

To the Chair and Members of the Audit Committee

ADULTS, HEALTH AND WELLBEING AUDIT ACTION PLAN PROGRESS REPORT: Progress on implementing outstanding recommendations in Adults Services, including Mental Health Section 117 refunds

EXECUTIVE SUMMARY

1. Audit Committee at its meeting on the 4th of February 2015 raised concerns about a number of outstanding Major internal audit actions relating to adult social care and in particular one regarding Mental Health Section 117 refunds.
2. This report provides: an update on all Major actions relating to the Directorate of Adults, Health and Wellbeing up to and including 28 February 2015; a specific progress report on Mental Health Section 117 refunds and an assurance to Audit Committee that future audit action plans within the Directorate will be delivered in a more-timely manner.

Appendix 1 to the report provides:

An update on Major actions with current due dates

Annex 1 provides:

An update on the Major action relating to Section 117

RECOMMENDATIONS

3. **Audit Committee is asked to:**
 - a) Note the update on all Major actions
 - b) Note and comment on the report regarding Mental Health Section 117 refunds
 - c) Note the agreed approach for more effectively managing audit action plans within Adults, Health and Wellbeing in the future.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

4. Audits and subsequent action plans are designed to improve services, make them more efficient and effective and identify issues with processes that could cause reputational and financial damage to the authority.

By delivering the audit action plans the interactions between the authority and citizens should be a more positive experience, work will be progressed

more quickly which will mean that individuals will achieve their outcomes much more quickly and the potential for them receiving confusing or conflicting information will be greatly reduced.

BACKGROUND

5. Audit committee at its meeting on the 4th of February 2015 raised concerns about a number of outstanding Major internal audit actions relating to adult social care particularly regarding Mental Health Section 117 refunds. Subsequently a meeting was held between the Assistant Director for Modernisation and Commissioning and Corporate Audit to look at the status of the seven “Major Risk” actions all of which were still outstanding.

At this meeting, the opportunity was taken to discuss implementing a more structured and proactive approach to managing all audit action plans relating to the Directorate in order to provide assurance that actions are being managed and delivered in a more timely and effective manner.

As at the 28th of February there were 18 audit action plans with 84 individual actions relating to the Directorate. A high proportion of the actions have been extended on more than two occasions with some being extended as many as ten times. The majority of actions are rated as Significant with seven rated as Major (based on the authority’s risk management process).

PROGRESS UPDATE

6. Work undertaken over the last month has resulted in 12 Significant and 3 Moderate actions being signed off by audit as completed.

A further 3 Major and 12 Significant actions have recently been submitted to Audit for sign-off as complete. These are still awaiting a decision by Audit.

On the 31st of March Adults Health and Wellbeing’s Directorate Leadership Team considered a report detailing progress against audit action plans – including, Mental Health Section 117 refunds and agreed an approach for more effectively managing audit action plans within the Directorate in the future. The approach was initiated with immediate effect.

IMPACT ON THE COUNCIL’S KEY PRIORITIES

7. Internal Audit assesses how effectively the Council is managing risks that threaten the achievement of the Council’s objectives. Any improvement in the management of the risks will have a positive impact thereby increasing the likelihood of the Council achieving its objectives. Internal Audit’s work is, therefore, relevant to all priorities but in particular the following:

	Priority	Implications
	We will deliver modern value for money services.	Internal Audit adds value to the organisation through a systematic, disciplined approach to evaluate and improve the effectiveness of the

		Council's Services
	We will provide strong leadership and governance, working in partnership.	The work undertaken by Internal Audit improves and strengthens governance arrangements within the Council and its partners.

RISKS AND ASSUMPTIONS

8. The implementation of audit action plans is a response to identified risks and hence is an effective risk management action.

LEGAL IMPLICATIONS

9. Doncaster Council's Legal Department have considered this matter further especially in line with the special report "The Local Government Ombudsmen Advice and guidance on the funding of aftercare under section 117 of the Mental Health Act 1983" (2003) which stated that
- a) Any person who has been charged by a Social Services Authority for any aspect of section 117 aftercare, is entitled to repayment
 - b) Social Services Authorities should put mechanisms in place to identify those persons improperly charged, or improperly deprived of financial assistance, and establish arrangements for reimbursing them or their estates.
 - c) No generally applicable cut-off date should be used when calculating repayments. Cases where such cut off dates have been applied should be reviewed.

There is no legal definition of what is reasonable as regards the efforts to be made to identify persons or their estates, what the courts deem to be reasonable is based on the view of the man in the street "What would the man on the Clapham omnibus feel was reasonable?" is quoted in one well known case.

Given this, Doncaster Council need to feel that the efforts made would be deemed reasonable by an objective individual considering them.

CONSULTATION

10. There have been a number of meetings between the Directorate and internal Audit. A report was presented to and approved by Adults Health and Wellbeing's DLT on the 31st March. The report was also discussed at Governance Group on the 8th of April

This report has significant implications in terms of the following:

Procurement		Crime & Disorder	
Human Resources		Human Rights & Equalities	

Buildings, Land and Occupiers		Environment & Sustainability	
ICT		Capital Programme	
Directorate Strategies and Policies		The Care Act	

BACKGROUND PAPERS

11. Internal Audit Reports

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APPENDIX 1

Table 1 below highlights the current situation of the 7 Major actions relating to Adults Health and Wellbeing

Table 1

Action	Current Deadline	Service Area	Comments
Section 17 After-Care Payments	28/02/15	M & C	A separate report regarding this action is attached as Annex 1
Safeguarding Adults Personal Assets – Investigate contingency arrangements for service user’s monies.	28/02/15	M & C	The amount held on site has been reduced. Uncollected monies are investigated and re-banked. Prepayment cards are being piloted and BACS payments are being utilised for larger one-off payments. Audit has been asked to undertake an assessment with a view to signing the action off as completed.
External Home Care Service Contracts – Assurance of checks in place in relation to minutes billed/minutes paid.	31/03/15	M&C	Processes have been implemented that give the required assurance until the new service model is implemented. Audit has been asked to undertake an assessment with a view to signing the action off as completed.
External Home Care Service Contracts – Assurance that checks are in place in relation to the invoice/actual care provided.	31/03/15	M & C	Processes have been implemented that give the required assurance until the new service model is implemented. Audit has been asked to undertake an assessment with a view to signing the action off as completed.
Direct Payments/ Personal Budgets – Manage and Monitor Debtor Accounts	31/03/15	M & C	There is now a clear picture for 2011 and 2012 which is where the majority of these accounts originate from. They will be progressed through debt management meetings which are part of the process that is now in place. An extension to 31/05/15 has been requested to enable the whole process to be finalised.
Blue Badge Scheme – Enforcement Strategy	31/03/15	ASC	A meeting has been scheduled with the Assistant Director to look at progressing this action to completion
Direct Payments/ Personal Budgets – Improve the Resource Allocation System	30/04/15	M & C	The Rescript is on track for implementation on 01/04/2015 and the deadline allows for preliminary evaluation to be undertaken.

ANNEX 1

SECTION 117 REFUNDS

EXECUTIVE SUMMARY

- This report outlines the proactive steps that will be taken to implement the S117 refunds recommendations highlighted by Internal Audit.
- There is recognition that this piece of work has exceeded the original timescales due to a lack of focussed resources.
- A protocol for making S117 refunds has been implemented.
- A process for minimising the risk of inappropriate charging in the future has been put in place using the Mental Health Act list and cross-checking this list with Care First records.
- Legal advice confirms that
 - Any person who has been charged for of Section 117 aftercare, is entitled to repayment
 - DMBC should put mechanisms in place to identify those improperly charged, or improperly deprived of financial assistance, and reimburse them or their estates.
 - No generally applicable cut-off date should be used when calculating repayments. Cases where such cut off dates have been applied should be reviewed.
 - DMBC needs to ensure that its efforts to process S117 refunds would be deemed reasonable by an objective individual considering them.

BACKGROUND AND CONTEXT

1. In July 2003 the Local Government Ombudsmen issued a special report that directed that Local Authorities should actively try to identify clients who have been wrongly charged for S117 after-care in the past and should reimburse them, or their estate.
2. In 2006/07, resources were allocated to identify all S117 eligible service users who had been charged for their care from database systems maintained by DMBC and RDaSH records. A list was created to log all the service users, which evidenced the value of each refund and the status of the refund payment.
3. The original Internal Audit report identified 117 outstanding S117 refund cases. As at August 2013 55 of these had received a refund; totalling £935,867 and 12 had declined refunds. Fifty service users had yet to receive a refund.
4. The most recent work on S117 refunds has focussed on a list of 45 service users. There is on-going work to triangulate and validate the final list of cases with outstanding refunds. The list of potential refunds may not have been updated with previously processed refunds. The triangulation and validation of all the cases will provide assurance on the final numbers of outstanding refunds.
5. The list of 45 service users have been checked with Financial Assessments and 16 service users are either not known to Financial Assessments or no charges were made by Financial Assessments therefore a refund is not due.

6. Of the remaining 29 service users, who are entitled to a refund, seven have had refunds processed in 2005-06 but the amount refunded does not match the total cost of care. The reasons for this are unknown but will be investigated and validated as part of the on-going work to finalise this project.
7. There are 22 outstanding cases for Section 117 refunds where no refund has been processed.
8. In 16 of the 22 outstanding refunds the service users have passed away.
9. Refunds have not been processed because of a lack of resources to fulfil this function.
10. Discussions with other Local Authorities has ascertained that they have not actively sought out S117 cases for review and refund – they have dealt with refund cases as and when they have arisen through the case review process. Doncaster Council have actively implemented the Local Government Ombudsmen's special report that directed Local Authorities to identify clients who have been wrongly charged for S117 after-care.
11. Doncaster Council have continued to move forward and refund cases have been identified historically, refunds have been processed, a refunding protocol and process have been developed and resources from Assessment and Care Management have been identified to carry out complex case reviews for service users with S117 entitlement.
12. The estimated S117 refund total is £555,000 (this includes the outstanding care fees paid by the seven individuals who have already had a refund in 2005-06 i.e. the additional refund that needs to be processed).
13. S117 refunds will only be for the charge made by Doncaster Council, interest will not be added to the payments.
14. The total reserve for S117 refunds is £500,000.

Recent activity

15. Validation of service users currently on the Mental Health Act register against Care First records has been completed so that the risk of inappropriate charging in the future will be minimised.
16. A S117 refund protocol and process has been developed that cross-checks the financial information on charges and contributions to confirm the actual refund due. The S117 refund protocol also ensures that issues around financial safeguarding are taken into account when arranging refunds to service users who may be vulnerable.
17. The S117 refunding process has been used to process two S117 refunds in 2014-15. These two cases are not included in the 45 outstanding S117 refund cases.
18. A complete list of individuals who have been Sectioned under the Mental Health Act in Doncaster has been received from RDaSH. This list is being

processed and checked against Care First records to ensure that there is an accurate and up to date picture of S117 aftercare for all individuals currently receiving a service through Doncaster Council. This piece of work is nearing completion.

Moving forward – ensuring users receive the right care and are not inappropriately charged

19. Doncaster Council will receive an updated list of people newly Sectioned under the Mental Health Act and a check will be made on whether they are known to Doncaster Council and/or whether they are being charged for services. This will minimise future cases where service users are charged inappropriately for services.
20. Service users with S117 aftercare needs will be reviewed by their Care Manager/Care Co-ordinator as part of the standard reviewing process. These reviews will be carried out by a social worker or a nurse and the outcomes discussed as part of Multi-Disciplinary Team review.
21. Doncaster Council and NHS Doncaster CCG have identified professional and clinical resources to review complex and out of area S117 cases. Priority cases for review are identified from the Mental Health Act list of service users, CareFirst and Silverlink (the RDaSH information system). This joined up approach will ensure that service users continue to have their on-going aftercare needs met with the most appropriate care package.
22. As part of the on-going review of all S117 cases there will be a review of the appropriateness of continued S117 aftercare

ACTIONS

23. All current information on S117 refund cases will be validated and triangulated to ensure that all information is correct and up to date and that there is absolute clarity on the outstanding numbers of refunds to be processed.
24. There will be a proactive approach taken to identify the last known correspondence address for all outstanding S117 refunds:
 - a. Write out using recorded delivery inviting the service user/family to a meeting to discuss a refund in relation to S117 aftercare
 - b. Contact the Registry Office/Probate Registry to identify last known information for service users who are deceased and write out, using recorded delivery, to the last known address of the Executor(s) inviting them to a meeting to discuss a refund in relation to S117 aftercare

If there are no responses to the letters within one month then progress to:

- c. Use a “track and trace” organisation to actively pursue the service user or, if deceased, their estate and invite them to a meeting to discuss financial charging in relation to S117 aftercare

There are three a “track and trace” organisations that Doncaster Council currently uses to trace families of individuals who are deceased and whose estate needs to be finalised:

- Finders
- Estates Research
- Treethorpe

Usually “track and trace” organisations offer a free service but negotiate with the family/estate for a % of the refund amount as a fee. For the Section 117 refunds there would be a contract put in place with the “track and trace” organisations so that service users or their estates receive the full refund amount.

25. An additional resource will be identified to verify and check all data and information in relation to S117 refunds. Once the additional resource has been put in place, the S117 refund programme of work can be closed down and verified as complete within four months.

LEGAL IMPLICATIONS

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