

Adult Services and Wellbeing
Calderdale Metropolitan Borough Council

Debt Recovery Policy for Adults

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Policy Version Control

Policy Name	Debt Recovery Policy for Adults		
Document Description	This document sets out the Debt Recovery Policy for Adults		
Supporting Documents	<ul style="list-style-type: none"> • The Care Act 2014 and associated guidance and regulations • Pre-action Protocol for Debt Claims • Rules & Practice Directions - Civil Procedure Rules 		
Document Owner	Cath Gormally, Director for Adult Services and Wellbeing		
Document Author	Zakera Pandor, Policy & Procedures Officer	Date	September 2023
Status	Live	Version	4.0
Last Reviewed	November 2025	Next Review Date	November 2026
Approved by	Cabinet	Position	N/A
Signed	N/A	Date Approved	September 2023

Document Change History			
Version	Date	Reviewed by	Amendments
1.0	September 2023	N/A	New document, approved by Cabinet
2.0	January 2024	Zakera Pandor, Policy & Procedures Officer	Policy reviewed following consultation
3.0	September 2024	Zakera Pandor, Policy & Procedures Officer	Policy reviewed; amendments made
4.0	November 2025	Zakera Pandor, Policy & Procedures Officer Michelle Neville Cooper Team Manager Financial Assessment and Charging Team Paula Williams, Care Charges Team Leader	Policy reviewed; amendments made

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1. Purpose of the policy

This policy outlines the process for collecting adult social care debt and describes the approach that Calderdale Metropolitan Borough Council (CMBC) will take in fulfilling this responsibility. CMBC aims to collect all monies owed promptly, while applying a fair, proportionate, and consistent approach to recovering overdue payments.

CMBC is committed to using the most effective recovery methods available.

This policy will ensure that recovery action is consistent and complies with legislation and best practice. It will be reviewed whenever there is a change to procedures, regulations or costs to ensure it remains valid, effective, and relevant.

Where necessary, decisions will be overseen by Adult Services & Wellbeing (ASW) Debt Panel.

2. Legal and Policy Framework

2.1 The Care Act 2014

The Care Act 2014 places a duty on CMBC to arrange care and support for people assessed as having eligible needs. CMBC also has a power to meet certain non-eligible needs.

Sections 14 and 17 of the Care Act 2014 provide a legal framework for charging for care and support where CMBC has decided under section 13(1) that the person's needs for care and support must be met. These sections, along with the Care and Support Statutory Guidance, provide a single legal framework for charging for adult social care.

The Care Act states that CMBC has discretion to choose whether to charge for meeting needs under section 14 of the Care Act. CMBC may charge except where it is required to arrange care and support free of charge. Where CMBC decides to charge, it must follow the Care and Support (Charging and Assessment of Resources) Regulations 2014 and have regard to the Care and Support Statutory Guidance (which outlines how councils should meet their legal obligations placed on them by the Care Act 2014).

CMBC may only charge up to the costs they incur when contracting for care. CMBC is not permitted to pay towards the cost of the provision of accommodation in a care home for a person with care and support needs if they have capital over the upper capital limit of £23,250 (Regulation 12 of the Care and Support (Charging and Assessment of Resources) Regulations 2014)).

The Care Act 2014 introduced a modern legal framework for the recovery of any debts that may have accrued as a result of a council meeting a person's eligible care and support needs. Section 69 of the Care Act provides powers to CMBC to recover civil debts owed to it. This power seeks to provide equal protection to both CMBC and the person. Section 70 of the Care Act also provides CMBC with powers to recover care charges from a third party where a person has transferred assets to them to avoid paying care charges for care and support. When considering how to recover adult social

care debt, CMBC will also have regard to the Care Act Statutory Guidance, Annexes D and E.

The way in which any outstanding care charges are recoverable prior to the commencement of legal proceedings is covered by the Pre-action Protocol for Debt Claims under the Civil Procedure Rules (see: [Practice Direction – Pre-Action Conduct](#) guidance published by the Ministry of Justice). Care charges should be recovered as a civil debt through the County Court as a last resort after all other avenues for payment have been explored with the person.

2.2 The Equality Act 2010

CMBC has a statutory equality duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, pursuant to section 149(1) of the Equality Act 2010.

Anti-discriminatory practice is fundamental to the ethical basis of care provision and critical to the protection of people's dignity. The Equality Act 2010 protects those receiving care and support from being treated unfairly because of any characteristics that are protected under the legislation. Acting in accordance with this policy will help to ensure that the collection of debts due is conducted in a consistent and objective manner that will reduce the risk of inadvertent discrimination against people with protected characteristics.

2.3 Mental Capacity Act 2005

Under section 1(2) of the Mental Capacity Act 2005, every person must be assumed to have capacity and able to make relevant decisions for themselves unless it has been established through mental capacity assessment that they lack capacity. In addition, under section 1(3), all practical steps should be taken to ensure that a person is supported to make their own decisions.

Where a person has an attorney or a deputy for property and financial affairs to make financial decisions on their behalf, CMBC will discuss options for debt recovery with them. If debt accrues when a person has an attorney or deputy acting for them, CMBC will consider whether they are exercising their duties appropriately and may refer the matter to the Office of the Public Guardian to consider whether they are acting in the person's best interests.

Where a person has an appointee authorised by the Department for Work and Pensions (DWP) for the purpose of benefit payments, CMBC can discuss options for debt recovery with them. If debt accrues when a person has an appointee acting for them, CMBC will consider whether they are exercising their duties appropriately and may refer the matter to the DWP to consider if they are acting in the person's best interests.

Where a person lacks capacity and has no appointee, attorney or deputy in place, they may require the appointment of an appointee or a property and affairs deputy. If a deputy is required, an application will need to be made to the Court of Protection to appoint one.

2.4 Safeguarding

Where concerns arise that an appointee, attorney, or deputy is not acting in the persons best interests, a referral to the Safeguarding Adults Team will be considered where appropriate.

3. Principles for Debt Recovery

Recovery of debts from people who are receiving care and support (or their representative(s)) is a sensitive issue, given their potential vulnerabilities and CMBC's responsibility to meet care and support needs under the Care Act 2014. It must be remembered that there could be a variety of reasons why the person has not paid their care charge, for example, there could be issues around diminishing or lack of mental capacity, an administrative error may have occurred, they may be in hospital and unable to notify CMBC of a change in their circumstances or they may face difficulties in arranging payments.

CMBC must act in accordance with human rights legislation, as well as the wellbeing principle set out in section 1 of the Care Act 2014. Therefore, it is important that all reasonable avenues to recover the debt have been exhausted before considering court action. If a claim does end up in court, it is likely that the court will consider what efforts were made to resolve the debt without the need for proceedings.

CMBC officers will need to bear in mind the following principles when approaching recovery of debts, especially when dealing with vulnerable people and/or their representative(s):

- Effective initial communication with the person around chargeable services.
- Effective and efficient collection of all money due, whilst ensuring that the person's financial circumstances and mental capacity are considered.
- Prevention of arrears by prompt billing and collection of money due, affordable repayment plans and early intervention.
- Debts must be discussed with the person and/or their representative(s).
- CMBC must act reasonably.
- Repayment plans should be agreed between the relevant parties and must be affordable.
- CMBC will consider how different approaches could impact on a person's wellbeing.
- Council services and agencies will work together to assist the person and determine the most effective course of action.

4. Debt Recovery Process

4.1 Community Based Services

As part of the debt recovery process for community-based care charges, the person will be encouraged to discuss the reasons for non-payment and their individual circumstances with CMBC so that a repayment plan can be agreed. Failure to pay care charges by the due date will result in the following:

4.2 First reminder

An arrears letter will be issued where an account is overdue by 6 weeks or more.

4.3 Second Reminder

A further arrears letter will be issued 14 days after the first reminder if a person still hasn't paid the amount due or agreed to a repayment plan.

4.4 Final reminder

Where a person still hasn't paid the amount due or agreed to a repayment plan 28 days after the second reminder, this will result in a CMBC officer trying to make contact by telephone (or via other reasonable means). If no response is received, the CMBC officer will raise an invoice to prompt payment.

4.5 Community Care Arrears Invoices

Where there are still arrears outstanding, an invoice will be raised to prompt payment (see 4.4). Payment terms are 28 days from the date of invoice, and a 'Letter Before Action' (LBA) will be issued after 30 days. If the person requests to pay the invoice in instalments and fails to make payments on time, they are sent an 'Arrangement Reminder Letter' informing them of the missed instalment(s) before they are sent an LBA. If the invoice remains unpaid 14 days after sending an LBA, this will result in a CMBC officer trying to make contact by telephone (or via other reasonable means). The person is given the chance to pay or agree an arrangement.

4.6 Direct Payment Invoices

An invoice will be raised to prompt payment (see 4.4). Payment terms are 28 days from the date of invoice, and a 'Letter Before Action' (LBA) will be issued after 30 days. If the person requests to pay the invoice in instalments and fails to make payments on time, they are sent an 'Arrangement Reminder Letter' informing them of the missed instalment(s) before they are sent an LBA. If the invoice remains unpaid 14 days after sending an LBA, this will result in a CMBC officer trying to make contact by telephone (or via other reasonable means). The person is given the chance to pay or agree an arrangement.

4.7 Community Alarms Invoices

All invoices are issued with an automatic instalment arrangement for equal monthly payments, over the financial year. If instalments are not paid on time, the person is sent an 'Arrangement Reminder Letter' informing them of the missed instalment(s) before they are sent an LBA. If the invoice remains unpaid 14 days after sending an LBA, this will result in a CMBC officer trying to make contact by telephone (or via other reasonable means). The person is given the chance to pay or agree an arrangement.

4.8 Care Home Respite and Short Stay Invoices

An invoice will be raised to prompt payment in full. Payment terms are 28 days from the date of invoice, and a 'Letter Before Action' (LBA) will be issued after 30 days. If the person is unable to make payment in full, in exceptional circumstances of financial

hardship, CMBC will consider payments in instalments. If the person fails to make payments they are sent an 'Arrangement Reminder Letter' informing them of the missed instalment(s) before they are sent an LBA. If the invoice remains unpaid 14 days after sending an LBA, this will result in a CMBC officer trying to make contact by telephone (or via other reasonable means). The person is given the chance to pay or agree an arrangement.

4.9 Care Home Permanent Stay Invoices

Invoices are generated in advance to the end of the financial year, with an automatic 4 weekly payment instalment. If instalments are not paid on time, the person is sent an 'Arrangement Reminder Letter' informing them of the missed instalment(s) before they are sent an LBA. If the invoice remains unpaid 14 days after sending an LBA, this will result in a CMBC officer trying to make contact by telephone (or via other reasonable means). The person is given the chance to pay or agree an arrangement.

4.10 Accounts of Deceased People

Upon receipt of a notification of death, a CMBC officer will notify the personal representative(s) of the estate of the balance due, in a timely manner. If the invoice remains unpaid after 28 days, a reminder letter is sent to the personal representative(s) of the estate. If the invoice remains unpaid after 14 days, a CMBC officer will make contact by telephone (or via other reasonable means) to give the personal representatives of the estate the chance to pay, agree an arrangement or provide proof there are insufficient funds in the estate. If the invoice remains unpaid or no proof is provided, an LBA will be sent.

CMBC will suspend debt recovery on accounts where notification is received from the personal representative(s) of the estate that Grant of Probate/letters of administration are being applied for. This will be monitored and regular updates requested.

In circumstances where there is a personal representative(s) of the estate, but they are refusing to co-operate/administer the estate and providing it would be economically viable to do so, in accordance with the Civil Procedure Rules 19.12, CMBC may consider bringing a claim against the personal representative(s) of the deceased.

In the absence of a personal representative(s) of the estate and providing it would be economically viable to do so, in accordance with the Civil Procedure Rules 19.12, CMBC may consider bringing a claim against the estate of the deceased and apply to the court for an order appointing a person to administer the estate.

4.11 Further Action if an Invoice Remains Unpaid

In the event of no contact after all the above has been attempted, a CMBC officer will refer the invoice to the Debt Panel Pre-Meet Group to agree the best course of action, with a view to referring to Debt Panel if the matter cannot be resolved. Failure to co-operate at this stage may result in court action.

5. Debts in Query or Dispute

If a debt is in dispute because the person believes that they do not owe the money or feel the amount charged is incorrect, recovery action will be suspended until CMBC is satisfied of the outcome of the dispute.

6. County Court Judgments (CCJs)

6.1 County Court Judgment

If all other reasonable options for debt recovery have been exhausted, CMBC may decide to proceed to the County Court. A County Court Judgment ('CCJ') is a court decision that a person owes money and that they must pay it back.

Before a CCJ is sought, a pre-action protocol (PAP) letter will be sent to the person or their representative(s). Pre-action protocols explain the conduct and set out the steps the court would normally expect parties to take before commencing court proceedings.

If the person or their representative(s) does not respond to the PAP, CMBC will seek legal advice which may result in CMBC starting court proceedings to recover the money owed.

Where a CCJ is obtained, the judgment will be posted to the person by the court and will explain:

- how much they owe
- how to pay (in full or instalments)
- the deadline for paying
- who to pay

The court will also decide if the person must repay any costs to CMBC in addition to the money owed. These can include solicitors' and counsel costs, court fees, disbursements to third parties and travel expenses.

6.2 Enforcement Options After a CCJ Remains Unpaid

A person who has a CCJ which remains unpaid is known as a "judgment debtor." A party who is owed an amount of money that has not been paid following a judgment is known as a "judgment creditor". Where a CCJ remains unpaid, CMBC may choose one of the following enforcement methods:

- **Third party debt orders**

CMBC may make an application for a third party debt order. A third party debt order is an order of the court that freezes money that might otherwise be paid to the judgement debtor. If successful, a third party debt order will stop the judgement debtor having access to the money until the court makes a decision.

- **Attachment of earnings order**

CMBC may make an application for an attachment of earnings order. This applies when

a person is in employment. The court will decide if an order will be made. If successful, the order will be sent to the judgment debtor's employer and will state how much to take from their earnings and when to take it.

- **Charging order**

CMBC may make an application for a charging order. This applies when a person owns property, such as a house or piece of land. The court will decide if an order will be made. If successful, a 'charge' will be placed on the persons property to secure recovery of the money owed. When the property is sold, the charge is usually paid before any of the proceeds of the sale can be given to the person.

- **Writ of control or warrant of control**

CMBC may make an application for a writ of control or warrant of control. If successful, this allows an Enforcement Officer to inform the judgment debtor that a warrant has been issued and payment must be made within seven days. If the person does not pay within seven days, the Enforcement Officer will visit the judgement debtors address to identify goods which they could sell at auction or collect a payment to prevent the goods being sold.

If any of the above actions are taken, the court will also decide if the person must repay any additional costs to CMBC. These can include solicitors' and counsel costs, court fees, disbursements to third parties and travel expenses.

7. Statutory Limitation to Recover a Debt

Under the Limitation Act (1980), all debt that arises must generally be recovered within 6 years from when the sum became due to CMBC. An exception to this is if the debtor has either made a payment or acknowledged the debt at some point within that 6-year period. If so, this would reset the limitation clock from the date of the payment or acknowledgement. Other exceptions may apply, for instance, where recovery action involves estate claims, recovery of land, or a contract by deed. In such cases the limitation period may be extended to 12 years.

8. Write offs

In certain circumstances a debt may need to be written off. These may include cases where:

- The person has absconded and cannot be traced
- The person has died, and evidence has been provided that there are no funds available in the estate
- The limitation period has passed
- The person is experiencing severe financial hardship
- The person (or their companies) has become insolvent
- It is not cost effective to continue recovery action

Debts will only be written off when all possible courses of recovery action have been taken. There is an approved scheme of delegation in place for authorising write offs. A quarterly report is then sent to the section 151 officer who reviews and authorises the debt write off.