



Measures to recover default payments by public service users

IN23/18-19

1. Introduction

1.1 Government revenue plays a critical role in securing and delivering financial resources for the provision of public services. Hence, a shortfall in revenue or delays in its collection would have an impact on the level and timeliness of financial resources available to the Government. Moreover, collection and recovery of payments from users of certain public services are an integral part of safeguarding public money and maintaining social fairness¹, so efforts have to be made to collect or reduce arrears in particular from those who have the ability to pay. Yet, government information and review reports reveal that there remain notable default cases every year. Meanwhile, there remain cases of medical fees not being settled after using the services of the Hospital Authority ("HA") by non-local people. All these have aroused public concerns about the Government's efforts in recovering these defaults.

1.2 At the request of Hon Paul TSE Wai-chun, the Research Office has prepared this information note aiming to examine the measures adopted in overseas places in recovering/reducing default payments by public service users, with particular focus on those non-tax defaults which are not subject to the recovery actions applied to tax default.² Two places, namely the United States ("US") and the United Kingdom ("UK"), are selected for the study. The former has put in place a central debt collection agency managing the federal government's non-tax delinquent debt portfolio through the administration of different debt management programmes. In addition, some states or cities have in recent years also strengthened the efforts in

¹ For example, some government departments may charge their services in accordance with the "user pays" principle to achieve full cost recovery for the services provided. Such fee charging principle ensures that taxpayers do not have to subsidize individual users of the services.

² For example, some of the recovery actions against tax defaults provided under the Inland Revenue Ordinance, such as issuing of recovery notice to the employer of defaulting taxpayer and preventing the taxpayer from departing Hong Kong, are believed to have a stronger deterrent effect than those in non-tax defaults.

collection of default payments. On the other hand, the UK health services authority, National Health Service ("NHS"), has faced a similar problem of default on medical fees by non-local people. To address the issue, it has rolled out a cost recovery programme by implementing a number of prevention/deterrent measures. The programme is expected to recover up to £500 million (HK\$5,230 million) per year.

1.3 This information note will begin with an overview on the present situation of default payment by public service users in Hong Kong and issues concerned by the public, followed by a discussion on the policy and measures adopted in both the US and the UK to prevent, recover and reduce default payments.

2. Hong Kong

2.1 Fees and charges for provision of services by the Government, repayment of government loans, as well as fines and penalties for governing public behaviour are part of government receipts.³ The Government has a duty to manage and recover payment as part of good financial management. As such, timely collection of government receivables is considered important. However, there are often reported cases of outstanding/unsettled payments after due dates (in general considered as default payments or arrears), leading to delayed collection of government revenue or even revenue loss⁴, and potential abuse of social resources.

2.2 There are various causes for the general public defaulting on payments, including their inability to pay, unawareness/inconvenience to pay and intention not to pay. According to the existing internal guidelines of the Government on the handling of account receivables, Controlling Officers ("COs") (who are the heads of the government departments) are responsible for prompt collection and for taking timely and appropriate actions to recover arrears of revenue within their jurisdiction. Such actions include **issuing payment reminders and taking legal actions against defaulters as necessary**. Against this backdrop, each department may have its own

³ Government receipts arising from provision of services also cover rents from government properties and tenancies which are not the major focus of this paper.

⁴ Revenue loss could be contributed by the cost of debt collection or the amount of default payments being written-off.

measures/procedures in recovering the defaults and devote different level of resources to tackle the causes.

2.3 At present, there is **no consistent approach** among the government departments in public disclosure of information relating to default payments made by service users. Some publish such information regularly (e.g. the Inland Revenue Department publishes the default statistics of tax in its annual reports; and the Working Family and Student Financial Assistance Agency publishes the default statistics of student loans in its website), while some others only provide information on a requested basis, such as upon request by the Legislative Council Members. Some default payment information was made open to the public upon release of review reports by the Audit Commission or the Office of The Ombudsman ("Ombudsman Office").

Status of default payments by public service users

2.4 Based on the fragmented information available, a summary of the default payment status is given in **Table 1**, which covers (a) student loans, (b) legal costs, (c) water charges and (d) fines arising from cases heard in the Magistrates' courts.

Table 1 — Default payment status relating to selected public services and fines, 2013-2014 to 2017-2018

	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
(a) Student loans⁽¹⁾ of the Working Family and Student Financial Assistance Agency⁽²⁾					
Default cases at each year end	13 936	12 380	12 195	11 329	10 713
Amount in default at each year end (HK\$)	224.08 mln	202.85 mln	191.53 mln	177.12 mln	159.34 mln
Amount of student loans written off in each year (HK\$)	5.12 mln	3.02 mln	1.88 mln	1.57 mln	1.01 mln
(b) Legal costs of the Legal Aid Department					
Cases of arrears ⁽³⁾ at each year end	1 160	1 045	911	893	823
Amount of arrears at each year end (HK\$)	82.5 mln	79.9 mln	83.7 mln	87.4 mln	102.2 mln
Amount of irrecoverable legal costs written off in each year (HK\$)	10.8 mln	6.3 mln	6 mln	7.3 mln	8.1 mln

Table 1 — Default payment status relating to selected public services and fines, 2013-2014 to 2017-2018 (con't)

	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
(c) Water charges of the Water Supplies Department					
Cases of arrears at each year end	12 257	10 692	11 608	11 611	11 635 (up to Feb 2018)
Amount of arrears at each year end (HK\$)	5.7 mln	5.2 mln	6 mln	6 mln	5.6 mln (up to Feb 2018)
Amount of water charges written off in each year (HK\$)	N/A	N/A	N/A	N/A	N/A
(d) Fines imposed by the Magistrates' Courts (as at 24 July 2019)					
(i) Non-fixed penalty fines and fixed penalty fines (public cleanliness offences and others – anti-smoking, vehicle idling, window inspection and plastic shopping bags)					
Cases outstanding and (due) in each year	230 (180 347)	283 (175 208)	321 (161 363)	469 (158 229)	2 616 (145 492)
Amount of fines outstanding and (due) in each year (HK\$)	0.7 mln (275.7 mln)	0.9 mln (291.1 mln)	1 mln (306 mln)	1.5 mln (304.4 mln)	8.6 mln (291.1 mln)
Amount of fines (including court costs) written off in each year (HK\$)	5.47 mln	0.06 mln	9.16 mln	9.94 mln	32.13 mln
(ii) Fixed penalty fines (moving offences and parking contraventions)					
Cases outstanding and (due) in each year	1 174 (74 764)	1 537 (71 157)	1 825 (80 193)	5 735 (98 181)	8 772 (104 917)
Amount of fines outstanding and (due) in each year (HK\$)	1.3 mln (86 mln)	1.7 mln (81.3 mln)	2 mln (90.9 mln)	6.4 mln (110.7 mln)	9.7 mln (117.8 mln)
Amount of fines written off in each year (HK\$)	N/A	N/A	N/A	N/A	N/A

Notes: (1) These include the Tertiary Student Finance Scheme - Publicly-funded Programmes, the Financial Assistance Scheme for Post-secondary Students and the Non-means-tested Loan Schemes.

(2) Figures refer to the position as the end of the respective academic years (i.e. 31 July).

(3) The amounts include: (i) contributions due from the aided person; (ii) costs incurred by the Legal Aid Department in a case where there is an order for the opposite party to pay the costs incurred by the aided person; and (iii) costs incurred by the Legal Aid Department in a case which are recoverable from moneys and/or property recovered or preserved on behalf of the aided person in the proceedings.

Sources: Legal Aid Department, Judiciary, Water Supplies Department and Working Family and Student Financial Assistance Agency.

2.5 Based on the information in Table 1, each of the payment categories has experienced different degrees of default payments in terms of number of cases and/or amount. First of all, the amount in default of **student loans** remained at a high level of HK\$159.34 million as at the 2017-2018 academic year despite a decreasing trend in recent years.⁵ While student loans involve a substantial amount of public money, the default problem had been examined by the Audit Commission and the Ombudsman Office in 2009 and 2015 respectively.⁶ The report of the Ombudsman Office specifically pointed out that the deterrent effect of loan default was very weak where loan defaulters were only asked to repay their debt with interest together with an administrative charge.⁷

2.6 On **legal costs** of the Legal Aid Department ("LAD"), the amount in arrears has persistently risen to HK\$102.2 million as at 2017-2018, although the number of cases of arrears has dropped over the past five years. In other words, the average amount in arrears per case remained increasing. LAD provides legal representation to eligible applicants by a solicitor and, if necessary, a barrister in civil or criminal proceedings. A person receiving legal aid may be required to contribute towards the costs and expenses incurred by LAD out of his/her financial resources or out of the moneys and/or property recovered or preserved on his/her behalf. Furthermore, LAD may recover from the opposite party the legal costs incurred.

2.7 **Water charge** is another case in point of default payments.⁸ As indicated by the Water Supplies Department in response to a question of a Legislative Council Member, there were over 10 000 cases of arrears in water charges annually from 2013-2014 to 2017-2018, with the amount of arrears reaching HK\$6 million.

⁵ The total amount of loans disbursed to students under various programmes (the Tertiary Student Finance Scheme - Publicly-funded Programmes, the Financial Assistance Scheme for Post-secondary Students and the Non-means-tested Loan Schemes) reached HK\$1,917.49 million.

⁶ See Audit Commission (2009) and Office of The Ombudsman (2015).

⁷ Regarding this, the Ombudsman Office recommended that the Working Family and Student Financial Assistance Agency should consider afresh forwarding the negative data of the defaulters of the more serious cases to credit reference agencies for greater deterrent effect. The recommendation was however objected by the Privacy Commissioner for Personal Data with the concerns on privacy issues. See Office of The Ombudsman (2015) and Privacy Commissioner for Personal Data (2015a and 2015b).

⁸ Water charge is treated as a government-operated public utility charge.

2.8 On collection of **fin**es⁹ imposed by Magistrates' Courts, there have been increasing outstanding cases in recent years. In particular, for the period of 2017-2018, the outstanding amount of the fixed penalty fines (moving offences and parking contraventions) has risen to HK\$9.7 million, representing 8% of the amount due and over six-fold larger than that in 2013-2014. In its recent review, the Audit Commission has suggested that the Government might explore more ways to facilitate local and non-local offenders to settle the payment of outstanding fines, such as through payment at convenience stores¹⁰, apart from payment by post as well as phone/internet which requires pre-registration or a linked bank account.

Status of default payment by non-eligible persons in public healthcare services

2.9 On the other hand, public healthcare services in Hong Kong are heavily subsidized by the Government, targeting local Eligible Persons (mainly holders of Hong Kong Identity Card¹¹). In recent years, rising amount of default medical service payments among non-eligible persons ("NEPs") after using the services of HA has drawn grave public concern. Based on the information provided by HA (**Table 2**), it is noted that the outstanding amount owed by NEPs remained increasing, from HK\$56.4 million as at 2013-2014 to HK\$70.2 million as at 2017-2018. According to the Government, NEPs are generally provided with public healthcare services only in emergency situations while non-emergency services for them would be considered on a case by case basis only when there is spare service capacity and the services provided for local residents will not be affected.^{12, 13}

⁹ The great majority of fines arising from cases heard in Magistrates' Courts.

¹⁰ See Audit Commission (2018).

¹¹ Under the Registration of Persons Ordinance, those who have been permitted to stay in Hong Kong for more than 180 days are required to register for an identity card, except those who are exempted or excluded (e.g. for transit purpose).

¹² See GovHK (2018 and 2019b).

¹³ The Research Office had written to HA requesting information on the breakdown of NEP outstanding payment arising from emergency services and admission to hospital after paying a deposit. HA has replied that the breakdown information is not readily available.

Table 2 — Default payment status of non-eligible persons receiving medical services of the Hospital Authority

Non-eligible persons	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
No. of outstanding cases	5 882	6 210	6 869	5 762	4 835
(i) Overseas/Mainland visitors	1 006	972	920	765	746
(ii) Others (e.g. persons without identification documents, non-refoulement claimants)	4 876	5 238	5 949	4 997	4 089
Outstanding amount (HK\$)	56.4 mln	47.2 mln	60 mln	62.1 mln	70.2 mln
(i) Overseas/Mainland visitors (HK\$)	20 mln	16.5 mln	18.7 mln	16.3 mln	18.4 mln
(ii) Others (e.g. persons without identification documents, non-refoulement claimants) (HK\$)	36.4 mln	30.7 mln	41.3 mln	45.8 mln	51.8 mln
Written off amount (HK\$)	31.6 mln	59.8 mln	41.6 mln	50.5 mln	49.6 mln
(i) Overseas/Mainland visitors (HK\$)	12.6 mln	21.5 mln	16.5 mln	17.8 mln	14.3 mln
(ii) Others (e.g. persons without identification documents, non-refoulement claimants) ⁽¹⁾ (HK\$)	19 mln	38.3 mln	25.1 mln	32.7 mln	35.3 mln

Note: (1) According to HA, over 80% of the written off amount was contributed by persons without identification documents.

Source: Hospital Authority.

2.10 NEPs' medical fees are determined on a cost-recovery basis. It is observed that outstanding medical payment among NEPs was mainly due to failure to pay by those non-visitors (e.g. those without identification documents and non-refoulement claimants).¹⁴ Indeed, for the vulnerable groups, there is a fee waiver mechanism under HA and Social Welfare Department for them to apply. According to HA, medical fees which are successfully waived would be treated as "medical waiver" and would not count towards account receivables. Under the system, assessment is made based on their financial and social situation on a discretionary basis. There may be cases that some non-visitors with outstanding payment are not aware of the

¹⁴ According to Official Record of Proceedings of Legislative Council (2019), in the past three years, among the relevant cases involving fees payable by NEPs being written off, over 50% were those without identification documents (e.g. the homeless or the abandoned), 18% were overseas visitors, 12% were Mainland visitors and another 12% non-refoulement claimants.

waiver channel or not willing to apply for it. It is believed that the default problem might be smaller if the fee waiver channel is more effectively used by NEP patients with genuine hardship.

2.11 As to the unpaid medical fees owed by NEPs who are overseas/Mainland visitors, there appears to be a mild declining trend but the total outstanding amount remained over HK\$18 million as at 2017-2018. This is notwithstanding that HA has put in place specific measures to tackle the default problem of NEPs, such as imposing upfront deposit¹⁵ upon admission to hospital, issuing interim bills during their hospitalization and final bills upon discharge. For emergency situations, deposit may not be collected at the point of admission. According to HA, for those NEPs with outstanding medical fees, HA would suspend the provision of non-emergency medical services to them.¹⁶

Issues and concerns

2.12 Based on the above information, various government departments have experienced different degrees of default payments by service users. Rising defaults may to a certain extent reflect **lack of effectiveness and/or deterrent effect of some recovery actions**. Moreover, there is no consistent approach in public disclosure of the default information across the government departments. As such, there are suggestions that the Government should **strengthen the information transparency** by providing itemized breakdown on outstanding/unsettled payments and amount written-off by every single government department and subvented organization, which may serve as an indicator of whether the Government has effectively managed public money.¹⁷

¹⁵ For example, the deposit amount for the general ward in public hospitals is HK\$51,000.

¹⁶ See GovHK (2019b).

¹⁷ In particular, a Member asked the Government at the Council meeting of 27 March 2019 whether it would provide information on the amount of fees written off in the previous financial year in the Budget. The Government replied that as the Budget covered mainly the estimates of the revenue and expenditure of the Government for the next financial year, it had no plan to set out such kind of information at this moment. See GovHK (2019a).

2.13 When responding to a Member's question at the Legislative Council meeting of 13 June 2018 about default payments by public service users, the Chief Executive stated that the Government had to protect the public coffers on one hand; and on the other there was a need to consider whether the actual recovery of default payments would present great difficulties to the defaulters.¹⁸ Moreover, she added that the cost of debt collection had to be taken into account as well. Despite various considerations in addressing the matter, at present, there appears to be **lacking a coordinated and consistent strategy in recovering default payments**, which are seen in some overseas places such as the US and the UK.¹⁹ In particular, a **centralized strategy** is considered to be beneficial to the default recovery in various ways, including **consistent collection efforts, consolidation of debt accounts from the same debtor, achieving economies of scale and increased efficiency**.²⁰

2.14 In recent years, **default medical service payments** by NEPs have drawn particular public attention. According to the Government, the average amount in default involving NEPs was about HK\$14,500 in 2017-2018, an increase of 46% compared to 2013-2014.²¹ There have been calls for HA to strengthen the efforts in recovering payment defaulted by visitors, especially those who intended to escape payment after using the services. While taking legal proceedings may achieve a greater deterrent effect, there are views that it may not be practical to apply it given the high cost and complexity involved.²² There have been different suggestions to tackle the problem. For instance, some have suggested refining the billing process; requiring a larger amount of upfront fees when using public medical services; and even imposing entry/exit restrictions in the event of default.²³

¹⁸ See Official Record of Proceedings of Legislative Council (2018).

¹⁹ In the UK, the government is implementing a cross-government debt management strategy with a view to creating a more consistent strategic approach to debt management. The approach of the US in the management of debt owed to the government will be discussed in section 3 of this paper.

²⁰ See Government Finance Officers Association (1995).

²¹ The case with the highest default amount even reached HK\$4.7 million. See GovHK (2019b).

²² See 經濟日報：《內地婦公院走數逾 616 萬 法律界料追回欠款機會微》(2019).

²³ See Official Record of Proceedings of Legislative Council (2019).

2.15 Default payments that remain outstanding and uncollectible might eventually lead to **bad debts**. Although full details on the written off amount due to default by public service users are not known²⁴, the increasing trend in some items seen in Table 1 (e.g. fines (including court costs) of the Magistrates' Courts) and Table 2 may warrant attention. Under the internal guidelines adopted by the government departments, "COs should consider writing off the receivables only after all exhaustive actions taken to recover the amounts have failed and upon seeking the necessary legal advice". However, it is unclear whether there is any cross-department benchmark or performance indicator for measuring the effectiveness in recovering payment, and whether there is a standardized approach to management of bad debt (e.g. a consistent timeframe for writing off the irrecoverable debt).

3. The United States

3.1 In contrast to Hong Kong, the US has put in place a system mandating **regular disclosure on the overall default status of government receivables**. As required by federal law, the US Department of Treasury ("US Treasury") reports to Congress annually on the government's non-tax account receivables (e.g. student loans, fines and penalties) and related debt collection activities. The report, being available online, provides (a) detailed information of outstanding receivables owed to the federal government, (b) the portion of those receivables that are delinquent²⁵, and (c) the amount written off by individual federal agencies²⁶. Other than annual reporting to Congress, there are also **interactive online reports** showing to the public about the latest

²⁴ According to GovHK (2019a), the total amount written off by the Government due to default payments by different persons amounted to HK\$541 million in 2017-2018, an increase of 87% compared to 2015-2016. Within the three-year period, the total written off amount reached HK\$1,113 million. According to the information provided by the Financial Services and the Treasury Bureau at the request of the Research Office, the top five government departments contributing to the three-year aggregate written off amount from 2015-2016 to 2017-2018 are Inland Revenue Department (77%) (mainly due to irrecoverable salaries tax and profits tax); Judiciary (5%) (included irrecoverable fines and court fees); Social Welfare Department (3%) (mainly due to irrecoverable overpayments under various social welfare schemes); Lands Department (2%) (mainly included judgment debts, outstanding rent and interest); and Hong Kong Police Force (2%) (mainly included irrecoverable fixed penalty fines and bail money). Nevertheless, there is no itemized breakdown on the written off amount.

²⁵ A debt is delinquent if it has not been paid by the payment date or by the end of any grace period contractually provided.

²⁶ Federal agencies with delinquent account receivables are known as creditor agencies.

status of non-tax receivables and progress of the debt collection work.²⁷ Indeed, to closely monitor the default status, the Office of Management and Budget (an executive office of the President of the US on budget development) has established different **performance indicators** such as delinquency rates²⁸ and delinquent collections rates²⁹ for individual federal agencies to meet.³⁰

3.2 The US has also engaged the Bureau of the Fiscal Service ("BFS") as the **central debt collection agency** to provide a wide range of debt management programmes to federal agencies. Prior to a debt (i.e. outstanding payment owed to the US government) becoming delinquent, BFS offers **Centralized Receivables Service ("CRS")** for federal agencies to increase collections on current receivables so as to reduce the chance of occurrence of delinquent debt. The Service assists them in managing non-tax receivables along the collection life cycle in various ways. These included centralized generating and mailing notices (e.g. invoices and delinquency notices) automatically, handling enquiries/disputes with the payors by the call centre and collecting the receivables. According to BFS, CRS has handled over 220 000 cases as at May 2018 since its launch in 2013 and on average it took 35 days to get receivables paid in full.³¹ Collection by CRS in the 2017 financial year amounted to nearly US\$45 million (HK\$351 million) and the cost of CRS operation represented less than 10% of the receivables collected.

3.3 When the receivables owed to federal agencies remain uncollected and become delinquent, they will be followed by statutory debt collection activities. Specifically, the Debt Collection Improvement Act of 1996 generally requires federal agencies to **transfer any non-tax debt delinquent 180 days or more** to BFS for centralized follow up action (no matter federal agencies have or have not participated in CRS). After transfer, BFS must take appropriate action to handle the debt (commonly referred to as "Cross-Servicing") using a combination of **debt collection tools** to recover the default payments.

²⁷ See U.S. Department of the Treasury (2019).

²⁸ By comparing the amount of an agency's delinquent debt relative to the total outstanding debt, the delinquency rate reflects the agency's effectiveness in collecting debt before it becomes past due.

²⁹ By comparing the amount of an agency's delinquent debt collected relative to the total amount delinquent, the delinquent collections rate reflects the agency's effectiveness in collecting debt after it has become past due.

³⁰ See Chief Financial Officers Council (2013).

³¹ See U.S. Department of the Treasury (2018).

3.4 To begin with Cross-Servicing, BFS would send demand letters and make phone calls to the debtors on behalf of federal agencies. If the debt remains uncollected, BFS may also seek assistance from **private collection agencies** for debt collection or issue a **wage garnishment order**³² to a non-federal employer to collect the delinquent federal non-tax debt. Among the various debt collection tools, the offset programme known as **Treasury Offset Program ("TOP")**³³ is the most common tool used by BFS.

Treasury Offset Program

3.5 As the major debt collection tool of BFS, TOP is a **centralized offset programme** which collects delinquent debts (including both tax and non-tax debts) owed to federal agencies and states. In order to be eligible for offset under TOP, the delinquent debt must be legally enforceable (e.g. not in bankruptcy) with the amount of at least US\$25 (HK\$196) (including interest, penalties and administrative costs). If there are multiple debts for the same debtor, the non-tax debts will be offset after the federal income tax debts have been settled. The essential features of TOP are highlighted below:

- (a) **Offset arrangement:** under TOP, federal agencies are required to notify BFS of the eligible debts delinquent more than 120 days and submit the debtor's information to TOP. BFS must offset federal payments (including tax refunds, federal salary³⁴ and certain social security benefits) against delinquent debts³⁵. To facilitate this, the debtor information will be compared against the payee information before a federal payment is disbursed. If their identity is matched, the payment will be offset in whole or in part, and will be transferred to the concerned federal agency to satisfy the debt (**Figure 1**);³⁶

³² Without the need of obtaining a court order, the wage garnishment order requires a non-federal employer to withhold up to 15% of an employee's net income to pay a delinquent non-tax debt owed to the agency.

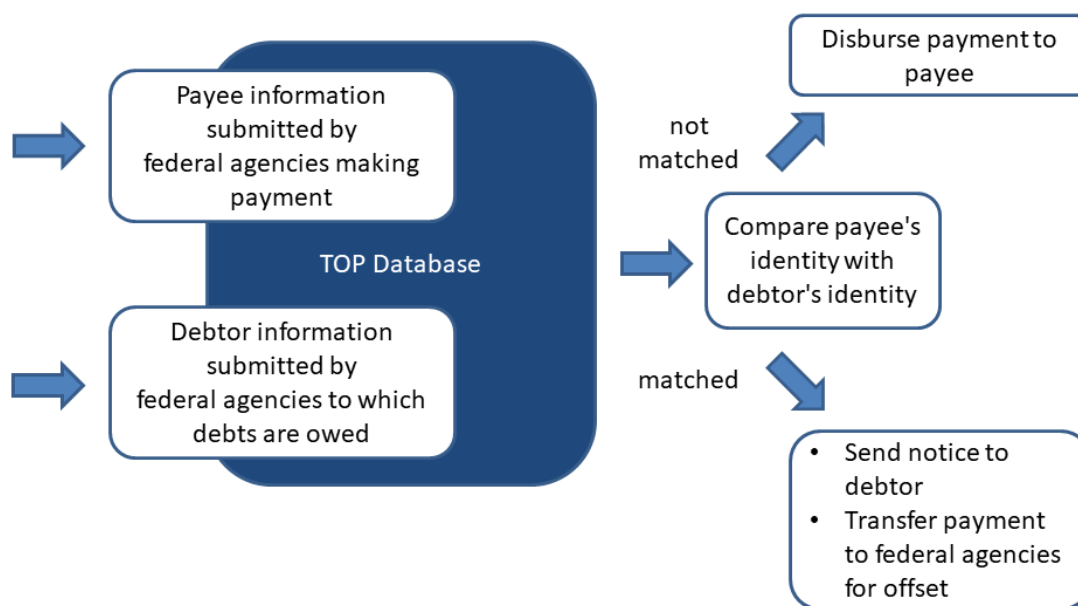
³³ TOP is a centralized offset programme to collect delinquent debts owed to federal agencies and states in accordance with the US Code (e.g. 26 U.S.C. § 6402(d) and 31 U.S.C. § 3720A) and other applicable laws.

³⁴ It refers to the salary paid by the federal government.

³⁵ States may offset their payments by entering into reciprocal offset agreements with BFS.

³⁶ On the other hand, the agency is generally required to report the debt to credit bureaus and this may impact the credit score of the debtor.

Figure 1 — Operation of TOP



Source: The Bureau of the Fiscal Service.

- (b) **Prior notification requirements and debtors' rights:** before submitting a non-tax debt to TOP, the concerned federal agency must certify that it has complied with all **due process prerequisites** prior to offset, including sending an at least 60 day-notice to the debtor stating its intention to submit the debt to TOP for offset. During the notification period of the due process, the debtor can request a file review and resolve the debt by entering an agreed instalment or repayment plan. The debtor also has the right to dispute existence or amount of debt as well as the legality of a particular debt collection action.³⁷ After the debt has been referred for offset under TOP and an offset is taken, BFS must notify the debtor that the offset has occurred (including the amount and type of payment that was used to pay the debt) and further point of contact; and
- (c) **Offset ceiling:** the amount of the federal payments to be offset is subject to a ceiling depending on its nature and/or types of debt. For instance, all federal tax refund could be 100% offset for the collection of federal non-tax debts; and for a debtor who is a

³⁷ While the dispute is being reviewed, collection action will continue unless the federal agency requests BFS to suspend the collection.

federal employee, only up to 15% of federal salary could be offset for the collection of federal non-tax debts.

3.6 BFS charges the concerned federal agency an **administrative fee** for each offset to cover its costs for collections through TOP. According to the audit report on TOP issued in 2016³⁸, the fee ranged from US\$15 (HK\$116) to US\$27 (HK\$210) for each offset made. Fees are set annually and collected from the amount offset. Federal agencies may elect to absorb them or pass them on to the debtors. In the 2018 financial year, about US\$7.2 billion (HK\$56.4 billion) of delinquent debts was collected through TOP with over 80% of them being non-tax debts.³⁹

3.7 Debts delinquent **more than two years** will be subject to mandatory **write off**⁴⁰ as "currently not collectible" or "close-out" unless justified to the Office of Management and Budget in consultation with the US Treasury.⁴¹ If the debts are written off as "currently not collectible", TOP and other debt collection efforts will still continue, until (a) the debt has been paid, (b) the agency determines that it is no longer cost effective to pursue collection (i.e. debt is "close-out"), or (c) the case has been referred to the Department of Justice for litigation.

Other special programmes to facilitate payments

3.8 Apart from the above government-wide debt collection/management programmes, there are also different strategies adopted by individual federal agencies and state/local governments to facilitate fees and fines payment. Some of these special programmes are highlighted as follows:

Flexible repayment plans

3.9 One of the reasons for a debtor defaulting payment could be his/her inability to pay. For instance, graduates cannot afford to repay the federal

³⁸ See U.S. Department of the Treasury (2016).

³⁹ On the contrary, only US\$243 million (HK\$1,905 million) of delinquent debts was collected through other debt collection tools.

⁴⁰ Write off of a debt is an accounting action that results in reporting the debt/receivable as having no value on the creditor agency's financial and management reports.

⁴¹ See The White House (2013).

student loans if they are unemployed or have low income. In such circumstances, the US Department of Education offers various **income-driven repayment plans** for eligible students under which they can pay the loan at a percentage (ranging from 10% to 20% in general) of their discretionary income in a long repayment period of 20-25 years. In some cases, the remaining loan balance could be forgiven even if the student loans are not fully repaid at the end of the repayment period.⁴²

Expansion of payment options

3.10 For certain fines and fees, the US has broadened the payment channels to facilitate more convenient and timely payment of service users and offenders. Apart from offering various electronic payment options (including online or mobile payment), some state/local governments allow the public to **pay their fees or fines easily by presenting a payment barcode at different kinds of retail stores (e.g. pharmacy stores and convenience stores)** through the electronic payment network PayNearMe⁴³ operated by a financial technology company. For example, the Superior Court of Alameda County of California has recently allowed the public to pay their **outstanding traffic-related court fees and fines** in cash at these retail stores using PayNearMe without charging any additional transaction fee.⁴⁴ Likewise, the Citrus County of Florida has newly announced that it will accept cash payment at convenient stores via PayNearMe for **traffic fines and court fines as well as other court related fees with a transaction fee applied**.⁴⁵

Amnesty programmes

3.11 To encourage the settlement of debt incurring large amount of interest/penalties, some places in the US have rolled out amnesty programmes which **allow offenders to resolve certain debts without paying late fees/interests within the designated period of time**. For instance, New York City launched a three-month "Forgiving Fines: The NYC Amnesty Program" in late 2016 which waived penalties and interests on certain violations (e.g. improper disposal of trash or recyclables) charged on

⁴² See Federal Student Aid (2019).

⁴³ It includes more than 27 000 retail stores nationwide.

⁴⁴ See Superior Court of Alameda County in California (2019).

⁴⁵ A fee of US\$5.99 (HK\$47) is applied for payments less than US\$200 (HK\$1,568), and US\$7.99 (HK\$63) for payments US\$200 (HK\$1,568) and above. See Citrus County Clerk of Courts in Florida (2019).

individuals and business owners.⁴⁶ Throughout the three-month programme, the city successfully restored US\$43 million (HK\$334 million) of outstanding debt which was already more than the collection in the 2014 financial year.⁴⁷ At present, the city of New Orleans is launching a similar amnesty programme for residents to settle certain fines (e.g. traffic-related tickets and library fines) with all/part of the additional penalties being waived.⁴⁸

4. The United Kingdom

4.1 In the UK, NHS is a residence-based healthcare system. "Ordinarily residents"⁴⁹ as well as vulnerable groups from other countries (e.g. refugees and asylum seekers) are entitled to have free NHS secondary care services. In contrast, overseas visitors who are non-UK residents are generally required to pay for the services, except certain treatments such as accident and emergency ("A&E") services provided at A&E departments and urgent care centre.⁵⁰ NHS has a statutory obligation to identify and charge overseas visitors who are not eligible for free care. In the early 2010s, the UK government conducted an assessment and estimated that only 25%-30% of the costs incurred by NHS in providing healthcare to visitors and migrants from other countries were recovered.⁵¹

4.2 To improve cost recovery and ensure that NHS receives a fair contribution for the cost of the healthcare provided to non-UK residents, the UK government launched the **cost recovery programme** in 2014 with an aim to recover £500 million (HK\$5,230 million) every year from 2017-2018 by introducing a host of measures. These included aiding better identification of chargeable patients with improved information system, recouping charges from patients' home country under the European Economic Area ("EEA") health insurance scheme, and increasing the collection of invoiced amount from non-EEA patients by providing incentives to NHS providers.⁵²

⁴⁶ See NYC Department of Finance (2019a).

⁴⁷ See NYC (2016).

⁴⁸ See the City of New Orleans (2019).

⁴⁹ Broadly speaking, ordinarily resident means a person who lives in the UK on a lawful and properly settled basis for the time being. See Government of UK (2018).

⁵⁰ Other free services also include treatment under the Mental Health Act and treatment of specified infectious diseases.

⁵¹ See Ipsos MORI's Social Research Institute (2017).

⁵² Under this arrangement, NHS providers charge visitors 50% more than ordinary price. In the event of payment default, NHS commissioners will pay NHS trusts half of the invoiced amount. If patients make full payment, the entire amount will go to the trust.

4.3 In the past, people living in the UK for temporary work or study were entitled to free public medical services.⁵³ Since 2015, its government has introduced the **immigration health surcharge** as part of the cost recovery measures to reduce deficits of NHS providers. Under the amended immigration rules, people from outside EEA are required to pay the health surcharge, currently at £400 (HK\$4,184) per year⁵⁴, as part of their visa application if they visit the UK or want to extend their stay in the UK for **more than six months**.⁵⁵ Having paid the surcharge, they will have the same access to NHS as a UK permanent resident for the duration of their visa⁵⁶. According to the government, a significant portion of the NHS cost recovery was contributed by the immigration health surcharge, which amounted to £164 million (HK\$1,724 million) or 57% of the total cost recovery in 2015-2016.

4.4 The UK government has estimated that the above host of measures under the cost recovery programme would help recover a total of £346 million (HK\$3,619 million) in 2017-2018, 2.6 times higher than the amount recovered in 2013-2014. However, the amount is still short of the target of £500 million (HK\$5,230 million). To support more efficient and effective cost recovery processes, the government amended the legislation in 2017 following the public consultation to introduce the **upfront charging** measure, applicable to overseas visitors from outside EEA and not covered by the immigration health surcharge. Moreover, the UK government may also impose **immigration sanction** on overseas visitors to make non-payment of NHS charges specific grounds for refusal of their entry or further stay in the UK. The two policy tools are discussed in the ensuing paragraphs.

⁵³ At that time, temporary non-EEA migrants had free access to NHS care soon after arrival in the UK. However, the UK government considered that this was overly generous, and inconsistent with the policy that temporary migrants were not given access to welfare benefits and social housing.

⁵⁴ For students or those on working holiday scheme, the amount of health surcharge is £300 (HK\$3,138) per year.

⁵⁵ Applicants are required to make upfront payment of the full amount of the charge, covering the length of the visa period.

⁵⁶ Having said that, they will still need to pay for certain types of services such as prescriptions, dental treatment and eye tests.

Upfront charging

4.5 Similar to the situation of Hong Kong, it has been difficult or even impossible for the UK government to trace overseas visitors with an outstanding NHS debt to be repaid once they have been discharged. It has therefore introduced upfront charging as a vital tool to reduce the risk of unpaid debt within NHS and to ensure that patients make informed choices about their care. Since October 2017, it has become a legal requirement to recover in advance the estimated **full cost** of a course of treatment unless doing so would prevent or delay the provision of immediately necessary or urgent treatment. That means when a clinician has determined a patient's need for care to be **non-urgent/elective**, the patient will be required to **pay upfront in full** before the treatment is provided. Certain groups such as refugees and asylum seekers are **exempted** from charging.

4.6 To support relevant service providers in upfront charging, the UK government has developed **a list of indicative prices** for the cost estimation of treatment. Following the categorization of treatment, the administrative party should inform the patient of the estimated costs either with reference to the government's indicative list or its own tariffs. They should also inform the patient that a post-discharge adjustment will be made if necessary (further payment or refund). The upfront charging policy has been in force for about two years. According to the British Medical Association, there have been occasions that patients who were ineligible or unsure of their eligibility for free NHS treatment were deterred from accessing health care services because of the requirement to pay in advance.⁵⁷ Since there are no national data requirements on upfront charging, the Department of Health and Social Care has recommended NHS providers to capture the key data for performance management and programme evaluation, including number of chargeable patients treated, and number of patients who have decided not to seek treatment following being identified as chargeable.

⁵⁷ See the British Medical Association (2019).

Chargeable treatments exempted from upfront payment

4.7 Having said that, certain chargeable services are not subject to mandatory upfront payment but are charged afterwards. These are treatments clinically assessed as **immediately necessary**⁵⁸ or **urgent**.⁵⁹ To ensure timely payment, the patient will be presented with an invoice for the treatment received once his/her condition becomes stable; and some NHS providers have installed a portable credit card machine, to take to the patients before they are discharged from hospital.⁶⁰ According to the guidance of the Department of Health and Social Care, where it is clear that a person is destitute or genuinely without access to any funds, the NHS service provider can conclude that it is not cost effective to pursue payment and write it off in their accounts. Yet to recover cost as much as possible, some NHS providers arrange **instalment plans** to help patients who cannot afford to pay.⁶¹

4.8 On the other hand, it is noted that the UK has signed **reciprocal healthcare agreements** with some 16 non-EEA countries.⁶² Visitors from these places will be treated as exempt from charges according to the terms in the agreements. For example, for visitors from Serbia, all treatment is free on the same basis as their residence country; and for visitors from Australia, free service is limited to immediate medical treatment only.

Immigration sanction

4.9 The UK government put in place the immigration sanction in 2011 allowing the UK Home Office (the ministry responsible for immigration matters) to make non-payment of NHS charges **as a ground to refuse an application for a new visa or extension of stay**. Under the amended

⁵⁸ Immediately necessary treatment generally refers to treatment to save a life, to prevent a condition from becoming life-threatening or to prevent permanent serious damage from occurring.

⁵⁹ Urgent treatment refers to any treatment that clinicians do not consider to be immediately necessary, but which cannot wait until the person can be reasonably expected to leave the UK. For this kind of services, the Department of Health and Social Care still strongly advises NHS organizations to make every effort to secure payment in the time before treatment is scheduled (though the treatment should not be delayed or withheld in the event that advance payment is not received). See Department of Health & Social Care (2019a).

⁶⁰ Ibid.

⁶¹ See Maidstone and Tunbridge Wells NHS Trust (2018) and Medway NHS Foundation Trust (2017).

⁶² See NHS (undated).

immigration rules, a person with an unpaid NHS debt of £1,000 (HK\$10,460) or more is subject to the above immigration control. The threshold of debt has further been reduced to £500 (HK\$5,230) since April 2016. The immigration sanction will not directly impact on access to NHS services. Rather, it encourages overseas visitors to pay and prevent additional outstanding debts being incurred if an overseas visitor wishes to return to the UK to receive further treatment. Once the NHS debt has been cleared, it will not be a reason to refuse entry on this basis.

4.10 To facilitate immigration control, NHS organizations must notify the UK Home Office of the debt amount that has been **outstanding for two months or more**⁶³. Prior to the transfer of information, **patients should be informed** at the earliest point at each key stage of interaction, including: (a) initial registration and screening for liability for NHS charges; (b) at the point of invoicing; and (c) follow up requests pursuing outstanding payment by the hospital or its contracting agency. If an invoice amount is particularly large or where the patient is unable to pay in full, the NHS providers should discuss with the patient a **reasonable repayment plan** at the earliest opportunity. According to the UK Home Office, repayment needs to be reasonable to allow for the debt to be repaid within a realistic timeframe, and the individual's particular circumstances such as amount of disposable income against the amount of debt should be taken into account.

4.11 If the charges remained unpaid or the patient failed to adhere to the repayment plan, the NHS organizations must provide relevant debtor information including personal particulars and details of unpaid debts to the UK Home Office. However, personal clinical information relating to treatment provided or his/her medical history must not be included. Based on the guidance of the UK Home Office, refusal on the basis of NHS debt is **discretionary rather than mandatory**.⁶⁴ In assessing the cases, all the circumstances would be carefully considered in reaching the immigration decision, including human rights considerations which may override the existence of the debt.

⁶³ Previously, in respect of relevant NHS services provided from 1 November 2011 to 5 April 2016, relevant bodies must notify the UK Home Office of outstanding debts of £1,000 (HK\$12,010) or more that have been outstanding for three months or more.

⁶⁴ See Home Office (2018a).

Effectiveness and implementation issues

4.12 According to the National Audit Office, about two-thirds of NHS providers had used to adopting a combination of debt collection agencies and in-house teams in recovering default payments. However, no positive link was found between their way of debt collection and their success in collecting debts. The requirement of upfront charging introduced in 2017 might have eased the efforts to pursue visitor debts after their departure. Since the upfront charging requirement is rather new, there is yet any evaluation published by the UK government. While the cost of service is more certain for patients under upfront charging, there have been reports that since the introduction, many doctors had faced pressure from administrative staff when making clinical judgments whether a chargeable patient's needs were non-urgent, urgent or immediately necessary.⁶⁵

4.13 Since 2011, the UK Home Office has maintained a record of people who had outstanding debts owed to NHS providers after receiving treatment. These people might be refused extension of stay or visas for re-entry to the UK if debt is not paid. This deterrent tool is believed to be an effective way of encouraging overseas patients to pay what they are charged.⁶⁶ However, there remains concerns that the debtor information transferred by NHS providers to the UK Home Office over the years may be used for other purposes, e.g. for immigration enforcement or detainment, and that sharing of information with the UK Home Office might have undermined the trust and relationship between patients and medical personnel.⁶⁷ To alleviate concerns over data privacy, the UK Home Office has issued guidance on data sharing, explaining to overseas patients with NHS unpaid debt what information will be shared by NHS providers and what the government will do with the information.

⁶⁵ See the British Medical Association (2019).

⁶⁶ During the financial years from 2013-2014 to 2015-2016, the amount of related debts written off annually by NHS providers ranged from £15 million (HK\$177 million) to £17 million (HK\$201 million). According to the National Audit Office, a small number of high-value cases can cause significant variation between successive years, so it requires a longer period of time to see whether there is an association between the amount of NHS debt collected and the measure of immigration sanction. See National Audit Office (2016).

⁶⁷ See the Independent (2019).

5. Concluding remarks

5.1 It is the Government's responsibility to recover default payments by public service users so as to ensure proper management of public funds. Internal guidelines have been developed to assist government departments to collect and reduce default payments. However, there appears a lack of effective tools on debt collection and recovery as there remain notable default cases in terms of student loans and selected fees and fines. Currently, there is neither a centralized strategy/unit in recovering default payments across departments, nor regular disclosure of default information to the public. Besides, medical fees defaulted by NEPs have also raised public concern. The problem of outstanding payment by NEPs who are the vulnerable groups (e.g. non-refoulement claimants) may be eased through more effective use of the fee waiver mechanism. Meanwhile, there have been calls for the Government to introduce specific measures to deter overseas/Mainland visitors from non-payment after receiving treatment.

5.2 In the US, the disclosure regime of default information appears to be more systematic and transparent. Every year, the federal government is required to report to Congress the default position of government receivables at both overall federal level and individual federal agency level. To closely monitor the default status and measure the effectiveness in debt collection, federal agencies have set out individual performance indicators. Moreover, backed by the Debt Collection Improvement Act of 1996, there is a federal agency, BFS, centralizing the collection of non-tax receivables to reduce the chance of debt becoming delinquent, and administering various debt collection programmes (e.g. through offsetting federal payments under TOP) to recover default payments, such as student loans, fees and fines owed by public service users. Although delinquent debt is subject to being written off after two years, debt collection process will still continue if it is cost effective to do so. At the same time, there are also different strategies adopted by individual federal agencies and state/local governments to facilitate fees and fines payment. These include the provision of flexible repayment plans, expansion of payment options and implementation of amnesty programmes.

5.3 In the UK, unpaid medical fees by overseas visitors after receiving chargeable services have been a problem concerned by the government. To address the issue, the UK government has since 2015 required those staying for over six months to pay an immigration health surcharge at the time of visa application, and introduced in 2017 the upfront charging, requiring overseas visitors not covered by the health surcharge to make full upfront payment when seeking non-urgent NHS medical services. This measure provides greater transparency and certainty on the cost of service to enable patients to make informed choice, while at the same time prevents non-payment by them after departure. For services that are immediately necessary or urgent, charges will be pursued afterwards. While there appear limited measures to avoid default payment arising from these treatments, some NHS providers offer repayment plan by instalment to help those with payment difficulty. Meanwhile, certain vulnerable groups including asylum seekers are exempted from payment. Besides, the UK may also impose immigration sanction on those visitors with outstanding NHS payments, refusing their application for extension of stay or new visa until debt is paid.

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