Section 117: After-Care under the Mental Health Act 1983/2007
Devon Wide Joint Protocol

Policy: M01

Policy Descriptor

Section 117 refers to the provision of aftercare services to any patient to whom this section of the Mental Health Act 1983 applies. The protocol describes the statutory framework and procedure for managing patients to whom Section 117 applies.

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Assurance Statement

This joint protocol aims to ensure that staff working across health and social care are aware of the requirements and their responsibility in discharging Section 117 as laid out in the Mental Health Act 1983 (MHA, reviewed 2007) and the Mental Health Act Code of Practice (amended 2008) and in the amendments to S117 introduced by the 2014 Care Act.

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Contents

1. Guiding Principles of the Mental Health Act Code of Practice 2015

1.1 The MHA Code of Practice provides a set of five guiding principles which should be considered when making decisions about a course of action under the Act:

- Least restrictive option and maximising independence - Where it is possible to treat a patient safely and lawfully without detaining them under the Act, the patient should not be detained. Wherever possible a patient's independence should be encouraged and supported with a focus on promoting recovery wherever possible.
- Empowerment and involvement - Patients should be fully involved in decisions about care, support and treatment. The views of families, carers and others, if appropriate, should be fully considered when taking decisions. Where decisions are taken which are contradictory to views expressed, professionals should explain the reasons for this.
- **Respect and dignity** - Patients, their families and carers should be treated with respect and dignity and listened to by professionals.
- **Purpose and effectiveness** - Decisions about care and treatment should be appropriate to the patient, with clear therapeutic aims, promote recovery and should be performed to current national guidelines and/or current, available best practice guidelines.
- **Efficiency and equity** - Providers, commissioners and other relevant organisations should work together to ensure that the quality of commissioning and provision of mental healthcare services are of high quality and are given equal priority to physical health and social care services. All relevant services should work together to facilitate timely, safe and supportive discharge from detention.

1.2 Using the principles:

- All decisions must, of course, be lawful and informed by good professional practice. Lawfulness necessarily includes compliance with the Human Rights Act 1998.
- The principles inform decisions, they do not determine them. Although all the principles must inform every decision made under the Act, the weight given to each principle in reaching a particular decision will depend on the context.
- That is not to say that in making a decision any of the principles should be disregarded. It is rather that the principles as a whole need to be balanced in different ways according to the particular circumstances of each individual decision.

2. Introduction

2.1. Section 117 of the Mental Health Act 1983/2007 (MHA) places a statutory duty on Health Authorities via Clinical Commissioning Groups (CCGs) and Local Authorities to work together to provide after-care services for all persons who have been detained in hospital under a treatment section of the MHA (i.e. Sections 3, 37, 47 and 48). This includes all those subject to Supervised Community Treatment Order (CTO) under the MHA. This duty is to consider the after-care needs of each individual to whom Section 117 applies. Processes must be in place to show that a full consideration of needs has taken place. Where required, the identified needs have a plan in place to ensure the mental health needs are met.

2.2. The responsibility for providing after-care services rests with the individuals' CCG and the Local Authority. Services provided under Section 117 are 'community care' services for the purposes of the National Health Service and Community Care Act 1990.

2.3. There is no duty to provide particular services and the nature and extent to which these services are provided is, to a large extent, a matter of discretion for the individual authorities and commissioning bodies. However, if a person has been granted a conditional discharge (in relation to detention for treatment under Section 37 or Section 37/41 with restriction), the Court

of Appeal has ruled that the local authority must take reasonable steps to fulfil the conditions concerned.

2.4. In order to fulfil their obligations, the CCG and the Local Authority must take reasonable steps to identify appropriate aftercare facilities for the patient before his or her discharge from hospital.

2.5. Most recently, in the case of R (Afework) v London Borough of Camden [2013] EWHC 1637 (Admin), Mostyn J was asked to consider whether a mere roof over the head could, without more, fall within the definition, but decided that it could not. He observed that the linking of the word "after" with "care" meant that the services in question must be consequential to the detention in hospital and relate to the reason for the detention in the hospital.

2.6. The Care Act amends Section117 MHA 1983 and provides a definition of what comprises "after care services". It now defines "after care services" as services which (i) meet a need arising from or related to the person's mental disorder; and (ii) reduce the risk of a deterioration of the person's mental condition (and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for the disorder).

At a Glance:

- Section 117 is a statutory duty on both Health and Local Authorities to provide after-care for people who have been detained under the certain Sections of the Mental Health Act (1983/2007)
- Services provided under Section 117 are specifically intended to reduce the prospect of compulsory or informal readmission to hospital on mental health grounds.
- Needs that relate **only** to the physical health or disability of the person (and not related to mental health needs) are not subject to Section 117.
- The duties to provide after-care services continue until both authorities are "satisfied" that the person no longer needs any after-care services.

2.7. Some services or aspects of care may be part of a person's care plan but not be provided or commissioned under Section 117.

2.8. These include:

- services provided or commissioned to address physical health needs or disabilities
- services provided or commissioned solely to address needs related to drug and alcohol problems (for example residential rehabilitation)
- services that meet general need and are not mental health specific, for instance laundry

3. Purpose

3.1. To offer the person a plan of care and support to prevent hospital re-admission to psychiatric hospital. Ensure that staff, health and local authority, are aware of their responsibilities under Section 117.

3.2. To ensure that local interpretation of Section 117 is in line with the legal requirements of the MHA and implements requirements of the Care Act 2014.

3.3. To integrate practice across Devon Partnership NHS Trust, Devon County Council and NHS Devon, Plymouth & Torbay.

3.4. To integrate decision making regarding Section 117 across Devon Partnership Trust, Devon County Council and NHS Devon, Plymouth & Torbay.

3.5. To provide specific guidance about when it is appropriate to discharge people from Section 117.

4. Duties and Responsibilities

4.1. Devon Partnership NHS Trust, Devon County Council (DCC) and the CCG all have roles and responsibilities to provide Section 117 after-care to those persons eligible.

4.2. **Organisational Roles:**

4.2.1. **Local Authority (LA)**

- LA is jointly responsible with the local CCGs for the provision of after-care services under Section 117 and will ensure that social care staff within Community Health and Social Care Teams and recovery co-ordinators within Adult Mental Health Services, will participate in Section 117 care planning meetings.
- LA is responsible to provide social care staff from Community Health and Social Care Teams to complete assessment of social care needs under Section 117. In Adult Mental Health services these staff are based in the Mental Health Multidisciplinary Teams. In Older Persons Mental Health these staff are based in the Community Health and Social Care Teams and Care Direct Plus.
- Where a person has a diagnosis of a Learning Disability, the DPT LD services will add expertise to the assessment and co-ordination process and may be the lead worker. The community health and social care team will provide the LD social care input and expertise and may also be the lead worker for S117 process.
- LA and CCGs hold joint commissioning responsibility for LD and OPMH Section 117 care packages that require funding.
- LA will provide an adequate mechanism so that those subject to Section 117 are not charged for services provided as Section 117 aftercare services for as long as the Section 117 is deemed to be in place.
- Decisions to end the Section 117 status are a joint Health/Social Service decision. Reviews of Section 117 after-care provision will always be conducted on a joint basis, involving health and social care staff. Decisions regarding discharge will be made jointly and a psychiatrist must be involved in the discussion[1].

4.2.2. **Clinical Commissioning Groups**

- The CCGs and Local Authority where a person is resident at the time of admission to hospital have legal responsibility for after-care under Section 117.
- If a person is discharged to a different area from the one they were resident in at the time of admission, the CCG and Local Authority where they were resident before admission, retain funding responsibility and must make necessary arrangements under Section 117 unless the transfer of financial responsibility to a new Local Authority is agreed between them.

[1] Please see Mental Health Act Code of Practice Ref: Chapter 27 for further guidance

- If the person is of No Fixed Abode at the time of admission to hospital the CCG responsible for the admission and hospital episode is the one where the hospital is situated. However if the patient is discharged to a different area, the responsibility falls to the CCG and Local Authority for the area the patient is discharged to.
- To determine the CCG responsible for commissioning the health care component of the joint support. All enquiries must be sent to **D-CCG.IPP-REQUESTS@nhs.net**. The turnaround time for receiving confirmation on the Responsible Commissioner is 24 hrs Monday to Friday. The following details are needed to help the CCG identify the Responsible Health Commissioner: Name, DOB, GP registration and NHS number.

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4.2.3. **Devon Partnership NHS Trust**

- The Trust is responsible for providing mental health care to those persons who may be eligible for Section 117 care for those individuals living in Devon.
- The Trust is jointly responsible with DCC to assess, monitor and review people subject to Section 117. The Trust will ensure that nursing staff and others, as necessary, are available and willing to participate in Care Programme Approach (CPA)/Section 117 assessment, planning and review meetings.
- The Trust is responsible to complete, or support, the development of multi-disciplinary mental health assessments when a person is subject to Section 117.
- The Trust retains responsibility for review for people subject to Section 117 aftercare when the person is no longer on caseloads but may be subject to active review.
- The Trust is required, through the Partnership agreement to keep an up-to-date register of all people subject to Section 117 and to share that information with relevant partner agencies as required. This register will be held by the Mental Health Act office hosted by Devon Partnership Trust.
- The register of Section 117 patients will be kept up-to-date by the Trust as a sub-set of the Trust electronic care record system. The register will operate as follows:
    - To provide a list of names of people subject to Section 117, the review information and discharge information.
    - Entry to the Section 117 Register will be through the CPA care plan via electronic care records or, where Adult care operations and health is the lead agency, copy of aftercare support plan (and any future review) is sent to Mental Health Act office.
    - Removal from the Section 117 Register will be through the CPA or MDT Section 117 Review Processes; where Adult care operations and health (DCC) is the lead agency, a copy of the review documenting decision to end S117 aftercare provision will be sent to Mental Health Act office. Audits of the electronic care record's MHA compliance will be organised regularly by the MHA Manager. This will include whether Section 117 status is recorded appropriately.

4.3. **Health and Social Care staff roles**

4.3.1. **Responsible Clinician:** To observe Section 117 responsibilities and, in particular, to make decisions about discharging people from Section 117.

4.3.2. **Social Care Staff:** To engage fully with Section 117 responsibilities in line with local and national guidance as set out in the Mental Health Code of Practice.

4.3.3. **Named Mental Health Practitioner/Care/ Recovery Co-ordinator:** To engage fully with Section 117 responsibilities in line with local and national guidance as set out in the Mental Health Code of Practice.

4.3.4. **MHA Manager for The Trust:** To support clinical staff and Locality MHA Managers with advice and raise concerns as necessary with senior managers within the Trust, CCG or Social Services:

- To maintain the Section 117 register, prompt reviews across both health and social care.
- To ensure the Section 117 register is available to partners as required.

5. Implementation of Section 117

5.1. After-care is the plan of care established for a person at the point in time when he/she has been subject to the relevant Section of the MHA in hospital or prison.

5.2. *"After-care is a vital component in a patient's overall treatment and care. As well as meeting their immediate needs for health and social care, aftercare should aim to support them in regaining and enhancing their skills or learning new skills in order to cope with life outside hospital "*(Code of Practice, 27.5)

5.3. After-care may include residential and community (non-residential) services.

5.4. Planning of Section 117 Aftercare

5.4.1. Although the duty to provide after-care begins when the person leaves hospital the planning of after-care is to start as soon as the person is admitted to hospital.[2]

5.4.2. A planning Section 117, after-care meeting, will take place within a maximum of 21 working days of admission for assessment and planning purposes, and is to include all relevant parties who are or will be actively involved in the person's care.

5.4.3. The planning Section 117 meetings are convened and managed by the relevant ward staff.

5.4.4. The following must be in attendance at the pre Section 117 after-care meeting.[3]

- The person subject to Section 117 and/or their representative
- Responsible Clinician (RC) or Ward In-Patient Consultant or Appropriately qualified medical staff
- Social Care Staff
- Ward Named Nurse
- Community Psychiatric Nurse/Recovery Co-ordinator

5.4.5. A carer should always be considered.

5.4.6. **The planning meeting will agree the Lead agency and named worker unless the person already has a named co-ordinator.**

[2] For further guidance see chapter 27 of the Mental Health Act Code of Practice 2008

[3] The Trust works to a Recovery Co-ordinator policy. See References

5.4.7. Where there is a named Social Care Manager or Care/Recovery Co-Ordinator already allocated to a person who requires Section 117 co-ordination of care that allocated worker will be expected to support the discharge planning.

At a Glance:

- The pre after-care meeting will take place not more than 14 days from admission
- All Section 117 aftercare meetings must be attended by the Responsible Clinician (or appropriate medical other), a Local Authority Representative, the Ward Named Nurse (or appropriately qualified member of the ward team) and a Community Mental Health Team representative.
- The after care meeting will confirm the needs and support requirements of the individual, and be clear which are s117 related and which are "other".
- Section 117 is the responsibility of all key agencies. The appropriate agencies (The Trust & DCC) must agree to accept the shared responsibilities and prioritise staff to deliver Section 117 processes within a legal framework.

5.5. **Allocation of a Lead worker/Agency**

5.5.1. **Adult Mental Health Services:**

5.5.1.1. At the pre Section 117 meeting the lead agency or team will be agreed. Where there is no allocated worker a lead worker/Care/Recovery Co-ordinator/Case Manager will be allocated.

5.5.1.2. Aftercare planning should begin as soon as possible after the person is admitted to the ward (MHA COP 33.10); there should be no delay in the allocation of recovery co-ordinator and a social care representative which could have the effect of prolonging the person's stay in hospital. Should delays occur this should be raised with Senior Managers to ensure a speedy resolution.

5.5.1.3. For most people subject to Section 117 the allocated lead worker is usually a member of a community mental health multi-disciplinary team/IATT/specialist LD nurses and the person is likely to be subject CPA/Recovery Planning. The lead worker may be any professional, depending on the balance of needs, and their relationship with the individual.

5.5.1.4. In adult mental health decisions to allocate to the correct Senior Mental Health Practitioner will be made by the Community Team Leader.

5.5.2. **Older Persons Mental Health (OPMH) Services**

5.5.2.1. Within the service provision for older people's mental health, the allocation of the lead agency and worker role will be agreed at the pre Section 117 meeting. It will be either DPT or DCC depending on the primary needs of the person.

5.5.2.2. Managers in both agencies will work together to ensure that the allocation of the lead agency reflects the expertise that can best meet identified individual needs. Where an older person has developed a functional mental illness for example, DPT may be the appropriate agency to lead assessment and support planning, when a person has a dementia and moves to a residential home it may be more appropriate for DCC to take the lead responsibility.

5.5.3. **Learning Disability**

5.5.3.1. Where a person has a diagnosis of a Learning Difficulty, the LD services and community health and social care teams will add expertise to the assessment and co-ordination process and either may be the lead worker.

5.6 The table below is a guide to support the decision as to which agency takes a lead in determining responsibility for allocation of a lead worker to support the older person subject to Section 117. The same principles apply to clients with a Learning Disability.

5.6.1 Table 1

Allocation to OPMH Community Mental Health Team - DPT	**Allocation to the Health and social care community team - DCC**
Person's Mental Health needs require regular follow up (at least monthly). These persons will be subject to CPA/Recovery planning and: cognition is severely impaired and/or behaviour is challenging at a severity and/or frequency that presents a significant risk to self and/or others; and/or Mood disturbance, hallucinations or anxiety symptoms, or periods of distress, have a severe impact on the individual's health and/or well-being or they are withdrawn from attempts to engage.	Person does not require regular mental health follow up other than a six monthly or annual Section 117 /MDT review of care plan
Social Care is not a significant area of need and therefore limited need for social care follow up	Social Care is the significant area of need to ensure the person's mental health does not deteriorate (usually pertains to people placed in residential/low support care homes)
Person has been or is known to the OPMH community team in the past 2 years and is on the community team active caseload.	Person is not on the active OPMH community team case load and requires only a 6 month or annual Section 117 review.

5.6.2 Where there is a dispute regarding which team should hold lead responsibility, the pre Section 117 planning meeting must agree a temporary allocation of the lead agency/worker role with responsibility to ensure that discharge planning continues while the issue is raised with senior managers.

5.7 Assessment and planning for care and support

5.7.1 All individuals with enduring mental illness and complex care needs should be assessed and their care planned within the CPA/Recovery Co-Ordination framework. These are joint Devon Partnership NHS Trust and DCC social service responsibilities across both Adult and Older Persons Mental Health provision.

5.7.2 Section 117 Aftercare leaflets are available on the wards and should be given to the person in order to inform them of the aftercare planning process and help then think about their aftercare needs

5.8 Assessment

5.8.1 A thorough assessment is likely to involve consideration of:

- continuing mental health needs
- the psychological needs of the person and, where appropriate, of their family and carers
- physical healthcare
- daytime activities, employment or training
- appropriate accommodation
- identified risks and safety issues
- any specific needs arising from, for example, co-existing physical disability, sensory impairment
- learning disability or autistic spectrum disorder
- any specific needs arising from drug, alcohol or substance misuse (if relevant)
- any parenting or caring needs
- social, cultural and spiritual needs
- assistance in welfare rights and managing finances
- involvement of authorities and agencies in a different area, if the person is not going to live locally
- the involvement of other agencies, for example the probation service or voluntary organisations;
- for a restricted patient the conditions which the Secretary of State for Justice or the tribunal has imposed or is likely to impose on their conditional discharge; and
- contingency plans (should the person's mental health deteriorate) and crisis contact details.

5.8.2 The assessment will provide an indication of the estimated personal budget to meet social care needs.

5.9 Planning and commissioning care and support

5.9.1 In the range of services which are considered to support a person's discharge from hospital, there may be services which are determined by assessment as those for which the person is eligible under Section 117. Some services which may be commissioned to meet other care needs, such as physical health, do not fall within Section 117 eligibility. Services may therefore be commissioned under Section 117 provision (which are not chargeable to the service user), and alongside the "non-Section 117 services" for which the Local Authorities usual financial assessment procedure will apply.

5.9.2 Care and support plans must clearly document which services are planned under Section 117 provision, and which services are not subject to this provision (services not covered by Section 117 provision will be subject to financial assessment).

5.9.3 Prior to confirming the S117 funded support, the lead worker must request determination of the CCG responsible for commissioning. All enquiries must be sent to **D-CCG.IPP-REQUESTS@nhs.net**. The turnaround time for receiving confirmation on the Responsible Commissioner is 24 hrs Monday to Friday. The following details are needed to help the CCG identify the Responsible Health Commissioner: Name, DOB, GP registration and NHS number.

~~5.9.2~~

~~5.9.3~~5.9.4 S117 aftercare plans must be completed by the MDT at the S117 aftercare planning meeting, and entered into the care planning section of CareNotes and Carefirst. S117 care

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plans should not be entered directly into the note section of CareNotes as over time these become difficult to find. S117 aftercare plans should be offered to the person and to carers that are involved and this should be documented on the care plan.

~~5.9.4~~5.9.5 Where residential or nursing care provision under S117 is being made available, the person's choice of home should be accommodated where this is available at "usual cost" to meet eligible need. Where residential or nursing accommodation is available at "usual cost", a person may chose alternative preferred accommodation if they are in a position to make top up arrangements (See section 7.2 below).

~~5.9.5~~5.9.6 Care plans are a shared document between Trust and DCC and the patient/their family. A copy will be provided to the person and they will have the opportunity to comment and sign the care/support plan. The Personal Brokerage Team will provide support where appropriate to ensure best value in commissioning arrangements.

5.9.6 The Lead worker will ensure that a copy of the document recording the Section 117 plan is sent to the Mental Health Act Administration Office email: dpn-tr.MHAAAdministrator@nhs.net

5.10 **Review of Section 117 Aftercare**

5.10.1 The MHA Administration office will advise the lead worker when the review is due.

5.10.2 Care plans for people receiving aftercare under Section 117 should be regularly reviewed within a timescale determined by their needs. A minimum for review is at least once every six months for any person subject to Section 117 in the first year following discharge from hospital. The timescale can be extended to (a minimum requirement of) annual review for those people whose needs remain stable longer-term and where stability of appropriate service provision is also ensured.

5.10.3 The review will be a joint process with input from both DCC (social care) and the Trust (health).

5.10.4 The nominated lead worker will arrange any meeting necessary for the review and invite relevant parties. Both the Trust and DCC staff are required to meet their usual agency guidelines for a Care Management and/or CPA/Recovery Co-ordination[4] alongside the requirements relating to Section 117 review.

5.10.5 It is important to consider at all reviews, whether it is appropriate for the care plan to continue to be provided under Section 117.

5.10.6 If amendments to the care plan identifying additional services to address the mental health needs are identified these will be Section 117 services and the relevant paperwork will need to be completed, reviewed and signed off to ensure additional costs are contracted and met.

5.10.7 Once a review has been completed a copy of the review paperwork must be sent to the Mental Health Act office identifying when the next review will be required.

[4] See Trust Recovery Co-Ordination policy – See References

5.10.8 Should other health or social care needs be assessed as required or changed as part the Section 117 review, these may not be provided under Section 117 however can be agreed through the usual commissioning processes.

5.10.9 The lead worker will ensure that a copy of the document recording the Section 117 review is sent to the Mental Health Act Administration Office, email: dpn-tr.MHAAAdministrator@nhs.net

5.10.10 Notification to the MHA Administration office should also confirm any changes to the care plan as agreed by panel where appropriate, and of the recommended future review date.

At a glance – transfer or responsibility in the event of a move out of county

If the person moves to a different county Devon Partnership Trust will transfer care to the local Mental Health provider. When a person has been moved out of area the local mental health provider will provide the health assessment for Section 117 and CPA reviews. In these instances Devon County Council will always be the lead organisation where it retains responsibility for social care.

6 Section 117 and Section 17 Leave

6.1 People subject to Section 17 leave under the MHA are covered by the Section 117 criteria. For any longer periods of leave there should be a Section 117 care plan to cover the period of leave and providing as necessary for:

- Supply of medication
- Emergency contact
- Any necessary support
- Leave address and any care arrangements
- Duration of S17 leave should be agreed at onset as part of the leave care plan

7 Discharge from Section 117

7.1 Discharge from Section 117 must always involve the person subject to Section 117 and where appropriate their carer.[5]

7.2 Once the person is no longer in need of aftercare services in respect of their mental health needs, they can be discharged from Section 117 after care.

7.3 Discharge from Section 117 is important in terms of the person's recovery and their expressed outcomes. Decisions about discharge should be based on the circumstances of each individual subject to review and should be considered as part of every CPA/Recovery Co-Ordination/Multi-Disciplinary review processes.

7.4 Within CPA/Recovery Co-Ordination, the Care/Recovery Co-ordinator will have a particular responsibility for considering the question of discharge from Section 117 and bringing it to the attention of the multi-disciplinary team. The decision to discharge from Section 117 will normally be made with input from the full multi-disciplinary team, including the responsible clinician. The

[5] Mental Health Code of Practice Chapter 27

responsible clinician and recovery coordinator will complete the Section 117 termination form and will send this to the MHA Administration office.

7.5 Where the person is not receiving social care services, only has contact with a Recovery/Care co-ordinator and the review occurs in outpatient clinics by the RC, consideration should be given to discharging the person from Section 117 aftercare. The services the person receives would continue if clinically required and not be affected by any change in Section 117 status.

7.6 If the person is no longer in need of mental health care and treatment, it will normally follow that they are also discharged from Section 117; however the following must be noted:

- People who no longer require active care/case management but still require a Section 117 service such as residential care may be placed on active review. The person will remain on the active review Section 117 list and require at least an annual review in line with this guidance.
- A person (who is not subject to a Community Treatment Order) who needs but is refusing treatment in the community may be discharged from treatment if they are not considered to be 'in contact' with services. If this position changes because they relapse or are re-referred or refer themselves, they are likely still to be covered by Section 117 if it is considered that the resumption of a service to them is the resumption of aftercare.
- Any unwillingness to receive after-care should not be equated with the absence of need for after-care; therefore Section 117 remains applicable.
- Aftercare services may be reinstated if it becomes obvious that they have been withdrawn prematurely e.g. where a person's mental health began to deteriorate immediately after they were withdrawn (MHA COP 33.22).

7.7 The Mental Health Act office will advise DCC (standard) brokerage of all termination of S117 arrangements to ensure that service agreements are terminated and the S117 key classification is ended.

8 Funding Process and Charges for Section 117

8.1 Charges for Section 117 Aftercare

8.1.1 Section 117 imposes a free-standing duty upon local health and social services authorities which does not include a power to charge for services. This provision does not extend to carers of people receiving Section 117 aftercare. Charges for after-care services will be met by the Local Authority Devon County Council (DCC) and Clinical Commissioning Group who have a joint responsibility for providing/commissioning after-care services under Section 117. This includes both health and social care services.

8.1.2 The Council and CCG will not pay for services not normally funded by their respective organisations e.g. food, clothing, household bills, rent, unless this is part of the assessed need met by full residential care. Other services attached to rent (which may include support services) are not classed as Section 117 services and charges may therefore apply. The lead worker/Recovery/Care Co-Ordinator/Case Manager will ensure the person subject to Section 117 accesses benefits to which they are entitled.

8.1.3 Where a person receiving aftercare under Section 117 is also receiving services for another reason unrelated to their mental health for example a physical disability, charges may be made for this part of their care, in accordance with the Council's charging policy.

8.1.4 Services which are specifically related to drug and alcohol problems rather than mental health (for example, residential rehabilitation) are not Section 117 services and charges may therefore apply Services (including residential care) which were provided to a service user living in the community, and charged for, prior to admission to hospital under one of the relevant sections

will be provided free of charge on discharge from hospital if the provision of that service is part of the Section 117 aftercare plan.

8.1.5 Section 117 funding will cover agreed increases in services for a service user already receiving 117 aftercare when needed to sustain him/her in the community and avoid future hospital admission and when agreed through the Recovery Co-ordination review process.

8.2 **Third Party/ Self Top Ups - only applicable to Social Care funded provision - Choice of Accommodation (Section 75 (6) of the Care Act)**

8.2.1 The Care Act amends Section 117 and allows the person and their family /carers greater choice of accommodation, by a new Section 117A the Secretary of State is empowered to make Regulations requiring a local authority to comply with a preference by P for particular accommodation, with P paying a top-up fee if the preferred accommodation is more than the authority's usual cost. In discharging the Section117 duty, the Council is permitted to provide the person with direct payments.

8.2.2 If the person with Section 117 aftercare or their family expresses a preference for particular accommodation it may be possible to allow that person's choice, where this is compatible with the individual's assessment of need.

8.2.3 Reasonable steps should be taken by health and social care authorities to facilitate individual choice.

8.2.4 The following sequence of steps must be followed and it is crucial that each stage is fully recorded and documented:

a) The local social services authority's assessment identifies a need for residential or nursing care; provision is identified that can meet eligible needs at the Local Authorities "usual cost", and an offer of funding made accordingly.

b) If the person with Section 117 aftercare expresses an alternative preference that meets the assessed needs and that is no more expensive than the local social services authority's (offered and vacant) choice, the authority will normally fund the service user's choice under Section 117.

c) If the person with Section 117 aftercare expresses an alternative preference that meets the assessed needs and that is more expensive that the local social services authority's (offered and available) choice, then the authority will consider permitting the service user or a third party to make up the difference between the cost of the authority's (offered and available) choice and the service user's preference through a **'top up' payment**.

d) For each 'top up' payment arrangement, confirmation should be sought of the service user agreement. There is no need to undertake a financial assessment but the risks detailed below must be clearly explained and recorded.

8.2.5 **Risks:** It is important to be clear about the risks attached to additional contribution arrangements and to share them with the service user and any third party:

a) If the 'top up payment' funding source runs out it may be necessary to move the service user to a less expensive placement or if their needs have become such that they have to remain in the preferred placement then the local health and social care agencies must pick up the full cost while they remain under section 117.

b) If the person with Section 117 aftercare is discharged from Section 117 and meets the eligibility criteria for social care services then usual financial arrangements will apply.

c) Any 'top up' payment arrangement for Section 117 must be agreed by the relevant joint locality/service/ area manager and county Placement Panel because of the risks involved.

8.2.6 **The funding of any care package while a patient is on Section 17 leave or S17A Community Treatment Order will be undertaken by the relevant health authority.**

8.2.7 **Once the person with Section 117 aftercare has been discharged from section 117 usual charging rules and financial assessment procedures will then apply.**

8.3 **Continuing Healthcare and Section 117**

8.3.1 The relationship between Section 117 and NHS Continuing Healthcare (CHC) is explained in the National Framework for NHS Continuing Healthcare and Funded NHS Funded Nursing Care (2009)[6].

8.3.2 Usually, an individual's eligibility for services under Section 117 should be considered before considering potential eligibility for CHC services. If all of the services which the eligible person requires are to be provided under Section 117 there will be no need to conduct a CHC assessment. All mental health after-care needs will be met under Section 117.

8.3.3 Where a CHC assessment is additionally conducted for an individual who is also eligible for Section 117 services, the CHC assessment should focus primarily on physical health needs. For further guidance on this issue professionals should consult the National Framework. In general, Section 117 eligibility should be considered ahead of a CHC assessment.

8.4 **Ordinary Residence- amendments introduced by the Care Act**

8.4.1 Ordinary residence in respect of social care support will be determined in accordance with the usual Ordinary Residence Guidance as outlined in the Care Act 2014, with any disputes arising to be determined by the Secretary of State.

8.5 **Responsibility for Funding Section 117 Aftercare**

8.5.1 Funding of Section 117 aftercare is a joint responsibility between DCC and CCGs.

8.5.2 All future Section 117 care will be jointly funded.

- In the DCC area the local CCGs and the DCC have come to an agreement whereby from 01 January 2018 all new Section 117 aftercare will be jointly funded. Anybody receiving Section 117 prior to 01 January 2018 will be funded in the same way they have been prior to 01 January 2018 unless there is a significant change to the careplan.

[6] National Framework for NHS Continuing Healthcare and Funded NHS Funded Nursing Care - July 2009 – From paragraph 112

9 Panel Processes: Roles and Responsibilities

9.1 Discharge from a mental health hospital

9.1.1 The Lead worker is responsible for making the funding application ensuring it is supported by the required documentation. See Appendix 1.

9.1.2 DCC's Personal Budgets Policy and Scheme of Delegation, provides the framework for authorisation of funding.

9.1.3 The DCC representative should support the multi-disciplinary assessment by providing an estimated budget calculation where appropriate funding agreement will be signed off.

9.1.4 The Scheme of Delegation (DCC) describes the authority within DCC to authorise funding. Individual managers (Team Managers or Community Services Managers) or panels should ensure that there is appropriate clinical expertise (from DPT) involved in the decision-making process. The application should include:

- Notes of Section 117 Discharge meeting
- Mental Health and social care core assessment (identifying estimated budget), and
- Support Plan (including identified provider where this has been identified, e.g. through Personal Brokerage Service).

9.1.5 Where the funding application exceeds the scope of frontline managers authorisation, the lead worker will ensure that documents presented for panel authorisation include an application for funding which summarises the options considered. The application should include:

- Notes of Section 117 Discharge meeting
- Mental Health and social care core assessment (identifying estimated budget), and
- Support Plan (including identified provider where this has been identified, e.g. through Personal Brokerage Service).

9.1.6 The DCC representative within the multi-disciplinary team will be able to provide local guidance about panel arrangements and timescales.

9.1.7 Locality Panels will confirm that the application for funding is supported by appropriate documentation, and will either authorise funding or forward the application to Senior Managers (via Devon Service Availability Meeting/Panel~~SAM~~) for authorisation as the Scheme of delegation determines.

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9.1.8 **The Lead Worker must ensure that a copy of the Funding Application, with Assessments and the S117 Support Plan is sent to the Mental Health Act Office for all S117 funded arrangements. Notification to the Mental Health Act Office should identify the worker/agency who will lead the review process.**

9.2 Review of S117 aftercare

9.2.1 In this instance the lead worker will be the mental health worker (care coordinator) if the individual is active on their caseload. If care of the individual has been discharged from the CMHT then the review will be led by the local authority. In this case the Mental health act office will contact the relevant cluster team advising that a review is due six weeks prior to the review date. The lead worker appointed by the local authority is

responsible for arranging a S117 review meeting patient and the family to review care and consider whether the person still needs S117 aftercare to support them to stay out of hospital.

9.2.2 The Lead worker is responsible for making the funding application ensuring it is supported by the required review documentation. See Appendix 2.

9.2.3 The DCC representative should support the multidisciplinary assessment by providing a budget calculation where appropriate for any increases in care required.

10 Access to Advocacy (Statutory Advocacy – IMHA and IMCA)

10.1 Section 130A MHA 1983 established arrangements for statutory MHA advocacy from 2009. The IMHA Service provides advocacy for people who have mental capacity but who are subject to compulsory powers under the MHA. This includes people who are in a psychiatric hospital and others who are subject to either S.17A Community Treatment Orders or Guardianship. Anyone who is directly involved in a person's care or treatment can refer to the IMHA Service, as can the individual themselves.

10.2

10.2 Under the Mental Capacity Act 2005, there has been a legal duty, since 2007, to refer Service Users to the Independent Mental Capacity Advocate (IMCA) Service, where they have been assessed as requiring to move to new residential accommodation, as part of the S117 MHA aftercare package, if they are deemed to lack capacity and have no relatives or family whom it is appropriate to consult. This referral must be made before the aftercare plan is implemented.

11.0 Complaints

11.1 If a Service User, or their representative, has a complaint regarding the operation of this policy, then this should in the first instance be addressed with their Recovery Co-ordinator/Care Manager and/or the relevant Team Manager. Where this is no successful then the complaint should be handled in line with the complaints procedures of the lead agency.

12 Training

12.1 Ward and Team Managers are responsible to ensure that all staff who work with Service Users subject to Section 117 maintain an up to date knowledge of the Mental Health Act 1983 and associated legislation as it applies within their practice.

12.2 All staff working with Service Users who are subject to S117 will have Mental Health Act training which includes all aspects of Section 117. The learning points from the training should be discussed with staff members as part of their 1:1 supervision/caseload review.

12.3 Compliance with training will be reported to the Mental Health Act and Mental Capacity Act Scrutiny Committee on a quarterly basis.

13 Monitoring of Section 117 arrangements

13.1 Team Managers, in collaboration with the Care Coordinators are responsible for monitoring the S117 aftercare arrangements for service through caseload management and S117/care planning reviews. They must ensure that all aspects of this policy are adhered to including training and appraisal and should report any problems, or concerns to the appropriate Service Manager and Locality Social Care Lead.

13.2 The Mental Health Manager will report S117 activities as part of Section 75 reporting. Activity and compliance with the S117 CareNotes Standard Operating Procedure will be monitored -

including aftercare planning on discharge, compliance with the Mental Health Act guiding principles, monitoring that reviews are undertaken on a timely and consistent basis and include all parties - and the outcome will be reported to the Directorates Senior Management, and the Mental Health Act and Mental Capacity Act Scrutiny Committee.

14 References

- Reference Guide to the Mental Health Act 1983 2015 Department of Health
- The Care Act 2014 Legislation.gov.uk
- Updated national framework for NHS continuing healthcare and related tools 28 November, 2012
- Dept. of Health
- Updated national framework for NHS continuing healthcare and related tools | Department of Health

- C40 Admissions, Transfers and Discharge policy
- Devon Partnership NHS Trust
- http://www.devonpartnership.nhs.uk/Publications (follow link, go to publications, and click policies)

- M08 Section 17 Leave Policy & Requirement
- Devon Partnership NHS Trust
- http://www.devonpartnership.nhs.uk/Publications (follow link, go to publications, and click policies)

- M01 Section 117 and After Care
- Devon Partnership NHS Trust
- http://www.devonpartnership.nhs.uk/Publications (follow link, go to publications, and click policies)

- C05 Wellbeing and Recovery policy
- Devon Partnership NHS Trust
- http://www.devonpartnership.nhs.uk/Publications (follow link, go to publications, and click policies)

Appendix A – Process Outline - OPMH

For full and up-to-date guidance please refer to online process maps:

DCC - http://dccchx03.devon.gov.uk/~acs-processes/

DPT – See references

- Detention in hospital under S3, 37, 47 or 48 of MHA.
- Initial S117 meeting convened (within 21 days of admission). Ward staff refer via Care Direct Plus for DCC representative to attend the initial S117 meeting.
- S117 Discharge Planning meeting (prior to discharge). Lead agency confirmed to co-ordinate support planning arrangements (Protocol Section 4.2)
- Mental Health and Social Care assessments completed (including estimated budget)
- Where the support required will exceed banded Residential/Nursing placement rates, Lead Worker completes My Plan and sends to Personal Broker Team (acspersonalbrokerage-mailbox@devon.gov.uk)
- Proposal of support arrangements submitted for funding authorisation before support is commissioned
- Funding authorisation:
  - Community-based support within scheme of delegation scope for PM authorisation => PM and Community Team Leader agree arrangements
  - Application sent to Locality Panel for residential/nursing placement; or support above estimated budget
  - Locality Panel sends authorisation request to Senior Manager representatives at Section 117 panel as identified within Scheme of Delegation

  Details of all funding agreements are sent to Mental Health Act Office for consideration by S117 panel as appropriate.

- The Person Brokerage Team will support the commissioning process where:
  a) cost for community based support exceeds £500, or
  b) cost of residential or nursing care is above the Local Authority agreed standard costs

  The Lead Worker will send information to the Personal Brokerage team:
  DCC lead worker – assign My Plan to PB team for system generated outcome Statement;
  DPT lead worker – complete Word Version Outcome statement and send via secure email.

- Lead worker is responsible for initiating the relevant support plan to commission support
- Lead worker sends notification to Mental Health Act office confirming S117 Support Plan – Accompanying documents include notes of S117 discharge planning meeting; assessment; funding agreement. Information sent will also confirm team/worker responsible to lead review process.
- Mental Health Act Office will send lead team/worker reminder of S117 review due
- Review at scheduled intervals (Protocol section 4.4 above). Lead worker sends MHA Office coy of review, support plan, and notifies and changes to S117 eligibility; support planned; and funding agreement. Lead Workers notifies MHA also of timescale and lead team/worker for future review.