

## DIRECTORATE OF SOCIAL SERVICES

### REPORT TO EXECUTIVE 5<sup>TH</sup> JULY 2004.

#### SECTION 117 OF THE MENTAL HEALTH ACT 1983

##### 1.0 Purpose of Report

- 1.1 To advise the Executive of the implications and the work being undertaken on the Ombudsman's Special Report on the funding of after care under S117 of the Mental Health Act.
- 1.2 To seek approval from the Executive of a reimbursement policy to respond effectively to the Ombudsman's requirements, which will require identification and repayment to clients who were incorrectly charged under S117.

##### 2.0 Background

- 2.1 S117 of the Mental Health Act 1983 requires local authorities and Health bodies to provide aftercare for certain groups of patients detained under Sections 3, 37, 45A, 47 and 48 of the Act. The services include residential, day and domiciliary care which may be provided by the Council direct or by another agency on behalf of the Council. The duty applies 'until such time as the local authority and Health are satisfied that the person concerned is no longer in need of services'.
- 2.2 Prior to 1999, Local Authorities pursued different policies in relation to charging for such services. In July 1999 the High Court decided that charges could not be made for aftercare services under S117. This judgement was upheld by the House of Lords in July 2002.
- 2.3 Following the original High Court judgment, the Department of Health issued new Guidance on S117 in February 2000. In accordance with this Guidance, Dudley Council ceased to charge people in residential care who had been subject to S117. We also picked up the costs of residential care placements where people had been self-funding and where we were aware that they had rights under S117. Dudley had not normally charged people for home care and day care.
- 2.4 Our approach at the time was to meet commitments where we were aware of them but in common with other Councils, we did not at first assiduously seek out those who may have had a claim.
- 2.5 A Protocol was agreed in June 2000 between Dudley Council, Dudley Health Authority and Dudley Priority Health Trust on the provision of after care services to people diagnosed with a mental illness.
- 2.6 In July 2003, the Local Government Ombudsman issued a Special Report containing further guidance for Local Authorities on the issue of funding for

aftercare. The key recommendations in the Ombudsman Guidance are as follows:

- The guidance requires the Council take steps to identify those people who were improperly charged and to reimburse them.
- The Council is required to go back to July 1993 to identify people who may be entitled to reimbursement. Local authorities should not carry out retrospective assessments to end S117 after-care.
- Charges should be reimbursed with interest and to relatives, where the person who was subject of the charges is deceased.

2.7 In March 2004, the Ombudsman requested all Councils to provide him with a progress report on this issue.

## 2.8 Progress made so far

2.8.1 The Social Services Directorate has made small numbers of reimbursements in line with the original DH guidance since 2000.

2.8.2 Following receipt of the Ombudsman's Guidance, which places additional requirements on Councils, arrangements are now in place to identify those people who should not have been charged for S117 aftercare.

- a) A caseload trawl;
- b) An electronic records trawl;
- c) Information from Finance Section re orders and payments;
- d) Manual trawl through purchase orders and the Mental Health Act Information Records that we keep on all patients subject to a Section.

2.8.3 A steering group chaired by the Assistant Director has been established which meets on a regular basis. This group is developing a project plan which will be updated regularly and reported to the Directorate Management Team.

2.8.4 Verification of the number of clients charged and the amount of the charges paid is the main task to be carried out. This will include actively seeking out clients by contact with user and carer groups, residential and nursing home managers and by advertising.

- 2.8.5 A part-time post to work specifically on S117 is being appointed to the Finance Team for 12 months.
- 2.9 At this stage, a total of 103 people are known to have been subject to S117, but 51 of these were never charged.
- 2.10 14 clients have already been reimbursed in full or in part.
- 2.11 We have so far identified a further 20 cases where reimbursement will be necessary and 10 cases where part reimbursement has been made but we are likely to have to make a further payment.
- 2.12 These cases are being processed to establish the exact amount, which must be repaid. There are another 15 cases known to have been subject to S117 which are still to be checked, and there will be other cases, particularly from the period 1993-99 which have not yet been identified.
- 2.13 The next stage will be to process the payments to clients, which will be a substantial task. It will necessitate close liaison with Social Work staff in the Local Mental Health Units to try to ensure that clients' lives, and their benefit entitlement, are not destabilised by receiving large sums of money.

### **3.0 Proposals**

- 3.1 Executive is asked to agree the Directorate policy on reimbursement of charges made under S117 as set out in paragraphs 2.6 to 2.9 above
- 3.2 Executive is asked to agree the provision which the Directorate has made to cover the cost of reimbursement, which is set out in section 4 below.

### **4.0 Financial Implications**

4.1 The total amount reimbursed so far on 14 cases is £93,000. The 30 other cases which will have to be reimbursed are expected to cost £225,000.

4.2 The total cost will increase because:

- More cases are likely to come to light.

• There may be some re-calculation of figures as e.g. dates are checked.

• Interest has yet to be added. It is proposed that this would be calculated with reference to historical data based on bank rate plus 0.5%

4.3 The full cost could reach £500,000. Executive will be informed in due course of the outcome of the work, which is continuing to identify clients who are entitled to reimbursement.

4.4 The Council will phase the repayments over two years 2004-05 and 2005-06. This will spread the cost and it will in any case take more than a year to work through all the cases.

4.5 The Council has made specific budget provision in the Social Services Directorate's reserve of £150K over two years for reimbursement. Additional resources will either have to be identified by virement from under spends from base budget in the current financial year or included as a budget pressure for inclusion in the budget review process for 05/06.

## **5.0 Legal Implications**

5.1 Legal advice is that the Local Government Ombudsman Guidance should be followed. If it is not followed, the Council is leaving itself open to claims for which it has no defence. The Guidance is not law. However, should a person make a complaint to the Ombudsman and a finding is made in their favour, then Dudley MBC would have a finding of maladministration filed against them, as there will be no defence, and the remedy granted to the complainant would be one of repayment.

## **6.0 Equal Opportunities**

6.1 There are no equal opportunities implications

## **7.0 Recommendations**

7.1 To agree the Proposals in section 3 of this report.

**Linda Warren**  
**Director of Social Services**

**Contact in SSD: Richard Carter, Assistant Director – Learning Disability and Mental Health**