

Care & Residential Services Debt Management & Recovery Policy

Fair and
reasonable



Collecting
debt quickly



TRAFFORD
COUNCIL

Version 1 - April 2015

Table of Contents

1 Introduction and Background	3
2 Legal and Policy Framework	3
3 Charged Services	4
3.1 Charges in a Residential Care setting	4
3.2 Charges in a Non-Residential Care setting	4
3.3 Protection of Property Fees	4
4 Services that are not charged for	4
5 Fixed Rate Services	5
5.1 Recovery of fixed rate services	5
6. Financial Assessments	5
6.1 Assessing the client's ability to pay	5
6.2 Property	5
6.3 Deferred Payments Scheme	6
6.4 Third Party Payments and Top Ups	6
6.5 Overpayments to Residential Care Homes	6
7 Direct Payments - Charging Guidance	7
7.1 Direct Payments	7
7.2 Virtual Budgets	7
7.3 Mixed Packages	7
7.4 Managed Accounts	8
7.5 Audit of Direct Payments	8
7.6 Recovery of money owed	8
8 Supporting Policies	9
8.1 Equality Policy	9
8.2 Mental Capacity Act 2005	9
8.3 Retention of supporting documents	9
9 Debt Recovery Process	9
10 Financial Regulations	10
11 Policy Review	10
12 Glossary	10
Appendix 1 Debt Recovery Process	12

1. Introduction and Background

Trafford Council (the Council) needs to demonstrate to residents, elected members and tax payers of the Borough that it collects all income due from whatever source as effectively and efficiently as possible.

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

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 is specific to the debt management and recovery of the Council's commissioned care and residential/nursing 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 client.
- **Prevention of debt and arrears** by prompt billing and collection of money due, affordable repayment plans and early intervention when a client 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 policy is also supported by operational procedures for staff within the Council.

2. Legal and Policy Framework

The Care Act 2014 provides a single legal framework for charging for care and support under Sections 14 and 17. This policy provides a framework to enable legal enforcement to be undertaken to recover debts where appropriate.

For local authority funded residential and non-residential care, the power to charge for services is contained in.

- The Care & Support (Charging and Assessment of Resources) Regulations 2014
- Care and Support Statutory Guidance issued under the Care Act 2014

Recovery of charges is addressed within Annex D of the Care Act 2014.

Failure to pay cannot be the grounds for the termination of a service and the charges are recoverable as civil debt.

3. Charged Services

The Council will charge for the following services:

3.1 Section 14-17 of the Care Act 2014 gives discretion to the local authority to charge for services in a residential or nursing setting including the following services:

Respite care;
24 hour care in registered care / nursing home; and
Third party top ups for the above services.

3.2 Section 14-17 of the Care Act 2014 gives discretion to the local authority to charge for services in a non-residential setting including the following services:

Home care support;
Purchased activities including day care;
Supported accommodation charges where relevant
Respite Care; and
Community alarms & Telecare equipment
Transport, meals and day care
Carers charges

3.3 Where a person is provided with temporary protection for property under the Care Act 2014 that Act provides for him to be charged for any reasonable expenses incurred by the Council under sections 24 & 25.

4. Services that are not charged for

The Council will not charge for the following services:

- Intermediate care, including Reablement, which must be provided free of charge for up to six weeks.
- Community equipment (aids and minor adaptations). Aids must be provided free of charge whether provided to meet or prevent/delay needs. A minor adaptation is one costing £1,000 or less.
- Care and support provided to people with Creutzfeldt-Jacob Disease.
- After-care services/support provided under section 117 of the Mental Health Act 1983.
- Any service or part of service which the NHS is under a duty to provide. This includes Continuing Healthcare and the NHS contribution to Registered Nursing Care.
- More broadly, any services which a local authority is under a duty to provide through other legislation may not be charged for under the Care Act 2014.
- Assessment of needs and care planning may also not be charged for, since these processes do not constitute “meeting needs”.
- Charges for carers.

Residential assessment provided by the Council is free for up to 6 weeks but will then be charged for and a financial assessment will take place. Charging for services will be subject to change.

5. Fixed Rate Services

Transport costs are currently a fixed rate service. Currently Transport Services are available to FACS (Fairer Access to Care Services) eligible users.

5.1 Recovery of fixed rate services –

Invoices for fixed rate services are raised through the Council's Financial System and recovery will proceed through an automated process.

6. Financial Assessments

As part of the Council's core 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 client is required to contribute towards the cost of their care and residential services.

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

The financial assessment process for clients in residential care is conducted in accordance with Section 14-17 of the Care Act 2014. A contract made with an independent home must include arrangements for the local authority to pay the home for the accommodation, as well as specifying the amount to be paid. The local authority must then ask the resident to refund that amount to the Council. Where the resident satisfies the local authority that he is unable to make a full refund, the local authority must assess their ability to pay in the same way as a person in a local authority managed home, and decide the lower amount to be refunded

6.1 Assessing the client's ability to pay

The Council will establish if the client has capacity to sign the consent forms or provide details of who is managing their financial affairs before a residential placement is made. If a client lacks capacity or is subject to safeguarding procedures, a referral is made to the Client Services team to act as their Appointee/Deputy.

Where a client is required to contribute towards the cost of care and residential services, the Council's representative will meet with the client and provide full details of the client's financial commitment 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. Each case will be considered on its own merits at a panel meeting which will be chaired by a senior officer. This process will be followed in all client contribution cases even if a deferred payment arrangement is in place in respect of the client's property (see 6.3 below).

6.2 Property

For clients who are going into residential care their property will be 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. Where ownership is disputed, written evidence to prove ownership via the client and Land Registry will be obtained and considered as part of this decision.

The Council will determine the value of the property at the time of the core assessment. This will include asking the client and looking at the value of similar properties nearby. Where the value is disputed or there is doubt as to the value, the Council & the client will be required to arrange for a professional valuation to support the assessment.

6.3 Deferred Payments Scheme

In some circumstances, the Council will consider a Deferred Payment Scheme. Under this scheme the client is not required to sell the property they own immediately or in which they have a financial interest. 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 financial assessment relating to the value of their property until the property is sold. Once the agreement has been signed, a charge will be placed on their property.

The charge will show up in future land searches and the client's solicitor will ask the Council to remove the charge before the sale goes through. The Council will request that the client's solicitor signs an undertaking assuring the Council that the outstanding care fees will be paid from the proceeds of the house sale. Once signed, the Council's solicitor will remove the charge on the property. The process for deferred payments can be found in Appendix 2.

6.4 Third Party Payments and Top Ups

If a client chooses residential care provision that is more expensive than those rates set by the Council, then the client's representative (third party) can pay the difference in the amounts. This is also known as a Third Party Top up Fee.

Clients are not permitted to pay their own Third Party Top Up. Instead, their representative (third party) would enter into a legal agreement with the Council. This states that they are responsible for paying the top up fees and that any debts may be recovered from them through legal action. As part of this process, the Council will seek assurance that the third party has the means to make the payments and that they are fully aware of their responsibilities and the potential consequences of non-payment. The Council will not agree to any Third Party Top Up arrangement unless the legal agreement has been signed and agreed.

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 client to a less expensive placement that, where possible, would be within the rates set by the Council.

Third Party agreements will be reviewed every year as part of the annual care review process.

6.5 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.

Continuing Healthcare Funding

If someone becomes eligible for NHS Continuing Healthcare (CHC) funding, the start date will be confirmed by the clinical commissioning group (CCG) in writing to the individual and Trafford Council. The CCG will then repay the top-up and client contribution back to the individual or their representative and also repay the Council for cost of care.

7. Direct Payments – Charging Guidance

Direct Payments are designed to give the client more choice and control over the services they receive. Instead of being offered a care package, clients are given their own budget and can then decide the best way to meet their needs with the money they have been allocated. The Direct Payments available are:

7.1 Direct Payments

This is where clients receive a payment from the Council and organise their own support to the cost of their care. At present the amount paid is gross and the Council recover the client contribution. However, the Council may make the decision to deduct the client contribution from the Direct Payment before the payment is made. Clients would then be expected to pay their contribution into their dedicated cash personal budget account.

A Direct Payment will not be awarded until the financial assessment has been completed. Clients are required to keep records of how their Direct Payment has been used. Use of the Direct Payment is subject to an audit review (the timescale of which is set by the Council). As a result of the audit, any unspent monies are identified and will be required to be repaid to the Council.

A Direct Payment will not be awarded if there are arrears or debt on the client's account after an audit and may be removed if funds are mis-used or not repaid following an audit that raises concern. Therefore an alternative provision of care needs to be identified with the client's case assessor or social worker until the arrears or debt is cleared.

7.2 Virtual Budgets

This is where the Client chooses their support but the Council administer payment of invoices etc. The client will be required to pay their assessed contribution to the Council. The process of recovery for any outstanding debt is outlined in Appendix 1.

7.3 Mixed Packages

This is a combination of the above options. This may require more intensive investigation given a combination of two processes. The client will pay their client contribution for the virtual element of the budget to the Council. The debt recovery processes will be implemented for all combinations.

There may be occasions where the debt recovery process for virtual individual budgets is suspended whilst reconciliation on the account takes place due to issues raised regarding the quality and quantity of care provided.

Any non-disputed debts will continue to be pursued in line with this policy, Appendix 1.

7.4 Managed Accounts

This allows a client to find a limited company or a sole trader to manage the Direct Payment on their behalf. The agreement is between the client and the company. At present the amount is paid gross to the provider and the Council recover the client contribution. However, as above, the Council may decide to deduct the client's contribution from the Direct Payment before the payment is made.

7.5 Audit of Direct Payments

Direct Payment management will be subject to regular audit as determined by the Council. This will establish if the process is being managed and supported effectively and that financial records are being maintained.

Failures or issues identified as part of the audit process will be discussed with the client. In some circumstances this may result in a withdrawal of a Direct Payment and a transfer to another support package. Initially a recommendation will be made by the Team Manager that will be based on an assessment of all the facts provided by Auditors. The final decision will be signed off and agreed by the appropriate Manager and the Head of Service (Social Work) and the Joint Director for Adult Services notified. If agreed the client will be notified in writing with an explanation of why the decision has been made.

7.6 Recovery of money owed

As part of the Audit process or other action the Council may establish that money is owed to the Council. This could be as a result of:

- The client under-spending their agreed budget.
- The client dying, or for some other reason no longer requires the service, and as a result an overpayment has been made.
- The client not paying their agreed contribution resulting in a shortfall.
- The client overspending their agreed budget.

Where required, the Council will provide support to determine the exact amount owed, either through a close down of the account or budget, or through the agreed process. Letters will then be sent to the client or their representative so that any money due can be repaid. In some circumstances the Council may agree a payment plan.

The Council would not normally deduct any money due from future awards of funding (within the care package and Direct Payment) to off-set payments from previous years.

If after the issue of a bill and two reminder letters, there has been no contact, the account will be presented to the CFW panel for a review. The review will examine the support provided and action required and a senior officer will make the decision on debt recovery action. Each case will be considered on its own merits. If an amount is deemed due at the panel it will be pursued via the agreed recovery process (Appendix 1).

8. Supporting Policies

8.1 Equality Policy

Application of this policy is in accordance with the Council's Equality Policy. The Council will consider individual access, communication and support needs to support equality of access and service delivery.

8.2 Mental Capacity Act 2005

Application of this policy is in accordance with the Mental Capacity Act 2005. All clients are assumed to have capacity unless it is established that they lack capacity. In addition, all practical steps will be taken to ensure that a client is supported to arrive at their own decisions.

8.3 Deprivation of Capital

Many people try to protect some of the value of their assets by making transfers of property or 'financial gifts' to family members. The Council can treat an individual as still possessing notional capital or notional income if it believes the individual has deprived him or herself of it in order to reduce their liability to pay for care fees. This is called 'deliberate deprivation of assets'. In these cases the Council will treat the client as if s/he still owns the asset that has been disposed of.

8.4 Retention of Supporting Documents

All documentation which supports the client's contribution will be retained for at least 6 years in case the client or client's representative defends any legal recovery action. In addition, most documents will be stored electronically.

9. Debt Recovery Process

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

- Charges for care in residential settings
 - Respite care;
 - 24 hour care in a registered care or nursing home;
 - Third party top ups for the above services;
- Charges for care in non-residential settings
 - Home care support;
 - Purchased activities including day care;
 - Supported accommodation charges where relevant
 - Respite Care;
 - Community alarms & Telecare equipment

Protection for Property Fees

Please see Appendix 1 and 2 for full details of this debt recovery process.

A debt reminder letter will be issued where a client fails to pay the charges detailed in their statement by the due date. Clients 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. Failure to pay charges by the deadline will result in a final debt reminder letter being sent to the client, setting a final deadline. Failure to pay by this deadline will result in approval being sought from an appropriate manager in Adult Services prior to taking enforcement action to ensure that negotiation, advocacy, mediation and support around any Deputyship processes has been undertaken. If approval is sought, the case will be presented to a debt recovery panel where each case will be considered on its own merits by a senior officer who will take account of the vulnerability of the client.

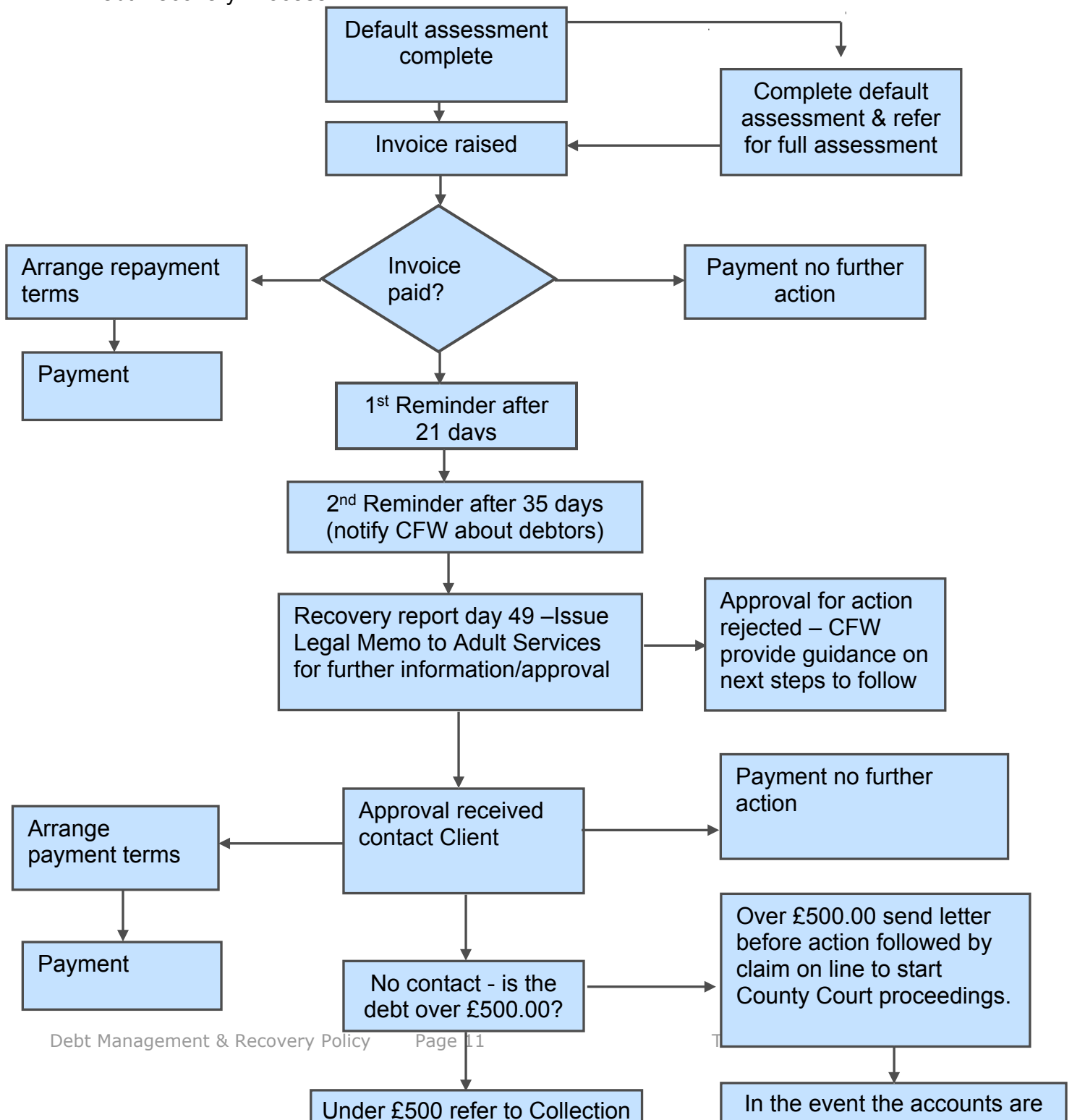
Enforcement options available to the Council through the legal process include:

- Warrant of execution leading to Enforcement Agent action;
- The client being required to attend court for an oral examination of means;
- Attachment of Earnings;
- Charging Order;
- Bankruptcy; or
- Third party debt order.

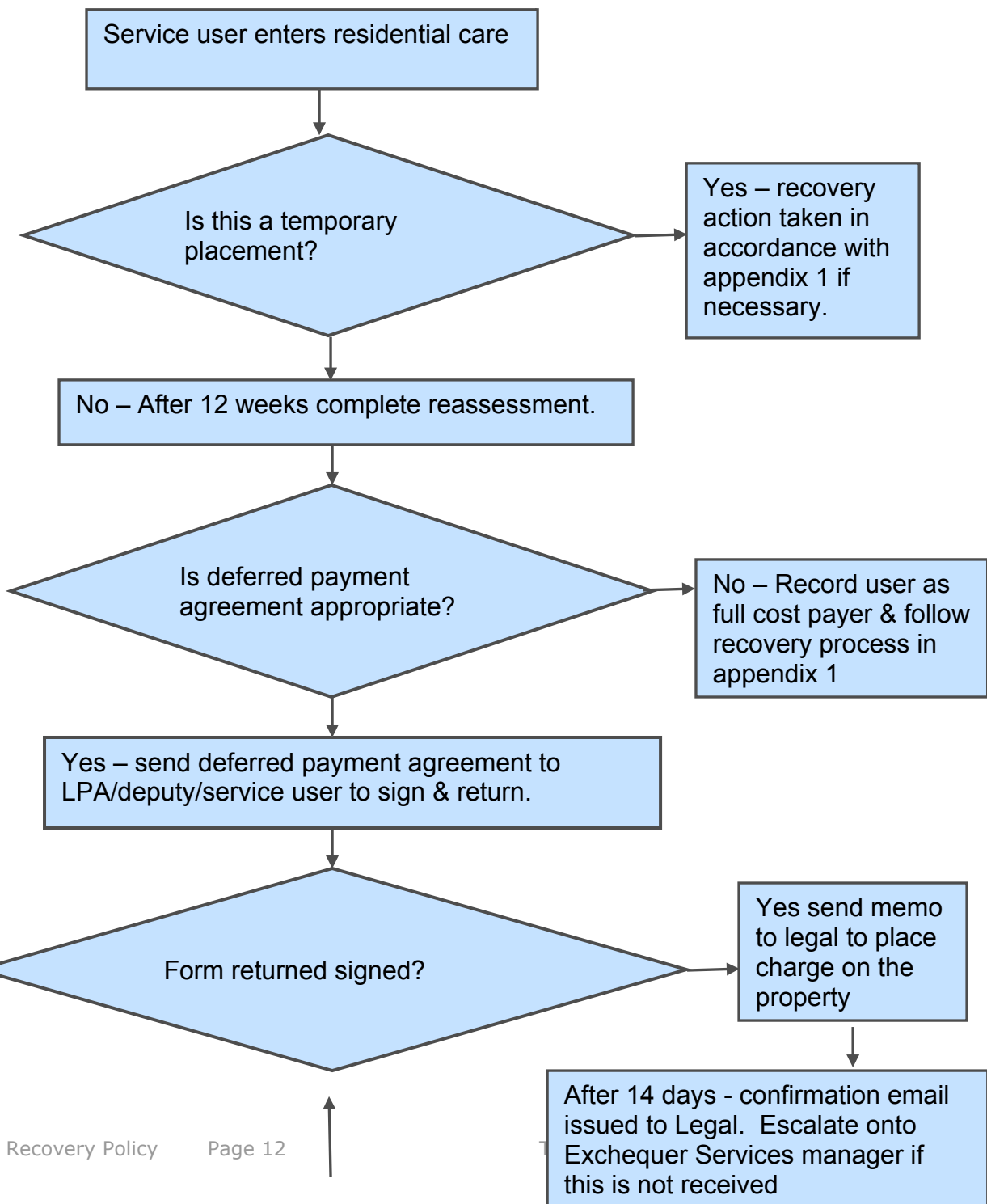
10. Financial Regulations

This policy will support and comply with the Council's Financial Procedure Rules set out in the Council's Constitution.

Appendix 1
Debt Recovery Process



Appendix 2
Deferred Payer process (Home owners)





Annex – Glossary of terms

A

Aftercare services – Services that are received after being discharged from hospital

Appointee/deputy – Both official roles where someone manages finances for people who are unable to do it for themselves.

Audit Commission – The Audit Commission’s role is to protect the public purse. They do this by appointing auditors, publishing analysis and comparing data.

B

Beneficial owner - a legal term where specific property rights in equity belong to a person even though legal title of the property belongs to another person.

C

Capacity to sign –

CHC funding - Continuing Healthcare Funding is awarded by the NHS and covers the cost of services offered or arranged by them for health needs, unlike social care services which are the responsibility of the council to arrange.

Civil debt – A civil debt is what a person has to pay if they are taken to court over monies owed and the case is found in favour of the creditor.

Commissioned care – care arranged and paid for on someone’s behalf which meets their needs. Commissioned care still requires a client contribution subject to a financial assessment.

Core assessment – an assessment which establishes a person’s social care needs.

F

FACS eligible users – Fair Access to Care Services legislation seeks to categorize people who have different social care needs from moderate, critical or substantial.

Financial assessment – a calculation completed in line with legislation which usually involves looking at a person’s income, expenditure and capital.

Financial Management – efficient and effective management of money in such a manner to meet the objectives of the organisation.

Fixed rate services –

N

Non-residential services – this involves services received at home such as day care, home care, transport or if people arrange their own care through our Direct Payment Scheme (this is where people are given a budget to arrange their own care services)

R

Respite care – a short stay in residential care which provides a break for carers at home.

S

Safeguarding procedures – certain steps a council will take when alerts, concerns, or problems discovered about individuals or organisations in how they have managed their processes, behaved or cared for a person.

T

Telecare equipment – covers equipment which helps to protect people in their home such as panic alarms, fire detectors, flood monitors, falls monitors or GPS trackers

Third party debt order – If your creditor (somebody who is owed money) thinks that you have the money to pay them and are holding it back, or are due to be paid some money which would cover the debt, they can apply for another court order. This is called a **third party debt order**. A third party debt order allows your creditor to take the money you owe them directly from whoever has the money.

Third party payments – payments from councils, NHS or other organisations.

Third party top-ups – an amount payable by someone other than the resident which covers the difference between the maximum amount the council can fund and the gross cost of a home.

