

London Borough of Barnet

Debt Management and Recovery Policy

October 2022

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1. Introduction	2
2. Scope	2
3. Debt Prevention	2
3.1 Corporate Appointeeship and Deputyship	3
3.2 Deputyship	3
3.3 Appointeeship	4
3.4 Power of Attorney (POA)	4
3.5 Existing Appointee / Deputy / POA	5
3.6 Deferred Payment Agreement	5
4. Financial Assessments	5
5. Key Principles	6
6. Recovery Action for Unpaid Invoices	7
7. Arranging a Repayment Plan	7
8. Referral to Anti-Fraud Team and Safeguarding Adults Team	8
9. Legal Proceedings through the County Court	8
10. Mental Capacity Act 2005	8
11. Issue of County Court Claim	9
12. Enforcement Options	9
13. Warrant of Execution leading to Bailiff Action	9
14. Attachments of Earnings	10
15. Bankruptcy	10
16. Third Party Debt Order to Freeze Assets/Bank Accounts	10
17. Charging Order on a customer's Land or Property	10
18. Write Off	10
19. Assistance to Customers	11

1. Introduction

The purpose of this document is to set out a consistent and effective approach to the collection, recovery and enforcement of Adult Social Care charges owed to London Borough Barnet. This document should be used in conjunction with the [Council's Corporate Debt Policy](#) and the [Income Collections and Debt Management Guidance](#). These documents set out the council's policy and procedures in relation to the billing, collection and recovery of monies owed to the council, including any court enforcement.

[The Fairer Contribution Policy](#) sets out Barnet Council's policy on charging for adult social care services (non-residential services).

Further information about [Paying for Residential Care](#) can be found [here](#).

2. Scope

Adult Social Care charges can apply to the following services:

- Contributions to residential and nursing accommodation
- Charges for Home Care services
- Charges for Community Support services
- Charges for day services
- Charges for transport to services

3. Debt Prevention

The best method of debt collection is the prevention of debt arising in the first place. It is for this reason that the London Borough of Barnet's (LBB) preferred method of payment for ALL ongoing care charges is via direct debits. As soon as a bill is generated by our system, an officer will be in touch with the named representative to set up a direct debit.

LBB will work with customers to establish the best mechanism to avoid debt and arrears arising in the first place.

The local authority will establish whether the person being assessed has capacity to take part in the assessment, and may involve any of the following as appropriate in making that assessment:

1. Holder of an enduring power of attorney (EPA)
2. Holder of a lasting power of attorney (LPA) for property and affairs
3. Holder of a lasting power of attorney (LPA) for health and welfare, property and affairs, deputyship under the Court of Protection, any other person dealing with that person's affairs (for example, someone who has been given appointeeship by the Department for Work and Pensions (DWP) for the purpose of benefits payments)

Where the local authority establishes that the person being assessed lacks capacity, it will be working with the holder of a Lasting Power of Attorney (or its predecessor an Enduring Power of Attorney) or Deputyship for Property and Financial Affairs who have authority to make decisions on behalf of the person in respect of charging for services . Family members can apply to the Court of Protection for Deputyship where there is no LPA or existing Deputyship

3.1 Corporate Appointeeship and Deputyship

The local authority can act as Appointee or Deputy for anyone who lacks mental capacity. This means we will manage their financial affairs and benefits because they are unable to make their own decisions and have no-one else to do it for them.

3.2 Deputyship

The Court of Protection can appoint us to act as Deputy for someone who lacks mental capacity.

Anyone can make a referral for Deputyship to us about someone who is receiving social care support from us who:

- lacks or may lack the mental capacity to make financial decisions on their own.
- don't have an existing deputy or other representatives.
- don't have family or friends that are willing, able or suitable to act as their Deputy.
- have no family or friends.

Our Public Guardianship Team, if appointed as Deputy, will manage the person's property and financial affairs. They will:

- manage routine spending such as paying bills, car tax and home insurance
- make sure they have access to money to meet their daily needs
- buy or sell property
- make investments
- pay care bills
- change accommodation to meet their needs
- apply for state benefits

Our role as Deputy ends when the person dies or regains capacity

3.3 Appointeeship

The DWP will appoint us to act as someone's Appointee if the person's only income is social security benefits and they have no property or savings.

An Appointeeship only allows LBB to communicate with the DWP, receive benefit monies and spend the benefit monies in the service user's best interest. It does not give any authority to deal with the service user's assets and savings.

3.4 Power of Attorney

A Power of Attorney (PoA) is a legal document that gives someone else permission to make decisions on someone's behalf if they no longer have the ability or no longer want to make decisions.

PoA can only be used where person has consented and is void when the individual loses capacity. Under a PoA, the person you are acting on behalf can still make their own decision.

A Lasting Power of Attorney is needed where capacity is lost but must have been registered with the Court of Protection before capacity is lost to be effective.

People who have someone with PoA acting on their behalf might need help with:

- managing their finances, such as their bank account, savings or investments
- claiming and managing benefits
- buying or selling property
- making decisions about their care

A person must have mental capacity when they appoint a power of attorney.

3.5 Existing Appointee / Deputy / Power of Attorney

If a customer already has an Appointee, Deputy or Power of Attorney who is responsible for administering either financial and property affairs and/or welfare benefits on their behalf, the council will always require evidence of these arrangements. If the Appointee, Deputy or PoA fail to undertake their duties, that is to fail to make regular payments towards care cost and personal allowances and ultimately push the customer into debt and arrears, then the council will report the Appointee, PoA or Deputy to the DWP and/or the Office of Public Guardian with a request for benefits to be suspended whilst the council review the case and find a more suitable recipient. The authority will take this action with the intention to limit the scale of the arrears and protect the customer's best interests.

3.6 Deferred Payment Agreement

For customers who are entering residential, and nursing care, their property could be considered as part of the financial assessment process. The treatment of property owned by the customer receiving care will depend on whether the customer is a legal or a beneficial owner.

The council will determine the value of the property at the time of the social care assessment. In almost all circumstances where property is owned, the council may consider offering a Deferred Payment arrangement. This is an arrangement where the costs of the person's care are paid after their death, from the value of their property. Under this scheme the customer is not required to sell the property they own or have a financial interest in during their lifetime. The council will require a signed legal agreement that allows the council to place a legal charge on the property and defer that part of their charges relating to the value of their property until the property is sold or the customer dies. Once the agreement has been signed, the customer must still make an ongoing contribution towards the cost of their care but for the part relating to the property, a Charge will be placed on it under Section 55 of Health and Social Care Act. The Charge will show up in future land searches and the outstanding care fees will be paid from the proceeds of the sale of the property.

The process for Deferred payments is set out in the council's [Universal Deferred Payment document](#)
Eligibility depends on the following:

1. You own your own home
2. You live in or are moving to a care home on a permanent basis
3. You have less than £23,250 in capital and savings
4. Nobody else, such as a spouse, partner or dependent child needs to continue living in your home

4. Financial Assessments

As part of the adult's social care assessment (to determine if there is a need for social care services to be provided) the council will also undertake a financial assessment. This financial assessment will determine how much the customer is required to contribute towards the cost of their social care services. The council will provide support through the assessment process and will need full financial disclosure from the customer to undertake this assessment.

It is important that the Financial Assessment form is completed, together with the signed copies of 'Your Care Declarations', and the Direct Debit mandate with all evidence should be submitted back to council within the deadline.

5. Key Processes

Invoicing for Non-residential Care and Residential and Nursing Care is issued on a 4-weekly basis. Direct Debit is the most efficient and preferred method of payment. It also assists customers to avoid missing payments and being subject to recovery action.

We aim to issue prompt and accurate bills with the correct assessed charges.

We will make the payment of social care charges as easy and as convenient as possible.

Our standard method of payment is direct debit for all ongoing care charges. Other methods of payment are permitted by exception and discussion. An officer of the council will make contact with the adult or their Appointee/Deputy/PoA to set up a direct debit.

We will give our customers the following options to contact the Adult Social Care (ASC) Debt Recovery Team to discuss payments of their accounts:

1. By telephone to the dedicated revenue and payments teams
2. By email or in writing
3. Face to face at the Colindale Office

We will inform customers who fall 21 days behind with their charges or payment arrangement, of the need to bring their account up to date. If they fail to do so, we will then follow Recovery Action for Unpaid Invoices. See section 6.

Where the customer wants a nominated person to manage the finance on their behalf, a Power of Attorney may be requested. On the rare occasions where this is not possible, the local authority may set up an arrangement/agreement with un-official representative.

Where an un-official representative fails to make THREE consecutive payments, the invoice will be addressed back to the customer and the council will engage with the customer to determine the best course of action to bring the account up to date. The council will seek legal advice about enforcement and debt recovery.

We will try and engage with the customer at every opportunity during the recovery process to discuss and make a suitable repayment arrangement, to avoid further recovery action. This includes clearly warning customers about further recovery actions that may happen and the additional costs and charges that may be incurred.

We will review the appropriateness of each recovery options, in partnership with Adult Social Care Services and the customers personal circumstance, their ability to pay, their past payment history, their mental capacity or other physical health or age-related limitations. The council will always adopt a careful and sensitive approach to debt recovery in relation to people who use social care.

6. Recovery Action for Unpaid Invoices

If an invoice is not paid within 21 days of issue, telephone contact with the customer may commence and continue for as long as necessary, in addition to a reminder letter being sent out giving the customer a further seven days in which to bring the account up to date.

If a payment arrangement is made, and if payments are maintained, then no further recovery action will be taken.

If the account remains unpaid 14 days after issue of the reminder letter, a second written letter is issued.

Should the account remain unpaid after a further seven days, a third written letter is issued.

Where a service user has opted for an unofficial family member / financial agent to manage their financial affairs and this person has failed to keep the account up to date, after the final reminder the invoice will be addressed back to the service user. The ASC Debt Recovery Team will contact the service user, to make them aware of the debt and agree a resolution to the arrears.

Should the account remain unpaid after a further 7-14 days, the council's Accounts Receivable team will liaise with ASC about starting legal action. Should this happen, the council's Legal Department will write to the customer to explain the legal proceedings to be taken, the associated costs that will have to be paid, as well as the steps that the customer can take to avoid such proceedings. This will be the very last opportunity for the customer to avoid potential court action.

Where appropriate, and depending on the value of debt, the Local Authority may consider using an external agency to carry these services. If required, Enforcement Agents will attend the debtor's premises, anywhere in England and Wales, within 36 hours of the prescribed period, and as directed by legislation and regulations.

7. Arranging a Repayment Plan

When agreeing and arranging a repayment plan, we will always ask that the customer pays an amount equal to their current weekly charge, plus an affordable amount based on the customer's personal circumstances in respect of any arrears. This ensures that the customer is able to maintain their payments and prevent the overall debt from increasing.

Where this is not possible, a temporary arrangement will be made with an appropriate date for its review. When making the arrangement we will:

1. Have proper consideration of a customer's circumstances.
2. Where we feel an offer of payment is too low, we will provide clear reasons why we are rejecting the offer and indicate an amount that we believe is reasonable.
3. Where appropriate, allow time for benefits and debt advice through referral to advice agencies, or if the agency informs us that the customer is receiving advice from them.
4. Accept that, in some truly exceptional circumstances, no payment scheme is affordable, and a temporary deferral of payment may be agreed.
5. Respect and protect customer's rights at every stage of the recovery process.
6. Recognise where the customer has other priority debts (for example, rent arrears or utility debts), or debts owed to other council departments, and ensure that a fair balance is reached between claims.

We will always try to resolve debt problems at the earliest opportunity, without letting them get out of control by advising customers, or taking appropriate action, as soon as possible after an arrangement payment is missed.

8. Referral to Anti-Fraud Team and Safeguarding Adults Team

In some situations, concerns may arise that the individual acting as financial agent and responsible for paying the charges on behalf of the customer is not administering the finances appropriately. In cases such as this it may be appropriate to refer the case to the Safeguarding Adults Team, the council's or Anti-Fraud Team or the Police.

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 with all our attempts to enforce this will a referral be made.

An arrears visit will always be undertaken as part of this process to establish if there is a clear intention to avoid paying the charges.

9. Legal Proceedings through the County Court

The council will choose the appropriate recovery option based on what we know about the customer's circumstances, their ability to pay, their past payment history, their capacity to litigate, any physical health or age-related limitations and the requirement to recover outstanding monies in a timely and efficient manner. A County Court Judgement gives the Local Authority various powers of recovery. The decision to commence legal proceedings for recovery of an unpaid debt will be approved by the Assistant Director for Communities and Performance.

10. Mental Capacity Act 2005

Where a decision is made to commence legal proceedings, consideration should already have been given to whether the customer has mental capacity for litigation purposes. The Mental Capacity Act provides a framework for assessing a person's mental capacity and determining their best interests if they lack capacity to make decisions. We will work closely with the ASC professional before a decision is taken to refer a case for legal proceedings.

11. Issue of County Court Claim

The court will issue a claim form with details of the claim to the customer. The customer will have 14 days to respond; this is their opportunity to explain the situation to the court. Customers are entitled to seek independent debt and legal advice.

The customer can accept that they owe the debt, and they will receive an admission form with the claim form, asking about their income and outgoings. On the form they can make an offer to repay the debt in instalments.

The customer can dispute that they owe the debt and can complete a defence. The Council would usually ask for an income and expenditure form to assist in this process. If the customer does not respond or if the court agrees (at hearing) that the customer owes the debt, then the court will issue an order to pay the debt. The judgment usually specifies whether the customer is required to pay a lump sum or an instalment. If the customer wants to set up a different arrangement, this can be done by way of application to the courts. The council can also enter into a payment agreement.

12. Enforcement

Approval will be sought from the Assistant Director for Communities and Performance prior to any enforcement action commencing.

13. Warrant of Execution leading to Bailiff Action

We can ask the court to use bailiffs to collect the money. The bailiff will ask for payment within seven days. If the debt isn't paid, the bailiff will visit the customer's home or business, to see if anything could be sold to pay the debt.

Approval will be sought from the Assistant Director for Communities and Performance prior to any enforcement action commencing.

14. Attachments of Earnings

We can ask the court for an attachment of earnings order which is a method by which money will be stopped from a customer's wages to pay a debt.

An attachment of earnings order will only help if the defendant is in paid employment, due to this it will not always be an appropriate method for enforcing recovery action for debts for Adult Social Care.

15. Bankruptcy

We can petition to the court for a bankruptcy order, in order that the customer's assets can be used to pay their debts. Bankruptcy may only be an appropriate method for enforcing recovery action for Adult Social Care in exceptional circumstances.

16. Third Party Debt Order to Freeze Assets/Bank Accounts

We can ask the court to freeze money in the customer's bank or building society account (or in a business account). The court will decide if money from the account can be used to pay the debt.

17. Charging Order on a customer's Land or Property

We can ask the court to charge the customer's land or property. If the land or property is sold, they must pay this charge before the customer receives any money from the sale.

18. Write Off

We have an agreed procedure for writing off social care debts, provided the relevant criteria are met. We will only consider writing off debts in rare circumstances where they are deemed to be uncollectable, for example, in circumstances where we are unable to trace the customer, where they have passed away, if it is considered uneconomical to pursue the debt further or where the Assistant Director for Communities and Performance has decided that legal action is not appropriate. The age of the debt is not usually a reason itself to consider write off.

19. Assistance to Customers

We recognise that some people do not pay their social care charges because of genuine financial or other difficulties. It is the council's policy to offer help and support to **ALL** customers who are experiencing difficulties paying at every stage of the collection and recovery process.

This starts with setting up direct debits for all ongoing care charges where possible, ensuring that customers have an official representative, either as an Appointee, Deputyship or Lasting Power of Attorney, where appropriate.

Although we have a duty to collect all social care charges, we also recognise that some customers will have financial and other difficulties that are not limited to paying social care charges. We will, therefore, try to achieve long term solutions so that the customer is better able to manage their finances and pay their liabilities and provide help and support to resolve their finance issues.

We will try and support customers in the following ways:

- Direct Debits will only be collected on a Monday or Friday.
- Resolve debt problems at the earliest opportunity, without letting them get out of control. Advising customers as soon as possible that charges are overdue.
- We will have proper consideration for a customer's circumstances and financial situation including other priority debt, when taking recovery actions and deciding for payment. We will work closely with ASC and where necessary social care practitioners.
- We will respect and protect the customer's rights at every stage of the recovery process.