

# ARGYLL & BUTE COUNCIL

## Internal Audit Section

### INTERNAL AUDIT REPORT

CUSTOMER DEPARTMENT	ARGYLL & BUTE HEALTH & SOCIAL CARE PARTNERSHIP
AUDIT DESCRIPTION	RISK BASED AUDIT
AUDIT TITLE	CHARGING ORDERS
AUDIT DATE	APRIL 2017

2017/2018



## 1. BACKGROUND

This report has been prepared as part of 2017/18 risk based Internal Audit Annual Plan and has been conducted in accordance with relevant auditing standards. The report is based on discussions with key personnel and information available at the time of the Audit.

A charging order is a legal instrument whereby the charge is placed against assets such as property and ensures that persons who have incurred a debt with the council such as residential care costs are legally obligated to settle the debt out of the proceeds of the sale of the said property.

Argyll and Bute Council have in place an Interim Funding arrangement for clients who are required to enter residential care who:

- Own property which, on its own or when added to the value of other capital or assets owned, would take the value of their total assets over the upper funding threshold, and;
- Have access to less than the upper funding threshold when the value of the property is disregarded.

Interim Funding bridges the gap until the client can realise the capital tied up in their property, ensuring that the client receives the care they require when they require it. The funding provided to the client during this time is effectively an interest free loan secured against the clients property which is paid back later via a Charging Order; typically when the property is sold or the client passes away. The sum recovered takes account of a number of factors including the value of the asset at disposal/death, the value of the recoverable fees paid by the Authority and the requirements of the National Assistance (Assessment of Resources) Regulations which govern charging for residential care in Scotland.

Revised guidance was introduced by the Scottish Government on how Local Authorities should charge for residential accommodation and this came into force on 11<sup>th</sup> April 2016. The guidance sets out in detail all aspects of the charging mechanism.

As of 31<sup>st</sup> March 2017 there were 67 active charging orders in place with an approximate value of £1.3m. During 2016/17 the Council recovered £0.384m from charging orders with a corresponding total cost of care of £0.482m

The audit focused on whether the use of Charging Orders by the Council is in compliance with legislation/guidance issued by the Scottish Government and also any relevant Council Policies.

## 2. AUDIT SCOPE AND OBJECTIVES

The audit assessed compliance with legislation and guidance issued by the Scottish Government and also any relevant Council Policies. The scope included the following areas;

- Review policies and procedures
- Review a sample of Charging Orders in place and carry out a walk through test in order to assess that policies and procedures and Scottish Office guidance has been followed
- Review procedures in relation to property valuations
- Review Reporting arrangements

Controls included:

Authority –	Roles and delegated responsibilities are documented in policies and procedures and are operating well in practice
Occurrence –	Sufficient documentation exists to evidence compliance with policies, procedures and relevant legislation and guidance
Completeness –	Policies and procedures are aligned to relevant legislation and guidance and all required documentation is accurately and fully maintained
Measurement –	Policies and procedures are in line with relevant legislation and guidance and all required documentation is accurately and fully maintained
Timeliness –	Actions and decisions are carried out in a timely manner
Regularity –	Documentation is complete, accurate and not excessive and is compliant with the data retention policy. It is stored securely and made available only to appropriate members of staff.

## 3. RISKS CONSIDERED

- Charging Order is not legally binding
- Processes and Procedures are not in place
- Financial assessment is not in place
- Insufficient controls in place to ensure Charging Orders are properly administered
- Insufficient documentation on file to support cost of care

#### 4. AUDIT OPINION

The level of assurance given for this report is Substantial

<b>Level of Assurance</b>	<b>Reason for the level of Assurance given</b>
<b>High</b>	Internal Control, Governance and the Management of Risk are at a high standard with only marginal elements of residual risk, which are either being accepted or dealt with. A sound system of control is in place designed to achieve the system objectives and the controls are being consistently applied.
<b>Substantial</b>	Internal Control, Governance and management of risk is sound, however, there are minor areas of weakness which put some system objectives at risk and where specific elements of residual risk that are slightly above an acceptable level and need to be addressed within a reasonable timescale.
<b>Reasonable</b>	Internal Control, Governance and management of risk are broadly reliable, however although not displaying a general trend there are a number of areas of concern which have been identified where elements of residual risk or weakness with some of the controls may put some of the system objectives at risk.
<b>Limited</b>	Internal Control, Governance and the management of risk are displaying a general trend of unacceptable residual risk above an acceptable level and system objectives are at risk. Weakness must be addressed with a reasonable timescale with management allocating appropriate resources to the issues raised.
<b>No Assurance</b>	Internal Control, Governance and management of risk is poor, significant residual risk exists and/ or significant non-compliance with basic controls leaves the system open to error, loss or abuse. Residual risk must be addressed immediately with management allocating appropriate resources to the issues.

This framework for internal audit ratings has been developed and agreed with Council management for prioritising internal audit findings according to their relative significance depending on their impact to the process. The individual internal audit findings contained in this report have been discussed and rated with management.

A system of grading audit findings, which have resulted in an action, has been adopted in order that the significance of the findings can be ascertained. Each finding is classified as High, Medium or Low. The definitions of each classification are set out below:-

**High** - major observations on high level controls and other important internal controls. Significant matters relating to factors critical to the success of the objectives of the system. The weakness may therefore give rise to loss or error;

**Medium** - observations on less important internal controls, improvements to the efficiency and effectiveness of controls which will assist in meeting the objectives of the system and items which could be significant in the future. The weakness is not necessarily great, but the risk of error would be significantly reduced if it were rectified;

**Low** - minor recommendations to improve the efficiency and effectiveness of controls, one-off items subsequently corrected. The weakness does not appear to affect the ability of the system to meet its objectives in any significant way.

## 5. FINDINGS

The following findings were generated by the audit:

### Review Policy and Procedures

#### Policy

- Current practice is that Argyll and Bute Council offer Interim Funding arrangements via the use of Charging Orders under Section 23 of the Health and Social Services and Social Security Adjudication Act 1983 on clients:
  - Who own property which, on its own or when added to the value of other capital or assets owned, would take the value of their total assets over the agreed government upper limit of approx. £26k and:
  - Who have access to less than the upper funding threshold when the value of the property is disregarded
- A review of Charging Order files noted that although current practice is underpinned by section there is no evidence of a formal policy document being in place and approved/agreed.

## Procedures

- A number of separate procedural documents covering the process of dealing with Interim Funding Arrangements via Charging Orders were available for review, these include:
  - Procedure outlining actions to be carried out on receipt of application for Interim Funding, this includes the following steps;
    - Assessment of clients resources
    - Application for Interim funding authorised by appropriate manager
    - Actions required by Legal e.g. checks in relation to property owner
    - Issue of contract
  - Procedural document for the valuation of Property
  - Procedural document outlining monthly checks to be carried out to ensure details recorded on their active Charging Order Database includes the following information for each client:
    - Personnel details of client
    - Property details including estimated valuation
    - Category of Care
    - Costs incurred to date by Argyll and Bute Council
    - Amount of potentially recoverable costs
- In addition to procedures noted above there are a number of checklists in place detailing the documentation within individual files.

- On review, the procedures were generally found to be adequate and authority limits have been clearly specified for each level of management, however the following point was noted;
  - There is no guidance within procedures that stipulates indicative timeframes or inbuilt controls to ensure that each stage of the Interim Funding process is carried out in a timely manner.
- Adult Care have created a site within the SharePoint document management system. It was noted that the site includes a section on Policies and Procedures but had yet to be populated with the relevant documents.

#### Roles and Responsibilities

- Roles and responsibilities have been identified within the procedural documents reviewed.

#### Filing and Record Keeping/ Documentation

- Documentation relating to Charging Orders is currently maintained in hard copies files which, depending on the circumstances of each client, can be extensive. Verification that documentation was complete was both time consuming and difficult as there was no standard layout of documentation within files. Income Maximisation Management have advised that they are currently introducing an electronic document management system that will incorporate the various processes and checklists within the system and which should also enhance document tracking and verification.

#### **Review a sample of charging orders in place and carry out a walk through test in order to assess that policies and procedures and Scottish office guidance has been followed.**

- A sample of 8 Charging Orders were chosen at random and walkthrough testing was carried out to assess the adequacy of the controls in place.

- The following controls were tested:
  - Financial Assessment of client completed and appropriately authorised
  - Application for Interim Funding has been fully completed and signed by client or representative with appropriate documentation on file
  - Application for Interim Funding has been appropriately authorised
  - Search has been carried out by legal on property and recorded appropriately
  - Property valuation included on database
  - Power of Attorney has been signed and checked as being valid
  - Charging order database has been completed and where appropriate agrees back to documentation
  - Proof of Charging Order in place
  - Council debt has been cleared on completion of Charging Order (if applicable)
  
- The following findings were noted;

<u>Check carried out</u>	<u>No. of Charging orders checked</u>	<u>Error rate volume</u>	<u>Comment</u>
Financial assessment of client completed and appropriately authorised	8	1	
Application has been fully completed and signed by client or representative with appropriate documentation on file	8	1	Not signed by representative



Application for Interim Funding has been appropriately authorised	8	0	Complete
Search has been carried out by Legal on property	8	0	Complete
Property valuation included on database	8	0	Complete
Power of Attorney signed and checked as being valid	8	3	Inconsistent approach by Social workers for checking validity of POA's
Charging order database has been completed and where appropriate agrees back to source documentation	8	0	Complete
Proof of Charging order in place	8	0	Complete
Council Debt has been cleared on completion of charging order (if applicable)	2	0	

- In general there are adequate controls in place to administer the Interim Funding policy as prescribed within Government guidelines and legislation. In addition the various tasks within the Charging Order process had been completed within a reasonable timeframe and where delay had occurred e.g.; in the placing of the charging order by legal there was sufficient documentation within the client file to explain the reason for the delay.
- It was noted that Social Work have in place a Memorandum of Understanding with the Department of Works and Pensions (DWP) whereby financial information supplied by potential clients requesting Interim Funding is checked by personnel from the DWP.

### **Review procedures in relation to property valuations**

- The Council currently do not undertake a formal valuation of the client's property to be carried out prior to Interim Funding being agreed. Previous arrangements had been that the Estates department would carry out this function however due to resource constraints within Estates this function ceased in 2012. Procedures reviewed noted that the valuations are based on local knowledge or obtained via relevant websites. Results from the walkthrough testing found that for one of the properties an initial valuation of £50,000 was used for the property but was subsequently sold for £250,000.

### **Review reporting arrangements**

- Charging order income is included in budget monitoring reporting arrangements though information is confined to financial data only.

### **Observations**

We have also highlighted to management the following observation(s) which have been identified during the review. Although not included in the scope the matter(s) were brought to auditor attention during the audit and either indicate a potential risk exposure and /or could be considered as a matter of good practice and therefore noted for information and completeness:

- There is currently no requirement for ascertaining whether properties are insured during the period of the loan therefore the Council is exposed to potential financial risk.

## **6. CONCLUSION**

This audit has provided a Substantial level of assurance as Internal Control, Governance and management of risk is sound, however, there are minor areas of weakness which put some system objectives at risk and where specific elements of residual risk that are slightly above an acceptable level and need to be addressed within a reasonable timescale. There were a number of findings identified as part of the audit and these, together with agreed management actions, are set out in the attached action plan. There

were 3 actions which will be reported to the Audit Committee. Progress with implementation of actions will be monitored by Internal Audit and reported to management and the Audit Committee.

Thanks are due to the Income Maximisation and Social Work staff and management for their co-operation and assistance during the Audit and the preparation of the report and action plan.

**APPENDIX 1 ACTION PLAN**

<b>Findings</b>	<b>Risk Impact</b>	<b>Rating</b>	<b>Agreed Action</b>	<b>Responsible person agreed implementation date</b>
<b>1. Policy</b>		<b>High/ Medium or Low</b>		
There is no evidence of a formal policy document being in place and approved/agreed r.e. Interim Funding.	Failure to have agreed policy or procedures may lead to inconsistent service delivery resulting in loss or error.	Medium	<b>Policy Document will be produced.</b>	<b>Head of Adult Care – East  30 September 2017</b>
<b>2. Timeframes</b>				
Procedures do not include an indicative timeframe for each part of the charging order process	Failure to ensure or monitor timely completion of application or process leads adversely impact efficiency and effectiveness	Medium	<b>Update guidance note to include an indicative timescale for the completion of interim funding tasks.</b>	<b>Accountant – Income Maximisation  30 June 2017</b>
<b>3. Power of Attorney</b>				
Validity of Power of Attorney agreements are not checked.	Failure to ensure that Powers of Attorney are valid may lead to legal challenge	Medium	<b>HOS to issue a practice note to Social Work Practitioners to ensure that POA documents are requested for file or that confirmation has</b>	<b>Head of Service Adult Care – East  30 June 2017</b>

			<b>been received that a POA exists as stated.</b>	
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