

Proposed Decision to be taken by the Portfolio Holder for Adult Social Care on or after 24 October 2014

Social Care Irrecoverable Debts

Recommendation

That the Portfolio Holder for Adult Social Care write-off as irrecoverable the 17 debts, accruing to £135,291.54 as set out in the report.

1.0 Key Issues

1.1 The Council uses all reasonable means to maximise income collection, prevent arrears arising, and manage outstanding debt effectively Measures include:-

- Discussing financial arrangements and agreements with customers and their representatives when a service package is being agreed so they are aware of their responsibilities
- Prompt billing and collection of money due
- Discussing with customers early and setting up affordable repayment plans when there are arrears, and reviewing plans regularly
- Taking appropriate, proportionate and effective enforcement action
- Taking court action only after all other reasonable actions by the Council have been exhausted
- Seeking evidence where customers state that there are no funds to pay debts
- At all stages of debt management and recovery taking account of the financial circumstances, social care needs, mental capacity and any known vulnerability of customers.
- In 2013/14, total domiciliary income invoiced amounted to £7.06m compared to £7.05m collected. Residential income invoiced was £18.20m with £18.09m being collected. Other income raised in the year amounted to £8.05m. This gives an overall total of £33.32m for the financial year.
- The % of debt recommended for write-off is 0.4%, when compared to the 2013/14 raised debt.

- 1.2 The duty to provide support for people assessed as needing a service remains, even where debts have accrued.
- 1.3 The Council is currently pursuing a number of outstanding debts and in the case of the 17 debts, it has been decided that it would be uneconomical to pursue these further. It is therefore proposed that these debts totalling £135,291.54 are written-off. The Portfolio Holder may approve the write-off of individual debts between £2,000 and £50,000.
- 1.4 The cost of writing-off would be set against the provision for bad debts that the County Council sets aside each year.

2.0 List of cases recommended for write-off

- 2.1 Arrears on Mr A's account commenced in November 2009 for his placement in a residential home. Payments by standing order were agreed and continued to be paid, as requested, until March 2010 at which time the amount paid was decreased.

In May 2010, Mr A's wife informed us that the reason for the reduced payment was because Mr A was repaying overpaid benefits back to the Department for Work and Pensions. It was explained to Mr A's wife that the charges were correct in line with CRAG (based on benefit entitlement), however Mr A had no means to pay his full assessed contribution towards his residential placement whilst money was being paid back to the DWP.

In January 2012 payments were brought back in line with the charges. Unfortunately Mr A passed away in July 2012 and his wife passed away two months later. In December 2012 we received confirmation that Mr A passed away with £500 savings which were used to pay towards the cost of the funeral. A balance of £3,142.44 remains outstanding.

- 2.2 Mr B was in residential care from December 2005 to March 2009 when he died. The charges due on the account relate to the period December 2005 to May 2007 when Mr B's daughter was his appointee. Mr B did not have capacity to deal with his own affairs, and his daughter signed the contract on his behalf, making the Contract between Mr B and the Council.

Mr B's daughter continually failed to correspond with the department regarding payments towards the account despite all our efforts to try and speak with her, and as a result a referral was made for an independent appointee to take over this role and safeguard future payments. At this time, arrears of £8,135.07 had accrued.

Mr B's funds were used to continue to pay his on-going care costs until his death, but there were no funds to clear the balance outstanding.

- 2.3 Mrs C went into residential accommodation in October 2008 and continues to reside there. Arrears of £11,398.79 relate to charges raised up to 28th October 2012 only.

When Mrs C's residential placement commenced, arrears immediately accrued on the account due to non-payment. It was discovered through a Police investigation that Mrs C's nephew 'a' had been financially abusing his aunt, and he was found guilty in 2010 and was given a 21 month custodial sentence.

From March 2010, the residential home assisted the department in payment of the fees from Mrs C's income. At this time Mrs C was being charged the full cost for the care she received as it had not been possible to complete a financial assessment. The Home were unable to obtain access to any of Mrs C's other funds in order to assist.

In May 2012, the department was contacted by another nephew 'b' who had become aware of the issues, and had obtained Power of Attorney. He was able to obtain all relevant financial details in order to complete a backdated financial assessment. As a result of this reassessment, it was possible to ascertain that Mrs C had £30,000 savings when she entered residential care and as a result of an equity release on her property, her net gain from this would be £5,000.

Based on this information a payment of £7,000 from Mrs C's funds was made towards the account; this being the amount that would have reduced the capital below £23,250 at the start of the placement.

Mrs C's nephew 'a' is responsible for the debt accrued on this account; however the debtor is impecunious, having several charges registered against his property along with a bankruptcy notice.

- 2.4 Mr D received residential care from December 2004 until February 2012 when he passed away. The balance outstanding of £9,582.58 relates to when Mr D's son was his appointee and held Power of Attorney.

Mr D's son failed to make payments towards the account despite many requests. Due to on-going concerns regarding financial abuse, Mr D's benefits were suspended and his appointeeship was revoked. From May 2007, an independent appointee handled Mr D's finances.

Mr D's son wrote to the department in 2011 stating there were no funds available to settle the account, and has at no point accepted liability for the debt making it difficult to pursue the matter via the courts. The independent agency have confirmed that there are no funds available making this debt irrecoverable.

- 2.5 Mrs E entered residential accommodation in December 2010 and remained there until she died in June 2011. Initially the son advised the Council that he had been led to believe there would be no charges for his mother's care as

she had been granted Continuing Health Care. It was found that Mrs E was not CHC funded and payment of the charges was not the responsibility of the NHS.

Correspondence was sent to the son. As no responses were forthcoming a probate search was requested. This provided no results and this was confirmed in May 2014. Mrs E's son has not been responsive and hasn't been since he informed us of his mother's death in 2011.

Mrs E's son did deal with her finances; however this was on an informal basis making it very difficult to pursue the son for the outstanding charge. Mrs E's assets at the time of her death were allegedly in the region of £3,000, from which the cost of the funeral was to be met, and is less than the balance outstanding of £3,351.37 and the risk of litigation costs to pursue this matter would be disproportionate given the chances of success.

- 2.6 Mrs F went into a residential home in November 2008. There were issues from the onset as charges were raised at full cost due to information received about Mrs F having a 50% share in a property in Scotland. This was jointly bought with her daughter and there was a joint mortgage.

As no payments were received a request was made to place a charge against the property, however due to the different laws in Scotland, this could not be done. A request was made to the Registers of Scotland in order to carry out a property search, but they came back to say the property in question was not on their registers.

Mrs F died in June 2010 and in pursuing her daughter for further information, in April 2011 her daughter provided details of the property, other debts, and details of the outstanding mortgage.

Advice was sought from Legal regarding the financial assessment and as a result a reassessment of charges was carried out, disregarding the property and a claim was submitted against the Estate. In November 2013 a cheque was received for £4,708.87 leaving a balance outstanding of £3,324.39. In March 2014 we received details of the title document from the Solicitors relating to the property. From the information received we are satisfied that nothing further can be recovered towards the arrears.

- 2.7 Mr G was in residential accommodation and was responsible for his own finances up until April 2011. Issues relating to non-payment of charges rose at the start of his placement and the Team were heavily involved as concerns were raised around Mr G's capacity. Attempts were made to assist with the management of his finances including payment of the charges but Mr G declined support.

He often left the residential home to visit friends and family, and chose to spend his money on personal things for him and his friends. Given Mr G's type of disability it was acknowledged that he required a high amount of

stimulation/social inclusion and was unable to maintain his lifestyle from the personal allowance he received.

It was only when he was deemed to no longer having capacity to understand the consequences of non-payment that an independent appointee was sought. Mr G accrued arrears of £12,476.20 to this point, after which payments were made by the appointee until September 2013 when Mr G passed away. Confirmation was received that there was no estate and no funds available to pay any amount towards the arrears.

- 2.8 Mr H had 3 temporary placements in a residential home in June, July and August 2012, and became a permanent resident on April 2013. He dealt with his own finances throughout and was deemed to have capacity, which would only come into question when he was intoxicated. Prior to his placement he was in receipt of a home care package, and several discussions and meetings took place with him to discuss the arrears. He did, eventually, commence payment of these charges, although he constantly disputed the charge and felt aggrieved that he had to pay for a service when his health deteriorated in a short space of time.

Mr H had stated during meetings with the social work team that he would not be able to live off the personal allowance he was given each week whilst in residential care. He did have a mental health advocate who was contacted on a regular basis to discuss the situation; however we were informed that the advocate no longer assisted Mr H, at his request. All offers of assistance to help Mr H have been refused, and a debt of £10,497.13 has accrued as a result of non-payment.

Mr H died in February 2014. His brother made contact to inform us that he did not speak with his brother often, but did agree to assist with tying up any loose ends relating to finances.

In April 2014 we received a cheque for the sum of £1,413.71 with a complete breakdown of what little money there was in Mr H's account and how this was spent. This confirmed there were no funds to clear the outstanding balance of £9,083.42.

- 2.9 Mrs I was in residential accommodation from May 2010 until February 2011. Payments were not received towards the account as required and substantial arrears accrued as a result.

We received contact from the grand-daughter in October 2010 to advise she was assisting Mrs I in trying to sort her finances. She informed us that Mrs I had ignored correspondence that was sent to her and it was agreed that future correspondence would be sent to the grand-daughter.

A payment of £6,000 was received on 04/02/11, however Mrs I died 3 days later and a balance of £5,544.92 remains outstanding.

Correspondence has been sent enquiring about the estate, but no response has been received. A probate search carried out produced no results and a trace was carried out to try and locate the grand-daughter. This, too, produced no results. The financial assessment carried out confirmed little savings. Despite our efforts to obtain further information we have been unable to do so and we are now outside the limitation period for recovery.

- 2.10 Mr J entered residential accommodation in May 2012 and remained there until he died in June 2014. Sporadic payments were received throughout, despite many requests to bring the account up to date.

Mr J's son completed the financial assessment; however it was not established whether he acted as appointee. Bank statements that were verified showed that benefits were paid direct to the customer, and it is not known whether his son had access to this account.

At the time of Mr J's death, a balance of £3,834.85 remained outstanding. We know from the time the assessment was carried out that Mr J had very limited savings.

Mr J's son provided clarification regarding the bank account, and it is evident that the account belonged to Mr J and sufficient documentation was provided to establish that he deceased had insufficient funds to enable us to pursue this debt.

- 2.11 Significant arrears of over £9,000 accrued on this account for when Mrs K was in residential care up until November 2005 when she became CHC funded.

This matter was subject to a lengthy LGO complaint, however an agreement was eventually reached with Mrs K's son in October 2011 for him to settle the third party account in full and then commence payments for the accommodation charges in instalments. Payment of £5,780.08 was received in November 2011 which cleared the third party balance in full. At the same time, a standing order for £125 was set up in November 2011 and payments continued to be made without fail until August 2013, following the death of Mrs K at which point a balance of £5,356.81 remained outstanding.

Her son contacted us in August 2013 confirming that he would not be applying for probate as there were no assets. He has since provided a final bank statement confirming there were no funds and no further payments could be made.

- 2.12 Mr L's home care commenced in April 2002 and he continued to receive a package of care in the community until he passed away in May 2012. He therefore received care for over 10 years.

In 2005 Mr L was assessed to pay £4.55 per week. He did not pay his charges for over 1 year and his account was referred to Legal Services for non-payment with the account £580.41 in arrears. Eventually, a repayment plan was arranged and Mr L started to pay the account off at £35.00 per

month. By February 2007 the account arrears had reduced to £443.00.

However from February 2007 Mr L's assessed contribution steadily increased from £4.55 per week up to £58.60 per week. Mr L was very slow to increase his payments and was paying just £80.00 per month against a charge of £229.00.

Mr L was not supported by anyone with his financial affairs, and was fiercely independent in this regard, although quite severely disabled and unable to access the community without major assistance. Despite a large number of letters from Legal Services and the Social Work Team involved in Mr L's care the arrears continued to rise.

Mr L would always contact us after receiving correspondence and promise to increase his payments but would never actually carry out his promise. Unfortunately Mr L died quite suddenly in May 2012 with £4,486.05 outstanding on his account. At this time his account was being looked at to seek authority for recovery via the Courts.

Mr L had no savings and lived in sheltered accommodation owned by the Council and at the time of death confirmation was received that he had no money to pay any amount towards the balance outstanding.

- 2.13 Miss M received a care package from 1997. She had severe learning disabilities and her sister-in-law was her appointee and managed her financial affairs.

Various disputes were raised regarding the charges, however an agreement was eventually reached to pay the account in instalments, and the arrears were cleared in full until payments stopped altogether in 2006 and arrears quickly rose. All attempts at recovery were failing and the appointee would not engage with the Council.

The Department for Work and Pensions were contacted and a request was made for benefits to be suspended, however the DWP refused to do this as they had visited the appointee and did not feel they would be making a best interest decision for Miss M if benefits were suspended. However sporadic payments were received following their visit.

Miss M sadly passed away very suddenly early in 2012. She had no savings or property and there are no funds to settle the outstanding balance of £2,876.71.

- 2.14 An invoice was raised for an ex-employee for overpayment of salary. The invoice was originally disputed, but this was subsequently resolved and a repayment plan was agreed which resulted in payments being received for a few months, but these stopped.

The debtor has suffered with ill health for many years and lost her partner in an accident and this is the reason she gave for payments ceasing. She has since contacted us to advise she has no money and no job and is not in a

financial position to repay the amount due of £3,899.05. Given the lack of assets, there is nothing to enforce against making this debt irrecoverable.

- 2.15 An invoice was raised to a small residential provider for overpayment of fees for the sum of £5,110.54. Several attempts have been made to recover the overpayment, but the provider is adamant that they are owed the money, as from their perspective they were not informed that the placement had changed. There is no evidence of a signed contract for a reduction in the services provided. This all arose from a change in the care package provided to the customer who had learning difficulties and was offered additional support as part of her care package due to the complex support she requires. This, in effect, reduced the amount being paid to the provider, which they did not agree with and stated they would terminate the placement if the matter was not resolved.

This would prove to be traumatic, as the customer has been in this residence since childhood and any move to the placement would be detrimental to her challenging behaviour. The provider has maintained that the charge is incorrect and has stated their position that they are not paying the outstanding charge. The customer remains in their care and the cost of her package is significantly cheaper to the previous one, and moving her to a specialist residential service would be much more expensive and would cost far more (in a very short space of time) than the disputed amount on the invoice.

- 2.16 An overpayment of residential fees resulted in an invoice being raised to a Provider for £13,758.80.

There were issues with the placement and meetings took place with the Mental Health Service in Manchester, where the placement was, to discuss when the placement would end.

A phased return home was agreed whereby the resident would move back to Nuneaton to live with his mother, but the Provider states they were not, at any point, informed of the actual date the agreement was going to end, and although the customer removed some of his belongings they kept the placement open and abided with the Contract of placement, stating they were not given 4 weeks' notice to terminate the placement.

Correspondence was sent to the Provider, and initially responses were received, albeit they continued to dispute the overpayment. However, following investigations, it became apparent that the Company were no longer trading from the address we had been writing to and a Tracing Agent was instructed to find the whereabouts of the owner. Unfortunately this provided no results. We became aware that the company had ceased trading and were informed by the CSCI that an unannounced inspection was carried out where it became known that the company no longer traded. All further attempts to establish the whereabouts of the owner have been to no avail.

- 2.17 A large Healthcare Group Plc faced financial collapse in 2011. The Plc had several limited companies in its group (subsidiaries) which owned and

managed care home across the UK and most of these were transferred to other providers when the subsidiaries were dissolved. On transfer there was a period when payments were continued to be made to the Healthcare Group. Attempts were made to recover these overpayments amounting to £29,920.55.

In order to avoid administration, however, the Healthcare Group entered into a Company Voluntary Arrangement with its creditors to agree how to distribute any remaining assets owned by the group to unsecured creditors. According to the terms of the CVA a distribution of no greater than 0.5 pence in the pound was to be made. In respect of the amounts owed to WCC, this equalled £125 and was paid earlier this year.

There is therefore no justification in continuing to pursue these debts as all the assets of the Healthcare Group have already been distributed in accordance with the CVA. Solicitors for the Healthcare Group were initially trying to recover defaults owed to them by WCC, indicating at one point that these were in excess of £30,000. They have, however, confirmed that these are not being pursued.

Background papers

None

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