

## **Appendix B**

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# **Adult Social Care Debt Management & Recovery Policy 2022/23**

## **Final Report consultation 2022/23**

**01 October 2022 – 31 January 2023**

**Communities, Adults & Health, Customer Finance**

# ASC DEBT MANAGEMENT & RECOVERY POLICY CONSULTATION 2022/23

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# ASC DEBT MANAGEMENT & RECOVERY POLICY CONSULTATION 2022/23

## 1. EXECUTIVE SUMMARY

This report sets out the consultation findings from the Adult Social Care Debt Recovery Consultation 2022/23 which will be presented at Adults Safeguarding Committee on Monday 13 March 2023.

### 1.1 Response to the consultation

- A total of 104 questionnaires were completed.
- The findings in this report are based on “valid responses”, i.e., all those providing an answer at each question (this may or may not be the same as the total response) unless otherwise specified. The base size may therefore vary from question to question.
- The majority (75%) of responses were from residents.
- 15 written responses were received via post.

### 1.2 Summary of consultation approach

- The consultation ran from 01 October 2022 to 31 January 2023.
- The consultation consisted of an online questionnaire and summary consultation document which was published on [engage.barnet.gov.uk](https://engage.barnet.gov.uk).
- Paper copies and an easy-read version of the consultation were also made available on request.
- Letters were sent out to all the council’s social care clients inviting them to take part in the consultation.
- The consultation was widely promoted via the council's residents' e newsletter, Barnet First resident's magazine delivered to all household in the boroughs; the website; Twitter and Facebook ads.
- Two focus groups were also setup and residents were invited to take part, however, due to lack of interest, this was later cancelled.

### 1.3 Summary of key findings

#### 1.3.1 Views on the overall satisfaction with the debt recovery process

Note, only 6 responded to this question, with 98 skipping to next question.

- A third of respondents agree (33%, 2 of 6 respondents) were satisfied with the existing debt recovery process.
- 17% (1 out of 6 respondents) were dissatisfied.
- 17% (1 out of 6 respondents) were neither satisfied nor dissatisfied.
- A third of respondents (33%, 2 of 6 respondents) were not sure / didn't know.

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### 1.3.2 Views on overall approach to invoicing and communication

Note, only 2 responded to this question with 102 skipping to next question.

- All respondents (2 out of 2 respondents) were not sure / didn't know.

### 1.3.3 Views on paying all charges via Direct debit.

Only 89 responded to this question with 15 skipping to next question.

- A quarter of respondents (24%, 21 of 89 respondents) strongly agreed with direct debits.
- Just under a quarter (19%, 17 of 89 respondents) tend to support direct debits.
- A minority (17%, 15 of 89 respondents) neither support nor oppose direct debits.
- Under a quarter (20%, 18 of 89) tended to oppose direct debit.
- A smaller minority (11%, 10 of 89) strongly opposed direct debits.
- Even smaller minority (9%, 8 of 89) were not sure or didn't know.

### 1.3.4 Views on nominated person and request for Power of Attorney

Only 88 responded to this question with 16 skipping to next question.

- A quarter of respondents (25%, 22 of 88 respondents) strongly supported this approach.
- Over a third of respondents (36%, 32 of 88 respondents) tended to support this approach.
- Less than a quarter (18%, 16 of 88 respondents) neither supported nor opposed this approach.
- A minority (10%, 9 of 88 respondents) opposed this approach.
- A smaller minority (6%, 5 of 88 respondents) strongly opposed.
- Just 5% (4 of 88 respondents) did not know or were not sure.

### 1.3.5 Views on Nominated person failure to make regular payments.

Only 85 responded to this question with 19 skipping to next question.

- A third of respondents (31%, 26 of 85 respondents) strongly supported this approach.
- A third of respondents (34%, 29 of 85 respondents) tended to support the approach.
- A minority (14%, 12 of 85 respondents) neither supported nor opposed this approach.
- A smaller minority (13%, 11 of 85 respondents) strongly opposed or tended to oppose this approach.
- 8% (7 of 85 respondents) did not know or was unsure.

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### 1.3.6 Views on managing financial affairs as an Appointeeship/Deputyship or Power of Attorney.

- Only 48 responded to this question with 56 skipping to next question.
- Under a quarter (23%, 11 of 48 respondents) strongly agree with this approach.
- A third of respondents (31%, 15 of 48 respondents) tended to support this approach.
- 19% (9 out of 48 respondents) neither supported nor opposed this approach.
- A minority (15%, 7 of 48 respondents) strongly opposed or tended to oppose this approach.
- 13% (6 of 48 respondents) were not sure or did not know.

### 1.3.7 Views on Legal Proceedings

Only 48 responded to this question with 56 skipping to next question.

- Just over a quarter (27%, 13 of 48 respondents) tended to agree with our approach to legal proceedings.
- a minority 17% (8 of 48 respondents) strongly support this approach.
- A similar minority (17%, 8 of 48 respondents) neither supported nor opposed this approach.
- Just under a quarter (23%, 11 of 48 respondents) tended to oppose this approach.
- A small minority (10%, 5 of 48 respondents) was strongly opposed to legal proceedings.
- 6% of respondents (3 of 48) were not sure or did not know.

### 1.3.8 Further comments on approach to direct debit

Respondents were also asked if they oppose direct debits, to explain why. Of those who responded to the consultation, 25 out of 104 gave a response to this question.

The most common themes have been summarised below.

- *It should be free (three comments)*
- *Older adults need flexibility and choice in how they can pay. i.e., standing order, post office, bank transfer, phone (fifteen comments)*
- *Incorrectly charged and have opportunity to check invoice before paying (four comments)*
- *Inconsistent billing means that several payments can be taken in a month putting the person in financial difficulties (three comments)*

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### 1.3.9 Further comments on nominated person and request for Power of Attorney

Respondents were also asked if they oppose a request for nominated person to apply for Power of Attorney, to explain why. Of those who responded to the consultation, 6 out of 104 gave a response to this question.

The most common themes have been summarised below.

- *Mental Capacity needs to be checked (one comment)*
- *Power of Attorney already in place (one comment)*
- *A request for Power of Attorney cost money and it is not right to require this of an unofficial person (three comments)*

### 1.3.10 Further comments on nominated persons failure to make payments.

Respondents were also asked if they oppose this approach, to explain. Of those who responded to the consultation, 11 out of 104 gave a response to this question.

The most common themes have been summarised below.

- *No point in sending debtor letter to a person who lacks capacity (four comments)*
- *If an un-official representative fails even one payment, the service user should be made aware immediately (two comments)*
- *Ensure invoices are sent out on time with the correct recharges (three comments)*
- *Individuals who manage finances on behalf of service users who do not pay, should be chased for the debt (two comments)*

### 1.3.11 Further comments on Appointee/Deputy/POA who fail their duty.

Respondents were also asked if they oppose this approach, to explain. Of those who responded to the consultation, 3 out of 104 gave a response to this question.

- *Establish all the facts why the attorney failed to make the payments, giving them opportunity to fix the situation before lodging a complaint with DWP / Office of Public Guardianship (Three comments)*

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### 1.3.12 Further comments on Legal Proceedings

Respondents were also asked if they oppose this approach, to explain why. Of those who responded to the consultation, 13 out of 104 gave a response to this question.

The most common themes have been summarised below.

- *Should be free (one comment)*
- *Does the service user have capacity to understand all the issues and the implications (three comments)*
- *If the debt was due to financial representative, then the debt should be enforced against the financial representatives (three comments)*
- *Make sure the invoices and recharges are correct and give the individual opportunity to repay the debt before any legal action (five comments)*
- *MDT approach (one comment)*

### 1.3.13 Comments about any further action the council need to include.

Of those who responded to the consultation, 7 out of 104 gave a response to this question.

- *More flexibility when dealing with Mental Health and Learning Disability clients (three comments)*
- *The council needs better collection process to avoid debt (two comments)*
- *Get all the facts of the case, review the case and engage with service user before starting any legal action (two comments)*

# ASC DEBT MANAGEMENT & RECOVERY POLICY CONSULTATION 2022/23

## 2. CONSULTATION METHOD AND RESPONSE

### 2.1 Introduction

The Adult Social Care Debt Recovery and Management Policy has been subject to a formal public consultation.

This report sets out the findings from the council's consultation on the policy. The findings will be considered by the Adults Social Care Safeguarding Committee on Monday 17 March 2023, where a final decision will be taken.

### 2.2 Summary of consultation approach

The Adults Social Care Debt Recovery Policy began on 1 October 2022 and concluded 31 January 2023.

Councils are permitted under section 14 of the Care Act 2014 to charge for the costs they incur in meeting care and support needs under the Act. The Care Act 2014 states that a financial assessment of the person's resources must be undertaken to determine what they can afford to contribute towards the cost of their care. The financial assessment determines the person's ability to pay; that is, whether they will be required to pay all, part of, or nothing towards the cost of care and support

Whilst most of the income due is paid on time, the council has a duty to ensure that all revenue owed to the council is collected promptly and effectively as the council has a duty of care to all taxpayers.

The Adult Social Care Debt Recovery and Management Policy sets out best practices and includes guidance to ensure that Barnet Council has a transparent, consistent, and proportionate approach to recovery of monies owed to the council. Taking into consideration the vulnerability of the customers and not causing any undue hardship because of any recovery actions.

### 2.3 Technical details and method

#### 2.3.1 In summary, the consultation was administered as follows:

- The general consultation consisted of an online questionnaire published on <http://engage.barnet.gov.uk> together with a summary consultation document which provided background information.
- Paper copies and an easy-read version of the consultation were also made available on request.
- Letters were sent out to all the council's social care clients inviting them to take part in the consultation.
- The consultation was widely promoted via the council's residents' magazine (Barnet First delivered to all households), the council resident's newsletter, the council's website, local press, Twitter, and Facebook.



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- Two focus groups were also setup and residents were invited to take part, however, due to the lack of interest and numbers, this was later cancelled.

### 2.3.2 Questionnaire design

The questionnaire was developed to ascertain views on the overall approach to debt management. The consultation invited views on the following:

- Our approach to invoicing and communication
- Use of Direct debits to pay care charges.
- Where there is a nominated person managing individual financial affairs, the councils request for power of attorney documents.
- What happens when a nominated Person fails to make payments.
- What happens when Appointeeship/Deputyship/POA fails to fulfil their duties.
- Council legal proceedings

Throughout the questionnaire and where applicable, hyperlinks were provided to the relevant sections of the consultation document.

## 2.4 Response to the consultation

A total of 104 questionnaires were completed. 15 written responses were also submitted.

### 2.4.1 Response profile

The table below shows the profile of those who responded to the consultation.

**Table 1: Profile of those who responded**

Stakeholder	%	Base
Barnet resident	75%	40
Health or social care professional	2%	1
Representing a voluntary/community organisation	2%	1
Representing a public-sector organisation	4%	2
Other (please specify)	17%	9
<b>Total who answered this question</b>	<b>100%</b>	<b>53</b>
Not Answered		51
<b>Total response to the consultation</b>		<b>104</b>

### 2.4.2 Profile of protected characteristics

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The council is required by law (the Equality Act 2010) to pay due regard to equalities in eliminating unlawful discrimination, advancing equality of opportunity, and fostering good relations between people from different groups.

The protected characteristics identified in the Equality Act 2010 are age, disability, ethnicity, sex, sex reassignment, marriage and civil partnership, pregnancy, maternity, religion or belief, sexual orientation and marital status.

To assist us in complying with the duty under the Equality Act 2010 we asked the respondents to provide equalities monitoring data and explained that collecting this information will help us understand the needs of our different communities and that all the information provided will be treated in the strictest confidence and will be stored securely in accordance with our responsibilities under data protection legislation (such as the General Data Protection Regulation or the Data Protection Act 2018).

Table 2 over the page shows the profile of those who answered these questions. However, due to the low completion of these questions However, due to the low completion of these questions, it has not been possible to do any demographic analysis on the consultation findings.

**Table 2: Protected Characteristics, profile of those that completed the questionnaire.**

Protected Characteristic	Response	
	Number	%
Age		
16-17	0	0
18-24	0	0
25-34	5	5%
35-44	5	5%
45-54	14	13%
55-64	15	14%
65-74	15	14%
75+	14	13%
Prefer not to say	5	5%
Not answered	31	31%
<b>Total</b>	<b>104</b>	<b>100%</b>

Sex		
Female	33	32%
Male	32	31%
If you prefer your own term	0	0
Prefer not to say	7	6%
Not answered	32	31%

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Protected Characteristic	Response	
	Number	%
<b>Total</b>	<b>104</b>	<b>100%</b>

Is the sex you identify with the same as your sex registered at birth?		
Yes, it's the same	66	63%
No, it's different	0	0%
Prefer not to say	6	6%
Not answered	32	31%
<b>Total</b>	<b>104</b>	<b>100%</b>

Disability		
Yes	37	36%
No	29	27%
Prefer not to say	6	6%
Not answered	32	31%
<b>Total</b>	<b>104</b>	<b>100%</b>

Protected Characteristic	Response	
	Number	%
Ethnicity		
Asian	7	6%
Black	2	3%
Mixed	2	3%
Other	7	6%
White	46	44%
Prefer not to say	6	5%
Not answered	34	33%
<b>Total</b>	<b>104</b>	<b>100%</b>

Faith		
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Buddhist	2	2%
Christian	20	19%
Hindu	3	3%
Jewish	13	12%
Muslim	7	7%
No religion	14	13%
Prefer not to say	12	12%
Not answered	33	32%
<b>Total</b>	<b>104</b>	<b>100%</b>

Pregnancy and maternity leave		
Pregnant	0	0%
On maternity leave	0	0%
Neither	39	38%
Prefer not to say	4	3%
Not answered	61	59%
<b>Total</b>	<b>104</b>	<b>100%</b>

Protected Characteristic	Response	
	Number	%
Sexuality		
Straight or heterosexual	51	49%
Prefer not to say	19	18%
Not answered	34	33%
<b>Total</b>	<b>104</b>	<b>100%</b>

Marital Status		
Single	21	20%
Married	29	28%
Divorced	4	4%
Widowed	6	6%
Prefer not to say	9	8%
Not answered	35	34%
<b>Total</b>	<b>104</b>	<b>100%</b>

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## 2.5 Calculating and reporting on results.

- The results for each question are based on “valid responses”, i.e., all those providing an answer (this may or may not be the same as the total sample) unless otherwise specified. The base size may therefore vary from question to question.
- Where percentages do not add up to 100, this may be due to rounding, or the question is multi-coded - i.e., respondents could give more than one answer.
- Due to the small total sample size the findings have been reported on in terms of percentages and numbers.
- All open-ended responses have been classified based on the main themes arising from the comments, so that they can be summarised.

## 3. RESULTS IN DETAIL

### 3.1 Views on the overall satisfaction with the existing debt recovery process

Respondents, who had experience of the councils existing debt recovery processes were asked how satisfied or dissatisfied they were with the debt recovery process.

Only 6 responded to this question, with 98 skipping to next question.

Table 3 below shows that:

- A third of respondents agree (33%, 2 of 104 respondents) were satisfied with the existing debt recovery process.
- 17% (1 out of 104 respondents) were dissatisfied.
- 17% (1 out of 104 respondents) were neither satisfied nor dissatisfied.
- A third of respondents (33%, 2 of 104 respondents) were not sure / didn't know.

**Table 3: Respondents' level of satisfaction with the debt recovery process**

Overall, how satisfied, or dissatisfied are you with the Debt Recovery Process?	%	Base
Very satisfied	0%	0
Satisfied	33%	2
Neither satisfied nor dissatisfied	17%	1
Dissatisfied	17%	1
Very dissatisfied	0%	0
Don't know / not sure	33%	2
<b>Total</b>	<b>100%</b>	<b>6</b>
<b>Skip</b>		<b>98</b>

### 3.2 Views on overall approach to invoicing and communication

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Respondents were asked to if they support or oppose our approach to communicating invoices and notification of charges. 2 respondents completed this question.

Table 4 below shows that:

- All respondents (2 out of 102 respondents) were not sure / didn't know.

**Table 4: Respondents level of support for invoicing and charging communication.**

To what extent do you support or oppose our approach to collecting charges if payments are not met?	%	Base
Strongly support	0%	0
Tend to support	0%	0
Neither support nor oppose	0%	0
Tend to oppose	0%	0
Strongly oppose	0%	0
Don't know / not sure	100%	2
<b>Total</b>	<b>100%</b>	<b>2</b>
<b>Skip</b>		<b>102</b>

### 3.3 Views on paying all charges via Direct debit.

Respondents were asked to what extent they support or oppose all care charges being collected by direct debit. Only 89 responded to this question, with 15 skipping to next question.

Table 5 below shows that:

- A quarter of respondents (24%, 21 of 104 respondents) strongly agreed with direct debits.
- Just under a quarter (19%, 17 of 104 respondents) tend to support direct debits.
- A minority (17%, 15 of 104 respondents) neither support nor oppose direct debits.
- Under a quarter (20%, 18 of 104) tended to oppose direct debit.
- A smaller minority (11%, 10 of 106) strongly opposed direct debits.
- Even smaller minority (9%, 8 of 104) were not sure or didn't know.

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**Table 5: Respondents level of support for direct debits**

To what extent do you support or oppose our approach to collecting charges if payments are not met?	%	Base
Strongly support	24%	21
Tend to support	19%	17
Neither support nor oppose	17%	15
Tend to oppose	20%	18
Strongly oppose	11%	10
Don't know / not sure	9%	8
<b>Total</b>	<b>100%</b>	<b>89</b>
<b>Skip</b>		<b>15</b>

### 3.4 Views on nominated person and request for Power of Attorney

Respondents were asked, where the customer wants a nominated person to manage the finance on their behalf, a Power of Attorney will be requested. In instances where this is not possible, the local authority will setup an arrangement/agreement with the unofficial representative. 88 responded to this question.

Table 6 below shows that:

- A quarter of respondents (25%, 22 of 104 respondents) strongly supported this approach.
- Over a third of respondents (36%, 32 of 104 respondents) tended to support this approach.
- Less than a quarter (18%, 16 of 104 respondents) neither supported nor opposed this approach.
- A minority (10%, 9 of 104 respondents) opposed this approach.
- A smaller minority (6%, 5 of 104 respondents) strongly opposed.
- Only 5% (4 of 104 respondents) did not know or were not sure.

**Table 6: Respondents level of support for requesting Power of Attorney**

To what extent do you support or oppose our approach?	%	Base
Strongly support	25%	22
Tend to support	36%	32
Neither support nor oppose	18%	16
Tend to oppose	10%	9
Strongly oppose	6%	5
Don't know / not sure	5%	4
<b>Total</b>	<b>100%</b>	<b>88</b>
<b>Skip</b>		<b>16</b>

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### 3.5 Views on Nominated person failure to make regular payments.

Respondents were asked, when an un-official representative fails to make three consecutive payments, after reminded letters are sent out, invoices will be addressed back to the customer and Social Services will engage with the customers to determine the best course of action to bring the account up to date. Only 85 responded to this question, with 19 skipping to next question.

Table 7 below shows that:

- A third of respondents (31%, 26 of 104 respondents) strongly supported this approach.
- A third of respondents (34%, 29 of 104 respondents) tended to support the approach.
- A minority (14%, 12 of 104 respondents) neither supported nor opposed this approach.
- A smaller minority (13%, 11 of 104 respondents) strongly opposed or tended to oppose this approach.
- 8% (7 of 104 respondents) did not know or was unsure.

**Table 7: Respondents level of support for falling to make regular payments by un-official representatives.**

To what extent do you support or oppose our approach?	%	Base
Strongly support	31%	26
Tend to support	34%	29
Neither support nor oppose	14%	12
Tend to oppose	7%	6
Strongly oppose	6%	5
Don't know / not sure	8%	7
<b>Total</b>	<b>100%</b>	<b>85</b>
<b>Skip</b>		<b>19</b>

### 3.6 Views on managing financial affairs as an Appointeeship/Deputyship or Power of Attorney.

Respondents were asked if they support or oppose the council lodging a complaint with Pension Service/DWP and Office of Public Guardianship, where an appointee/Deputy or Power of Attorney fails in their duty to make regular payments. Only 48 responded to this question, with 56 skipping to next question.



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Table 8 shows that:

- Under a quarter (23%, 11 of 104 respondents) strongly agree with this approach.
- A third of respondents (31%, 15 of 104 respondents) tended to support this approach.
- 19% (9 out of 104 respondents) neither supported nor opposed this approach.
- A minority (15%, 7 of 104 respondents) strongly opposed or tended to oppose this approach.
- 13% (6 of 104 respondents) were not sure or did not know.

**Table 8: Respondents level of support in our approach**

To what extent do you support or oppose our approach?	%	Base
Strongly support	23%	11
Tend to support	31%	15
Neither support nor oppose	19%	9
Tend to oppose	8%	4
Strongly oppose	6%	3
Don't know / not sure	13%	6
<b>Total</b>	<b>100%</b>	<b>48</b>
<b>Skip</b>		<b>56</b>

### 3.7 Views on Legal Proceedings

Respondents were asked to what extent they support or oppose legal action and enforcement against non-payments. Only 48 responded to this question with 56 skipping to next question.

Table 9 shows that:

- Just over a quarter (27%, 13 of 104 respondents) tended to agree with our approach to legal proceedings.
- A minority 17% (8 of 104 respondents) strongly support this approach.
- A similar minority (17%, 8 of 104 respondents) neither supported nor opposed this approach.
- Just under a quarter (23%, 11 of 104 respondents) tended to oppose this approach.
- A small minority (10%, 5 of 104 respondents) was strongly opposed to legal proceedings.
- 6% of respondents (3 of 104) were not sure or did not know.

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**Table 9: Respondents level of support for Court proceedings**

To what extent do you support or oppose our approach?	%	Base
Strongly support	17%	8
Tend to support	27%	13
Neither support nor oppose	17%	8
Tend to oppose	23%	11
Strongly oppose	10%	5
Don't know / not sure	6%	3
<b>Total</b>	<b>100%</b>	<b>48</b>
<b>Skip</b>		<b>56</b>

### 3.8 Additional comments on approach to direct debit

Respondents were also asked if they oppose direct debits, to explain why. Of those who responded to the consultation, 25 out of 104 gave a response to this question.

The most common themes have been summarised below.

- *It should be free (three comments)*
- *Older adults need flexibility and choice in how they can pay. i.e., standing order, post office, bank transfer, phone (fifteen comments)*
- *Incorrectly charged and have opportunity to check invoice before paying (four comments)*
- *Inconsistent billing means that several payments can be taken in a month putting the person in financial difficulties (three comments)*

### 3.9 Additional comments on nominated person and request for Power of Attorney

Respondents were also asked if they oppose a request for nominated person to apply for Power of Attorney, to explain why. Of those who responded to the consultation, 6 out of 104 gave a response to this question.

The most common themes have been summarised below.

- *Mental Capacity needs to be checked (one comment)*
- *Power of Attorney already in place (one comment)*
- *A request for Power of Attorney cost money and it is not right to require this of an unofficial person (three comments)*

### 3.10 Further comments on nominated persons failure to make payments.

Respondents were also asked if they oppose this approach, to explain. Of those who responded to the consultation, 11 out of 104 gave a response to this question.

## ASC DEBT MANAGEMENT & RECOVERY POLICY CONSULTATION 2022/23

The most common themes have been summarised below.

- *No point in sending debtor letter to a person who lacks capacity (four comments)*
- *If an un-official representative fails even one payment, the service user should be made aware immediately (two comments)*
- *Ensure invoices are sent out on time with the correct recharges (three comments)*
- *Individuals who manage finances on behalf of service users who do not pay, should be chased for the debt (two comments)*

### 3.11 Further comments on Appointee/Deputy/POA who fail their duty.

Respondents were also asked if they oppose this approach, to explain. Of those who responded to the consultation, 3 out of 104 gave a response to this question.

- Establish all the facts why the attorney failed to make the payments, giving them opportunity to fix the situation before lodging a complaint with DWP / Office of Public Guardianship (Three comments)

### 3.12 Further comments on Legal Proceedings

Respondents were also asked if they oppose this approach, to explain why. Of those who responded to the consultation, 13 out of 104 gave a response to this question.

The most common themes have been summarised below.

- *Should be free (one comment)*
- *Does the service user have capacity to understand all the issues and the implications (three comments)*
- *If the debt was due to financial representative, then the debt should be enforced against the financial representatives (three comments)*
- *Make sure the invoices and recharges are correct and give the individual opportunity to repay the debt before any legal action (five comments)*
- *MDT approach (one comment)*

### 3.13 Comments about any further action the council need to include.

## **ASC DEBT MANAGEMENT & RECOVERY POLICY CONSULTATION 2022/23**

Of those who responded to the consultation, 7 out of 104 gave a response to this question.

- More flexibility when dealing with Mental H and Learning Disability clients (three comments)
- The council needs better collection process to avoid debt (two comments)
- Get all the facts of the case, review the case and engage with service user before starting any legal action (two comments)