# Debt Management And Recovery Procedure For Care And Residential Services Debt



**P26 - PROCEDURE** 

v2.1

2016-05-16

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THIS PROCEDURE APPLIES IN THE FOLLOWING DIRECTORATE(S)/ UNIT(S) (please delete as appropriate)

Adult Social Care, including Cumbria Care

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#### 1. INTRODUCTION/ BACKGROUND

Cumbria County Council needs to demonstrate to our customers, elected members and tax payers that it collects all income due as a result of a local authority meeting a person's eligible care and support needs from whatever source as effectively and efficiently as possible. Powers are provided under Section 69 of the Care Act which provides both Cumbria County Council and the customer with equal protection. Section 70 of the Care Act provides Cumbria County Council with the power to recover charges from a third party where a person has transferred assets to them in order to avoid paying charges for care and support.

The Audit Commission report on 'Charging with Care' states that income collected from charges can be used to protect services, extend access and promote independence and wellbeing of customers.

Effective financial management is fundamental to being able to fund the quality of services the Council provides. The best method of debt collection is the prevention of debt arising and this policy covers both prevention and recovery.

This policy covers the debt management and recovery of the Council's care and residential services and describes the approach that the Council will take in carrying out this function.

Key Principles of the Policy

- Collection of all money due; quickly, efficiently and economically taking into account the financial circumstances and mental capacity of the customer.
- Prevention of debt and arrears; prompt billing, collection of money due, affordable repayment plans and early intervention when a customer is in arrears.
- Provision of a legal framework to enable legal enforcement (where necessary) to recover debts.
- Compliance with the Council's Financial Regulations and Standing Orders.

This procedure outlines the requirements of the Care Act 2014 and the associated regulations and statutory guidance. It should be read in conjunction with:

- Sections 14, 17 and 69-70 of The Care Act 2014
- Care and Support (Charging and Assessment of Resources) Regulations 2014
- Care and Support and Aftercare (Choice of Accommodation) Regulations 2014.
- Chapters 8 and 9 and Annexes A to E of the <u>Care and Support Statutory</u> Guidance
- Health and Care Services internal Procedures and Guidance

For debts accrued prior to April 2015 the time period for recovering that debt continues to be 3 years as previously set out under Section 56 of the National Assistance Act 1948 as any change to this would retrospective and unfair. (Page 439 Annex D: Recovery of debts Care Act 2014)

# 2. PROCEDURE

This procedure provides a framework to enable legal enforcement to recover debts where appropriate.

The method of recovery of money owed is the same whether the care services are provided in the community or in a residential environment. For services provided in the community and for residential care the main powers and duties for local authorities to charge for Social Care services are described in The Care Act 2014.

## **Charged Services**

The Council will charge for the following services:

- Respite care;
- 24 hour care in registered care/nursing home
- Third party top ups for the above services.
- Home care support;
- Purchased activities including day support;
- Transport costs
- Telecare

The Council will not charge for the following services:

- Aftercare services provided under Section 117 of the Mental Health Act 1983
   Providing advice about the availability of services or for the assessment of
   community care needs and financial assessments.
- Care and support received by customers suffering from any form of Creutzfeldt- Jacob Disease (CJD).
- Intermediate Care including reablement (for up to 6 weeks)
- Community equipment (minor adaptations less than £1000, all aids see Community Equipment Policy).
- Any service or part service which the NHS is under a duty to provide eg continuing health care and NHS contribution to Registered Nursing care.
- Any service which a local authority is under a duty to provide through other legislation may not be charged for under the Care Act. (this refers to services other than care, that Local Authorities can charge for – under different legislation).

# **Fixed Rate Services**

Meals are currently not means-tested and everyone pays the same flat rate charge to the service provider.

#### **Financial Assessments**

As part of the Council's social care assessment to determine if there is a need for care or residential services to be provided, the Council will undertake a financial assessment. This financial assessment will determine how much the customer is required to contribute towards the cost of their care and residential services.

The Council will provide support through the assessment process and will need a full financial disclosure from the customer to undertake this assessment.

The financial assessment process for customers in residential care is conducted in accordance with the Care Act.

# Assessing the customer's ability to pay

The Council will establish if the customer has capacity to sign the consent forms or provide details of who is managing their financial affairs before the residential placement is made.

Where a customer is required to contribute towards the cost of care and residential services, the Council's representative will meet with the customer and provide full details of the customer's financial position and their responsibilities. This will include the explanation of the financial contribution (how much, how it is calculated and the associated debt recovery processes including legal action if necessary). The process of recovering any outstanding debt is outlined in Appendix 1.

#### **Property**

For customers who are going into residential care (assessed in accordance with the Care Act 2014) their property may be included in their assessed contribution and considered as part of the financial assessment process. The treatment of property owned by the person receiving care will depend on whether the resident is a legal or a beneficial owner of the property. Where ownership is disputed, written evidence to prove ownership via the customer and Land Registry documents will be obtained and considered as part of this decision. Any transfer of assets that may have taken place will be investigated under section 70 of the Care Act 2014.

The Council will determine the value of the property when undertaking a financial assessment. This will involve the Council obtaining a professional valuation of the property.

# **Deferred Payments Agreement Scheme**

In some circumstances, the Council will offer the Deferred Payment Agreement Scheme if a customer meets certain criteria governing eligibility for the scheme. Cumbria County Council is only required to offer the DPA for the amount of the accrued debt and is not obliged to defer any future costs, however it may wish to consider allowing the person to defer further payments so as to avoid any further accrual of debt.

Only where a person refuses the option of a DPA or does not meet the eligibility criteria can a local authority seek to enforce the debt via an application to the County Court.

Under the DPA scheme, the customer is not required to immediately sell the property they own or have a financial interest in. 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 assessment relating to the value of their property until the property is sold or the debt is settled. Once the agreement has been signed, a Charge will be placed on their property under section 34 of The Care Act 2014. Under this scheme the Council will continue to meet the difference between the customers assessed contribution and the full cost of the care home fees either until the home is sold or the customer leaves residential care.

The Charge will show up in future searches of the property in question and the customer's solicitor will ask the Council to remove the Charge before the sale goes through.

# Declaring a legal charge/Deferred payment

Section 34 of the Care Act gives the Council an option to place *a* legal charge on a resident's interest in a property to secure a debt for residential care with the agreement of the customer or their legal representative. The deferred payment process should commence at the financial assessment stage and the customer/representative must be in agreement. The legal charge covers the outstanding amount in respect of a residential care charge, where the debt has accrued from unpaid fees linked to the property.

It is important that all information provided to Legal Services is accurate, complete and current so that they can deal with it appropriately.

Deferred payments should be offered via a DPA when individuals own or have an interest in property and are willing to pay their assessed contribution but do not wish to do so immediately as doing so would force them to sell their property.

# **Third Party Payments and Top Ups**

If a customer chooses residential care that is more expensive than rates set by the Council, (and this is their preferred option and not because their needs cannot be met adequately in a less expensive residential home) then a third party can pay the difference. This is also known as a Third Party Top up.

Customers are not permitted to pay their own Third Party Top Up, unless it is evidenced that the customer is willing and able to meet the additional cost.

A representative (third party) would enter into a legal agreement with the Council. This states that they are responsible to pay the top up fees and that any debts may be recovered from them through legal action. The Council will not agree to any Third Party Top Up arrangement unless the legal agreement has been signed and agreed. The third party is not permitted to enter into a private arrangement with a care home contracted by the Council to pay a top up.

If there are arrears on a third party account, the Council will commence the legal debt recovery process. The Council may choose to terminate the agreement and reassess the accommodation with a view to moving the customer to a less expensive placement that, where possible, would be within the rates set by the Council.

#### **Overpayments to Residential Care Homes**

Whilst attempts are made to minimise the number of overpayments being made, it is sometimes unavoidable that payments have been processed before notification to terminate the placement has been received. For example, date of death, discharges and timing of payment cycle etc.

The Council will deduct and claw back any overpayments from future payments that are made to the care home.

#### Personal Budgets- Care Act 2014

Personal budgets are designed to give the customer more choice and control. Instead of being offered a care package, customers are given their own budget and can then decide the best way to meet their needs with the money they have been allocated. The personal budgets available are:

#### **Direct Payments**

This is where customers receive social care payments and organise their own support. The assessed customer contribution is deducted from the direct payment before the payment is made. Customers are expected to pay their contribution into the dedicated direct payment account.

A Direct Payment will not be awarded until the financial assessment has been completed. Use of the Direct Payment is subject to regular monitoring and submission of receipts if these should be requested.

# **Care Managed**

This is where the Council organises the support on behalf of the customer. The customer will be required to pay their assessed contribution to the Council. The process of recovery for any outstanding debt is outlined in Appendix 1.

# **Individual Service Funds (ISF)**

This allows a customer to find a limited company or a sole trader to manage the personal budget on their behalf. The customer will be required to pay their assessed contribution to the Council.

# **Attorneys and Deputies**

Where a person is appointed to make decisions about property and affairs (including finance matters) and fails to pay care contributions then the CFO should contact the Office of the Public Guardian to request an investigation. The OPG may consider a court order to cancel the powers if the attorney/deputy has not acted in the person's best interests.

In cases where the customer has an Appointee and there has been inappropriate use of monies, CFO's should inform the DWP.

#### **Debt Recovery Process**

The debt recovery process described in this section will be adopted for the following services:

- Charges under The Care Act 2014
  - Respite care:
  - 24 hour care in a registered care or nursing home
  - Third party top ups for the above services;
  - Home care support;

- Purchased activities including day care;
- Transport costs
- Telecare costs

The process of recovery for any outstanding debt is outlined in Appendix 1.

#### Principles underpinning the approach to debt recovery:

- Possible debts must be discussed with the person or their representative:
- The local authority must act reasonably;
- Arrangements for debt repayments should be agreed between the relevant parties;
- Repayments must be affordable; and
- Court Action should only be considered after all other reasonable avenues have been exhausted.

A debt reminder letter will be issued where a customer fails to pay the charges detailed in their statement by the due date. Customers **or their representative(s)** will be encouraged to discuss the reasons for non-payment and their individual circumstances with the Council in order that a repayment plan can be agreed. CFOs are encouraged to refer customers to money advice agencies who can support the customer in managing their debt and finances, for example Citizens Advice Bureau.

Failure to pay charges within agreed timescales will result in a final debt reminder letter being sent to the customer, setting a final deadline. Failure to pay by this final deadline will result in the Council issuing a letter before action that will lead to legal debt recovery action being undertaken.

Before debt recovery procedures against a customer are initiated the CFO must ensure vulnerability checks are made with the allocated practitioner and record on file that these checks detail the level of understanding and capacity of the customer. If the customer is found to lack capacity e.g. due to severe mental illness then the decision to proceed should be discussed with the Locality Support Manager.

Enforcement options available to the Council through the legal process include:

- Warrant of execution leading to bailiff action undertaken by CCC approved bailiffs;
- The customer being required to attend court for an oral examination of their means and assets;
- Attachment of Earnings Order;
- · Charging Order;
- Petition for Bankruptcy; or
- Third party debt order.

# **Pursuing Debt**

Responsibility for pursuing debt is as follows:

**Community Finance Officer:** It is the responsibility of the CFO to monitor and identify debts and pursue the debt via enforcement actions where necessary in accordance with guidelines and procedures. Any debt that requires further enforcement action should be highlighted to the Locality Support Manager at the earliest opportunity.

**Locality Support Manager:** It is the responsibility of the Locality Support Manager to ensure that debt recovery procedures and guidelines are observed and followed and provide guidance and direction to the CFO. The Locality Support Manager is responsible for overseeing cases that require enforcement actions and ensure legal advice is taken.

**Customer Support Manager:** It is the responsibility of the Customer Support Manager to ensure that any debt submitted by the Locality Support Manager for debt enforcement action has sufficient supporting evidence to show that the debt procedure has been followed. Following any debt being submitted to Legal Services, it is the responsibility of the Customer Support Manager, to liaise with legal colleagues, to determine the course of action required to recover the debt.

# Identifying debt for write off

This is a debt resulting from the non-payment of an account that is deemed to be unrecoverable by the Locality Support Manager.

The only person who has the authority to authorise a write off of a debt up to £10,000 is the Director of Health and Social Care. Debt deemed unrecoverable over the value of £10,000 needs to be submitted to elected members of Cumbria County Council. All write offs once approved will be shown in monthly debt reports submitted to Corporate Finance to be incorporated into the debt figures for Cumbria County Council.

The County Manager Health and Social Care North/West/South is responsible for submitting all write off requests to the Director.

Community Finance Officer and Locality Support Managers will liaise to ensure that debt recovery procedures have been exhausted and obtain evidence to confirm that the debt is unrecoverable. This evidence will be reviewed by the Locality Support Manager for consideration. The Locality Support Manager will review the evidence and decide if the write off application is valid and either authorise via a Write Off form see Appendix 2 to be passed to the Customer Support Manager or refer back to the Community Finance Officer for further action.

#### Limitation periods for recovering debts

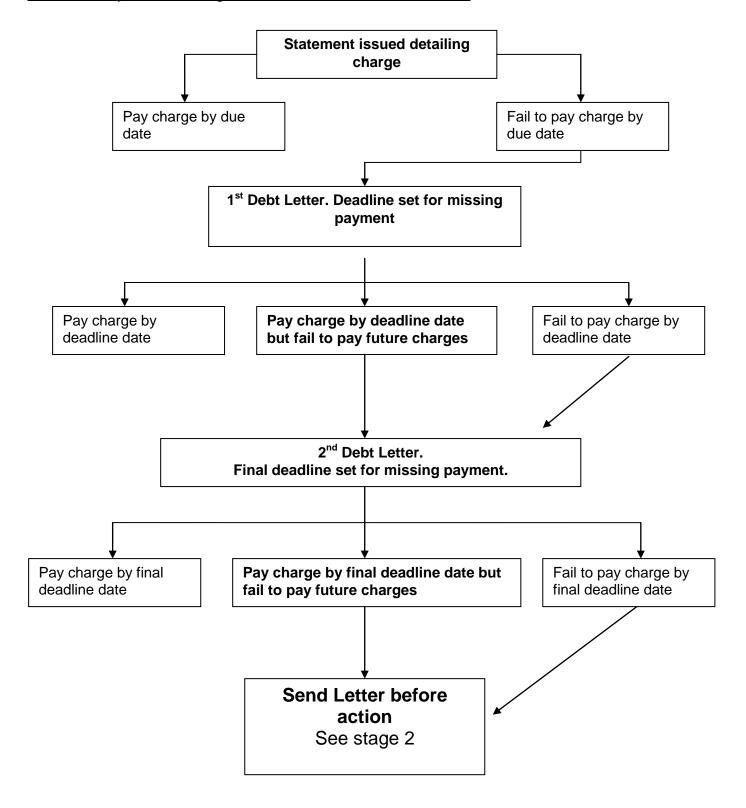
Any debt relating to care, which arises after the Care Act 2014 comes into force must be recovered within 6 years of the date when the sum became due to the Local Authority, it is considered to be unfair or improper to write to a debtor saying that they could be the subject of a Court action for the amount of the stature barred debt when it is known, or reasonably ought to be known, that the relevant limitation period has expired. The person seeking to recover the debt would effectively be relying on the debtor not knowing the relevant legal provisions. This means, in practice, that it would be improper for a Council to write a letter requiring repaying of the debt in circumstances where we know that the debt is statute barred.

The OFT consider it to be unfair or improper to pursue a debt when the debtor has heard nothing from a creditor during the relevant limitation period. They say "if a creditor has been in regular contact with a debtor before the debt is stature barred, we (they) do not consider if unfair to continue to attempt to recover the debt."

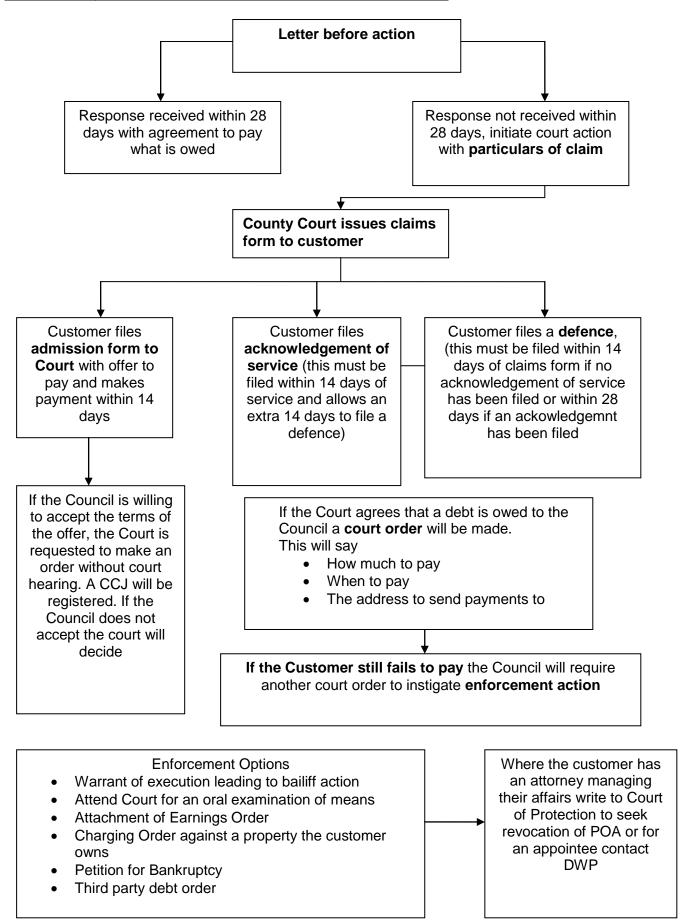
It is important to ensure that regular invoices are being sent to the debtor, which will demonstrate that the Council as creditor has maintained regular contact with the customer (debtor).

There are some exceptions to the general rule. For example, if a debtor acknowledges that the sum is due and payable then the limitation period starts to run again from the date of that acknowledgement.

# Debt Recovery Process: Stage 1- Statement to Letter Before Action



# Debt Recovery Process: Part 2- Letter Before Action to Enforcement



# Health and Care Services

1<sup>st</sup> Debt Letter

3<sup>rd</sup> Floor • Civic Centre • Rickergate • Carlisle Cumbria • CA3 8QQ • Fax 01228 221597 Tel 01228 ????? • Email ????@cumbria.gov.uk

Date: Our ref: Your ref:

Name Address line 1 Address line 2 City County Postcode

Dear

# NAME & RAS / NAS ID - Unpaid Charges for Residential / Non-Residential Care

It has come to my attention that there is an outstanding debt of £0.00 on the above account as at 00/00/00. The account is now in arrears, as payments have not been made every 4 weeks upon receipt of the statement, as advised in the Notification of Charge letter. If you have already paid the account please disregard this letter.

Collecting a customer's contribution is an important role the Council undertakes, as the contributions made are used to protect services and promote independence and wellbeing of all our customers. Where a customer fails to pay their contribution the Council will consider enforcement options to collect the amount owing.

Please arrange for payment of the above amount to clear the arrears and confirm that all future payments will be made on a regular 4 weekly basis. You can pay your contribution via Direct Debit which is our preferred way of receiving your payment. If this is not already set up please discuss this with your Community Finance Officer.

Payment can also be made at a Bank or Post Office by cash, cheque or at a Local Link.

I have enclosed a pre-paid envelope for your reply and/or payment, I would be grateful if you could return it no later than date 2 weeks from date of letter.

If you are experiencing any difficulty in settling this account please contact me immediately.

Yours sincerely

Name Title

# Health and Care Services

3<sup>rd</sup> Floor • Civic Centre • Rickergate • Carlisle Cumbria • CA3 8QQ • Fax 01228 221597 Tel 01228 ????? • Email ????@cumbria.gov.uk 2<sup>nd</sup> Debt Letter

Date: Our ref: Your ref:

Name Address line 1 Address line 2 City County Postcode

Dear

# NAME & RAS ID - Final Letter- Unpaid Charges for Residential / Non-Residential Care

I wrote to you on dd/mm/yyyy advising you of the outstanding debt on the above residential / non-residential account, which is now standing at £0.00. To date I have had no response and no payments have been made.

As advised in your Notification of Charge letter you should pay your account in full every 4 weeks upon receipt of your statement. You do not appear to be doing this.

# Please settle this account before the (insert date..allow 5 working days).

If you have any reason for withholding payment you should contact the above office immediately to discuss the situation.

If you have already paid the account please disregard this letter.

Yours sincerely

Name Title

# Adult and Local Services

3<sup>rd</sup> Floor · Civic Centre · Rickergate · Carlisle Cumbria · CA3 8QQ · Fax 01228 221597 Tel 01228 ????? · Email ????@cumbria.gov.uk

Date: Our ref: Your ref:

Name Address line 1 Address line 2 City County Postcode

Dear

# NAME & RAS ID – Notice of Legal Proceedings- Unpaid Charges for Residential / Non-Residential Care Amount Due:

We are disappointed to note that you have failed to pay the following outstanding statement(s): -

Inv No Inv date Due Amount

xx xx-xx-xx xx-xx-xx £x

Your account is now overdue for payment by xx days. Despite previous requests, no payments have been made to this account.

We write to advise that unless we receive payment of £x within the next 7 days we will be left with no alternative but to issue court proceedings against you. There will be no further warnings made for demands of payment. Court proceedings can include the additional expense of legal costs being added to the balance of this account.

It is regrettable that it has come to this point and court action is still avoidable if immediate and full settlement of this account is made.

I look forward to hearing from you on this matter. Yours sincerely

Name Title

# <u>If Court action is required, please contact your Locality Support Manager to discuss.</u>

Guide to make a court claim for money (for information only)

#### Part 1: Overview

If someone owes CCC money and doesn't pay, you can take court action against them. This is known as making a court claim. You usually have to pay a court fee, and you may not win your case or get your money back.

#### How to take court action

To take court action download a claim form (<a href="http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\_forms\_id=338">http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\_forms\_id=338</a>)

#### Where to send the claim form

Send the claim form to:

County Court Money Claims Centre PO Box 527 Salford M5 0BY

You'll need to include payment for the court fee which is detailed below.

#### What happens next?

You may have to go to a court hearing if the other person denies owing the money. If they admit owing the money or don't respond, you can get the court to order them to pay. If they still won't pay, you'll need to ask the court to take extra steps to collect the money. This is called enforcing a judgement.

#### Help making a claim

Contact the court centre:

County Court Money Claims Centre 0300 123 1372

#### Part 2: Court fees

The court fee is based on the amount you're claiming, plus interest. Cumbria County Council will not be charging interest on the amount of debt. However, will seek to claim the costs back if we win the case, i.e. the Court Fee.

Claim amount	Court fee
Up to £300	£35
£300.01 to £500	£50
£500.01 to £1,000	£70
£1,000.01 to £1,500	£80
£1,500.01 to £3,000	£115
£3,000.01 to £5,000	£205
£5,000.01 to £10,000	£455
£10,000.01 to £100,000	5% of the value of the claim
£100,000.01 to £200,000	5% of the value of the claim
More than £200,000	£10,000

Pay with a cheque (payable to HM Courts and Tribunals Service).

# Part 3: After you make your claim

The person who owes you money must respond to your claim within 14 days of receiving it

# If you don't get a response

If they don't respond to your claim, ask the court to order them to pay.

To do this, you can fill in a request for judgement form (http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\_forms\_id=465)

# What to do if you get paid?

If they pay you, or make you an offer you're happy with, tell them you're withdrawing your claim. You'll also need to tell the court centre, if you started the claim with a paper form.

# How to take your claim to court

You may have to go to a court hearing if:

- The person says they don't owe you any money
- They disagree with the amount
- You can't agree on how the money will be repaid

The court will send you a questionnaire,

(<a href="http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\_forms\_id=384">http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\_forms\_id=384</a>) asking for more information on the case. Fill this in and return it to the court.

You will have to pay extra court fees.

(http://hmctscourtfinder.justice.gov.uk/HMCTS/GetLeaflet.do?court\_leaflets\_id=264)

# Agreeing without going to court

You can still talk to the other person and try to reach an agreement before the court hearing.

Use the court's small claims mediation service if your claim is worth under £5,000- contact your local county court. (<a href="http://hmctscourtfinder.justice.gov.uk/HMCTS/">http://hmctscourtfinder.justice.gov.uk/HMCTS/</a>)

If you settle out of court before the hearing, you may be able to get some of your court fees refunded.

The judge might not award you costs if they think you've made no effort to agree out of court.

#### Part 4: Going to court

You may have to go to court if the other person denies owing the money, and they defend the case.

#### Small claims

If your case is a small claim- under £10,000- it may be dealt with using written evidence, without a hearing.

If there is a hearing,:

- CFO/LSM can represent the Council
- Seek Legal Services colleague to represent the Council

Small claims hearings can be held in the judge's room or a court-room at the defendant's local county court.

#### Cases worth more than £10,000

If you're claiming for more than £10,000, there may be a more formal hearing. Using the Council's legal services is not necessary however you should take advice if unsure.

# After the hearing

The court will send you a letter giving you its decision.

If you disagree with the decision, you have 21 days from the date of the decision to appeal. The letter will explain how to do this.

# Part 5: Enforce a judgement

If you win your case, you may have to ask the court to take steps to collect the payment if the defendant does not pay the amount owing.

You will have to pay extra court fees- ordering someone to attend court costs £50, and the other steps which cost £100 each. (Court fees subject to change)

# Find out what the person can afford to pay

It's worth working out what the person can afford to pay.

You can ask the court to order a debtor to attend court. (<a href="http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\_forms\_id=547">http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\_forms\_id=547</a> to provider evidence of their income or spending, like bills and statements.

#### Get money deducted from wages

You can ask the court to send an order to the person's employer, to take money from wages to pay the debt. To do this, fill in an attached of earnings order. (http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\_forms\_id=567)

# Freeze assets or money in an account

The court can freeze money in the person's bank or building society account. To do this, fill in a third party debt order.

(http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\_forms\_id=573))

The court will decide if money from the account can be used to pay the debt.

# Charge the person's land or property

You can ask the court to put a charge the person's land or property. To do this, fill in a charging order.

(http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\_forms\_id=576)

If the land or property is sold, they must pay this charge before they get their money.

Guidance taken from Make a court claim for money, a guide from GOV.UK.

# **DOCUMENT HISTORY**

RELATED DOCUMENTS				
OTHER RELATED DOCUMENTS	ASC-P43 Procedure Financial Assessments ASC-P47 Procedure Finance and Charging for Care and Support Guidance – Deferred Payments Template – Deferred Payments Agreement			
LEGISLATION OR OTHER STATUTORY REGULATIONS	<ul> <li>Sections 14, 17 and 69-70 of The Care Act 2014</li> <li>Care and Support (Charging and Assessment of Resources) Regulations 2014</li> <li>Care and Support and Aftercare (Choice of Accommodation) Regulations 2014.</li> <li>Chapters 8 and 9 and Annexes A to E of the Care and Support Statutory Guidance</li> <li>Health and Care Services internal Procedures and Guidance</li> </ul>			
DOCUMENTS SUPERSEDED BY THIS PROCEDURE				

APPROVAL AND REVIEW						
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2.0	2015-04-01	Paul Latimer	Rewritten to reflect the Care Act. Please see previous version for sign off of original version.				

2.1	2016-05-16	Reviewed on 05/05/16. No current changes required. Document expiry date extended by 12 months.