

My Ref: JP5/CG

20th May 2003

Dear Tony,

Section 117 of the Mental Health Act 1983

I refer to your letter of the 1st April 2003 to Norman Yates, who has asked me to respond on behalf of ACSeS.

ACSeS welcomes the Commission's decision to provide advice and guidance on this difficult issue with a view to trying to ensure that there is some level of consistency nationally, particularly regarding the approach to restitution.

In general we support your draft advice and guidance, but we do not agree with paragraph 82 on the calculation of interest for restitution at the County Court rate. The latter is currently 8% per annum which is well in excess of the Bank rate. Payment at the County Court rate seems to us to be very punitive and would comfortably exceed the average rate of return if the principal had been invested with a Building Society or Bank. Our view, therefore, is that in all of the circumstances, it would be more equitable to pay simple interest at the Bank rate each year and, indeed, this has been the approach of a number of Authorities who have already made refunds.

I do hope that the Commission will accept this proposed amendment and I look forward to receiving your final report.

Yours sincerely,

JOHN POLYCHRONAKIS.
Vice-President of ACSeS.

Mr. T. Redmond,
Chairman - The Commission for Local
Administration in England,
Millbank Tower,
Millbank,
LONDON, SW1P 4QP.

Further correspondence -

My Ref: JP5/CG

30th May 2003

Dear Tony,

Section 117 of the Mental Health Act 1983

Further to my letter of the 20th May 2003, I have received further representations from Newcastle City Council which I set out below.

Although the law has recently been clarified in relation to the power of local authorities to charge for after-care services provided under Section 117 of the Mental Health Act 1983, uncertainty remains over the nature, and thus the extent, of after-care services. We appreciate that the Ombudsmen may not be in a position to clarify this issue, but we should like to raise it in case there is any opportunity in the Ombudsmen's Report to address the issue or to take it forward to the Secretary of State for further guidance.

We note the reference in the draft Report at paragraph 18 to the Secretary of State's guidance on aftercare within the Mental Health Act Code of Practice, in particular at 27.1 regarding the purpose of aftercare in relation to minimising the chances of the patient needing any future in-patient hospital care. It seems to us that after-care services under section 117 should be limited, not only by reference to the objective of minimising the need for future in-patient hospital care, but also by reference to the reason for admission under section 3 (or the other sections qualifying a patient for section 117 after-care services). The Mental Health Act makes a distinction in terms of after-care provision between patients admitted under long-term treatment sections and patients admitted for assessment. The following examples illustrate the issue:

cont'd.

Mr. T. Redmond,
Chairman - The Commission for Local
Administration in England,
Millbank Tower,
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1. A young man suffers from schizophrenia with problems exacerbated by drug use. He has erratic compliance with treatment and is unable to manage his finances appropriately. The local authority provides 1 hour home care per week to ensure that some suitable shopping is done. His mental health deteriorates because he stops taking medication altogether and his drug use increases. Subsequently, he struggles to maintain care of his home. He is admitted to hospital under section 3 of the Mental Health Act 1983. On discharge it is agreed at the section 117 meeting that he needs an extra hour home care to help him get back into the routine of cleaning his flat. This would be a section 117 service, to address a need arising from the mental disorder as presenting at the time of admission. However, the original hour of home care to do shopping, under the above reasoning, would not be an after-care service under section 117 because it addresses a need arising from the ongoing mental disorder, not as it presented at the time of admission.
2. A young man with a similar mental health diagnosis and drug use problems leads a highly chaotic lifestyle. His mental state remains poor but reasonably stable provided he takes medication, but he constantly needs services to assist him as he moves from crisis to crisis. He will not engage with any discussion about entering a mental health rehabilitation unit to work on coping strategies which would help him take increased control of his life. He stops taking his medication precipitating an admission to hospital under section 3. In hospital his mental state improves (on medication and being drug-free) and he does talk about and agrees to a referral to a residential rehabilitation mental health programme. It is also agreed that he needs regular visits from a Community Psychiatric Nurse to ensure he takes his medication. On the above reasoning the CPN visits would be a section 117 after-care service, because they address a need arising from the presentation of the mental disorder at the time of admission. The residential rehabilitation programme will not be a section 117 after-care service because this addresses longer term issues.

It seems logical and equitable that section 117 services should be those that arise out of the reason for compulsory admission - not the ongoing mental disorder from which the patient may be suffering, but the specific manifestation of that disorder that led to compulsory admission. We appreciate that the Judge's comments in the High Court regarding the example of dementia (paragraph 25 of the draft Report) do not assist this interpretation. Nevertheless we should be grateful for the Ombudsmen's views if they are able to give them.

We would refer to the reference to guidance in paragraph 18 which we take to be a reference to the Mental Health Act Code of Practice. The Code, although it deals with after-care in paragraphs 27.1-27.12, is not as drafted in the report. Perhaps this could be clarified.

Yours sincerely,

JOHN POLYCHRONAKIS.
Vice-President of ACSeS.