.

11.0 MENTAL CAPACITY

Where a decision is made to commence legal proceedings, consideration must be given to whether the service user has mental capacity for litigation purposes.

The Mental Health (Northern Ireland) Order 1986 provides a framework for assessing a person's mental capacity and determining their best interests if they lack capacity to make decisions regarding their finances.

Where a service user lacks mental capacity to conduct or defend the litigation on their own behalf then an application must be made to the court to appoint a representative / litigation friend.

In cases where there is an indication of possible incapacity to manage financial matters, the care manager must immediately arrange a referral to the Office of Care and Protection of the High Court.

Note that non-payment of charges by Controllers will result in a referral being made to the Office of Care and Protection for review and action.

12.0 LIMITATION PERIODS FOR RECOVERING DEBTS

The Limitations Order (Northern Ireland) 1989 governs all financial and contractual debts. The statute of limitations is the amount of time permissible by law for a party to be eligible to file a lawsuit against a second party. Once the allotted time has passed, the case can no longer be filed and all liability is removed.

In Northern Ireland, if a creditor fails to keep some form of contact with a debtor for six years, that debtor is considered released from his or her responsibilities and the debt is from that time forward governed by the statute of limitations.

13.0 ENFORCING THE JUDGEMENT

If the Court agrees that the debt is owed and the client still fails to pay the Trust, there are a number of steps that can be taken to recover the outstanding debt.

It is advised that in most cases searches should be carried out regarding bankruptcy and the Enforcement of Judgements Office (EJO) to discover the debtors' circumstances and the likelihood of recovery.

A judgement is valid for 6 years.

The Trust must obtain an original copy of the court order / decree and then can enforce these through the Enforcement of Judgements Office.

The following enforcement options are available to the EJO:

- Attachment of Earnings Order
- Instalment Order
- Order Charging Land
- Seizure Order
- Order Appointing Receiver
- Attachment of Debt Order

The Certificate of Unenforceability:

When the EJO decides that the judgement cannot be enforced within a reasonable timescale, or there are no assets, it will issue this certificate. In this case, the debt will be referred for write-off.

14.0 INTEREST CHARGES

Interest Claimed in Court proceedings (statutory interest):

The Court allows simple interest to be applied to outstanding debt claims at a flat rate of 8%. Interest runs from when payment was due until judgement is given by the court.

Other Interest:

The Trust has the authority to apply interest to other debt particularly debt that is accrued on property. It is not the policy of the Trust to charge interest in these cases but the Trust reserves the right to revisit this position at a future date.

Interest will only be applied when legal proceedings are involved or at the direction of the Office of Care and Protection in cases of mental incapacity.

15.0 TRUST SCRUTINY COMMITTEE

The Trust Scrutiny Committee meets on a quarterly basis to consider:

- ❖ Suspected cases of deprivation of assets
- ❖ Requests for discretionary disregards of assets
- ❖ Other complex financial issues

Members of the Scrutiny committee are the Assistant Director of Financial Accounting and the Assistant Director of PCOP. The Committee is supported by other Finance and Social Care staff. Other Assistant Directors are invited to attend when an issue is referred that affects a service user in their programme.

A quorum of the AD Finance and AD PCOP must be present to approve decisions made by the Committee.

16.0 EQUILITY STATEMENT

In line with duties under the equality legislation (Section 75 of the NI Act 1998), an initial screening exercise to ascertain if this policy should be subject to a full impact assessment has been carried out. The outcome of the equality screening for this policy is _____.

17.0 SIGNATORIES

Name: _____

Date: _____

Title: _____

Appendix 1

BASIC RESIDENTIAL DEBT RECOVERY ROUTE

