



Care costs debt

In this month's Spotlight, we will cover care costs debt owed to a local authority and how it is enforced, including the limitation argument, and how care costs are viewed in a DRO / bankruptcy.

Note that we cannot advise on disputing liability or calculations. [Age UK](#) may be able to provide guidance on liability for care fees and whether these have been calculated properly.

Enforcement

Under [s33\(5\)\(b\)](#) of the Care Act 2014 (CA 2014), the council has power to require repayment of a direct payment of care costs:

"(5) In a case where a condition specified under subsection [\(2\)\(b\)](#) or the condition mentioned in subsection [\(3\)](#) is breached, the local authority—

(a) may terminate the making of direct payments, and

(b) may require repayment of the whole or part of a direct payment (with section 69 accordingly applying to sums which the local authority requires to be repaid)."

The [Care and Support \(Direct Payments\) Regulations 2014](#) goes hand-in-hand with the Care Act 2014 (CA 2014), but there does not seem to be sections explicitly saying how the council can enforce within the Regulations. However, [s69\(1\)](#) CA 2014 appears to confirm that a local authority can take court action to recover care charges made:

"69 Recovery of charges, interest etc.

(1) Any sum due to a local authority under this Part is recoverable by the authority as a debt due to it."

In addition, it is confirmed in several sections of the gov.uk's "[Care and support statutory guidance](#)" (updated 26 October 2018) that a local authority can take court action in the county court to recover direct payments:

Within the guidance, paragraph 8.30 of '[Section 8: Charging and financial assessment](#)' states:

"8.30 Ultimately, the local authority may institute County Court proceedings to recover the debt. However, they should only use this power after other reasonable alternatives for recovering the debt have been exhausted. Further details on how to pursue debts are set out in Annex D."

['Annex D: Recovery of debts'](#) has further details:

"Issuing a claim and subsequent enforcement through the county court

27) Where all other reasonable avenues have been exhausted, a local authority may wish to proceed to the county court in order to recover the debt owed. The county court has been chosen to enable all the parties involved to have an equal say regarding the debt that has accrued."

Paragraph 30 goes on to explain that an N1 is to be used where county court proceedings are to be taken:

"30) In order to make a claim, the local authority will need to fill out the relevant form. This can be done either on paper or online. Conditions apply for claims started online, including that the claim must be for a specified sum of money (under £100,000); that it cannot be against more than 2 people; and it cannot be against a known protected party or child, this includes a person who lacks capacity. Local authorities will also wish to note that fees are often reduced for online applications. Access to the [Money Claim online service](#) and registration for an account with the UK Government Gateway is required. The paper based claim form [N1 and notes for guidance N1A and N1C](#) can be downloaded from the HMCTS website. It is important that these guidance notes are read carefully. It is at this point that initial fees are required to be paid. If making a paper application this will need to be by cash or cheque and online, by credit or debit card."

The above also indicates that it isn't a benefit overpayment as such because there is no mention of recovering the debt via benefits or a Direct Earnings Attachment for example, which does not require court action to implement.

Lastly, paragraphs 42 and 43 of Annex D state:

"Enforcing the judgment or order

42) Where there is a court order or judgment for payment, but the person has not complied with it, the local authority may choose to enforce the order. The HMCTS leaflet EX321 [I have a judgment but the defendant hasn't paid](#) sets out the various options. It is important to note that the court will only issue enforcement proceedings at the request of the local authority.

43) There are various methods of enforcement and local authorities will wish to think carefully about which may be the most appropriate taking into account the person's circumstances and their own responsibilities to the person. The most appropriate are likely to be one of the following:

- *a warrant or writ of control*
- *an attachment of earnings order*
- *a third party debt order*

- *a charging order*

Limitation

The CA 2014 repealed the National Association Act 1948 (NAA) in England, but some aspects of the NAA are still in force, for example, it maintained the responsibility of social services authorities for the discharge of adult social care responsibilities; and limitation periods depending on the circumstances.

The general limitation period is 6 years under the CA 2014 pursuant to s69(3)(a), which applies to debts accrued from April 2015. Section 69(3)(a) states:

“in a case in which the sum becomes due to the local authority on or after the commencement of this section, within six years of the date the sum becomes due;”

Where debts accrued before the CA 2014 came into force (prior to 1 April 2015), it appears that the limitation period remains as 3 years after the debt became due where the debt to be recovered is for non-payment of care home fees. This is where s69(3)(b) seems to apply, which was previously under s56 of the NAA as being 3 years:

“in any other case, within three years of the date on which it becomes due.”

The above is confirmed on pages 306 – 307 of the Legal Action Group’s “Community Care and the Law Sixth Edition”, and at Annex D, paragraph 11 of the Government’s [“Care and support statutory guidance”](#). Paragraph 11 also has information how to calculate when the debt becomes due.

For instance, if a client’s re-assessment was carried out on 28 February 2013, it is arguable that the limitation period is 3 years from this date. Therefore, the local authority would be out of time to recover this debt and the client can try and argue that the debt should be written off.

How care costs debts and overpayments are viewed in a DRO

The overpayment of care costs would be a qualifying debt (and a provable debt in bankruptcy for that matter). Excluded debts regarding DRO applications are listed within [Rule 9.2](#) of the Insolvency (England and Wales) Rules 2016. As there is no indication that care costs would be excluded, we are of the opinion that these are a qualifying debt for the purposes of a DRO.

Regarding the impact of including the debt in the DRO, this will be something to check with the Local Authority on their policy but as mentioned earlier, the consequence of non-payment usually leads to County Court recovery action.

Regarding contractual payments missed post-DRO / bankruptcy, the local authority would not be able to stop providing a care package but would be able to pursue the client for those missed payments post-DRO / bankruptcy.

Summary

- A local authority can take County Court action to pursue care costs overpayments / unpaid care costs.
- The general limitation period is 6 years under the CA 2014, which applies to debts accrued from April 2015.

- For debts before the CA 2014 came into force (prior to 1 April 2015), it appears that the limitation period remains as 3 years.
- Care costs are a qualifying debt in a DRO and a provable debt in bankruptcy.

Further reading:

“Community Care and the Law Sixth Edition”, Luke Clements