

# North Tyneside Council

## Report to Cabinet

### Date: 16<sup>th</sup> April 2012

#### ITEM 6(c)

Title: Section 117 Reserve

Portfolio(s): Adult Social Care

Cabinet Member(s): Cllr Les Miller

Report from Directorate: Community Services

Report Author: Jacqui Old, Head of Adult Social Care (Tel: (0191) 643 7317)

Wards affected: All

### PART 1

#### 1.1 Purpose:

The purpose of the report is to update Cabinet in respect of the progress that has been made by the Adult Social Care team in advertising and inviting claims for reimbursement of charges incorrectly applied to individuals who were subject to Section 117 aftercare services provided under the Mental Health Act 1983.

This follows recommendations made by the Finance Sub-Committee and considered by Cabinet at its meeting held on 8<sup>th</sup> August 2011.

#### 1.2 Recommendation(s):

It is recommended that Cabinet:

- (1) Note the progress made by Adult Social Care as detailed in this report.
- (2) Agree to transfer £491,282 of the £533,592 contained in the Section 117 Reserve to the Strategic Reserve, the remaining £42,310 to be repaid to those individuals already identified as entitled to such financial restitution; and
- (3) Agree to submit a report to the Finance Sub-Committee to advise the of the progress made and the agreed proposal with regard to the Section 117 Reserve, as outlined in this report.

#### 1.3 Forward Plan:

This report appears on the Forward Plan for the period 1<sup>st</sup> April 2012 to 31<sup>st</sup> July 2012.

#### 1.4 Council Plan and Policy Framework

This report relates to the section 117 reserve within the Council's Budget.

## 1.5 Information:

### 1.5.1 Background

The Finance Sub-Committee received a report on 20 July 2011 which outlined the position with regard to the Section 117 Reserve.

Section 117 of the Mental Health Act 1983 (MHA) places a duty on health services and councils to provide aftercare services for certain patients previously detained under the MHA because of a mental illness.

Until 1999 all councils charged individuals for those aftercare services; that practice was found to be unlawful by the House of Lords in 1999. The Council followed Local Ombudsman guidance issued in a special report in July 2003 and took steps to pay refunds to those individuals who had been incorrectly charged for aftercare services, using a specific reserve set up for that purpose. At the 20<sup>th</sup> July 2011, the balance on that reserve was £533,592.

From a review undertaken of Council's records, some individuals known to the Council remain entitled to restitution in the sum of £42,310 in total. However despite extensive efforts it has not been possible to pay a refund to the estates or to relatives of the 79 other known individuals who have since died, and who would have been entitled to such a refund. An individual (or their estate) who has not already received a refund no longer had a legal right to make a claim as the time limit to do so expired in 2009.

### 1.5.2 As a result of this report, the Finance Sub-Committee recommended to Cabinet:

1. That a final attempt be made to invite claims for reimbursement of the charges levied under Section 117 of the Mental Health Act 1983, through the publication of an appropriate notice in the Council's Widening Horizons magazine and in another appropriate publication;
2. That a cut off date of 31 December 2011 be applied for receipt of claims; and
3. That any remaining balance in the reserve fund remaining unclaimed be used in the budget setting-process.

It was the Sub-Committee's view that agreeing to and implementing the recommendations would support the Council's financial position and would be of benefit to residents of the Borough.

### 1.5.3 Cabinet considered the recommendations of the Finance Sub-Committee at its meeting on 8 August 2011. At that meeting, Cabinet agreed:

1. The report of the Finance Sub-Committee be noted; and
2. A formal response to the Sub-Committee's recommendations be considered by Cabinet prior to its submission to the Sub-Committee; and
3. An update report on the progress on the reimbursement of charges be submitted to Cabinet following the 31 December 2011 cut off date.

#### 1.5.4 Updated position

In line with the recommendations of the Finance Sub-Committee, an initial notice was published in the Council's Widening Horizons Magazine in November 2011. As a result of this publication, one enquiry was received, however this was found not to be a valid claim. This position had not changed by the agreed cut-off point of 31<sup>st</sup> December 2011.

Given the limited response it was agreed by the Mayor and the Strategic Director for Finance and Resources that further notices were placed in the Newcastle Journal and the Evening Chronicle on the 23<sup>rd</sup> January 2012, and that the deadline for claims for reimbursement was extended to 17<sup>th</sup> February 2012. Despite the publication of these notices, there have been no further claims, or queries in respect of reimbursement received by Adult Social Care.

#### 1.5 **Decision options:**

The following decision options are available for consideration by Cabinet:

The following decision options are available for consideration by Cabinet:

##### Option 1

To transfer £491,282 of the £533,592 contained within the Section 117 Reserve, which relates to individuals who are deceased, to the Strategic Reserve. The remaining £42,310 will be re-paid to those individuals who are still alive.

Or:

##### Option 2

To use £491,282 of the £533,592 contained within the Section 117 Reserve, which relates to individuals who are deceased, and create a Reserve earmarked specifically for Adult Social Care budget pressures in 2012/13.

Option 1 is the recommended option.

#### 1.6 **Reasons for recommended option:**

Cabinet is recommended to agree to option 1. This will ensure that the remaining balance of the Section 117 Reserve is used in line with the Council's Reserves and Balances Policy.

#### 1.7 **Appendices:**

Appendix 1 – Copy of Statutory Notice (Evening Chronicle and Newcastle Journal 23<sup>rd</sup> January 2012)

#### 1.8 **Contact officers:**

Sheila Watson, Strategic Commissioning Manager, tel. (0191) 643 7007  
Alison Campbell, Financial Business Manager, tel. (0191) 643 7038  
Michelle Garrod, Lawyer, tel. (0191) 643 5369

## **1.9 Background information:**

The following documents have been used in the compilation of this report and may be inspected at the offices of the author:

1. Report to Finance Sub-committee: Section 117 Reserve – 20 July 2011
2. Minutes of Finance Sub-committee – 20 July 2011
3. Report to Cabinet, Report of the Finance Sub-committee: Section 117 Reserve – 8 August 2011
4. Minutes of Cabinet – 8 August 2011
5. Report to Finance Sub-committee: Section 117 Reserve - 26 October 2011.

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and other resources**

The Section 117 Reserve currently has a balance of £533,592, of which £42,310 relates to 20 individuals who are still alive. The balance of the reserve relates to the 79 individuals who are now deceased, or in one case missing presumed dead, for whom no claims have been made. The use of any balance on this reserve would need to be in line with the Council's Reserves and Balances Policy.

### **2.2 Legal**

The legal implications associated with this proposal are set out in the body of the report.

### **2.3 Consultation/community engagement**

#### **2.3.1 Internal Consultation**

Officers from Finance and Resources and Legal Services have been consulted in the drafting of this report. Officers from the Communications team provided support in terms of advertising for claims.

#### **2.3.2 External Consultation/Engagement**

At its meeting on 8<sup>th</sup> August 2011, Cabinet agreed that advertisements would be placed in the local press and the Council's Widening Horizons magazine for the purpose of endeavouring to identify individuals, or the estates of the deceased, who were owed money.

An article was published in the November edition of Widening Horizons in November 2011 and a Statutory Notice was published in the Evening Chronicle and the Newcastle Journal on 23<sup>rd</sup> January 2012.

### **2.4 Human rights**

There are no human rights implications directly arising from this report.

### **2.5 Equalities and diversity**

There are no equalities and diversity implications directly arising from this report.

## 2.6 Risk management

As the Council previously implemented the Ombudsman's advice in 2003, with no payments of charges accepted after 26<sup>th</sup> October 2003, on legal advice given, the six year limitation period for potential claims expired on 26<sup>th</sup> October 2009.

## 2.7 Crime and disorder

There are no crime and disorder issues directly arising from this report.

## 2.8 Environment and sustainability

There are no environmental or sustainability issues directly arising from this report.

### PART 3 - SIGN OFF

- Strategic Director(s)
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Strategic Director with Responsibility for Community Engagement