**North Tyneside Council**

**Mental Health Act 1983**

**Section 117 aftercare**

**Practice and Process**

**(Draft March 2020 v x)**

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**Terminology / abbreviations:**

**Mental Health Act 1983 (MHA)**

**S/s117:** Section 117 of the Metal Health Act 1983; aftercare.

**Patient:** a person who has been detained under a qualifying part of the Mental Health Act 1983, who, when they leave hospital or prison, will be the subject of aftercare under s117 of the Mental Health Act.

**Local Social Services Authority (LSSA):** generic term referencing all local authorities in England. NT LSSA is specific reference being made to North Tyneside Local Authority in this document.

**Clinical Commissioning Group (CCG):** generic term referencing all Clinical Commissioning Groups in England. NT CCG is specific reference being made to North Tyneside Clinical Commissioning Group in this document.

**Responsible Authorities (RA):** A term to describe the pairing of LSSA and CCG who hold s117 responsibility toward a patient.

1. **Introduction (context and arrangement with Clinical Commissioning Group)**

The MHA places a joint duty on the LSSA and CCG to provide aftercare services under s117 (see Annex 1 for full text). Any services provided under s117 are free at the point of delivery to the person receiving them. The LSSA has no power to charge.

In law s117 stands alone and is not a duty to provide services under other legislation. S117 services can be provided as part of a broader plan of care and support being provided under other statutory arrangements such as the Care Act 2014. For Adults (18 years and over), since 1 April 2016[[1]](#footnote-1), in relation to CCGs, the duty is placed upon the CCG with whom the patients GP is registered at the time of the admission. For the LSSA, the duty rests with the area in which the patient resided (other than MHA detentions in prisons) immediately before admission to hospital[[2]](#footnote-2). Both the CCG and LSSA must work in cooperation with relevant agencies to provide aftercare services for any person to whom s117 applies. If, exceptionally, no place of residence / GP can be identified (possibly because the patient had been of no fixed abode at the time of admission), s117 responsibility will lie with the authorities for the area to which the patient will be discharged.

The purpose of s117 is to provide aftercare services for certain categories of mentally disordered patients who have ceased to be detained and leave hospital or prison, with the aim of enabling patients to return to their home or other accommodation, rather than a hospital, and to minimise the chance of a need for future in-patient care.

LAC (2000) 3/HSC 2000/0031 required the National Health Service (NT CCG) and Local Authorities (NT LA) to establish a jointly agreed policy for agreeing s117 services. There is no specific guidance within the MHA regarding the respective funding commitment between LSSA and CCG. Locally, to reflect the ‘joint’ nature of the Section 117 duty, a 50/50 funding arrangement has been agreed between NT CCG and NT LSSA[[3]](#footnote-3). Assessment care planning, commissioning and arranging services will be provided through the locally agreed Care Programme Approach (CPA), Care Co-ordination and Case Management processes. Locally, NT LSSA and NT CCG have agreed a s117 Panel arrangement, that meets monthly, to consider all new and review cases involving s117 aftercare plans. The Panels remit is to provide oversight and governance of planning and provision under s117. NT CCG and NT LSSA agree that for each individual patient, the aftercare plan will be unique to the patient. For some patients the plan will involve services provided by the existing ‘core services’ (nurses, social workers, support workers and doctors); for other patients it may involve the inclusion of additional services. NT LSSA undertakes the commissioning of additional services outside of the ‘core’. Both the NT CCG and NT LSSA will ensure that the funding of services under s117 are robust and that regular reviews of these take place. Both agencies agree the responsibility to ensure any package of care appropriately provides services to meet the needs of the patient and continues to provide value for money.

1. **The provisions of the MHA**

**2i)** S117 applies to any patient who is or has previously been detained in hospital under: -

* S3,

or

* A Hospital Order made under s37 (with or without Restriction Order made under s41),

or

* A Hospital Direction made under s45A (with or without a Limitation Direction),

or

* A Transfer Direction made under s47 or s48 (with or without a Restriction Direction),

and then ceases to be detained and leaves hospital or prison,

or

* S17 when on leave of absence from a qualifying detention order.

**2ii)** Patients treated as being detained under one of the above sections of the MHA following a transfer to hospital from Guardianship, or from outside England and Wales are also covered by s117.

S117 applies to all patient’s subject to a s17A Community Treatment Order (CTO) and patients subject to s37 with restrictions (s41). S117 cannot be discharged in advance of the discharge from CTO or 37/41.

**2iii)** Individuals eligible under s117 are still entitled to ‘universal’ health and social care services that they would receive irrespective of s117 eligibility e.g. GP, community nursing and Care Act assessment and planning for non-section 117 care services, care management services, carer support services. The costs of care services provided under the Care Act that do not form part of the s117 aftercare plan will be subject to means testing and where indicated charging.

**2iv)** S117 does not prescribe the type of service or organisation to provide the service, giving considerable discretion to CCGs and LSSAs as to the nature of the services that can be provided.

S117 (6) gives statutory definition to what constitutes an aftercare service under s117:

(6) In this section, “aftercare services”, in relation to a person, means services which have both of the following purposes:

1. **meeting a need arising from or related to the person's mental disorder;**

**and**

1. **reducing 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 mental disorder).**

**2v)** Aftercare services under s117 may therefore include, but are not restricted to, all community care services such as advice, guidance and counselling, occupation, social cultural or recreational activities as well as day centre and drop in provision, home care including laundry and other such services, residential care accommodation.

**2vi)** There is no reciprocal obligation within s117 for the patient to accept services proposed by the clinical team. A refusal to accept proposed services should be considered in the light of the risk assessment and the viability of discharge without the proposed service support.

**2vii)** The duty under s117 continues until the CCG and the LSSA are satisfied that the patient is no longer in need of the services that make up the section 117 aftercare plan. The duty is ended when there is agreement between the CCG and LSSA to discharge from S117 i.e. the statutory definition no longer applies. The patient and the agencies involved should be notified of a discharge decision. No discharge will take place whilst the person is a community patient (s37/41or s17A).

See standard discharge report (Annex 3)

1. **Other Funding support**

**3i)** Patients eligible under s117are, as noted above, entitled to be considered under the Care Act and NHS Continuing Healthcare for funding support for the costs of services that do not meet the s117 statutory definition.

1. **Choice of Accommodation and ‘Top Up’ Payments, MHA s117 aftercare**

**4i)** The Care Act 2014 introduces specific changes to s117 of the Mental Health Act 1983 via s75. S 75 makes 3 fundamental changes to s117 introducing a formal definition of “after care services” (noted above); clarifying the position regarding Ordinary Residence and arrangements regarding choice of accommodation / direct payments.

**4ii) North Tyneside Council Practitioner Guidance in relation to top ups and s117 planning**

* A patient or their representative may only be expected to make a top up payment if they have made an informed choice to enhance, extend or add to the care and support in a particular provision beyond the identified meeting of need within the assessment and plan, or, if they choose a provision that is more expensive than other appropriate provision that is available to them.
* Where there is no provision available to the patient at the cost the local authority has specified, at the time the provision is required, the local authority will not expect a top up to be paid for a more expensive appropriate provision.
* It is the responsibility of the case worker to ensure that the top up arrangement is clearly recorded in the plan and that all necessary arrangements regarding how the payment is to be made are in place.

**For detailed explanation of the above see Care Act 2014 Statutory Guidance: Annex A: Choice of accommodation and additional payments**

**Choice of accommodation and mental health after-care**

1. **S117 Process overview: North Tyneside Council Staff (NT LSSA)**

**Admission, assessment, care planning, discharge plans and responsibilities**

Admission, assessment, review and care planning for those patients eligible under section 117 should be undertaken within the agreed local frameworks and comply with the Mental Health Act Code of Practice, local Care Programme Approach (CPA)/care co-ordination arrangements.

**5i) Admission to hospital.**  Appropriate pre-discharge planning and co-ordination should begin as soon as the patient is admitted to hospital. Coordination should be led by the inpatient clinical team. The responsible inpatient team should always establish who the Responsible Authorities are as early as possible in the admission.

* Where the patient already has an allocated worker within NT LSSA; the worker will identify themselves, name contact number to the inpatient team at the earliest opportunity.
* Where the patient does not have an allocated worker from the NT LSSA; once notified of the admission, the appropriate team will allocate a worker. The worker will identify themselves , name contact number to the inpatient team at the earliest opportunity.
* Where the LSSA has an allocated worker for a person living in another LSSA area, the NT LSSA worker identify themselves to the inpatient team and confirm NT LSSA’s position regarding responsibility in terms of s117. If NT LSSA has determined that they do not hold responsibility under s117, the allocated worker will remain involved during the inpatient stay providing relevant assistance to the inpatient team and identified LSSA who are preparing the aftercare plan. If there are residual needs ‘outside s117’ NT LSSA will decide its position regarding responsibility to address these needs Care act 2014) and advise the clinical team accordingly.
* Where NT LSSA is contacted regarding a patient not known to the LSSA and the information available to the LSSA is insufficient to decide regarding s117 responsibility the relevant team within NT LSSA will request additional information of the clinical team in order that a decision can be made.
* In all cases where a NT LSSA worker is involved; their role will be to assist / support and facilitate assessment and aftercare planning. In some cases, they will become the lead for arranging and delivering the aftercare plan to facilitate discharge from hospital.

**5ii) Assessment.** A thorough assessment will involve consideration of the range of need / risk presented by the patient and will include liaison with relevant services, family members in the formulation of the assessment. Having completed the assessment the statutory definition of s117 should be applied to distinguish those aspects of the aftercare plan that fall within s117.

**5iii) Care Planning.** It is the responsibility of the Responsible Clinician (RC) to ensure discussion takes place to devise a care plan to meet the patient’s on-going health and social care needs when they leave hospital. This discussion should be multi-professional, involving both the inpatient clinical team and those who will be providing care and support in the community.

**5iv) Aftercare and Mental Health Review Tribunal/Managers’ Hearings.** The courts have stated that Section 117 does not constitute an absolute duty on the RA’s to satisfy any conditions that a mental health tribunal may specify as a prerequisite to discharge a patient. They must use their “best endeavours” to fulfil the conditions. A failure to use “best endeavours” may, in the absence of strong reasons, be an unlawful exercise of discretion. If, despite the exercise of all “best endeavours”, it proves impossible to fulfil the Tribunal’s conditions, the continued detention of the patient would not violate Article 5 of the European Convention of Human Rights (From: case law: R v MHRT & Others ex parte Hall April 1999).

**5v) Discharge from hospital.** Planning for discharge should start at the earliest opportunity and should include at the appropriate time, confirmation of NT LSSA’s funding decision regarding the proposed costs of the plan. NT LSSA operates a hierarchy of responsibility regarding funding commitments being made by the LSSA. Each plan should be ‘signed off’ by an officer of the LA who has authority to commit the proposed level of funding to deliver the aftercare plan. The responsible case manager should provide the s117 panel with relevant assessment(s) and plan in order that the NT CCG and NT LSSA are able to fulfil their duties under s117 by providing oversight and governance of the plan inclusive of the appropriateness of the proposed cost of the plan.

The North Tyneside s117 Panel meets formally on a monthly basis, to consider all new and review cases. In addition to this arrangement NT CCG and NT LSSA have developed virtual panel arrangement, to allow for oversight and consideration to take place between formal arranged meetings, of cases where there is an urgent need for the panel to consider an aftercare plan prior to an operational decision being implemented. Virtual panels take place between the formal meetings to avoid delay.

The aftercare plan should set out clearly the identified s117 aftercare services. Services being provided other than under s117 should also be clearly identified.

**5vi) Review**. Reviews are to be undertaken to reflect locally agreed standards and should also reflect the circumstances of the individual case, which may, in some cases, require review at a frequency above the minimum requirements. Each review must consider and record whether the patient continues to require services to be provided under s117. The s117 Panel will receive reviews as they arise.

**5vii) Discharge of Section 117.** At each review the statutory definition regarding s117 aftercare should be considered in relation to the needs presented and services being provided, and decisions made regarding s117 continued relevance.

The Mental Health Code of Practice stipulates that aftercare services under s117 should not be withdrawn solely on the grounds that:

* The patient has been discharged from the care of the specialist mental health services
* An arbitrary period has passed since the care was first provided
* The patient is deprived of their liberty under the Mental Capacity Act 2005
* The patient may return to hospital informally or under Section 2 MHA 1983
* The patient is no longer on Supervised Community Treatment (SCT), Section 17 leave or Section 37/41.

Section 117 can only be discharged when it is agreed by **both** the responsible CCG and LSSA that the patient is no longer in need of the services to meet their assessed aftercare needs, based on evidence of the reviews and regular monitoring in the community. Aftercare **must** continue until such time as both health and local authorities are satisfied the individual is no longer in need of such services. In the case of those subject to formal supervision (Community Treatment Order; Restricted Patients) under the Mental Health Act, no consideration of discharge from s117 will be made before the discharge of the supervision orders.

All cases must be considered individually. Aftercare provision under s117 does not have to continue indefinitely. It is the responsibility of the CCG and LSSA to decide in each individual case whether aftercare under section 117 should end considering the patient’s needs at the time.

See discharge documentation Annex 3

1. **Process for discharge from s117.**

**6.i)** Care should be taken to distinguish between the discharge / ending of elements or components of the aftercare plan and the recommendation that the CCG and LSSA discharge their duty toward the patient under s117. In terms of discharge, the Panel is concerned with the ending of the s117 duty NT CCG and NT LASSA hold toward the patient.

**6.ii)** The relevant case responsible worker completes the locally agreed discharge recommendation document (see Annex 3) and provides this with the review documentation for the Panel’s consideration.

**6.iii)** If the patient or their carer disagrees with any recommendation to discharge from s117, all attempts must be made to reach agreement, however the recommendation can still be made to the NT CCG and NT LSSA. The disagreement must be reported in full. The final decision to discharge a patient from s117 can only be made jointly by the NT CCG and NT LSSA.

**6.iv)** Where there is disagreement within the clinical team regarding discharge, the team should resolve the disagreement prior to a recommendation being made to the s117 Panel.

**6.v)** Where discharge is agreed by the Responsible Authorities the person will be advised in writing.

**6v)** Following discharge from section 117, NT CCG and NT LSSA recognise that they still have a duty to carry out an assessment should the patient appear to be in need of health and social care service (s).

1. **Reinstating s117**

**7i)** The Code of Practice at 33.22 states that “After-care services may be reinstated if it becomes obvious that they have been withdrawn prematurely, e.g. where a patient’s mental condition begins to deteriorate immediately after services are withdrawn. In such circumstances the responsible practitioner should immediately notify the s117 Panel, providing a rationale for reinstatement.

1. **Interplay with the provisions of the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care; *October 2018 (Revised); Published March 2018*:**

**Guidance:** Following assessment, practitioners must always address and formulate the s117 aftercare plan before considering NHS Continuing Health Care eligibility. NHS Funded Nursing Care eligibility is determined as per the Standing Rules irrespective of the persons’ status under s117.

Relevant extracts from the National Framework for NHS Continuing Health Care and Funded Nursing Care 2018, in relation to MHA s117 Aftercare and NHS Continuing Health Care below:-

**“When should a Checklist be completed?** (p30)

91. There will be many situations **where it is not necessary** to complete a Checklist. These include where:

• An individual is receiving services under Section 117 of the Mental Health Act that are meeting all their assessed needs.

**Section 117** (p83- 84)

309. CCGs and local authorities should be familiar with the relevant sections of the Mental Health Act 1983 (as amended).

310. Under section 117 of the Mental Health Act 1983 (‘section 117’), CCGs and local authorities have a joint duty to provide after-care services to individuals who have been detained under certain provisions of the Mental Health Act 1983. The duty applies when those individuals cease to be detained and are discharged from hospital (including on Section 17 leave, or under a Community Treatment Order under section 17a) until such time as the CCG and local authority are satisfied that the person is no longer in need of such services. Section 117 is a freestanding duty to provide after-care services to the individual for needs arising from, or related to, their mental disorder. CCGs and local authorities should have in place local policies detailing their respective responsibilities, including funding arrangements.

311. The Care Act 2014 [amended the Mental Health Act 1983], introduced a definition of section 117 after-care services as follows:

*‘services which have both of the following purposes—*

1. ***meeting a need arising from or related to the person’s mental disorder;***

***and***

***(b) reducing 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 mental disorder).’***

312. It is important to make a distinction between needs that must be met under section 117 arrangements, and, needs to be met under a different arrangement.

313. Responsibility for the provision of section 117 services lies jointly with local authorities and the NHS. Where an individual is eligible for services under section 117 these must be provided under section 117 and not under NHS Continuing Healthcare. It is important for CCGs to be clear in each case whether the individual’s needs (or in some cases which elements of the individual’s needs) are being funded under section 117, NHS Continuing Healthcare or any other powers.

314. There are no powers to charge for services provided under section 117, regardless of whether they are provided by the NHS or local authorities. Accordingly, the question of whether services should be free NHS services (rather than potentially charged-for social services) does not arise. It is not, therefore, necessary to assess eligibility for NHS Continuing Healthcare if all the services in question are in fact to be provided as after-care services under section 117.

315. However, a person in receipt of after-care services under section 117 may also have ongoing needs that do not arise from, or are not related to, their mental disorder and that may, therefore, not fall within the scope of section 117. Also a person may be receiving services under section 117 and then develop separate physical health needs (e.g. through a stroke) which may then trigger the need to consider NHS Continuing Healthcare, but only in relation to these separate needs, bearing in mind that NHS Continuing Healthcare must not be used to meet section 117 needs. Where an individual in receipt of section 117 services develops physical care needs resulting in a rapidly deteriorating condition which may be entering a terminal phase, consideration should be given to the use of the Fast Track Pathway Tool.

316. Local policies should be in place dealing with the approach to section 117 which should include apportionment of financial responsibility having regard to the nature of the services being provided.

317. Local authorities and CCGs may use a variety of different models and tools as a basis for working out how section 117 funding costs should be apportioned. However, where this results in a CCG fully funding a section 117 package this does not constitute NHS Continuing Healthcare.

318. It is preferable for the CCG to have separate budgets for funding section 117 and NHS Continuing Healthcare. Where they are funded from the same budget they still continue to be distinct and separate entitlements.

319. The legislation relating to assessment for NHS-funded Nursing Care contained in the Standing Rules, applies to section 117 individuals as it does to other individuals. (p83- 84)”

# S117 Local Authority responsibility: Care Act 2014.

# Care and support statutory guidance (Updated 12 February 2018):

“Practitioners are advised to affirm LA responsibility under s117

**Mental health after-care**

19.63 Under section 117 of the Mental Health Act 1983 (the 1983 Act), local authorities together with CCGs have a joint duty to arrange the provision of mental health after-care services for people who have been detained in hospital for treatment under certain sections of the 1983 Act. After-care services must have both the purposes of ‘meeting a need arising from or related to the person’s mental disorder’ and ‘reducing 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 mental disorder.’ The range of services which can be provided is broad.

19.64 The duty on local authorities to commission or provide mental health after-care rests with the local authority for the area in which the person concerned was ordinarily resident immediately before they were detained under the 1983 Act, even if the person becomes ordinarily resident in another area after leaving hospital.

19.65 Although any change in the patient’s ordinary residence after discharge will affect the local authority responsible for their social care services, it will not affect the local authority responsible for commissioning the patient’s section 117 after-care. Under section 117 of the 1983 Act, as amended by the Care Act 2014, if a person is ordinarily resident in local authority area (A) immediately before detention under the 1983 Act, and moves on discharge to local authority area (B) and moves again to local authority area (C), local authority (A) will remain responsible for providing or commissioning their aftercare. However, if the patient, having become ordinarily resident after discharge in local authority area (B) or (C), is subsequently detained in hospital for treatment again, the local authority in whose area the person was ordinarily resident immediately before their subsequent admission (local authority (B) or (C)) will be responsible for their aftercare when they are discharged from hospital.

19.66 If, however, a patient is not ordinarily resident in England or Wales immediately before being detained, the local authority responsible for commissioning the patient’s after-care will be the one for the area in which the patient is resident. Only if that cannot be established, either, will the responsible local authority be the one for the area to which the patient is sent on discharge. However, local authorities should only determine that a person is not resident anywhere as a last resort.

19.67 Section 39(4) of the Care Act is a deeming provision that applies to any person who is provided with accommodation as part of their aftercare. The effect of section 39(4) is that the person is deemed, for the purposes of Part 1 of the Care Act, to be ordinarily resident in the area of the local authority responsible for the person’s aftercare. Section 39(4) will apply to any person who receives after-care on leaving hospital on or after 1 April 2015, irrespective of the date that they were discharged from detention under any of the relevant provisions cited in section 117(1).

19.68 There are several provisions in the Care Act (section 39(1)-(3) and (5)-(7) and paragraph 2 of Schedule 1) which deem a person to be ordinarily resident in a particular local authority’s area in specified circumstances for the purposes of Part 1 of the Act. These deeming provisions do not apply to section 117 of the 1983 Act, nor have they been incorporated into section 117 of the 1983 Act.

19.69 If there is a dispute between local authorities in England about where the person was ordinarily resident immediately before being detained, this will be determined by the process set out in section 40 of the Care Act. Disputes between a local authority in England and a local authority in Wales will be determined by the Secretary of State for Health or the Welsh Ministers. The Secretary of State and the Welsh Ministers have published arrangements for [determining which of them will determine such disputes](https://www.gov.uk/government/publications/mental-health-aftercare-in-england-and-wales)”.

**Annex 1**

**Mental Health Act 1983**

117 After-care.**E+W**

(1)This section applies to persons who are detained under section 3 above, or admitted to a hospital in pursuance of a hospital order made under section 37 above, or transferred to a hospital in pursuance of a hospital direction made under section 45A above or a transfer direction made under section 47 or 48 above, and then cease to be detained and (whether or not immediately after so ceasing) leave hospital.

(2)It shall be the duty of the clinical commissioning group orLocal Health Board and of the local social services authority to provide or arrange for the provision of, in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies until such time as the clinical commissioning group orLocal Health Board and the local social services authority 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 community patient while he remains such a patient.

(2A)

(2B) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

(2C) References in this Act to after-care services provided for a patient under this section include references to services provided for the patient—

(a) in respect of which direct payments are made under

(i)sections 31 to 33 of the Care Act 2014 (as applied by Schedule 4 to that Act),

(ii)sections 50, 51 and 53 of the Social Services and Well-being (Wales) Act 2014 (as applied by Schedule A1 to that Act), or

(iii)regulations undersection 12A (4) of the National Health Service Act 2006, and

(b)which would be provided under this section apart from those sections (as so applied) orthe regulations.

(2D) Subsection (2), in its application to the clinical commissioning group, has effect as if the words “provide or” were omitted.

(2E)The Secretary of State may by regulations provide that the duty imposed on the clinical commissioning group by subsection (2) is, in the circumstances or to the extent prescribed by the regulations, to be imposed instead on another clinical commissioning group or the National Health Service Commissioning Board.

(2F) Where regulations under subsection (2E) provide that the duty imposed by subsection (2) is to be imposed on the National Health Service Commissioning Board, subsection (2D) has effect as if the reference to the clinical commissioning group were a reference to the National Health Service Commissioning Board.

(2G) Section 272(7) and (8) of the National Health Service Act 2006 applies to the power to make regulations under subsection (2E) as it applies to a power to make regulations under that Act.

(3) In this section “the clinical commissioning group or ... Local Health Board” means the clinical commissioning group or. Local Health Board, and “the local social services authority” means the local social services authority

(a)if, immediately before being detained, the person concerned was ordinarily resident in England, for the area in England in which he was ordinarily resident;

(b)if, immediately before being detained, the person concerned was ordinarily resident in Wales, for the area in Wales in which he was ordinarily resident; or

(c)in any other case for the area in which the person concerned is resident or to which he is sent on discharge by the hospital in which he was detained.

(4) Where there is a dispute about where a person was ordinarily resident for the purposes of subsection (3) above—

(a)if the dispute is between local social services authorities in England, section 40 of the Care Act 2014 applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of Part 1 of that Act;

(b)if the dispute is between local social services authorities in Wales, section 195 of the Social Services and Well-being (Wales) Act 2014 applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of that Act;

(c)if the dispute is between a local social services authority in England and a local social services authority in Wales, it is to be determined by the Secretary of State or the Welsh Ministers.

(5)The Secretary of State and the Welsh Ministers shall make and publish arrangements for determining which of them is to determine a dispute under subsection (4)(c); and the arrangements may, in particular, provide for the dispute to be determined by whichever of them they agree is to do so.

(6) In this section, “aftercare services”, in relation to a person, means services which have both of the following purposes—

(a)meeting a need arising from or related to the person's mental disorder; and

(b)reducing 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 mental disorder).

**Annex 2**

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| **Minimum Data set required in all s117 reports** | |
|  | **Notes** |
| 1.The patients name | Person identifier |
| 2.The patients date of birth | Person identifier |
| 3.The patients NHS number | Person identifier |
| 4.The patients LA reference number | Person identifier |
| 5.The date of the patients most recent detention under the MHA that creates s117 eligibility. | The date the application under the MHA was accepted by the hospital or the date of the order transferring the person to hospital from prison. |
| 6.The address in the community where the patient was resident immediately before the detention recorded in 5 above | Address is important because it will determine the responsible LA in terms of s117. For some long stay patients and prisoners, it will be necessary to research the records to confirm this address.  Where the patient is admitted informally or subject to s2 the address will be where the person was resident before being admitted to hospital.  For s17a CTO patients the relevant address is the one held before the original s3 detention (5 above) – recall from another address post the implementation of CTO does not change the responsible LA. |
| 7.The name of the GP and Practice the patient was registered with prior to being admitted to hospital and the detention in hospital being applied | GP/Practice is important because it will determine the responsible CCG. |
| **General note**: Responsible LA and CCG must be determined after each new episode of detention under the MHA. | |

**Annex 3**

**North Tyneside Clinical Commissioning Group**

**& Local Authority**

**Mental Health Act 1983**

**Mental Health Act 1983 Recommendation for the discharge of eligibility under S117 (aftercare)**

Guidance

This document should be completed by the Responsible Clinician; care coordinator or case manager on behalf of the clinical team responsible for the person and forwarded (electronically) to the North Tyneside S117 Panel. A recommendation for the discharge from eligibility under S117 must not contravene the provisions of the Mental Health Act or Code of Practice:

MHA Code of Practice Chapter 33:

“Ending section 117 after-care services

33.20 The duty to provide after-care services exists until both the CCG and the local authority are satisfied that the patient no longer requires them. The circumstances in which it is appropriate to end section 117 after-care will vary from person to person and according to the nature of the services being provided. The most clear-cut circumstance in which after-care would end is where the person’s mental health improved to a point where they no longer needed services to meet needs arising from or related to their mental disorder. If these services included, for example, care in a specialist residential setting, the arrangements for their move to more appropriate accommodation would need to be in place before support under section 117 is finally withdrawn. Fully involving the patient and (if indicated) their carer and/or advocate in the decision-making process will play an important part in the successful ending of after-care.

33.21 After-care services under section 117 **should not** be withdrawn solely on the grounds that:

• the patient has been discharged from the care of specialist mental health services

• an arbitrary period has passed since the care was first provided

• the patient is deprived of their liberty under the MCA

• the patient has returned to hospital informally or under section 2, or

• the patient is no longer on a CTO or section 17 leave.

33.22 After-care services may be reinstated if it becomes obvious that they have been withdrawn prematurely, e.g. where a patient’s mental condition begins to deteriorate immediately after services are withdrawn.

33.23 Even when the provision of after-care has been successful in that the patient is now well-

settled in the community, the patient may still continue to need after-care services, eg to

prevent a relapse or further deterioration in their condition.

33.24 Patients are under no obligation to accept the after-care services they are offered, but any

decisions they may make to decline them should be fully informed. An unwillingness to accept

services does not mean that patients have no need to receive services, nor should it preclude

them from receiving them under section 117 should they change their minds.”

For full detail see Chapter 33 of the Code of Practice, ‘After-care’ (to be read in conjunction with Chapter 34).

**Review report and recommendation**

To be completed in full by the Care coordinator / case manager

|  |  |
| --- | --- |
| Name of Patient to whom this recommendation refers: |  |
| The Patients date of birth: |  |
| Name of responsible Clinical Commissioning Group |  |
| Name of responsible Local Authority |  |
| The Patients NHS reference number |  |
| The Patients Local authority reference number |  |
| The address to which notice of discharge from s117 should be sent: |  |
| Does the patient have the mental capacity to understand and form opinions about discharge from S117 eligibility? | |  |  |  |  | | --- | --- | --- | --- | | yes |  | no |  | |
| Does the patient have a representative? | |  |  |  |  | | --- | --- | --- | --- | | yes |  | no |  | |
| Name of patients representative if someone is acting in this role |  |
| Under what arrangements is the representative operating: Family, IMCA, RPR, IMHA, Solicitor etc |  |
| Address and contact details of patients representative if someone is acting in this role |  |
| Name of persons GP: |  |
| GP’s address: |  |
| Date the patient was last detained under relevant section of the Mental Health Act: |  |
| Please list the name, designation and contact details of all those who have contributed to this review and recommendation: |  |
| Please give the date this recommendation was made: |  |
| Please give the name of the NHS Mental Health Trust who is or was last involved with the person. |  |
| Please describe the present circumstances of the person and the rational for the recommendation: | |
| Is the patient living safely in the community without risk, because of mental disorder, to themselves or others? | |  |  |  |  | | --- | --- | --- | --- | | yes |  | no |  | |
| If the answerer is “no” please explain: |  |
| Does the patient have needs now that are related to or arising from their mental disorder? | |  |  |  |  | | --- | --- | --- | --- | | yes |  | no |  | |
| Are / would the provision of services now, to meet the needs related to or arising from the patients’ mental disorder reduce the risk of readmission to hospital for treatment of mental disorder? | |  |  |  |  | | --- | --- | --- | --- | | yes |  | no |  | |
| Guidance: If the answerer to the two questions above is ‘yes’, discharge from S117 eligibility is **NOT** indicated | |
| Are any of the services provided as part of the S117 aftercare plan, planned to continue after the discharge of S117? – please list if the answerer is yes. | |  |  |  |  | | --- | --- | --- | --- | | yes |  | no |  | |
| If services previously provided under S117 are planned to continue, please explain why the review considers that they do not meet the definition of S117 aftercare: | |
| Is the patient or their representative aware that this recommendation is being made? If the answerer is “no” please explain. | |  |  |  |  | | --- | --- | --- | --- | | yes |  | no |  | |
| Does the patient or their representative object or disagree with the recommendation to discharge from S117? If the answerer is “yes” please explain their reasoning. | |  |  |  |  | | --- | --- | --- | --- | | yes |  | no |  | |
| Recommendation | I (name of person completing this document [Print]):  Make recommendation on behalf of those who have contributed to this review that (name of person this document refers to [Print]):  Is discharged from eligibility under S117 of the Mental Health Act 1983.  Date : |
| Guidance: Should the review consider it appropriate or necessary to provide additional supporting information that informs this recommendation it should be attached with this document | |
| Notice of the decision of the clinical commissioning group and local authority will be shared with | * The person * The Persons representative (if one involved) * The Persons GP * The NHS Mental Health Trust last involved with who the person (mental health Act office) * The responsible Local Authority * The responsible Clinical Commissioning Group |
| Should anyone else require notification please give name(s) and contact details. |  |

To be completed by the North Tyneside s117 Panel

|  |  |
| --- | --- |
| Date of Panel Meeting |  |
| Name and Job Role of clinical commissioning group & local authority representative(s) in attendance at Panel |  |
| The s117 Panel agree with the recommendation of the review | |  |  |  |  | | --- | --- | --- | --- | | yes |  | no |  | |
| Notes regarding the Panels decision: | |

**Annex 4a (page 1)**

North Tyneside Council

**S117 decision pathway: Mental Health Act s117 – assessment and planning**

**Person detained in hospital under provision of the MHA which will lead to the application of s117 aftercare when they leave hospital or Prison.**

North Tyneside Council establishes what its responsibilities toward the patient will be at the point of discharge from hospital.

Where there is an allocated local authority case worker- worker links with inpatient team to support discharge planning.

**In patient team lead assessment and planning for aftercare care and support****.**

Where there is no allocated local authority case worker- worker allocated.

Where the person already has a s117 aftercare plan and has an allocated local authority case worker but has been detained again under a relevant section of the MHA which has the effect of changing local authority responsibility under s117 the existing case worker will remain involved during the inpatient stay to advise the clinical team and receiving LA of relevant information that will assist the formulation of the new aftercare plan.

Where local authority worker is the identified care co-ordinator or case manager or key worker. The worker will complete the local; authority aftercare planning documentation and submit this via the local authority management / approval arrangements to the s117 Panel.

**Proposed aftercare plan developed by inpatient MDT. The components of the plan that are considered as coming within statutory definition of s117 identified within the plan.**

Where there is no role for the local authority worker within the aftercare plan or the local authority in arranging services within the plan, LA case involvement will close.

Responsibility to review assessment and plan resides with the NHS.

Communication with the S117 Panel rests with the NHS Case worker see annex 2(b) and 2(c) below for actions regarding actions for NHS case workers

Where an NHS worker is the identified care co-ordinator, or case manager or key worker **and** there is, within the aftercare plan a requirement to make arrangements for additional service support beyond that which is provided by the core mental health services, the local authority worker will work with the NHS worker to complete the local authority aftercare planning documentation and submit this via the local authority management / approval arrangements to the s117 Panel.

In cases of CTO review where there is no other local authority involvement the AMHP undertaking the review will complete the relevant aftercare planning documentation and forward this via the local authority management approval processes to the s117 Panel.

Aftercare assessment and plan sent to North Tyneside CCG and LA s117 Panel – see next page

**Annex 4a(page 2)**

North Tyneside Council

**S117 decision pathway (s117 Panel)**

**S117 Panel meets on the first Monday of each month – agenda for the meeting is distributed to Panel members on the Wednesday before the Panel meets. This is to allow time for the Panel members to read the assessments and plans for the meeting.** Panel consists of a minimum of one representative from North Tyneside CCG and LA.

Administrator creates Panel agenda and attaches all the documents received regarding each patient. Agenda and documents emailed to the Panel members.

Agenda consists of:

Hospital aftercare assessments & plans

Reviews

Recommendations for discharge of s117

Information re virtual panel decisions

Panel members review documents provided pre-Panel

Panel members may seek clarification regarding aspects of the assessment and plan prior to the Panel meeting.

S117 Panel meeting

Members review cases - considering: 1. who are the s117 responsible authorities,

2. Does the assessment and plan contain sufficient information upon which the Panel can agree to make decisions, 3. From the information provided the plan appears proportionate and appropriate in addressing identified needs / risks, 4. That the services identified within the plan as s117 come within the statutory definition of s117 (s117 (6) *above annex 1*)

S117 administration completes and distributes decision sheet for each patient discussed at Panel. Decision sheets sent to relevant agency contacts who are responsible for updating their systems and notifying their workers of the outcome of the Panel meeting.

Recharge arranged by NT LA finance services to NT CCG.

*See next pages for review, discharge and virtual panel*

**Annex 4a (page 3)**

North Tyneside Council

**S117 decision pathway (Reviews),**

**Reviews**

North Tyneside CCG and LA expect that aftercare plans involving s117 services, will at a minimum, be reviewed every 12 months. It is anticipated that reviews may occur earlier in some cases because of changing circumstances / need.

Where an aftercare plan is being delivered solely by the NHS and those involved feel it may be necessary to commission additional services under s117 the case responsible worker should refer to the LA for the involvement of an LA worker in the review.

Process led by case worker responsible for coordinating aftercare planning.

If additional services identified at review, revised assessment and plan to be agreed via LA authorisation processes prior to presentation at s117 Panel.

Review

If additional services are required, LA worker involved will work with NHs worker to complete relevant aftercare documentation and obtain authorisation via LA agreed process

Updated assessment and aftercare plan (the review) submitted to s117 administration for inclusion in s117 Panel agenda.

S117 Panel consider the review information and make decisions re s117 on the information provided. Panel decision sheet circulated following meeting.

**Annex 4a (page 4)**

North Tyneside Council

**S117 decision pathway**

**Discharge from s117**

Process led by case worker responsible for coordinating aftercare planning.

Review

Outcome of review – statutory definition of s117 aftercare servicers no longer applies.

Case worker responsible for aftercare plan submits review documentation plus discharge recommendation document (see annex 3 below).

*Documents (review and discharge recommendation) sent to s117 panel administration for inclusion in next Panel meeting agenda*

If discharge recommendation **accepted**  by the LASSA and CCG:

Standard letter sent to the person to confirm discharge of s117 as per review recommendation.

Copy of discharge letter sent to LSSA and NHS for inclusion in patients record.

LSSA record updated, s117 flag in system given an end date.

If discharge recommendation **not accepted**  by the LASSA and CCG:

Case worker responsible advised by nominated member of the s117 Panel of the reason(s) for recommendation not being accepted by the LSSA and CCG.

Agreed course of action planned.

**Annex 4a (page 5)**

North Tyneside Council

**S117 decision pathway**

**Virtual Panel**

North Tyneside CCG and LA s117 Aftercare Panel meets formally once each calendar month – both the CCG and LA recognise that it may be necessary for the Panel to formally consider an assessment and aftercare plan in the periods between the formal meetings.

The reasons for immediate decisions may be varied for example: the proposed provider is unwilling to commit resources until a formal decision is confirmed or the costs of the plan are such that senior officers in both organisations require the Panel to affirm s117 services within the plan prior to the funding agreement or the Patient is unwilling to agree the plan until the s117 components of the plan are formally agreed by the CCG and LA. These examples are not ehaustive.

The Virtual Panel exists to respond to urgent requests for the aftercare assessment and plan to be reviewed by the Panel. The aim of the Virtual Panel is to avoid unnecessary delay being caused by the s117 aftercare processes.

The Virtual Panel can be triggered by Panel representatives of the CCG or LA on receipt of s117 assessment and plan.

Case responsible worker discuses position with their supervisor.

Agreement that assessment and plan should be considered by the s117 Virtual Panel.

Assessment and Plan sent to any one of the s117 Panel members by case worker.

Panel member who receives VP request shares aftercare assessment and plan with other Panel members.

Virtual conversation between Panel members using secure email – additional information sought from case worker if required. Virtual Panel makes decision re s117 – reports this to Case Worker

*Documents shared with s117 panel administration by Panel member who received the initial request, along with confirmation of outcome of Virtual Panel discussion.*

*Name of person will be included in next planned Panel agenda, Formal confirmation and production of decision sheet will follow from next meeting of this s117 Panel.*

Annex 4 (b)

Northumbria Health Care

Annex 4(c)

Cumbria, Northumberland Tyne and Wear Mental health trust

1. Identifying responsible CCG prior to 1 April 2016 consult responsible commissioner’s guidance / rules 2012 which came into effect from 1 April 2013 [↑](#footnote-ref-1)
2. For Children and young people consult separate provisions in relation to s117 [↑](#footnote-ref-2)
3. Note exclusion from s117 at s117B [↑](#footnote-ref-3)