

## **Section 117: After-Care under the Mental Health Act 1983/2007 Herefordshire Joint Policy**

This policy describes the statutory framework for managing and supporting persons to whom section 117 of the Mental Health Act 1983 applies across Herefordshire. The purpose of the policy is to:

- provide a consistent approach across Herefordshire and Worcestershire ICS; and
- clarify agreements for the funding of Section 117 between the CCG and the local authority.

**This document is not exhaustive and it recognises that although correct at the time of distribution there are likely to be changes to national legislation/guidance/policy developments or case law. This document should NOT be used as a substitute for seeking legal advice when required.**

Document Control Summary		
Status:	Final version 30 June 2021	
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Approved by:		Date:
Implementation Date:		
Review Date:		
Associated Policy or Standard Operating Procedures	Section 117: After-Care under the Mental Health Act 1983/2007 Herefordshire Standard Operating Procedure	

## Contents

	Page
1.0 Introduction .....	3
2.0 Scope of Policy .....	3
3.0 Purpose of Section 117 and When It Applies .....	4
4.0 Ordinary Residence and Responsible Commissioner Guidance .....	4
4.3 Commissioning Responsibility: Local Authority .....	4
4.4 Commissioning Responsibility: CCG .....	5
5.0 The Persons Rights .....	6
6.0 Section 117 and Children and Young People .....	7
7.0 Health and Social Care Needs Assessment – Discharge Planning	8
8.0 Funding Aftercare Plans .....	9
9.0 NHS Continuing Healthcare (Adults) and Continuing Care (Children) ..	9
10.0 NHS Funded Nursing Care .....	10
11.0 Local Authority Care and Support Planning .....	10
12.0 Direct Payments and Personal Health Budgets.....	10
13.0 Accommodation Needs under s117.....	11
14.0 Reviewing Section 117 Aftercare Plans .....	11
15.0 Complaints and Disputes .....	12
16.0 Authority to Discharge from Section 117 .....	12
17.0 Out of Area s117 placements and Transfer of Responsibility .....	13
18.0 Monitoring Compliance and Effectiveness .....	14
19.0 Section 117 Register .....	14
20.0 References .....	15
Annex 1 Key Words and Phrases Used in This Framework .....	16
Annex 2 Joint Funding Arrangements between Herefordshire Council and Herefordshire and Worcestershire CCG .....	18
Annex 3 Review and Monitoring Oversight Group Terms of Reference .....	19

## **1.0 Introduction**

- 1.1 Section 117 of the Mental Health Act 1983/2007 (MHA) places a joint duty on local NHS and local authorities with social services functions to provide or arrange for aftercare services for people that have been sectioned under the treatment sections of the Mental Health Act 1983, namely Sections 3, 37, 45A, 47 and 48 and then cease to be detained and leave hospital.
- 1.2 Section 117 aftercare services refers to services which have the purpose 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).
- 1.3 Section 117 gives considerable discretion to health and local authorities as to the nature of the services that can be provided. These include support with: management of medication and mental health needs; activities of daily living which enables a person to remain a full part of their community; employment services, supported accommodation and services to meet the person's wider social, cultural and spiritual needs.
- 1.4 Aftercare services only relate to those needs which arise directly from or are related to the person's mental disorder and help to reduce the risk of deterioration in the person's mental condition. It may be that the person also requires other support services in the community which are not part of their section 117 aftercare plan, and these should be provided accordingly under the relevant legislative provisions (e.g. the Care Act 2014).
- 1.5 Services should be provided in co-operation with the relevant voluntary agencies.
- 1.6 Identifying which elements of a person's care might be eligible under section 117 can be complex, especially when determining what is a health need and what is a social care need. Therefore, all those to whom this policy applies pursuant to paragraph 2.4 will work together to ensure that all identified aftercare needs are met.

## **2.0 Scope of Policy**

- 2.1 This Policy should be read in conjunction with the Herefordshire Standard Operating Procedure and the relevant legislation and guidance
- 2.2 This Policy applies to people of all ages including children and young people who have been detained in hospital under the MHA under sections 3, 37, 45A and 47/48 of the Act and then cease to be detained and leave hospital. This includes patients granted leave of absence under section 17 and patients going on CTOs.
- 2.4 This Policy and any associated documentation applies to:
  - Herefordshire Council
  - Herefordshire and Worcestershire Clinical Commissioning Group
  - Herefordshire and Worcestershire Health and Care NHS Trust

### 3.0 Purpose of Section 117 and when it applies

3.1 The primary purpose of section 117 is to:

- meet a need arising from or in relation to a person’s mental disorder;
- reduce the risk of deterioration of a person’s mental condition; and
- reduce, therefore, the risk of a person requiring admission to hospital again for treatment for mental disorder.

3.2 Aftercare can be a vital component in a person’s overall treatment and care. As well as meeting immediate needs for health and social care, aftercare should aim to support a person in regaining or enhancing their skills. It is therefore important that section 117 aftercare is effectively managed and delivered to improve the outcomes for the person and their carers and families.

3.3 Section 117 aftercare provisions only apply to people who have been detained in hospital under one the following sections of the MHA.

Section 3	Detained for treatment
Section 37	Admitted to hospital by an order of the Court
Section 45A	Admitted to hospital by a direction of the Court
Section 47	Removal to hospital of a person serving sentence of imprisonment
Section 48	Removal to hospital of other prisoners

### 4.0 Ordinary Residence and Responsible Commissioner Guidance

4.1 No necessary assessment, care or treatment should be refused or delayed because of uncertainty or ambiguity as to which NHS commissioner or local authority is responsible for funding an individual’s health or social care provision.

4.2 Unless stated otherwise in the following sections, the overriding principle is that the originating authority or body with responsibility for commissioning section 117 services i.e. the authority or body where the patient is registered prior to their detention, is also the authority or body who is responsible for paying for the commissioned 117 aftercare services regardless of where the patient is treated or placed

#### 4.3 Commissioning Responsibility: Local Authority

4.3.1 The duty on local authorities to commission or provide section 117 aftercare rests with the local authority for the area in which the person concerned was ordinarily resident immediately prior to that period of detention under the MHA

4.3.2 In relation to any additional care and support needs that an individual may have (which are not part of the Section 117 aftercare plan), if that individual is being provided with accommodation under Section 117, they are to be treated as being ordinarily resident for the purposes of the Care Act, in the area of the local authority which has the duty to provide aftercare. This is to ensure that the same local authority will be responsible for both.

4.3.3 If the person is subsequently detained before being discharged from section 117 aftercare, the responsible local authority becomes the authority in whose area the person is ordinarily resident at the time that period of detention commences. To quote the judgement in *R(Worcestershire County Council) v Secretary of State for Health and Social Care* [2021] EWHC 682 (Admin): “ 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 aftercare. 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 after-care. 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 after-care when they are discharged from hospital”.*

- 4.3.4 Where a dispute arises between local authorities, the local authority that is meeting the needs of the person on the date that the dispute arises must continue to do so until the dispute is resolved. If no local authority is currently meeting the person's needs, then the local authority where the person is living or is physically present should accept responsibility until the dispute is resolved. The dispute resolution process to be followed by local authorities is set out in The Care and Support (Disputes between Local Authorities) Regulations 2014.
- 4.3.4 It should be noted that the rules for determining the responsible local authority applies to children and young people as well as adults.

#### **4.4 Commissioning Responsibility: CCG**

- 4.4.1 Where, after the 1 September 2020, a person is detained under the relevant section of the MHA, and is not already in receipt of section 117 aftercare, the responsible CCG for section 117 after discharge will be the 'originating CCG' defined as:
- Where a person is registered on the list of NHS patients of a GP practice, even if on a temporary basis, the CCG of which the GP practice is a member.
  - Where a person is not registered with a GP practice, the CCG in whose geographic area the person is "usually resident". This includes people of 'no fixed abode'. Appendix 2 of 'Who Pays?' Guidance (August 2020) provides more details on determining usual residence.
- 4.4.2 Where, at 1 September 2020, a person has been discharged from detention and is already receiving s117 aftercare, funded in part or whole by a CCG, that CCG will remain responsible for funding the aftercare – and any subsequent further detentions or voluntary admissions – until such point as the person is discharged from section 117 aftercare.
- 4.4.3 Where, at 1 September 2020, a person is detained in hospital funded by a CCG, that CCG will be responsible for funding the full period of detention and any necessary NHS aftercare on discharge – and any subsequent further detentions or voluntary admissions – until such point as the person is discharged from section 117 aftercare.
- 4.4.4 Where, at 1 September 2020, a person is detained in hospital funded by NHS England, the CCG which will be responsible for funding any further detention in a CCG-funded hospital setting and any necessary NHS aftercare (including any subsequent further detentions or voluntary admissions, until such point as the person is discharged from section 117 aftercare) will be the responsibility of the CCG in whose area the person was registered, or where not registered usually resident, at the start of the period of detention in hospital funded by NHS England.

- 4.4.5 Where, after 1 September 2020, a child or young person aged under 18 years is placed out of area under the Children Act 1989 and is subsequently detained under the MHA and becomes section 117 eligible on discharge, and is still detained on their 18<sup>th</sup> birthday, the CCG which will be responsible for funding the continued period of detention and any necessary NHS aftercare (including any subsequent further detentions or voluntary admissions, until such point as the person is discharged from section 117 aftercare) will be the originating CCG at the time of the care placement.
- 4.4.6 The CCG who is responsible for section 117 aftercare is not necessarily the responsible CCG for meeting other health needs. The CCG responsible for meeting other health needs (e.g. for physical health, FNC or CHC) will be the CCG in whose area the person is registered, or where not registered deemed to be usually resident.
- 4.4.7 Given Herefordshire and Worcestershire ICS proximity to Wales, there may be occasions where cross-border disputes arise between NHS commissioning bodies. Guidance on managing and resolving these are contained in paragraph 19 of the 'Who Pays?' Guidance (August 2020).
- 4.4.8 Where a dispute takes place between CCGs about responsibility for commissioning, the commissioners must agree that (a) one of them will take responsibility for arranging for assessment and planning for the person, and for arranging appropriate aftercare services; and (b) all costs are jointly funded pending resolution of the dispute. Once the dispute is resolved, the CCG which is no longer deemed responsible will be reimbursed. The dispute resolution process to be followed by CCGs is set out in Appendix 1 of 'Who Pays?' Guidance (August 2020).
- 4.4.9 Any person who is in receipt of section 117 aftercare and is subsequently detained under the MHA will remain the responsibility of the CCG who was originally responsible for section 117. Subsequent periods of detention prior to discharge of section 117 do not transfer commissioning responsibilities.

## 5.0 The Person's Rights

- 5.1 **Right to be engaged:** The person who is subject of detention under the Mental Health Act should be engaged in the process of reaching decisions about aftercare services, and decisions should be agreed with them. Consultation involves helping the person to understand the information relevant to decisions, their own role and the roles of others who are involved in taking decisions. Where a decision is made that is contrary to the person's wishes, that decision and the authority for it should be explained to the person using a form of communication that they understand. Carers and advocates should be involved where the person wishes or if the person lacks capacity to understand.
- 5.2 **Right to advocacy:** The person who is subject of detention under the Mental Health Act has the right to an advocate.

**Independent Mental Health Advocate (IMHA)** - Mental health service staff have a legal duty to ensure that everyone who qualifies (this includes any person detained under the MHA) is aware of their right to speak to an IMHA. This includes hospital managers, nurses, psychiatrists, administrators, social workers, approved mental health practitioners (AMHPs), community psychiatric nurses (CPNs) and ward managers.

**Independent Mental Capacity Advocate (IMCA)** - IMCAs are a legal safeguard for people who lack the capacity to make specific important decisions: including making decisions about where they live and about serious medical treatment options. IMCAs are mainly instructed to represent people where there is no one independent of services, such as a family member or friend, who is able to represent the person. The role of the IMCA is to support and represent the person in the decision-making process and ensure that the Mental Capacity Act 2005 is being followed.

- 5.3 **Right to aftercare as long as needed:** The duty to provide aftercare services continues as long as the person is in need of such services. In the case of a person on a CTO (section 17A), aftercare must be provided for the entire period they are on the CTO, but this does not mean that their need for aftercare will necessarily cease as soon as they are no longer on CTO.
- 5.5 Where eligible people have remained in hospital informally after ceasing to be compulsorily detained under the relevant section of the MHA, they are still entitled to aftercare under section 117 once they leave hospital.
- 5.6 **Right to decline aftercare services:** Eligible people are under no obligation to accept the aftercare services they are offered, but any decisions they may make to decline aftercare services should be fully informed. The principles of the Mental Capacity Act 2005 and best interest decision making guidance must be followed in all aspects of care planning in relation to aftercare needs where individuals lack the relevant decision making capacity.
- 5.7 An unwillingness to accept services does not mean that the individual does not need to receive services, nor should it preclude them from receiving services later under section 117 should they change their minds.
- 5.8 Where a person disengages with services or refuses to accept aftercare services, the entitlement does not automatically lapse. The named practitioner will liaise with all involved professionals (social worker / Responsible Clinician / GP etc.) to ensure that needs and risks are reviewed and, where possible, communication with the person should be maintained.

## **6.0 Section 117 and Children and Young People**

- 6.1 Where a child or young person is detained in hospital and that is likely to be for at least 12 consecutive weeks, the authority or health body who arranged for the detention is required under section 85 of the Children Act 1989 to notify the responsible local authority. This duty ensures that the local authority is aware of any child or young person in such detention and can ensure they are being safeguarded and their needs are being met.
- 6.2 Discharge and aftercare planning must start as soon as possible after admission and must be child and young person focused and informed by an assessment of need. In relation to children and young people, the Mental Health Act Code of Practice 2015 recognises additional factors will need to be considered. This may include ensuring that the aftercare integrates with any existing provision made for children in care, care leavers and those with special educational needs or disabilities, as well as safeguarding vulnerable children.

- 6.3 Whether or not section 117 of the MHA applies, a child or young person who has been admitted to hospital for assessment and/or treatment of their mental disorder may be 'a child in need' for the purpose of section 17 of the Children Act 1989, and should be assessed accordingly.
- 6.4 When a child or young person with a statement of special educational needs, or an Education, Health and Care Plan (EHCP) is admitted to hospital under the Act, the local authority who maintains the plan should be informed, so that they can ensure that educational support continues to be provided. If necessary, the Education, Health and Care Plan may be reviewed and amended to ensure needs and outcomes remain appropriate.
- 6.5 In agreeing a section 117 aftercare plan, the local authority must also ensure that this is informed by, and reflected in, any other statutory and non-statutory assessment or plan for the child, such as Education Care and Health Plan, Early Help Plan, Child in Need Plan, Child Protection Plan, Looked After Care Plan or Leaving Care Pathway Plan, and where appropriate run concurrently with co-ordinated reviews. Whilst co-ordinating planning can be complex, for example where a young person is transitioning to adult health and social care services, this should never be a reason to delay discharge.

## **7.0 Health and Social Care Needs Assessment – Discharge Planning**

- 7.1 Responsibility for undertaking appropriate assessments will be with the responsible Council for social care, and, in the case of patients who are the responsibility of Herefordshire and Worcestershire CCG, with Herefordshire and Worcestershire Health and Care NHS Trust or another Provider where they are commissioned by the CCG.
- 7.2 At the point of becoming eligible for section 117, each person must have their needs assessed and clarified as part of the appropriate care planning process and receive an assessment of their care and support needs. Aftercare planning must start as soon as possible after admission and should be person focused. The person's care and support needs should be considered at care planning meetings in the same way as any other patient. The differences should be that: -
- Contributors to the care planning process should be aware of the person's section 117 status and the additional statutory duty to provide aftercare services.
  - All the person's needs should be considered carefully, identifying which needs should be met under section 117, and which should be met as part of any previous or additional care package.
  - The care plan should identify which section 117 aftercare needs will prevent relapse and readmission to hospital and identify the support/interventions that are required to address those aftercare needs.
  - Where a person has multiple care plans in place, e.g. health care plan, Care Act support plan, Education, Health and Care Plan (EHCP), they must still have a section 117 aftercare plan that will be referenced in all other care plans as necessary.
  - Each person must be provided with clear information in an accessible format which explains their rights under section 117, the discharge process and how to complain should they wish to.

- 7.3 Each person who will be subject to section 117 must have a named practitioner who will be involved in all multi-disciplinary team and pre-discharge planning meetings.
- 7.4 Where there is a requirement to fund a package of care to meet section 117 aftercare needs, Section 8 below must be followed to agree funding responsibilities.

## **8.0 Funding Aftercare Plans**

- 8.1 Services provided under section 117 are a joint duty and, though there are no set criteria on apportionment of funding within the MHA, there is a requirement to establish a jointly agreed policy for deciding funding arrangements. The bodies to which this policy applies acknowledge that section 117 services are not the automatic sole responsibility of either the Council or the CCG.

Annex 2 sets out the agreed joint funding arrangements for Herefordshire, as agreed between Herefordshire Council and Herefordshire and Worcestershire CCG.

- 8.2 Both local areas will establish arrangements for advising and supporting decisions relating to the joint provision of aftercare services.
- 8.3 Where the person chooses care and support which is more expensive than that which either the Council or the CCG has commissioned, the person, or a third party, will pay for the difference. Section 13 below specifically refers to accommodation.
- 8.4 During any period of section 17 leave from hospital, then section 117 aftercare arrangements will apply. It is essential that where a period of section 17 leave will directly result in discharge from hospital, then the relevant Council and the CCG must be informed of this arrangement in advance to ensure any funding arrangements are agreed and in place.
- 8.5 No CCG nor Council should unilaterally withdraw from an existing funding arrangement without a joint review of the person's needs, and without first consulting one another and informing the person about the proposed change of arrangement. Any proposed change should be put in writing to the person by the organisation that is proposing to make such a change. If agreement cannot be reached on the proposed change, the local disputes procedure should be invoked, and current funding arrangements should remain in place until the dispute has been resolved.

## **9.0 NHS Continuing Healthcare (Adults) and Continuing Care (Children)**

- 9.1 NHS Continuing Healthcare (CHC) and NHS Continuing Care (Children) means a package of ongoing care that is arranged and funded solely by the NHS where the person has been found to have a 'primary health need'. Such care is provided to meet needs which have arisen because of disability, accident or illness.
- 9.2 The NHS Frameworks clarify that, where a person is eligible for services under section 117 these should be provided under section 117 and not under NHS continuing healthcare.

- 9.3 A person eligible for section 117 aftercare should only be considered for NHS continuing healthcare or NHS continuing care where they have physical health needs which are not related to their mental health aftercare needs. However, for adults, not meeting the criteria for full CHC funding does not preclude the CCG from having a joint funding arrangement with the Council to meet specific physical health care needs which do not fall within the eligibility of the Care Act. It is not, therefore, necessary to assess eligibility for NHS Continuing Healthcare if all the services in question are to be provided as aftercare services under section 117.
- 9.5 However, a person in receipt of section 117 aftercare services may also have, or later develop ongoing primary health care needs which may then trigger the need to consider NHS Continuing Healthcare or NHS Continuing Care for Children in addition to any section 117 support.

## **10.0 NHS Funded Nursing Care**

- 10.1 NHS-funded nursing care (FNC) is a universal service available to people under section 117 and on the same criteria as to anyone else placed in a nursing home.
- 10.2 FNC is free at the point of delivery and is a set weekly amount paid to a care home for the nursing element of a placement. Funding is accessed via a specific assessment provided by the relevant CCG.

## **11.0 Local Authority Care and Support Planning under the Care Act**

- 11.1 An assessment to determine eligibility for care and support under the Care Act 2014 will need to be undertaken. This will determine what needs can be met by the Care Act and identify any care and support needs that should be met by section 117 and/or continuing healthcare. Where needs are met under the Care Act 2014 then a financial assessment will have to take place and some charges may apply.

## **12.0 Direct Payments and Personal Health Budgets**

- 12.1 Local authorities are obliged to offer a person the option of direct payments in place of the services currently received, subject to the conditions set out in section 31 of the Care Act 2014 and The Care and Support (Direct Payments) Regulations 2014. There are some limited circumstances where a person may not be given this choice and direct payments cannot be used to pay for permanent residential accommodation.
- 12.2 Where the person does not have capacity to request direct payments then an authorised third party may do so on their behalf subject to section 32 of the Care Act 2014. The local authority must consider that making direct payments to the authorised third party to be an appropriate way to discharge their section 117 duty and be satisfied that the authorised party will act in the best interests of the person when arranging the aftercare.
- 12.3 People eligible for aftercare services under section 117, and who are funded by a CCG, have a right to have a Personal Health Budget (PHB). The PHB may be taken as a direct payment (under The National Health Service (Direct Payment Regulations) 2013), a Third Party PHB or a Notional PHB, dependent upon prescribed criteria being met.

12.4 Where a person receives funding from a local authority and a CCG, they may be eligible, if all relevant criteria is met, to combine payments into a single Integrated Budget.

### **13.0 Accommodation Needs under section 117**

13.1 Where accommodation is provided to an adult as an aftercare service it must not be charged for and this must be made clear in the aftercare plan. For the accommodation to be free of charge, the accommodation must be specialist or intrinsically linked to the section 117 aftercare being provided at the accommodation. In determining whether accommodation should be free of charge, commissioners will need to distinguish between the physical offer of accommodation and the section 117 aftercare services in place at that accommodation to support the person.

13.2 Where an aftercare plan includes the provision of funded accommodation the person can choose their preferred accommodation under The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 where the following criteria are met:

- The person is 18 or over;
- The person's preferred accommodation is suitable to meet their needs;
- The person's preferred accommodation is available;
- The provider of the preferred accommodation agrees to the commissioning local authority and CCG contractual terms and conditions; and
- Where the cost of the preferred accommodation is in line with Resource Allocation and Choice Policy of the CCG and respective Councils.

13.3 Where a person or a connected third party identifies accommodation that provides the same level of care and support as accommodation identified by the Council and/or CCG, but the cost is higher, then the person or a third-party can make a top-up or third party payment to cover these additional costs. However, in line with any other top-up or third party payment agreement, the Council must be sure that these additional costs can be met for the likely duration of the placement.

### **14.0 Reviewing Section 117 Aftercare Plans (co-ordination of reviews)**

14.1 Section 117 aftercare plans will be reviewed periodically in the following circumstances:

Scheduled reviews will be held:

- within 3 months of discharge from hospital;
- at whatever agreed interval, but at least every 12 months;

Unscheduled reviews will be held:

- whenever the person moves to another local authority area;
- whenever there is information that indicates that the current plan is not meeting the person's mental health needs;
- at the request of the person or their formal representative; and
- whenever discharge from section 117 is being considered.

14.2 People may be subject to a review under other statutory arrangements and reviews will be co-ordinated as far as practicable to ensure a co-ordinated approach to planning and provision of services and to reduce the bureaucratic burden.

## 15.0 Complaints and Disputes

- 15.1 No necessary assessment, care or treatment should be refused or delayed because of a complaint or dispute as to which CCG or local authority is responsible for funding an individual's health or social care provision.
- 15.2 Any complaint by a person or their carer or representative with the quality and standard of the provision commissioned will be managed under the complaints procedure of the providing organisation in the first instance. Where the provider is distinct from the commissioning body, the complaint may subsequently be managed by the commissioning body. Once statutory complaints procedures have been concluded, any person has the right to complain to the Local Government and Social Care Ombudsman or the Health Service Ombudsman.
- 15.3 Any formal complaint in respect of the type or level of the joint commissioned service will be dealt jointly by the responsible commissioning bodies. All complaints in respect of Herefordshire will initially be considered under any arrangements established under section 8.2 above. Once statutory complaints procedures have been concluded, any person has the right to complain to the Local Government and Social Care Ombudsman or the Health Service Ombudsman.
- 15.4 Where there is a dispute between local authorities regarding where the person was 'ordinarily resident' before being detained, this will be determined by the process set out by the Care and Support (Disputes Between Local Authorities) Regulations 2014 (SI 2014/2820).
- 15.5 Where there is a dispute between separate CCGs regarding section 117 responsibility the updated NHS 'Who Pays Guidance (August 2020) should be referred to. In summary this requires:
- Local resolution at Director level;
  - STP / Integrated Care System resolution at Director / Executive level; and
  - Arbitration by NHS England.
- 15.6 Where a dispute takes place between CCGs about responsibility for commissioning, the commissioners must agree that (a) one of them will take responsibility for arranging for assessment and planning for the person, and for arranging appropriate aftercare services; and (b) all costs are jointly funded pending resolution of the dispute. Once the dispute is resolved, the CCG which is no longer deemed responsible will be reimbursed.

## 16.0 Authority to discharge section 117

- 16.1 A person can only be discharged from section 117 if **both** the responsible Council and Herefordshire and Worcestershire Health and Care NHS Trust, or an agent of another Provider, acting on behalf of Herefordshire and Worcestershire CCG, are satisfied that the person is no longer in need of such services by virtue of their mental disorder. Circumstances in which it is appropriate to end such services vary by individual and the nature of the services provided.
- 16.2 A person cannot be discharged from section 117 while they are subject to a CTO.

- 16.3 Where it is established following a review of section 117 eligibility that aftercare is no longer required and that the removal or cessation of aftercare services will not put the person at risk of readmission to hospital, this must be clearly documented giving reasons why it is not required and the person's section 117 eligibility should be discharged and recorded in the person's record.
- 16.4 Discharge planning must consider whether the person is eligible for other health and social care services.
- 16.5 Where consideration is being given to discharging a person from section 117, the person and / or their representative should be fully informed and involved in all stages of the process.
- 16.6 Discharge from community mental health services is not a discharge from section 117 aftercare. If a person with section 117 entitlement is discharged from the care of community mental health services the relevant Council and the CCG should be informed of this so they can undertake their own review of the person's current needs, and whether there should be a joint decision to discharge the patient from section 117.
- 16.7 In the case of Herefordshire and Worcestershire CCG the decision regarding whether or not a person continues to need aftercare services should be taken by the identified Responsible Clinician of Herefordshire and Worcestershire Health and Care NHS Trust or an agent of another Provider commissioned by the CCG.
- 16.8 Where there is difference of opinion between the social worker and the Responsible Clinician about the appropriateness of discharge, or where the person subject of section 117 or their representative or IMCA objects to the decision, this will be reviewed by Section 117 Panel for the local area. If the person subject to the section 117 disagrees with Section 117 Panel, they may follow the complaints process as set out in section 15 above.
- 16.9 Care services under section 117 should not be withdrawn solely on the grounds that:
- the person refuses the aftercare plan;
  - the person has been discharged from the care of specialist mental health services;
  - an arbitrary period has passed since the care was first provided;
  - the person is deprived of their liberty under the Mental Capacity Act 2005;
  - the person may return to hospital informally or under section 2; or
  - the person is no longer on supervised community treatment or section 17 leave

## **17.0 Out of Area Section 117 placements and Transfer of Responsibility**

- 17.1 If the person moves to or is placed in another local authority area and becomes resident in that area, then section 117 eligibility remains with Herefordshire Council and Herefordshire and Worcestershire CCG until such time as section 117 is no longer required or the person becomes re-detained under the Mental Health Act, at which point the rules relating to a person's 'ordinary residence' applies.

17.2 Herefordshire Council and Herefordshire and Worcestershire CCG retain overall accountability and responsibility for reviewing section 117 aftercare provisions for a person, including any re-assessment of need and agreement to funding changes. Where these responsibilities are delegated to another area, responsibilities and expectations must be clearly set out and agreed.

## **18.0 Monitoring Compliance and Effectiveness**

18.1 A Review and Monitoring Oversight Group will be established under this policy with senior representatives from all those to which this policy applies (the Group). The terms of reference for the Group are set out in Annex 4.

18.2 The overall purpose of the Group is to assure the effectiveness and efficiency of section 117 aftercare services across the system, for all ages, and ensure compliance with the agreed policy. In particular, the Group will:

- monitor and review the section 117 budget;
- monitor and review operational performance in respect of section 117 services;
- commission periodic reviews and audits of compliance with the local policy and SOP;
- review the section 117 register, identify trends, and recommend commissioning intentions;
- review the policy and SOP and recommend revisions;
- maintain oversight of national mental health policy and review impact on local section 117 policy and operational arrangements, and recommend changes

18.3 The Group will escalate concerns to Executives when required and report annually to the relevant Governance Programme Boards.

## **19.0 Section 117 Register**

19.1 Herefordshire Council and Herefordshire and Worcestershire CCG have a joint responsibility to maintain a record of people entitled to section 117 aftercare.

19.2 On admission to hospital under one of the relevant sections of the Mental Health Act, the name of the person will be placed on the relevant Register to confirm entitlement to section 117 aftercare services.

19.3 The information held on the register will be agreed by the Review and Monitoring Group.

19.4 The partners will agree a Data Sharing Agreement which ensures that the relevant information is provided to maintain a Register and will ensure all information is kept up to date, in particular:

- the date section 117 aftercare ends; or
- if responsibility for section 117 aftercare is transferred to another authority.

19.6 Any changes in section 117 status will be recorded in the register, within 5 working days after receiving notice of the change.

## 20.0 References

Care Act 2014 <https://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

Care Act Guidance. Department of Health <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

Mental Health Act 1983 as amended by the Mental Health Act 2007  
<https://www.legislation.gov.uk/ukpga/1983/20/contents>

Mental Health Act Code of Practice  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/435512/MHA\\_Code\\_of\\_Practice.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF)

Mental Capacity Act 2005 <https://www.legislation.gov.uk/ukpga/2005/9/contents>

Mental Capacity Act Code of Practice <https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care  
October 2018 (Revised) <https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>

Children and Young People's Continuing Care National Framework  
<https://www.gov.uk/government/publications/children-and-young-peoples-continuing-care-national-framework>

Children Act 1989 <https://www.legislation.gov.uk/ukpga/1989/41/contents>

Children Act 2004 <https://www.legislation.gov.uk/ukpga/2004/31/contents>

Children & Families Act 2014 <https://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

SEND Code of Practice 0-25 year olds <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

NHS Who Pays Guidance – August 2020 <https://www.england.nhs.uk/wp-content/uploads/2020/08/Who-Pays-final-24082020-v2.pdf>

The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014  
<https://www.legislation.gov.uk/uksi/2014/2670/contents/made>

ADASS Section 117 Protocol (revised December 2018) <http://londonadass.org.uk/wp-content/uploads/2018/01/Section-117-Protocol-reviewed-Dec-2018.pdf>

The Care and Support (Disputes between Local Authorities) Regulations 2014  
<https://www.legislation.gov.uk/uksi/2014/2829/contents/made>

DHSC position on determination of ordinary residence  
<https://www.gov.uk/government/publications/care-act-statutory-guidance/dhscs-position-on-the-determination-of-ordinary-residence-disputes-pending-the-outcome-of-r-worcestershire-county-council-v-secretary-of-state-for>

Guidance on Personal Health Budgets for mental health  
<https://www.england.nhs.uk/personal-health-budgets/personal-health-budgets-for-mental-health/>

## Annex 1: Key Words and Phrases used in this Framework

Term	Definition
Care programme approach (CPA)	A system of care and support for individuals with complex needs which includes an assessment, a care plan and a care coordinator. It is used mainly for adults in England who receive specialist mental healthcare and in some CAMHS services. This approach is described in Chapter 34 of the Mental Health Act Code of Practice
Clinical commissioning group (CCG)	The NHS body responsible for commissioning (arranging) NHS services for a particular part of England from NHS trusts, NHS foundation trusts and independent sector providers. CCGs replaced primary care trusts from 1 April 2013. CCGs' commissioning plans are reviewed by the NHS Commissioning Board (NHS England). CCGs are generally responsible for commissioning mental healthcare, except for specialist care commissioned by the NHS Commissioning Board.
Community treatment order (CTO)	The legal authority for the discharge of a person from detention in hospital, subject to the possibility of recall to hospital for further medical treatment if necessary. People in the community are expected to comply with the conditions specified in the community treatment order.
Detention under the Mental Health Act (MHA) 1983/2007	Unless otherwise stated, being held compulsorily in hospital under the Mental Health Act for a period of assessment or medical treatment.
Education Health and Care Plan (EHCP)	Education, Health and Care Plan is a plan put together by professionals in education, health and social care to make sure children with Special Educational Needs and a Disability have a package of support to help them through to adulthood (until they are 25).
Hospital managers	The organisation (or individual) responsible for the operation of the Act in a particular hospital (e.g. an NHS trust, an NHS foundation trust or the owners of an independent hospital). Hospital managers have various functions under the Act, which include the power to discharge a person. In practice, most of the hospital managers' decisions are taken on their behalf by individuals (or groups of individuals) authorised by the hospital managers to do so. This can include clinical staff.
Human Rights Act 1998	The Human Rights Act 1998 sets out the fundamental rights and freedoms that everyone in the UK is entitled to.
Independent mental capacity advocates (IMCA)	An advocate able to offer help to people who lack capacity under arrangements which are specifically required to be made under the Mental Capacity Act 2005.
Independent mental health advocate (IMHA)	An advocate available to offer help to people under arrangements which are specifically required to be made under the Mental Health Act.
Learning disability	In the Mental Health Act, a learning disability means a state of arrested or incomplete development of the

	mind which includes significant impairment of intelligence and social functioning. Further guidance on the meaning of learning disability is provided in chapter 20 of the Code of Practice
Mental Health Act Office	The office established in each local authority to oversee and monitor MHA activity.
Named Practitioner	Any health professional or social worker who is named as the person with overall responsibility for the section 117 aftercare plan. This role is sometimes also referred to as: lead professional, key worker or care co-ordinator.
Responsible Clinician	A clinician approved by the Secretary of State with overall responsibility for a person's case whilst they are detained under a section of the Mental Health Act. A responsible clinician will always be appointed when a person is admitted to hospital under the Act and will therefore always be involved in planning discharge from hospital. A person may or may not have a responsible clinician following discharge under section 117, depending on their care plan.
Responsible local authority	The local authority responsible for commissioning section 117 aftercare for the person. As this is not always the local authority in whose area the person is ordinarily resident, absolute clarity about responsibility must be sought at the outset.
Section 17 leave	Section 17 of the Mental Health Act allows detained patients to be granted leave of absence from the hospital in which they are detained. Leave is an agreed absence for a defined purpose and duration and is accepted as an important part of a person's treatment plan.

## **Annex 2: Joint Funding Agreement between Herefordshire Council and Herefordshire and Worcestershire CCG**

- A2.1 All funding decisions will be made on a case-by-case basis, with each party funding the totality of the element for which it has commissioning responsibility.
- A2.2 The mechanism for determining proportionality will be agreed by the Section 117 Overview and Monitoring Group.
- A2.3 Any agreement to fund arrangements differently from A2.1 may be agreed on a case-by-case basis.
- A2.4 There must be agreement between both parties, followed by written notification and subsequent written acknowledgement, ahead of any request for retrospective charges.
- A2.5 All section 17 leave will be funded by the CCG unless a prior agreement has been reached with the Council for another funding arrangement. Where section 17 leave is to a residential placement which, at the end of the section 17 leave period, is intended to become the long-term placement of the person as part of their section 117 aftercare plan, the funding arrangements and appropriateness of the placement must be agreed by the Council and CCG in advance of the section 17 leave commencing.
- A2.6 This agreement applies to children and young people.
- A2.7 This agreement does not apply to any funding arrangements between the Council and another CCG, or between the CCG and any other Council. In these circumstances, separate arrangements and protocols will apply.

## **Annex 3: Section 117 Review and Monitoring Oversight Group: Terms of Reference**

### **Purpose of Group**

The overall purpose of the group is to ensure the effectiveness and efficiency of section 117 aftercare services across the system, for all ages, and assure compliance with the Section 117: After-Care under the Mental Health Act 1983/2007 Herefordshire Joint Policy (the Policy) policy.. In particular, the Group will:

- monitor and review the section 117 budget;
- monitor and review operational performance in respect of section 117 services;
- commission periodic reviews and audits of compliance with the local policy and SOP;
- review the section 117 register, identify trends, and recommend commissioning intentions;
- review the policy and SOP and recommend revisions; and
- maintain oversight of national mental health policy and review impact on local section 117 policy and operational arrangements, and recommend changes.

### **Core Membership**

Core members are:

- Lead for Mental Health, Learning Disability and Children, Herefordshire and Worcestershire CCG
- Senior operational representative from Herefordshire and Worcestershire Health and Care NHS Trust, representing NHS provision for AMH, LD and CAMH services
- Senior operational representative from the Council
- Senior social care commissioning representative from the Council
- Senior operational representative from children's services function of the Council
- Senior financial representative from the CCG, the Trust and from the Council
- Expert by Experience (identified by the CCG)

Other officers may be invited as required.

### **Chair**

The meeting will be chaired by the Lead for Mental Health, Learning Disability and Children, Herefordshire and Worcestershire CCG.

A deputy will be nominated from one of the other core members.

### **Quoracy**

For the meeting to be quorate, the following must be present:

- The Chair or Deputy
- One representative from Herefordshire Council
- One representative from Herefordshire and Worcestershire Health and Care NHS Trust

## **Frequency of Meetings**

At least every 3 months

## **Reports for the Meeting**

The Group will receive reports on the following for each meeting:

- A budget report covering committed and projected expenditure for the financial year for each organisation in respect of section 117 aftercare
- A summary report of the section 117 register including relevant trends (anonymised)
- Operational performance of the Trust and each Council for the metrics set out in the policy, and any others agreed by the Group, relating to section 117 aftercare services

Responsibility for producing reports will be agreed at the first meeting of the group.

## **Standing Agenda Items**

The Group will consider the following items as a minimum at each meeting:

- The section 117 budget
- Operational performance
- Section 117 register trends
- Update on national policy and guidance

## **Reporting Arrangements**

The Group will report annually to ICS Mental Health Programme Board (Herefordshire and Worcestershire). It is the responsibility of the Chair to arrange for an annual report to be written covering the activities of the Group.

## **Escalation Protocol**

The Chair of the Group will raise directly with the relevant Executive Officers any immediate issue of serious concern relating to finance, operational performance or compliance with the policy and SOP.

The Chair of the Group will raise directly with the relevant Executive Officers where they consider that any organisation, as represented by its core member or nominated deputy, is not making an active and proportionate contribution to the Group.

Any member of the Group may escalate concerns about the function of the group and its effectiveness to their relevant Executive Officer.

## **Recording of Meetings**

Record of attendance and notes of the meeting will be kept. Responsibility for recording the meeting and issuing notes will be agreed by partners at the start of each meeting.

## **Duration of Group**

The group is established under the Policy. The group will therefore operate for as long as the Policy is operational. The terms of reference will be reviewed every 12 months.