

A **Investigation into Complaint Nos 97/0177 and 97/0755 against the former Clwyd CC and Conwy County BC**

Local Government Ombudsman

B 19 September 1997

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A social services authority is required to provide after-care services under Mental Health Act 1983 s117 free of charge, from hospital discharge until it as a social services authority is satisfied that there is no longer any need of such services.

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The complaint

The complainant, on behalf of her mother, complained about the manner in which the former Clwyd CC decided on 28 February 1996, in conjunction with the district health authority, to stop providing after-care services for Mrs Wilson under Mental

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Health Act 1983 (MHA) s117 following her discharge from a hospital in which she had been detained under MHA 1983 s3. The complainant complained that the decision was made without proper consideration of her mother's needs, and that as a result of the decision to stop providing after-care services (for which authorities are not entitled to charge) Mrs Wilson had been asked to pay for residential care.

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The complainant also complained that Conwy County BC (which took over Clwyd CC's responsibilities on 1 April 1996) refused to overturn the former county council's decision and continued to charge Mrs Wilson for after-care services. The complainant further alleged that the council had failed to deal properly with her letters of complaint about her grievance.

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The conclusions:

1 Clwyd CC (and subsequently Conwy County BC) had a duty to provide after-care services for Mrs Wilson at no cost to her from the moment she was discharged from hospital on 7 September 1994 until such time as it was satisfied as a social services authority (irrespective of whether the district health authority was so satisfied) that Mrs Wilson was 'no longer in need of such services'. Conwy County BC contended that Clwyd CC was satisfied on 28 February 1996 that Mrs Wilson no longer needed such after-care services, and submitted that its predecessor quite properly decided on that date that it would no longer provide after-care services under MHA 1983 s117.

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2 Conwy County BC acknowledged that the services provided for Mrs Wilson between 6 November 1995 and 28 February 1996 were after-care services provided under MHA 1983 s117 because it had already repaid to the complainant the sums paid for Mrs Wilson's care during that period. The care provided had not changed materially since then. Evidence, including that contributed by Conwy County BC, suggested that throughout the relevant period since 28 February 1996 Mrs Wilson needed after-care services particularly in the form of specialist care in a home for the elderly mental infirm.

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3 Despite such evidence, Clwyd BC purported to relinquish its duty to provide after-care services for Mrs Wilson under MHA 1983 s117 on the basis that Mrs Wilson no longer needed such services. Clwyd BC failed (and Conwy County BC continued to fail) to address the relevant question of whether Mrs Wilson needed and whether she continued to need after-care services. At one point Conwy County BC maintained that the decision to stop providing after-care

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services was a medical one alone, but had since accepted that this view was wrong and that it also had to address the issue itself and arrive at a reasoned decision in its capacity as a social services authority. The two social services authorities failed to address this issue, and they took into account immaterial considerations such as whether Mrs Wilson 'had settled in the home' and whether there was no 'possibility of her returning home'. If the two local authorities had asked themselves the relevant question, they would have had to conclude that she was in need of the specialist care provided at a home for the elderly mentally infirm rather than accommodation at a residential home. Mrs Wilson's brief stay at a residential home was clearly an unhappy episode.

- 4 The failure to address the relevant issues should be regarded as maladministration. That maladministration was compounded by the continuing failure to address and deal with the complainant's repeated complaints on behalf of her mother; by the failure of Clywd BC to abide by the Code of Practice issued under the MHA 1983 which required it to consult the complainant and to take account of her views before ceasing to provide after-care services under MHA 1983 s117; by Conwy County BC's failure to inform the complainant either of the decision to 'discharge' her mother or the decision to register a caution against her mother's property, and by both authorities' failure to answer the complainant's correspondence promptly and fully.
- 5 As a result of the maladministration Mrs Wilson had been wrongly charged for the cost of after-care services provided for her. That was an injustice. To remedy the injustice and to avoid a recurrence the Conwy County BC was instructed to:
 - a) confirm formally to the complainant and her solicitor that it would now provide after-care services for Mrs Wilson in the home for the elderly mentally infirm free of charge under MHA 1983 s117;
 - b) confirm that it would continue to do so until such time as it was satisfied, in accordance with the MHA 1983, that Mrs Wilson no longer needed such after-care services;
 - c) give an undertaking to the complainant that it would consult her and take her views into account before arriving at a decision to discontinue such services;
 - d) confirm that it would no longer seek to recover from Mrs Wilson or the complainant the sum so far charged to Mrs Wilson;
 - e) pay Mrs Walton the solicitors' costs she incurred in pursuing her complaint with the two authorities and a further £500 in recognition of the distress and inconvenience she suffered and her time and trouble in having to pursue her mother's complaint with the two councils and the local government ombudsman.

Cases referred to in report:

None.

Legislation/guidance referred to in report:

Mental Health Act 1983 ss2, 3 and 117 – National Assistance Act 1948 Part III and ss21 and 22 – National Health Service and Community Care Act 1990 s47 – Mental Health Act 1983: Code of Practice (Department of Health, 1993) para 27.

This report also reported at:

Not elsewhere reported.

A Report

THE COMPLAINT

1. The complainant, whom I shall call 'Mrs Walton' but that is not her real name, complains on behalf of her mother (whom I shall call 'Mrs Wilson') about the manner in which the former Clwyd County Council ('the former County Council') decided on 28 February 1996, in conjunction with the District Health Authority ('the DHA'), to stop providing after-care services for Mrs Wilson under Section 117 of the Mental Health Act 1983 ('the 1983 Act') following her discharge from a hospital in which she had been detained under Section 3 of the 1983 Act. Mrs Walton complains that this decision was made without proper consideration of her mother's needs, and that as a result of the decision to stop providing after-care services (for which authorities are not entitled to charge) Mrs Wilson has been asked to pay for residential care. She also complains that Conwy County Borough Council ('the Council' – which took over the former County Council's responsibilities as local social services authority ('LSSA') on 1 April 1996) has refused to overturn the former County Council's decision and has continued to charge Mrs Wilson for after-care services. She further alleges that the Council has failed to deal properly with her letters of complaint about her grievance.

THE INVESTIGATION

2. The Council has submitted its observations on Mrs Walton's complaint both on its own behalf and on behalf of the former County Council. An investigating officer has interviewed Mrs Walton and has inspected the Council's files. He has also interviewed a number of officers who have dealt with Mrs Wilson's care, including the Council's Director of Social Services ('Officer 1'), the Council's Assistant Director of Adult Services ('Officer 2'), a senior manager responsible for services for the elderly ('Officer 3') and Mrs Wilson's social worker/care manager ('Officer 4'). Both the Council and Mrs Walton have had the opportunity to comment on the factual part of this report, and I have taken their comments into account before completing the report and adding my conclusions.

LEGAL AND ADMINISTRATIVE BACKGROUND

The DHA's power to detain mentally ill people

3. Section 2 of the 1983 Act allows a person to be admitted to and detained in a hospital for assessment on the grounds that he or she is suffering from a mental disorder of a nature and degree which warrants detention for a limited period and that such detention is in the interests of his or her own health or safety or with a view to the protection of other persons. Section 3 of the 1983 Act provides that, on application by two registered medical practitioners and also by an approved social worker, a patient may be admitted to a hospital and detained there on the grounds that:

- (a) *he is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment and his mental disorder is of a nature or degree which makes it appropriate for him to receive medical treatment in hospital; and*
- (b) *in the case of a psychopathic disorder or mental impairment, such treatment is likely to alleviate or prevent a deterioration of his condition; and*
- (c) *it is necessary for the health and safety of the patient or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this section.*

The joint duty of the LSSA and the DHA to provide 'after-care services' A

4. By virtue of sub-section 117(2) of the 1983 Act, where a patient has been detained under Section 3 of the 1983 Act and leaves hospital:

It shall be the duty of the [DHA] and of the [LSSA] to provide, in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies until such time as the [DHA] and the [LSSA] are satisfied that the person concerned is no longer in need of such services [; but they shall not be so satisfied in the case of a patient who is subject to after-care under supervision at any time while he remains so subject]. B

After-care and community care C

5. Section 47 of the National Health Service and Community Care Act 1990 states:

47.-(1) Subject to subsections (5) and (6) below, where it appears to a local authority that any person for whom they may provide or arrange for the provision of community care services may be in need of any such services, the authority – D

- (a) shall carry out an assessment of his needs for those services; and*
- (b) having regard to the results of that assessment, shall then decide whether his needs call for the provision by them of any such services.*

...

(5) Nothing in this section shall prevent a local authority from temporarily providing or arranging for the provision of community care services for any person without carrying out a prior assessment of his needs in accordance with the preceding provisions of this section if, in the opinion of the authority, the condition of that person is such that he requires those services as a matter of urgency. E

(6) If, by virtue of subsection (5) above, community care services have been provided temporarily for any person as a matter of urgency, then, as soon as practicable thereafter, an assessment of his needs shall be made in accordance with the preceding provisions of this section. F

6. In its commentary on Section 117 of the 1983, Act Sweet and Maxwell's *Encyclopedia of Social Services and Child Care Law* states: G

Services provided under this section are 'community care' services for the purposes of the National Health Service and Community Care Act 1990. A person who falls within subs (1) of (Section 47 of that Act), as a person who 'may be in need' of community care services (S.47(1)), must be assessed by the local authority. Under s.47(1)(b) of the 1990 Act the local authority 'having regard to the results of that assessment, shall then decide whether his needs call for the provision by them of any such services'. As s.117 places a duty on a local authority to provide after-care services, it is submitted that the correct authority must determine that such need calls for the provision of those services. This is the interpretation of the law favoured by Richard Gordon in 'Community Care Assessments, A Practical Legal Framework' (1993), para 4.3. Although the authority is placed under an obligation to provide a service that it has determined will meet an assessed need, it has a discretion in identifying the level and precise nature of the service to be provided given resource constraints. H

The Council accepts that it does not have legal power to charge for after-care services provided under Section 117 of the 1983 Act. I

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A *The LSSA's other powers to provide residential care*

7. Section 21 of the National Assistance Act 1948 provides that:

... a local authority may with the approval of the Secretary of State, and to such extent as he may direct shall, make arrangements for providing –

- B *(a) residential accommodation for persons [aged 18 or over] who by reason of age, [illness disability] or any other circumstances are in need of care and attention which is not otherwise available to them; . . .*

By virtue of Section 22 of the same Act, where a person is provided with accommodation under Section 21, the LSSA shall recover from the person the full costs to the authority of providing the accommodation. These costs can be recovered by the attachment of a charge to any property owned by the recipient of the service. The LSSA can continue to charge for the accommodation until the value of the accommodated person's interest in their property less the amount of the charge falls below a certain level, currently £16,000.

D *Guidance on the provision of after-care services*

8. In conjunction with the Secretary of State for Health, the Secretary of State for Wales has issued a Code of Practice intended to guide LSSAs and DHAs in their implementation of the requirements of the 1983 Act. Paragraph 27 of the Code (as revised in 1993) states:

E *27.1 The purpose of aftercare is to enable a patient to return to his home or accommodation other than a hospital or nursing home, and to minimise the chances of him needing any future in-patient hospital care.*

F *27.2 Section 117 of the Act requires health authorities and local authorities, in conjunction with voluntary agencies, to provide aftercare for certain categories of detained patients.*

27.3 Health and social services authorities should, together with local voluntary organisations, agree procedures for establishing proper aftercare arrangements . . .

G *27.4 Proper records should be kept of all those patients for whom S.117 could apply and of those for whom arrangements have been made under Section 117. The records could be in the form of a register.*

27.5 Managers in the health service and Directors of Social Services should ensure that all staff are aware of the care programme approach (which does not apply in Wales) and the principles set out in the Welsh Office Mental Illness Strategy.

H *27.6 When a decision has been taken to discharge or grant leave to a patient, it is the responsibility of the (responsible medical officer) to ensure that a discussion takes place to establish a care plan to organise the management of the patient's continuing health and social care needs. This discussion will usually take place in multi-professional clinical meetings held in psychiatric hospitals and units.*

I *If this is not possible, administrative support should be available to the (responsible medical officer) to assist in making arrangements.*

Who should be involved?

27.7 Those who should be involved in the discussion are:

- J *– the patient's (responsible medical officer);*
– a nurse involved in caring for the patient in hospital;
– a social worker specialising in mental health work;
– the (General Practitioner);
– a (community psychiatric nurse);
K *– a representative of relevant voluntary organisations (where appropriate and available);*
– the patient if he wishes and/or a relative or other nominated representative.

27.8 Professionals should be made available to attend. Representatives of housing authorities should be invited if accommodation is an issue. It is important that those who are involved are able to take decisions regarding their own and as far as possible their agencies' involvement. If approval for plans needs to be obtained from more senior levels (for example, for funding), it is important that this causes no delay to the implementation of the plans.

Consideration for aftercare.

27.9 Those contributing to the discussion should consider the following issues:

- (a) the patient's own wishes and needs;
- (b) the views of any relevant relative, friend or supporter of the patient;
- (c) the need for agreement with an appropriate representative at the receiving health authority if it is to be different from that of the discharging authority;
- (d) the possible involvement of other agencies, e.g. probation, voluntary organisations;
- (e) the establishing of a care-plan, based on proper assessment and clearly identified needs, in which the following issues must be considered and planned for insofar as resources permit: day care arrangements, appropriate accommodation, out-patient treatment, counselling, personal support assistance in welfare rights, assistance in managing finances, and if necessary, in claiming benefits;
- (f) the appointment of a Key Worker from either of the statutory agencies to monitor the care-plan's implementation, liaise and co-ordinate where necessary and report to the senior officer in their agency any problems that arise which cannot be resolved through normal discussion;
- (g) identification of an unmet need.

27.10 The multi-professional discussion should establish an agreed outline of the patient's needs and assets taking into account their social and cultural background, and agree a time-scale for the implementation of the various aspects of the plan. All key people with specific responsibilities with regard to the patient should be properly identified. Once plans are agreed it is essential that any changes are discussed with others involved with the patient before being implemented. The plan should be recorded in writing.

27.11 The care-plan should be regularly reviewed. It will be the responsibility of the Key Worker to arrange reviews of the plan until it is agreed that it is no longer necessary. The senior officer in the Key Worker's agency responsible for Section 117 arrangements should ensure that all aspects of the procedure are followed.

The policies and procedures of the former County Council and the Council for the provision of after-care

9. Both the former County Council and the Council have been maintaining a register of those persons within their areas receiving after-care services. However, neither authority has adopted a formal written policy for establishing after-care arrangements. Instead, each case has been dealt with on a 'case by case basis'. The social services department of the Council is divided into a number of sections one of which deals with people suffering from mental illness and another of which deals with elderly people. Elderly people with a mental illness are normally dealt with by the section responsible for elderly people, but the overriding principle is to seek to ensure that there is as little change as possible in the identity of the social worker/care manager dealing with each case.

THE HISTORY OF MRS WILSON'S CASE

10. Mrs Wilson was originally detained in hospital ('Hospital 1') under Section 2

- A of the 1983 Act on 16 June 1994. Immediately prior to her detention she had been living in her home ('the property'), which she owned jointly with the estate of her late partner. A report on the file prepared by her social worker at the time confirmed that she was 'expressing increasingly paranoid ideas with regard to her home care assistant' whom she was accusing of theft and that she had become 'so
- B distressed by these ideas that she was no longer prepared to leave the house'. Following consultations with her general practitioner and a consultant in mental health care for the elderly ('the consultant') a decision was taken to admit Mrs Wilson to Hospital 1. Mrs Wilson's case was at the time formally referred to the former County Council's social services department. The referral requested Mrs
- C Wilson's case to be allocated to a social worker who could arrange for the provision of appropriate after-care when Mrs Wilson was discharged from Hospital 1. Mrs Wilson's case was allocated to Officer 4.

11. On 13 July 1994 the basis of Mrs Wilson's detention in Hospital 1 was changed from Section 2 to Section 3 of the 1983 Act. Mrs Wilson subsequently lodged with
- D the DHA an appeal against her detention. For the purposes of this appeal, the former County Council prepared a report on its involvement with Mrs Wilson. In the section entitled 'Social Services Support', the report stated:

- This has been tried with mixed success in the past. Home Care was withdrawn following angry disagreements and accusations of the home care assistant, but (Mrs Wilson) has formed an attachment to her night sleeper, . . . , who has continued to visit her since she's been in hospital. (The night sleeper) has said she could offer some additional help but because of other commitments this couldn't be on a regular basis, e.g. not daily.*
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- Until recently (Mrs Wilson) has attended the local authority day centre twice a week, and, although this was her only social contact, she had been refusing to go. She liked the craft room there. The place has been held open for her and she could possibly be offered further days particularly as they hope to open at weekends soon. Alternatively a day placement could be found in a private residential home.*
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- The usual support services like meals on wheels or frozen meals are available but (Mrs Walton) is sure that her mother would not use them. However, (Mrs Wilson) used to go out to lunch every Sunday to a local hotel.*
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Personal support from the (Community Psychiatric Nurses – 'CPN's) and social workers is available.

- H The report was sent to Mrs Walton for her comments. She returned the report on 15 August 1994. On it she commented:

- The most important consideration is that once my mother leaves her home (i.e. the property) which is the most important thing in her life it has to be sold under the agreement of life tenancy.*
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12. On 19 August 1994 Mrs Walton wrote to the former County Council's social services department advising it that the review by the Mental Health Tribunal or her mother's detention was to take place shortly. Mrs Walton stated her understanding that if Mrs Wilson was discharged, a 'care package' would be put into
- J operation to try to help Mrs Wilson cope at home. Her letter continued:

- Will you please write to me to let me know if my mother has to make any financial contribution to this 'Care Package'? She has no savings and her only income has been from her Pension, Attendance Allowance at the lower rate and*
- K *Income support. This amounted to £135.25 per week but has now been reduced to £29.05 per week because she has been in hospital since 16.6.94. It is of course*

impossible to maintain the house on this amount of money in her absence. I have tried to take out extra insurance etc and have had to make up the shortfall myself. I have 'APPEALED' against this decision with the D.S.S. but have not yet heard from them.

If she has to make a financial contribution will you please tell me how this will be funded. I deal with all my mother's financial affairs and have an 'Enduring Power of Attorney' which is in the process of being registered with the 'Court of Protection'.

I am of course very anxious to know what the full financial implications are and would be grateful if you would kindly let me know as soon as possible.

There is no record of any written response to this letter by the former County Council save that a copy of the former County Council's policy for charging for social services was sent to Mrs Walton. This policy did not, however, deal with the question of whether or not the local social services authority could charge for after-care services.

13. Before Mrs Walton's appeal could be considered, a decision was taken to discharge Mrs Wilson from Hospital 1. She was discharged on 7 September 1994. She returned to live in the property. Shortly before her discharge, Officer 4 met the consultant and a community psychiatric nurse (referred to from this point as 'the CPN') to discuss the joint arrangements to be made by the former County Council and the DHA for Mrs Wilson's after-care. The consultant was designated the responsible medical officer. Officer 4 was designated as the social worker responsible for Mrs Wilson's care. Both officers signed a document entitled 'Statutory Joint Aftercare Plan'. The after-care detailed on the plan required that visits should be made to Mrs Wilson's home three days a week and she should receive a home help. It also indicated that she would attend the day centre once a week. In addition to the statutory joint after-care plan Officer 4 prepared a number of plans setting out the assistance Mrs Wilson was to receive from the former County Council's social services department. A plan dated 13 September 1994 concluded:

... the success of the care plan in enabling (Mrs Wilson) to stay at home depends on whether her general health improves and whether the difficulties overtaking her medication are solved. It needs to be closely monitored by the CPNs, the care manager (Officer 4) and all carers involved in giving her support. If any of the carers is worried about anything at all they must contact (the CPN) or (Officer 4) without delay.

On 15 September 1994 Mrs Walton wrote to the Mental Health Review Tribunal advising it of Mrs Wilson's current situation. Her letter stated how much she appreciated the help given to her by the CPN and Officer 4.

14. On 26 September 1994 another consultant psychiatrist wrote to Mrs Wilson's general practitioner. His letter included the following statement:

(Mrs Wilson's) husband died in November 1993. (The CPN) was called in to see her when he was ill and she was getting increasingly agitated. The situation got worse and she became paranoid particularly about the Home Carers, saying that they were stealing things. The paranoid ideas are not as intense.

She was originally admitted on Section 3 to (Hospital 1) and has been on home leave for the last two weeks. There is a tribunal arranged on 29 September 1994, but her clinical condition at the time of my outpatient clinic does not necessitate any compulsory detention in the hospital.

A *She is also getting tremendous community support, such as Medicare going in almost every day, along with supervision by the Social Worker and the Community Psychiatric Nurse. In view of this community support and the disappearance of psychotic symptoms I have discharged her after having regraded the section to an informal status.*

B *During this Section 117 meeting it was decided to increase her home care support, so that somebody would make sure that she takes the tablets regularly. No doubt she will be seen again in the outpatients clinic on 28.10.94. I hope that you will find this useful.*

C This letter was copied to Officer 4.

The change in the nature of the aftercare provided for Mrs Wilson

D 15. Mrs Wilson continued to live at the property and to receive support from the former County Council until 27 October 1995 when she refused to go home from the day centre. The CPN admitted her as an emergency to a different hospital for the mentally ill ('Hospital 2'). The following day the CPN agreed with Officer 4 that Mrs Wilson should be placed in a residential home for the elderly. This placement is described in Officer 4's notes as 'disastrous'. Mrs Wilson was extremely agitated throughout her one night in the residential home and the following day she was readmitted to Hospital 2.

E 16. On 30 October 1995 Officer 4 met with the CPN and Mr and Mrs Walton. Officer 4 says Mrs Wilson was offered increased home care and domiciliary support which she refused. Mr and Mrs Walton say they were advised by the CPN that they had no alternative other than to place Mrs Wilson in a home for elderly people with mental health problems. He advised them to visit a number of homes to see whether any of them would be suitable for Mrs Wilson. Mr and Mrs Wilson say they visited six homes, four of which they regarded as totally unsatisfactory and two of which they thought might be satisfactory although both were at the time fully occupied. However, on 6 November 1995 a place at one of these two homes for the elderly mentally infirm ('the EMI home', which is registered as a nursing home with the DHA) became available. Mrs Wilson was moved to the EMI home that day.

G 17. On 7 November 1995 the former County Council social services department wrote to Mrs Walton in the following terms:

H *The Social Worker/Care Manager who has given you this letter is employed by Clwyd County Council, and he/she will be pleased to answer any of your questions regarding the possibility of living in residential accommodation.*

I *You may decide to pay the full standard charge for your (sic) residential accommodation; if so, please delete the appropriate paragraph when you sign this letter. If, on the other hand, you feel you are unable to pay the full charge for your accommodation and would like assistance in meeting these costs, you will be asked to complete and sign a Financial Assistance Claim Form. Clwyd County Council needs to have this information because you have to pay a contribution towards the cost of your accommodation. The actual amount you will pay depends upon your finances and I will let you know what you will be expected to pay as soon as possible.*

J *NOTE: An applicant is required to give full details of his/her weekly income plus details of Capital (Bank Accounts, investments in Building Societies, property, land etc). Applicants will have to sign Authorisation Forms allowing Banks etc to forward financial information to the County Council for verification. Applicants*

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owning property/land will have to complete a form authorising the County Council to contact their Solicitor. A

The charge is reviewed periodically to take account of changes of running Residential Homes (sic). Similarly the amount you will have to pay will vary with changes in your financial circumstances, so it is important that you let the County Council know immediately of any changes (if you are in a Home tell the Officer in Charge of the Home, or if a change occurs while you are awaiting admission, tell your Social Worker/Care Manager). B

Persons for whom accommodation is provided under the National Assistance Act 1948, must pay for the accommodation at standard rates unless they are unable to do so in which case the Council will assess at what lower rate they shall be liable to pay for accommodation. However, it is important that you should know that if you dispose of any financial resources for the purpose of reducing your liability to pay for accommodation, the Council may take into account those financial resources as if you still owned them. If for instance, you make a gift from resources (eg of property, case or investments) the only reasonable inference may be that you have deliberately abandoned that asset for the purposes of reducing the amount you pay towards your accommodation. In those circumstances the Council will take the resources you disposed of into account as if you still owned them. If you have any doubt about your position, please take legal advice (sic). C D E

When you sign the information you are confirming that you understand the contents of this letter. If you are unable to understand any point made in this letter, you should seek help from a relative, friend, Solicitor or Accountant, or ask staff of the Social Services Department to assist.

If you are admitted to a Residential/Nursing Home, I hope you will be pleased with your choice and that your stay will be enjoyable. F

The letter contained space for the recipient to indicate whether or not he or she wished to receive assistance in meeting the cost of residential accommodation and required recipients to acknowledge that they had received the letter and understood its content. Mrs Walton signed and returned the letter indicating that she would like financial assistance to meet the cost of Mrs Wilson's care. G

18. On or around 10 November 1995 Mrs Walton received a standard form to be returned to the former County Council's Director of Social Services which required her to give details of any property owned by Mrs Wilson, the value of which could be taken into account by the Council in assessing her liability to pay for her residential care in the EMI Home. Mrs Walton completed and signed the form on behalf of Mrs Wilson. On 13 November 1995 Mrs Walton submitted to Officer 4 a further form claiming financial assistance towards the cost of her mother's care. H I

19. At this time it was agreed between Mrs Walton and the former County Council that Mrs Wilson's placement would last until 3 December 1995. Officers of the former County Council also completed a standard form entitled 'Arrangement for Purchase of Service' confirming to Mrs Walton the County Council's decision to purchase care for Mrs Wilson from the EMI Home. The form contained a section requiring officers to set out the extent to which the cost of residential accommodation was to be borne by the former County Council or the service recipient. In this section Officer 4 wrote: J

... to be notified in writing by financial assessment officers. K

- A Mrs Walton signed the form following Mrs Wilson's admission to the EMI Home. The form also recorded that 'the client' had agreed to pay the client contribution direct to the service provider (i.e. the EMI home).

B 20. Shortly after Mrs Wilson's admission to the EMI home Officer 4 prepared a document entitled 'Care Plan'. The stated purpose of this plan was to summarise the assessment which had been carried out 'and' to give details of the services to be provided to meet (Mrs Wilson's) assessed need. In a section entitled 'Service User Needs' the plan stated:

C *(Mrs Wilson) needs a quiet, comfortable and unthreatening environment where she will feel secure. She has been living on her own with help from carers to do housework, shopping but has been unable to look after her personal care needs and cook for herself. Within the last three weeks she has become increasingly afraid of being on her own.*

D The care plan form required Officer 4 to list all practical options offered to meet needs. Under this heading Officer 4 stated:

Increased domiciliary/daycare support

Residential home

Nursing home EMH (Elderly Mental Health)

E *(Mrs Wilson) has refused extra help at home. She does not feel able to cope herself. She unsuccessfully tried a residential home and the recommendation now is that she should move to an EMH home.*

F (It should be noted that throughout the documentation referred to in this report, the terms EMI (Elderly Mentally Infirm) and EMH (Elderly Mental Health) have been used interchangeably by the two Councils to indicate old people who suffer from some mental infirmity.) Under a section entitled 'Objectives of agreed care plan', Officer 4 stated that the purpose of the placement in the EMI home was:

- G 1. *To provide a quiet and unthreatening environment where (Mrs Wilson) will feel supported and cared for.*
- H 2. *To provide company when (Mrs Wilson) needs it. She has enjoyed attending (the day centre). Given the upset she has in trying a residential home it is unlikely that she may feel very unsettled at first and be very demanding towards staff and other residents. She may need constant help and support from a carer both during the day and more likely at night when she would normally be alone. She has recently shown great fear at being alone when it is dark and carers should be prepared to sit with her for as long as necessary.*
- I 3. *(Mrs Walton, Mrs Wilson's) daughter, requests that no drugs are used apart from those she is taking now. This is because anti-psychotic drugs have serious side effects on (Mrs Wilson's) health which does seem to have deteriorated sharply since she was given anti psychotic injection 2-3 weeks ago.*

J The Care Plan, which is undated, also included a space for Officer 4 to indicate the total cost charged to the user per week. In this section Officer 4 wrote 'to be assessed'. The document also has space for the 'Service User' and 'the Social Worker/Assessor' to sign to indicate the approval of the Plan. It is, however, unsigned.

K 21. On 21 November 1995 the former County Council social services department wrote to Mrs Wilson at her former home and advised her that her contribution towards the cost of her residential accommodation would be £132.35 per week. This amount was calculated by adding together Mrs Wilson's income support,

state pension and attendance allowance and deducting a specified amount as a 'personal allowance'. Mrs Wilson's placement was subsequently extended for a further four weeks from 3 December 1995. A

22. On 11 December 1995 Mrs Walton wrote to Officer 4. Her letter stated:

I note your comments about my mother demanding a lot of attention but she does not need the attention. She always has demanded attention and whilst people give it to her she does just go on demanding. I personally feel that the sister home to (the EMI Home) ('Home 2' – a residential home registered with the County Council, which cares for old people without mental infirmities) might be the answer, particularly as I discussed with you on our last visit what (Home 2) offers, lots of activities, etc. B C

It seems a pity that my mother is placed in a nursing home when she doesn't need it. I think (Home 2) where there is more activity sounds better for her. In (the EMI Home) where she sees people who do need lots of attention she will copy them (in fact the Matron has mentioned this to me). As regards other alternative small homes – I am not in favour. I think it is essential for her to be somewhere where there is plenty of activity. D

Although she has told you she doesn't want to go back home, knowing my mother when the nights get lighter she will probably change her mind. Apparently she keeps asking about the house and said to me on the telephone she wants to go back. I am sorry to present you with such a difficult problem. I think the best solution would be for her to try (the EMH Home) and then if she didn't settle down see what she thinks about going home. If neither of these work I think the best arrangement would be for her to go back to (the EMI Home). I wouldn't want her to go anywhere else. E F

I will ring you on Friday (15th) morning say around 9 am when you have had time to think about this. Unfortunately I will not be able to come to N. Wales until late January, but we can discuss it by telephone.

23. On 29 December 1995 the former County Council wrote again to Mrs Wilson at her former home advising her that her contribution had reduced to £97.30 per week. Once again this amount was calculated in the same way. On the same date, Officer 4 sent a copy of this letter to Mrs Walton explaining the calculation of Mrs Wilson's contribution. Her letter concluded: G

I understand you are coming to North Wales at the end of January so I look forward to seeing you then so we can plan what steps would best be taken for your mother's future. H

24. On 26 January 1996 a meeting took place at Hospital 2 between Mr and Mrs Walton, the matron, the owner of the EMI home, Officer 4 and the CPN. At the meeting Mrs Walton advised Officer 4 that the property would have to be sold because Mrs Walton could not afford to maintain it and because it was held under a trust under which Mrs Wilson's late partner's estate was entitled to half the proceeds of sale. Officer 4's handwritten note of this meeting states: I

Decided she'd (i.e. Mrs Wilson) would stay at (the EMI home) – no dementia but behaviour problems (attention seeking) which make it hard for her to relate to others. Made permanent – did financial. House to be sold. J

Officer 4 subsequently completed a formal pro-forma document entitled 'Social Services Department Care Plan Review'. Under the section 'present needs' Officer 4 recorded: K

- A *(Mrs Wilson) needs 24 hour supervision. She has said repeatedly that she doesn't want to go home and live by herself. Staff involved with (Mrs Wilson) agree she does not suffer from a dementia but that her behaviour is such e.g. attention seeking, that it would be very difficult for her to settle in a residential home and to be accepted by other residents. Decision made to make her permanent at (the*
 B *EMI home).*

The form required Officer 4 to indicate whether the service user (i.e. Mrs Wilson) and the carers (i.e. Mr and Mrs Walton) were satisfied with the service they were receiving. Officer 4 wrote that Mrs Wilson had told Mrs Walton that the staff in the EMI home were kind to her and that:

- C *Apart from a problem over arranging for (Mrs Wilson) to have money (Mr and Mrs Walton) are satisfied with the care at (the EMI home). Although the move from independent living to an EMH home was sudden and a shock to them, they now agree that (Mrs Wilson) needs this type of environment.*

- D Once again the form provided a space for the service user, the carer and the social worker/assessor to sign their agreement with the record of the meeting. However, the form does not contain any signatures.

- E 25. It was agreed at the meeting that Mrs Wilson's placement at the EMI Home would become permanent from 5 February 1996. Following the meeting, Officer 4 requested Mrs Walton to sign another standard form requiring the applicant to give details of the ownership of the property in which he or she had lived prior to taking up occupation in the home (identical to that sent to her the previous November). Mrs Walton refused to sign the form.

- F 26. On 31 January 1996 a solicitor acting on behalf of Mrs Walton wrote to Officer 4 stating that he had been instructed by Mrs Walton. His letter continued:

I am considering the position overall and I have yet facts to establish and law to research [sic].

- G *The particular property (Mrs Wilson's former home – 'the property') is vested in the joint names of herself and the personal representatives of her deceased partner, . . .*

- H *We shall soon be in touch with the solicitors acting for the personal representatives, as above, but for the time being we invite you to let us know if it is the case that your authority has power to take a legal charge over the legal estate of a property which is owned as to part by the patient and as to part by a person unconnected by blood or marriage. We look forward to hearing from you.*

- I *We are also asked to investigate the whole question of the Authority's suggestion that our client is now liable to pay for her care, and at this stage we make no admission of the Authority's right to seek payment and/or security.*

27. On 5 February 1996 the former County Council's Financial Assessment Officer sent a copy of the solicitor's letter to the former County Council's legal department. Her memorandum stated:

- J *The above client has now been assessed as needing Permanent Nursing Care. In the normal course of events, I would now ask for a charge to be put on the property. However, I would be grateful for your confirmation, following receipt of the attached letter, as a matter of urgency.*

- K On the same date, the former County Council wrote to Mrs Wilson c/o Mrs Walton's address advising her that her contribution towards the cost of her stay in the EMI home had once again been revised to £109.30 per week.

28. On 13 February 1996 the former County Council's legal department replied to the Financial Assessment Officer advising her that, where a service user had a beneficial interest in land in England and Wales and had failed to pay any sum assessed as due to be paid for accommodation under Part III National Assistance Act 1948 (which includes section 21), the former County Council could create a charge in its favour over that interest in land. However, the legal department's reply continued:

It is unclear from (the solicitor's letter of 31st January 1996) whether (Mrs Wilson) has a beneficial interest in (her former home). If (Mrs Wilson) does have such an interest in the property, then it does not matter whether she is the sole or joint beneficial owner, the Authority may create a charge over that interest for unpaid fees. I would refer you to sections 7009–7016 annex D of CRAG. I am unable to comment upon the form of authority relating to the creation of a charge over the property, whether (Mrs Wilson) is liable to continue to contribute towards the cost of her care, or whether her interest in the property should be taken into account on the information which has been supplied to me.

If you wish to discuss the matter further, please do not hesitate to contact (a named officer in the former County Council's legal department).

The decision to discharge Mrs Wilson from after-care under the 1983 Act

29. Mrs Wilson was seen by the CPN shortly before 26 February 1996. The CPN subsequently discussed Mrs Wilson's care with Officer 4. On 26 February 1996 Officer 4 visited Mrs Wilson. Following her visit she prepared a note entitled 'Review Care Arrangement for (Mrs Wilson)'. The note stated:

BACKGROUND:– Following the breakdown of (Mrs Wilson's) domiciliary care package in October when she returned home from (the day centre) she was found alternative accommodation in (a residential home for elderly people). She was unable to settle here either and was readmitted to (Hospital 2) while a suitable home was found. She refused to return to her own home even with the offer of increased support. In view of her agitation and her inability to settle in the Residential Home it was decided to offer accommodation in (the EMI Home).

PRESENT CARE ARRANGEMENTS:– (Mrs Wilson's) family and (Officer 4) were uncertain whether an EMH Home was the right place for her because she doesn't suffer from dementia and is more independent than many of the other Residents. It was also hoped that she might change her mind about returning home. She continued to attend (the day centre) and also (another home for old people without any mental health problems) on a weekly basis.

Although she enjoyed these visits it was felt at a Review meeting held at (Hospital 2) on the 26th January 1996 attended by the Matron of (the EMI Home, its owner) the CPN, (Officer 4), and (Mrs Wilson's) daughter and son in law that her needs would not be met in a Residential Home. It was, therefore, decided that she should stay at (the EMI Home).

DISCHARGE OF SECTION 117:– Since then (the CPN) has visited (Mrs Wilson) and the Care Manager visited on the 26th of February 1996. We are agreed that her care arrangements can be monitored in the usual way for Residential and Nursing Homes and that there is no further need for her to be monitored under Section 117.

30. On 28 February 1996 Officer 4 met the consultant at Hospital 1. They discussed Mrs Wilson's case. The consultant subsequently completed a proforma document entitled 'Review of Statutory Joint After Care Plan'. In response to a

- A question on the document 'Is after care still needed?', the consultant circled the word 'No'. There were two spaces on the document for it to be signed. He signed his name in one space leaving the other space blank. He circulated the document to the CPN and Officer 4. Neither the consultant nor Officer 4 informed Mrs Walton of their decision to discharge Mrs Wilson from aftercare under Section 117 of the 1983 Act.

31. On the same date (28 February 1996) Officer 4 wrote to the former County Council's legal section seeking advice as to how to respond to Mrs Wilson's solicitor's letter of 31 January 1996. Her memorandum set out the history of Mrs Wilson's case and concluded:

- I have written a review of the change in care arrangements and, because these can be monitored in the usual way for Residential and Nursing Homes, have discharged the Section 117. However I am unclear about charging for Residential care in (Mrs Wilson's) circumstances, given that an EMH Home was chosen because of her mental state and because she was subject to the aftercare provisions of Section 117. (Mrs Wilson) has a solicitor acting for her who had already queried whether (the former County Council) can put a charge on her house which she part owns and I am anxious that I proceed correctly with arrangements for her care.*

32. In her response, which was dated 27 March 1996, a solicitor employed in the former County Council's legal department replied that '... the question of whether the authority can charge for services provided to individuals when they are released from hospital having previously been detained under the (1983 Act) is a complex issue and one which the new unitary authority (i.e. the Council) will have to consider. I am copying your memorandum to the Head of Legal Services for (the Council) for their (sic) consideration.'

33. On 22 March 1996 lawyers employed by the former County Council sought to register a caution against any proceeds from the sale of Mrs Wilson's former property. In the event of the property being sold, the Council intended to take from such proceeds the amount it was entitled to charge Mrs Wilson for her residential care. The caution was registered on 4 April 1996. Notice of this caution was not sent to Mrs Walton either by the former County Council or the Council. The Land Registry wrote to Mrs Wilson at the property purporting to notify her of the caution.

34. On 22 May 1996 the Council's Director of Finance sent to Mrs Wilson, care of Mrs Walton's address, a demand for £1,773.60 being the full price of eight weeks' care at the EMI Home between 5 February 1996 and 31 March 1996. The invoice was, however, marked with the words 'self financing due to property' and 'for information only'.

35. On 5 June 1996 Mrs Wilson's solicitor wrote to the Council's 'Treasurer', from whom she had received the invoice of 22 May 1996, referring to his earlier letter of 31 January 1996 to which he had not received a response and asking the Council's Treasurer to clarify the position. The solicitor's letter concluded:

- We shall be pleased to discuss the matter with you, but it remains our view that the care expenses incurred at (the EMI Home) should be borne by your authority and are not recoverable from either the patient or her family nor is it appropriate to accumulate any outstanding accounts on the basis that they might be recovered, in due course, from (Mrs Wilson's) estate in the event of her death.*

It has been made clear by the Health Minister that the Local Authorities should meet, without contribution, (and regardless of means) the care of a person who required health care as opposed to a person who decides to have social care. There is no doubt at all, on the facts of this case, that (Mrs Wilson) requires, and must have, health care.

Your early reply and confirmation that there will be no charge to . . . (Mrs Wilson) . . . for her health care would be appreciated.

The Council's Director of Finance acknowledged this letter on 11 June 1996 and said that he had forwarded it to Officer 1's department who would contact Mrs Walton directly.

36. On 3 July 1996 a meeting took place which was attended by (*inter alia*) Officers 2, 3 and 5 (Officer 5 being a legal officer employed by the Council). The question of the Council's ability to charge for services provided under Section 117 of the 1983 Act was raised. A minute of the meeting records:

1. Section 117 Mental Health Act: There are currently grey areas regarding charging of clients who are 'placed' under Section 117 of the Mental Health Act. Differences arise when clients over 65 yrs of age with the Mental Health Team are not charged under the charging policy, while similar cases with the Community Care Team are charged in accordance with the charging policy. It was a general consensus that the Conwy Authority was required to adopt a new policy to address problems in this area.

. . . (Officer 5) will respond to this at a later date.

37. On 28 August 1996 Officer 3 wrote to Mrs Walton's solicitors in response to their letters of 31 January and 5 June 1996. Her letter stated:

In addition the issues surrounding (Mrs Wilson's) placement in a Private Nursing Home are complex. (Mrs Wilson) was placed in the (EMI Home) under Section 117 of the (1983) Act which was later discharged in January 1996, as she had settled in the home and there was no further need for the Section. The law is quite clear that when people subject to Section 117 living in their own homes receive services from the Department, those services are provided free, but there is no clarification regarding residential/nursing home care which as you know is normally covered by Section 22 of the National Assistance Act 1948. The matter has therefore been referred to our Legal Department who have requested some further advice. I think the issue in relation to (Mrs Wilson) is whether the department can charge for her care when she was subject to Section 117. It is felt that once the section was discharged, she is liable to pay the costs of her care in the same way as other Elderly people – however clarification is being sought.

The other issue which has been highlighted in the past few months is whether a person who has ongoing health needs should be the responsibility of the Health Authority for future care rather than the Social Services Department. NHS care is free whereas people receiving care from the Social Services Department usually have to pay. The decision as to whether a person requires on going NHS care lies with the Consultant but at present the (DHA) have not yet agreed the Eligibility Criteria for continuing health care. (Mrs Wilson's) relatives may well be advised to discuss this aspect of her care with the Consultant responsible for her care.

Again, I must apologise for the delay in replying, but will contact you again once we have received a reply from our Legal Department.

38. On 3 October 1996 Officer 4 initiated a review of the care Mrs Wilson was receiving. Following the decision to discharge Mrs Wilson from after-care on 28

- A February 1996, Officer 4 had decided such reviews should take place annually in accordance with the Council's normal practice for people in residential homes. As part of the review, Officer 4 visited the EMI Home. On the date of her visit Mrs Wilson was not present in the home and, therefore, Officer 4 spoke to the matron who confirmed that, although Mrs Wilson's short term memory had deteriorated and she could sometimes forget things minutes after they had happened, physically she remained well. As she had done following the meeting of 26 January 1996, Officer 4 completed a 'care plan review' proforma. In the space provided for the views of Mrs Wilson's carer, i.e. Mrs Walton, Officer 4 wrote 'no comments were received prior to the review'. Once again the proforma was not signed by either Officer 4, Mrs Wilson or Mrs Walton.

39. On 14 October 1996 Mrs Walton wrote to Officer 3 in response to Officer 3's letter of 28 August 1996 to Mrs Walton's solicitor. In her letter she complained that she had still not received a response from the Council's legal department despite the fact that a caution had been placed on her mother's property and that she had not been previously notified of this fact. Mrs Walton's letter concluded:

- I think you (i.e. Officer 3) will agree that as 'Service Manager for Older People' that (sic) in my opinion my mother's affairs are being treated in a shabby way. I would be grateful for your help in resolving matters. In particular requesting the Legal Department to acknowledge the solicitor's letter and answer the points raised by (Mrs Walton's solicitors) in their letter of the 5th June 1996.*

40. On 15 October 1996, Officer 3 replied to Mrs Walton:

- I am aware that the Legal Department in the new Conwy County Borough Council are looking into the situation and have been in touch with other Authorities and other agencies nationally. We want to be fair to your Mother and do not wish to take the property into account if this is against the law or practice guidelines. However, I shall contact the Legal Department immediately to ascertain whether or not the problem has been resolved and will write to you again with more details.*

41. Having heard nothing further, on 13 November 1996 Mrs Walton wrote to the Council's Chief Executive. She sent her letter by recorded delivery. It stated:

- Last year my mother was admitted to (the EMI Home) as she was considered to be unfit for a normal residential home. She has a long history of psychiatric illness. It is my belief and that of my solicitor that the high cost of the special care she needs should not fall on her small personal estate. We have for many months been in touch with your authority seeking a ruling. During all of this time although the matter has been referred to them your Legal Department has not replied to our enquiries. This is a very worrying situation for me and could lead to all kinds of ramifications if my mother were to die before this matter is resolved. She is almost 92 years old. May I please place on record with you my formal complaint against your authority in the handling of this matter.*

- Mrs Walton's letter was stamped as having been received in the Chief Executive's Department on 14 November 1996. It was referred to Officer 1. On 20 November 1996 Officer 1 wrote to Officer 5 referring to Mrs Walton's letter of 13 November 1996 and suggesting that the matter be discussed at a forthcoming meeting on 25 November 1996. Officer 1's memorandum to Officer 5 concluded:

I am sure you will share my annoyance at being subject to a 'formal complaint' with the letter enclosed being the first I have known of the long term nature of the correspondence between parties.

A

42. On 22 November 1996 Mrs Walton wrote a long letter to Officer 4 seeking clarification of the comments in Officer 3's letter of 28 August 1996 that her mother had been discharged from after-care services in 'January 1996'. Officer 4 referred Mrs Walton's letter to Officer 2 on 27 November 1996. Her letter of referral concluded:

B

I'm not sure if circumstances leading to (Mrs Wilson's) admission to a nursing home are significant but I'll briefly explain the background. (Mrs Wilson's) home care package worked well from September 1994 when she was discharged from (Hospital 1) until November 1995 when she absolutely refused to return home after a day at (the) Centre. We arranged for her to go initially to a small residential home but she didn't settle at all and was there for only one night. After an emergency stay at (Hospital 2) a place was found at (the EMI Home). The CPN, her family and myself were hopeful that she would return home but she consistently refused saying she didn't like being at home by herself, especially during the dark evenings. The decision to remain in residential care was, therefore (Mrs Wilson's) own choice. We did however, decide that she was better suited to an EMI Home. She continued to go to Day Care at . . . until recently and to (Home 2) for a while but did not get on well with other residents. The Section 117 was discharged when we were sure there was no possibility of her returning home and the arrangements made for her to live at home were not (sic) long necessary.

C

D

E

There is no record of a response to this letter from Officer 2, or of any response by the Council to Mrs Walton's letter of 22 November 1996.

F

43. On 12 December 1996 Mrs Walton wrote again to the Council's Chief Executive pointing out that she had not received a response to her letter of 13 November 1996 and pointing out also that she had been waiting for a response from the legal department of the former County Council and the Council for just under one year. The letter also stated Mrs Walton's intention to complain to my office. On 16 December 1996 the Chief Executive replied:

G

I hasten to acknowledge receipt of your letter of 12 December, and despite an exhaustive search of my records, I am unable to trace your letter of 13th November. I can only assume that it was directed to another Department by those dealing with internal mail, but, nevertheless, I do apologise for the failure to respond.

H

I am seeking an immediate report on the matter that you have raised with me and hope to be able to come back to you as soon as possible.

44. On 24 December 1996 Officer 3 wrote to Mrs Walton attempting to explain the situation. Her letter stated:

I

Thank you for copies of recent letters sent to the Chief Executive and the Financial Assessment Officers. The Director has asked me to respond on behalf of the Social Services Department and to inform you of our understanding of the situation.

J

I have now clarified with the Chief Legal Officer that people who enter Residential or Nursing Home Care under Section 117 of the Mental Health Act are not requested to contribute towards their care. The Department will therefore pay the costs of the Nursing Home in full from the date of (Mrs Wilson's) admission to (the EMI Home) until the date that the section was discharged.

K

A *Following this date (Mrs Wilson) will be expected to contribute towards the costs of her care, unless the Health Authority agree that she meets the eligibility criteria for continuing Health Care needs. NHS care is of course free of charge. I understand that a review to assess (Mrs Wilson's) needs is being arranged by the Health Authority.*

B *If however your Mother does not meet the Eligibility criteria for on-going health care, we return to the fact that she will need to contribute towards the costs of her care depending upon financial resources. If she has an excess of £16,000 (from the sale of the property for instance) she will be expected to pay the full costs of the Nursing Home. The legal charge, placed on the property by*
C *the department means that the Authority can re-claim any monies owing from the sale of the property.*

Once (Mrs Wilson's) resources fall below £16,000 the Social Services will fund the shortfall according to the regulations.

D *In your previous letter you question why the Section 117 was discharged. This question will have to be referred to the Health Authority as this is a medical decision, but I understand that as your Mother has settled at (the EMI Home) there was no need for the section to continue.*

I hope that this letter clarifies the position of the Social Services Department in respect of your mother's financial contributions.

E *With best wishes for Christmas and the New Year.*

45. On 28 December 1996 Mrs Walton wrote again to Officer 4 asking her to clarify the exact date of Mrs Wilson's discharge from after-care under Section 117 of the 1983 Act. On 2 January 1997 Office 4 wrote to Mrs Walton. Her letter stated:

F *Thank you for your letter. I'm sorry mine was late arriving. As I explained in the letter your mother's file has been taken by our legal department to try and sort our responsibility for payment for the fees at (the EMI Home). I am not, therefore,*
G *able to give you the exact date of the discharge of Section 117, but it was after the meeting we had with (the CPN, the owner and matron of the EMI Home) when it was agreed that (Mrs Wilson) would not return home but would become a permanent resident in the nursing home.*

I will pass your letter on to the legal department with a request that they give you the date you require.

H 46. On 9 January 1997 Officer 5 wrote to Officer 3 with her understanding of the legal situation. Her memorandum concluded:

I *In essence the advice is that after care services under s.117 MHA 1983 cannot be charged for; residential care nursing home care may be included in 'after care services'. Residential care provided under (the National Assistance Act 1948)*
J *must be charged for. Where section 117 after care services are terminated there should be a recorded determination by DHA and Social Services that the client is no longer in need of after care services under s117 but social services may still decide to make provision under a different statutory power which ideally should be recorded and relevant personnel duly informed of the change of circumstances.*

47. Having heard nothing from the Chief Executive since his letter of 16 December 1996, Mrs Walton wrote again on 9 January 1997 asking the Chief Executive:

K *Could you please explain why if my mother no longer was in need of such services she remains in an EMI home and was not at the time any decision was made transferred to a residential home?*

It leads me to the view that a proper decision in accordance with the Act was never made. In the circumstances I believe it can be said that the Section 117 continued to apply to my mother and indeed I believe that there are good grounds for a declaration of the Court by way of a judicial review to this effect.

On 14 January 1997 the Chief Executive replied:

I am today writing to my colleagues in Social Services and Legal, to ensure that all further correspondence is channelled through myself and I shall endeavour to raise the questions that you have raised as quickly as possible.

Mrs Walton has not heard from the Chief Executive since that date.

48. At the end of January 1997 the DHA carried out an assessment of Mrs Wilson's medical condition to see whether or not she was entitled to receive continuing health care from the DHA. On 20 January 1997 the Council contributed to this assessment. The documentation sent by the Council to the DHA stated that Mrs Wilson was 'quite confused' and that her dementia was getting worse. It also stated that Mrs Wilson could be disruptive and aggressive, that she was 'very anxious' and 'extremely paranoid', and had hallucinations. In a section entitled 'summary of needs' the Council stated:

Constant supervision in specialist nursing home where staff are used to people suffering from dementia and difficult behaviour . . .

The occupational therapy and physiotherapy part of the assessment included a statement which said:

Staff (at the EMI Home) reported that (Mrs Wilson) continues to have paranoid ideas, especially at night when she becomes agitated and has been prescribed Melleril. She is also reported to be aggressive at times, using her stick to hit out on occasions.

The medical assessment concluded:

This 93 yr. old lady has settled well in the EMI Nursing Home, appears happy and contented, I believe that this is because the staff have the skills and experience and qualifications to look after people with a mental illness and (Mrs Wilson) responds to the management skills the staff demonstrate. The home staff/ keyworker report she is not a major problem and her peers accept her, and is well liked as her social and communication skills are only moderately disruptive. She does need the specialist support but her behaviour is not extreme and does not qualify for NHS support.

49. On 23 January 1997 Officer 4 wrote to Mrs Walton formally confirming that the date that her mother had been discharged from after-care was 28 February 1996. On 24 January 1997 Officer 1 wrote to the Chief Executive's department, and his memorandum included the following statement:

It is not the responsibility of the Social Services Department to undertake a full investigation of the circumstances re. Discharge of Section 117. This is within the Health Authority remit. Neither is our role to justify the validity of the discharge.

We cannot acknowledge (Mrs Walton's) request for recompensation (sic).

50. On 27 January 1997 Officer 5 wrote to Officer 1 on the way in which local social services authorities should deal with decisions to discharge after care. Her memorandum stated:

- A *The DHA and the (LSSA) are empowered to decide together that a person is no longer in need of after care services. I would respectfully suggest that your comment (in the memorandum dated 24th January 1997 sent by Officer 1 to the Chief Executive's department stating that the decision to discharge after care was a medical decision) is not quite accurate; there must be some responsibility on*
- B *Social Services to investigate and to justify the termination of s.117 after care services because s.117(2) specifically provides that it is a joint decision of both the DHA and the Social Services – the Social Worker concerned must be equally satisfied that the client no longer requires after care services and it follows that if a Social Worker was not satisfied then the s.117 services could not be terminated.*
- C *In this case (Officer 4) and (the Consultant) were satisfied that (Mrs Wilson) was no longer in need of after care services and (the Consultant) duly signed the termination form. If we accept Counsel's opinion, what was then needed was a separate decision duly recorded that (Mrs Wilson) was still in need of residential care which would be provided under NAA 1948 and for which the local authority was obliged to charge. Was this done and was (Mrs Walton) informed? It may be that it was not done for lack of procedural guidance that such a step was required and certainly not for any other reasons. If the Ombudsman investigates this matter he will not comment on the decision to terminate itself, but on the procedures which led up to the decision and which followed. This matter has been touched on in a recent training session but you may think that a practice/procedure note would be more useful and please do not hesitate to let me know if I can assist with the drafting.*

F There is no record of any formal response by Officer 1 to Officer 5's memorandum. Officer 1 says no response was sent because the memorandum was sent to 'key staff members'. The Council has not yet finalised a 'practice/procedure note' of the type referred to by Officer 5 in her memorandum, although Officer 5 has written to Officer 1 again confirming her view that the Council has no power to charge for services provided under Section 117 of the 1983 Act.

- G 51. In January and March 1997 the Council refunded to Mrs Walton all the money she had paid in respect of Mrs Wilson's occupation of the EMI Home between 6 November 1995 and 28 February 1996 (£1,784.82). However, the former County Council and the Council have charged Mrs Wilson £346 per week for her care at the EMI Home since 28 February 1996 (amounting so far to over
- H £8,000). Mrs Wilson's half share in the property is valued at £23,850. The property has now been sold and Mrs Walton's solicitors have provided an undertaking to the Council to place the sum of £8,750 in a joint account in the names of the Council and Mrs Walton to be retained pending the conclusion of my investigation.

I **THE COMPLAINANT'S VIEWS**

- J 52. Mrs Walton does not complain that the care which Mrs Wilson has received from the former County Council and the Council has at any stage been inappropriate to Mrs Wilson's needs. Indeed, until she learned of their role in the decision to discharge Mrs Wilson from after-care services under Section 117 of the 1983 Act, Mrs Walton felt she had a good relationship with both the CPN and Officer 4 and that all parties had worked closely together. She says that when Mrs Wilson was first discharged from Hospital 1 in September 1994, Officer 4 told her that Mrs Wilson would not have to pay for her care. When Mrs Wilson was admitted to the EMI Home in November 1995, Mrs Walton still thought Mrs Wilson's
- K care in the EMI Home was to be paid for by the former County Council, although

she accepted that she would have to pay to the former County Council her mother's state benefits. It is for this reason that Mrs Walton refused to sign the forms given to her in November 1995 and January 1996 asking her to provide details of Mrs Wilson's interest in the property.

53. Mrs Walton believes that the decision to discharge her mother from after-care services was taken for purely financial reasons. She is suspicious of the manner in which it was taken, and she believes the decision was wrong because all the evidence in the former County Council's possession pointed to her mother's continuing need for the specialist care for the mentally ill provided at the EMI Home. She maintains, therefore, that it was not open to the former County Council to conclude that Mrs Wilson was 'no longer in need' of after-care services in accordance with the provisions of Section 117 of the 1983 Act. She believes this evidence is contained in the 'Care Plan' prepared at the time of Mrs Wilson's admission to the EMI Home and in the records of the meeting of 26 January 1996. She also believes that this evidence has subsequently been confirmed by the medical assessments of Mrs Wilson's condition in January 1997, which show that Mrs Wilson is still suffering from periods of paranoia and anxiety and is being treated with anti-psychotic drugs. She also says that Mrs Wilson is under twenty-four hour supervision. Mrs Walton is suspicious of the manner in which the decision was made because, despite her close working relationship with Officer 4, she was not told of the decision until nearly a year after it was taken by which time she had stated her wish to complain formally.

54. Mrs Walton is also aggrieved that neither the former County Council nor the Council told her about the caution placed on the property and that the Council failed to respond promptly and accurately to her letters and those sent on her behalf by her solicitor. She is particularly aggrieved by the Chief Executive's failure to respond to her letter of 13 November 1996, by his claim that the letter had been lost and by the absence of any proper response to her letter of 22 November 1996. Mrs Walton believes that a considerable injustice has been done to Mrs Wilson in that she should not have been charged in excess of £8,000 for the care she has received at the EMI Home since February 1996.

THE COUNCIL'S VIEWS

The Council's response to Mrs Walton's complaint following its consideration under its internal procedures

55. In accordance with its internal complaints procedure, Officer 1 has written to Mrs Walton setting out the Council's response to her complaint. This response included the following statements:

As you already know the Department has already undertaken a full investigation into the circumstances surrounding the discharge of Section 117 in respect of (Mrs Wilson). This investigation was held in response to the enquiry made by the Ombudsman and the findings of that investigation have been forwarded.

With regards to circumstances surrounding the discharge of Section 117, the department has already admitted that, at the time, there were no procedures or guidance for social workers on this subject. The social worker acknowledges that she did not inform you that the section had been discharged. She was not aware of the necessity for this otherwise she would obviously have done so. At the time, the social worker was totally unaware of the uncertainty surrounding whether residential/nursing home care constituted 'after care services' as described in the Act and the issue of charging, although as a result of this case, the Department aims to ensure that all social workers working with Older People have knowledge

- A of the law and practice guidance in relation to the discharge of people under Section 117.

...

- B The principles and philosophy contained in Mental Health legislation would tend in this case to support the views of the social worker, CPN and Consultant. Individuals only need to be subject to Sections under the legislation when it was necessary for them to do so. It would be inappropriate to section people or keep them under Section for longer than is necessary. In (Mrs Wilson's) case, her needs were being met appropriately in . . .; she wanted to stay there and you and your husband agreed that it was the best course of action. It was therefore appropriate for her needs to continue to be met under the National Assistance Act 1948 – i.e. the provision of accommodation, rather than under Mental Health legislation.

- C The actions taken in relation to meeting (Mrs Wilson's) case were appropriate and were taken in her best interest. As a Department we always learn from experiences, and in the future whenever a Section 117 is being discharged we will ensure that the agencies involved will conduct the process in a formal manner which will involve the next of kin.

...

- E The views expressed by individual officers when interviewed by the Commission's investigating officer

Officer 1

- F 56. Officer 1 is the Council's Director of Social Services. He now accepts that the decision to discharge a person from after-care services under Section 117 of the 1983 Act is a joint decision of the social services authority and the health authority and not a decision for the health authority alone as he stated in his memorandum of 24 January 1997. He says that all managers in his department have been instructed to tell their staff to record the reasons for any change in the statutory basis on which care is provided. There is, however, no written record of this instruction.

- G Officer 2

- H 57. Officer 2 is the Council's Assistant Director of Adult Services. He believes the decision to discharge Mrs Wilson from after-care in February 1996 was the correct one because Section 117 of the 1983 Act should be regarded as a 'safety net' to ensure that a patient does not have to go back to hospital and to ensure that the patient returns to the community. He, therefore, believes that once the danger of a patient having to be readmitted to hospital has passed, services can be provided under a different section (i.e. under the National Assistance Act 1948).

- I Officer 3

- J 58. Officer 3 is the Council's Service Manager for Old People and People with Physical and Sensory Impairments. Her first involvement with Mrs Wilson's case came during the summer of 1996 when Mrs Walton's solicitor's letter of 5 June 1996 was passed to her. She says the delay between her receipt of that letter and her response of 28 August 1996 was because she was waiting for legal advice on the question of whether or not it was appropriate to charge for services provided under Section 117 of the 1983 Act. She accepts that her statement that Mrs Wilson was discharged from after-care in 'January 1996' was incorrect and also acknowledges the delay in sending a substantive response to Mrs Walton's letter of 14 October 1996 until 24 December 1996. She says this delay was also because she was awaiting legal advice.

Officer 4

59. Officer 4 says that Mrs Wilson's case was the first case she had ever dealt with where a client was receiving after-care under Section 117 of the 1983 Act. Officer 4 normally dealt with old people rather than people with mental illness, and only became involved with Mrs Wilson's case because of her previous contact with Mrs Wilson prior to Mrs Wilson being admitted to Hospital 1 under the 1983 Act. When she secured a place for Mrs Wilson in the EMI Home, Officer 4 believed Mrs Wilson was being placed there under the National Assistance Act 1948 in the same way that the Council provided residential care for a number of old people and nursing home care for confused elderly people. That is why she provided Mrs Walton with the information about charging and asked Mrs Walton to return a form giving details of Mrs Wilson's interest in the property.

60. Officer 4 says the decision subsequently to discharge Mrs Wilson from after-care services was taken because Mrs Wilson had 'settled' at the home, and was, therefore, no longer in need of regular visits from a social worker or from the CPN. This view had been confirmed in her discussions with the CPN and the consultant although, to the best of her knowledge, the consultant had not seen Mrs Wilson since she had been in Hospital 1. In Officer 4's opinion Mrs Wilson's health and mental condition were similar to those of other people in the EMI Home, and the social services department's involvement could from that point on be limited to monitoring the placement annually.

CONCLUSIONS

61. The former County Council (and subsequently the Council) had a duty to provide after-care services for Mrs Wilson at no cost to her from the moment she was discharged from Hospital 1 on 7 September 1994 until such time as it was satisfied as social services authority (irrespective of whether the district health authority was so satisfied) that Mrs Wilson was 'no longer in need of such services'. The Council contends that the former County Council was satisfied by 28 February 1996 that Mrs Wilson no longer needed such after-care services, and it submits that its predecessor authority quite properly decided on that date that it would no longer provide after-care services under Section 117 of the 1983 Act.

62. The Council has acknowledged that the services provided for Mrs Wilson in the EMI home between 6 November 1995 and 28 February 1996 were after-care services provided under Section 117 of the 1983 Act because it has already repaid to Mrs Walton the sums paid for Mrs Wilson's care during that period. The care provided has not changed materially since that time. Throughout the period relevant to this complaint Mrs Wilson was prone to mental illness including paranoia and delusions which necessitated her being cared for in a home designated for the care of the elderly mentally infirm (see, for example, paragraphs 20, 29 and 48 above). The Council's contribution on 20 January 1997 to the assessment of Mrs Wilson by the DHA at that time states that her dementia was getting worse, that she was 'extremely paranoid' and had hallucinations. The Council's assessment stated that she needed 'constant supervision in specialist nursing home where staff are used to people suffering from dementia and difficult behaviour . . .' In other words, the evidence suggests that throughout the relevant period, Mrs Wilson needed after-care services particularly in the form of specialist care in a home for the elderly mentally infirm.

63. Despite the evidence, the former County Council purported to relinquish its duty to provide after-care services for Mrs Wilson under Section 117(2) of the 1983 Act on the basis that Mrs Wilson no longer needed such services. It seems to

A me that the former County Council failed (and the Council has continued to fail)
to address the relevant question which is whether Mrs Wilson needed and
whether she continues to need after-care services. At one stage the Council main-
tained that the decision to cease providing after-care services was a medical deci-
sion alone, but it now acknowledges that this view was wrong and that it also had
B to address the issue itself and arrive at a reasoned decision in its capacity as social
services authority. In my view, the two social services authorities failed to address
this issue, and they took into account immaterial considerations such as whether
Mrs Wilson had 'settled in the home' (see paragraph 37) and whether there was
no 'possibility of her returning home' (see paragraph 42). If the two local author-
C ities had asked themselves the relevant question, they would have had to con-
clude that she was in need of the specialist care provided at a home for the elderly
mentally infirm rather than accommodation at a residential home. Mrs Wilson's
brief stay at a residential home was clearly an unhappy episode. Officer 4's notes
describes this placement as 'disastrous' (see paragraph 15).

D 64. I regard the failure to address the relevant issues as maladministration. That
maladministration has been compounded by the continuing failure to address
and deal with Mrs Walton's repeated complaints on behalf of her mother; by the
failure of the former County Council to abide by the Secretary of State's Code of
Practice which required it to consult Mrs Walton and to take account of her views
E before ceasing to provide after-care services under Section 117(2) of the 1983 Act;
by the Council's failure to inform Mrs Walton either of the decision to 'discharge'
her mother or the decision to register a caution against her mother's property, and
by both authorities' failure to answer Mrs Walton's correspondence promptly and
F fully.

65. As a result of the maladministration Mrs Wilson has been wrongly charged for
the cost of the after-care services provided for her. That is an injustice to her. To
remedy the injustice and to avoid a recurrence the Council should:

- G (a) confirm formally to Mrs Walton and her solicitor that it is now providing
after-care services for Mrs Wilson in the EMI home free of charge under
Section 117(2) of the 1983 Act;
- (b) confirm that it will continue to do so until such time as it is satisfied, in
accordance with the 1983 Act, that Mrs Wilson no longer needs such
after-care services;
- H (c) give an undertaking to Mrs Walton that it will consult her and take her views
into account before arriving at a decision to discontinue such services;
- (d) confirm that it will no longer seek to recover from Mrs Wilson or Mrs Walton
the sum so far charged to Mrs Wilson;
- I (e) pay Mrs Walton the solicitors' costs she has incurred in pursuing her com-
plaint with the two authorities and a further £500 in recognition of the dis-
tress and inconvenience she has suffered and her time and trouble in having
to pursue her mother's complaint with the two Councils and with me.