

By: Peter Oakford – Cabinet Member for Finance and Traded Services
Cath Head – Head of Finance (Operations)

To: Governance & Audit Committee – 3 October 2018

Subject: Debt

Summary: To report on the Council's debt position.

1 Introduction

- 1.1 The purpose of this report is to provide Members with assurance on the Council's outstanding debt position.
- 1.2 This report focuses mainly on debt **over 6 months** old.

2 Summary and context

- 2.1 This report provides a snapshot of the adult social care and sundry debt position at a given point in time. Income is credited to the service when the invoice is raised. The level of debt is linked to our cash balances and cashflow. However, rising debt levels could result in an increase in our bad debt provision and an increase in the number of write offs; both of these could create a budget pressure. It is likely that as income rises through increases in charges, debt will also rise.
- 2.2 The overall outstanding unsecured social care debt due for payment as at the 17 July 2018 was £9,620k and the unsecured sundry debt due for payment as at 31 July 2018 was £9,064k. This is further broken down in the table below:

Table 1 – Overview of total debt as at 31 July 2018

<u>Total Debt</u>	<u>Social</u>	<u>Sundry</u>	<u>Total</u>
	<u>£k</u>	<u>£k</u>	<u>£k</u>
Overall Debt	21,126	23,261	44,387
Less Not yet due	5,106	8,397	13,503
Overdue	16,020	14,864	30,884
Secured	6,400	5,800	12,200
Total Unsecured Overdue Debt	9,620	9,064	18,684
Total Unsecured Debt over 6 months old	6,002	1,906	7,908

3. Background on Social Debt

3.1 Upon completion of the client's needs assessment, a financial assessment is undertaken to determine what they should contribute based on their 'means'. It is at that point that charging will then commence.

3.2 Unsecured social care debt

There are 2 types of unsecured social care debt:

- Residential – this relates to those clients who are in residential care, and all their disposable income and assets are taken into consideration within their charge, and they are left with a personal expenditure allowance. Generally, any client who has above the capital threshold of £23,250 will be self-funding, so are not within these debt figures, as they pay homes directly.
- Non-residential – this relates to those clients who are receiving care in their own home. The financial assessment determines the amount they can afford to pay after allowing them adequate income to cover their daily living costs as laid down in legislation. This means that some clients will be assessed and not have adequate levels of income so are not charged at all, others make a contribution, and some are able to pay for the full cost of their care. The debt referred to as unsecured therefore relates to those clients assessed to pay a contribution or the full cost.

3.3 It is worth noting that 6298 clients pay by direct debit.

4 Debt Recovery Action

4.1 Under the previous legislation local authorities held unilateral power to obtain charges on client's property without their consent to do so. Under the Care Act this power has been removed as it did not allow debtors a chance to pursue alternative methods of payment. The Care Act (2014) therefore now forms the legal framework the authority must adopt for the recovery of debts incurred under it. The changes made under the Care Act, put greater responsibility on local authorities attempting all amicable collection methods, whilst maintaining an understanding of the needs of the client and their capability to engage. Any recovery action must be taken keeping in mind the client's wellbeing and the impact any recovery action may have on the client. This reduction in powers combined with a statutory requirement for the council to provide care puts the local authority in a difficult position when dealing with consistent non-payers.

4.2 Under the Care Act the local authorities have an obligation to engage with a client, or a financial agent acting on their behalf – however liability for a client contribution falls on the client regardless of the

involvement of a voluntary financial agent. When a client is making a conscious decision to spend their incomes on goods/services other than their care the local council have little recourse other than to commence recovery proceedings.

- 4.3 In the event a client lacks the mental capacity to manage their finances and, a relative/friend is unable or unwilling to step in and become a deputy, this could lead to a panel deputy referral being made via the Court of Protection. Annex D of the Care Act advises that this process can take weeks, however a review of recently referred cases indicates it is taking 6-12 months+ for a panel deputy to be appointed in Kent. This significant delay is leading to an increasing number of cases having high value debts whilst the deputy application process is ongoing.
- 4.4 In line with the framework dictated by the Care Act, our recovery process works on an escalation basis. We have a requirement to explore all reasonable efforts before court action. This includes possible alternative action to legal proceedings, such as mediation and alternative dispute resolution. The fulfilment of these requirements leads to an elongated collections process that, ultimately, if payment continues to be avoided, leaves us with little recourse than to commence legal proceedings.
- 4.5 The prospects of recovery need to be fully reviewed before legal action can commence. The nature of this type of debt means court action is not always a feasible or effective option and could, in some cases, be throwing good money after bad. For example, if a client is purposefully spending any incomes received and has no assets – How are we going to recover any judgment obtained? The impact on credit rating, or the threat of enforcement are unlikely to have significant impact and do not necessarily act as a deterrent.
- 4.6 Prior to adopting a more aggressive collections process we must consider point 21 of the Care Act guidance, Annex D – “Local authorities must not issue threatening letters to clients demanding payment”. Whilst there is scope to adjust our process this must be aligned with the Care Act guidance. We must also consider the impact a more aggressive collections process will have on the number of complaints we receive.
- 4.7 The contribution care fees incurred under the Care Act (2014) do not form a consumer credit agreement, nor is there a signed contract specifying a chargeable interest rate. On this basis we therefore do not have a legal foundation for charging interest. We do currently charge interest on our deferred payment agreements, as these are fully signed and essentially form a loan agreement with the client. Additionally, we also charge interest on any legal cases in line with section 69 of the county courts act (1984).
- 4.8 Minimal support is received from the Department for Work and Pensions in redirecting the element of benefits that are not being used to pay for care charges to the Local Authority. Allowing clients to continually spend income elsewhere whilst ongoing care charges continue to accrue.

- 4.9 Our current collections framework does not charge costs for pre-legal recovery – however under section 69 (5) of the Care Act 2014 local authorities have the ability to charge these costs:

“The costs incurred by a local authority in recovering or seeking to recover a sum due to it under this part are recoverable by the authority as a debt due to it.”

Any changes made to our collection’s procedure mentioned in point 4.6 could be adjusted to utilise this legislation

- 4.10 The Debt Recovery Teams have introduced a number of new initiatives which are aimed at improving the service delivered. Some of these include:

- Introduction of a formalised end to end debt recovery process focusing on pro-active collections with clearly defined escalation points
- Diary allocation – Introduction of a diary system to allow the collections team greater control of debts throughout the process, also provides greater understanding into workload management
- Increased focus on Third Party Top Up (TPTU) debts – Aim to introduce a much quicker, more focused recovery process for TPTU debts, ensuring placements are reviewed at the earliest opportunity and Debt Recovery tackle these types of debt at a far earlier stage
- Introduction of consented charges – Replacing the previous Legal Settlement Agreements – When applicable securing debts against a property at an early stage, allowing recovery action/repayment plans to continue with the security obtained
- Introduction of Overseas Partners to allow continued collections from a local standpoint once KCC internal collections have proved unsuccessful
- Formalised Bona Vacantia process allowing KCC to demonstrate every recovery effort has been attempted prior to considering a write off

A Service Improvement Plan has also been introduced covering both types of debt. The Debt Recovery Teams produce regular detailed reports covering both Sundry and Client Billing, which are available on request.

- 4.11 The current annual cost of Kent County Council Debt Recovery Team is £303k consisting of one Client Financial Services (CFS) Manager, two CFS Senior Officers and six CFS Officers. The £303k represents 0.46% when compared to the £66m of forecasted income for 2018-19. The cost of this team reflects the complexities around social care debt and a need to have an in-depth knowledge of the Care Act.

- 4.12 ‘The Income Pathway’, which is a new project being developed within Adult Social Care and Health will explore the full process of charging through to debt to gain a greater understanding of the client base we have and how their wealth and benefit entitlements are changing over

time, as it does need to be recognised that if the level of charges we are raising is increasing due to increased income and capital of users, this will ultimately lead to some increase in debt.

5 Analysis of Social Care Debt as at 17 July 2018

5.1 The total Social Care Client Debt as at 17 July 2018, being the date of the most recent Client Billing run, is split as follows in Table 2:

Table 2 – Total Social Care Debt as at 17 July 2018

	A	B	C	D	E	
	0-28 Days (Not Yet Due) £k	29-56 Days £k	57-182 Days £k	183-365 Days £k	365+ Days £k	Grand Total £k
Social Care Debt	5,106	1,273	3,532	2,474	8,738	21,125

5.2 It should also be noted that the age of the debt is based on the time elapsed from the invoice date rather than the due date. Therefore, the total debt as at 17 July 2018 stands at £21.13m across 12,477 debtor accounts. This is broken down in Table 3:

Table 3 – Analysis of Social Care Debt as at 17 July 2018

<u>ASCH Debt</u>	<u>Secured</u> <u>£k</u>	<u>Unsecured</u> <u>£k</u>	<u>Total</u> <u>£k</u>
Overall Social Care Debt	6,670	14,456	21,126
Less Not yet due	270	4,836	5,106
Overdue	6,400	9,620	16,020
Residential	6,400	6,703	13,103
Non-Residential	0	2,917	2,917
Total Overdue	6,400	9,620	16,020
Bad Debt Provision		3,398	

6 Unsecured Debt Over 6 months Old

- Restriction against the property £7k
- Unsecured £5,995k
- Total Unsecured over 6 months' old: £6,002k

6.1 There are 2,159 debtors making up the total unsecured over six months' debt of £6,002k.

6.2 The decision taken by the Department of Health not to increase the minimum income guarantee (the amount of income that a client is required to be left with for their daily living), since 2016 has seen the

assessed charge for non-residential clients gradually increase over the past three years. This in turn has caused an increase in clients being charged for the full cost of their care. The impact of this has not yet been analysed.

7. Social Care debt write offs

7.1 As at 31 July 2018, £117k in Social Care write offs had been processed in ORACLE since 1 April 2018.

7.2 Table 4 details the percentage of Social care debt written off compared to the total value of invoices raised for the past 6 years.

Table 4 – Percentage of Social Care debt written off compared to total value of Social Care invoices raised

	2012 - 2013 £k	2013 - 2014 £k	2014 -2015 £k	2015 - 2016 £k	2016 - 2017 £k	2017 - 2018 £k
Total written off	188	401	472	687	388	363
Total invoice amount	61,093	67,093	60,208	59,126	60,073	62,694
% written off	0.31%	0.60%	0.78%	1.16%	0.65%	0.58%

8 Background on Sundry Debt

8.1 As and when a Budget Holder requires an invoice to be raised to collect income external to the authority they complete the paperwork in order for an invoice to be raised via the Accounts Receivable (AR) system. It is the Budget Holder's responsibility to ensure that they have the necessary paperwork evidencing that the invoice will be paid.

8.2 The current annual cost of Cantium Debt Recovery Team is £81k which comprises of three full time Recovery Officers. The £81k represents 0.03% when compared to the £270m of invoices raised in 2017-18.

9 Sundry Debt as at 31 July 2018

Table 5 – Total Sundry Debt as at 31 July 2018

	A	B	C	D	
	Not Yet Due	AR Overdue 0-60 Amount	AR Overdue 61-181 Amount	AR Overdue 182+ Amount	Total AR Outstanding Amount
	£k	£k	£k	£k	£k
Sundry Debt	8,397	8,524	4,242	2,098	23,261

9.1 There are two performance indicators that the Debt Recovery Team aims to achieve. The percentages are based on the total outstanding Sundry debt:

- **Total outstanding debt under 60 days old – greater than 75%**

(including debt not yet due for payment)

- **Total outstanding debt over 6 months old – less than 15%**

9.2 As at 31 July 2018 the KPI position was as follows:

Table 6 – Outstanding debt under 60 days old

% of Sundry debt under 60 days old	72.7%
Under 60 days old (£k)	16,921
Total debt (£k)	23,261

Table 7 – Outstanding debt over 6 months old

% of Sundry debt over 6 months	9.0%
Over 6 months (£k)	2,098
Total debt (£k)	23,261

10. Sundry debt Write Offs

10.1 Table 8 details the percentage of Sundry debt written off compared to the total value of invoices raised for the past 6 years.

Table 8 – Percentage of Sundry debt written off compared to total value of invoices raised.

	2012 - 2013	2013 - 2014	2014 -2015	2015 - 2016	2016 - 2017	2017 - 2018
	£k	£k	£k	£k	£k	£k
Total written off	178	303	80	55	63	153
Total invoice amount	234,422	244,156	250,887	280,859	342,035	269,837
% written off	0.08%	0.12%	0.03%	0.02%	0.02%	0.06%

11 Recommendation

11.1 Members are asked to note the content of this report for assurance.

Khalid Muslun
Client Financial Services Senior Officer
Tel no: 03000 410864
Email: Khalid.Muslun@Kent.Gov.UK