Section 117 Policy
The Mental Health Act 1983
[as amended by the Mental Health Act 2007]
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1. INTRODUCTION

Section 117 Mental Health Act 1983 (MHA 1983) imposes duties on NHS Clinical Commissioning Groups (CCGs) and Local Social Services Authorities (LSSAs) to provide after-care for patients who have been detained under section 3, 37, 45A, 47 and 48 of the MHA 1983 once they leave hospital.

For individuals who are in contact with specialist mental health providers section 117 of the MHA 1983 does not replace arrangements under the Care Programme Approach and where appropriate these should run in tandem alongside each other.

The Health Service Circular HSC 2000/003 and Local Authority Circular LAC 2000(3) states that:

‘Social services and health authorities should establish jointly agreed local policies on providing Section 117 Mental Health Act after-care. Policies should set out clearly the criteria for deciding which services fall under section 117 Mental Health Act and which authorities should finance them. The Section 117 Mental Health Act after-care plan should indicate which services are provided as part of the plan. After-care provision under section 117 of the Mental Health Act does not have to continue indefinitely. It is for the responsible health and social services authorities to decide in each case when after-care provided under section 117 Mental Health Act should end, taking account of the patient’s needs at the time. It is for the authority responsible for providing particular services to take the lead in deciding when those services are no longer required. The patient, his/her carers, and other agencies should always be consulted’.

The Mental Health Act Code of Practice 2015 states that the purpose of section 117 of the MHA 1983 is to:

- Provide care and treatment for the purposes of meeting a need arising from or related to the patient’s mental disorder; and
- reduce the risk of a deterioration of the patient’s mental condition; and
- reduce the risk of the patient requiring admission to hospital again for treatment for mental disorder.

2. PURPOSE

This purpose of this policy is to lay out a clear framework on, and commitment to, the provision of after-care services to people who are entitled to those services under section 117 of the MHA 1983 and should ensure that:

- the organisation is aware of their section 117 responsibilities;
- staff within the organisation are aware of their section 117 responsibilities;
- local interpretation of section 117 is in line with the legal requirements
under the MHA 1983;

- there is agreement through the LSSA and CCG’s to the practices in relation to section 117 after care decision-making, and commissioning of packages of care.

3. SCOPE

This policy applies to all patients entitled to aftercare services under section 117 of the MHA 1983 within Rotherham Doncaster and South Humber NHS Foundation Trust (the Trust).

4. RESPONSIBILITIES, ACCOUNTABILITIES AND DUTIES

The duty to provide aftercare services under Section 117 is a stand-alone duty which is not reliant on any other piece of legislation. The MHA states that the responsible after-care bodies are now the CCG and the LSSA “for the area in which the person concerned is resident, or, to which the person is sent on discharge by the hospital in which the person was detained.”

As a partnership the Trust and the CCGs and LSSAs are committed to the on-going support and recovery of residents through the effective co-ordination of section 117 after care provision and with local partners aim to produce a framework that ensures delivery of this.

Through a partnership and joint commissioning approach the Trust, CCGs and LSSAs are committed to ensuring that individuals receive the services to which they are entitled under section 117 and individuals who are not entitled or who no longer require such services have the entitlement reviewed and where appropriate ended.

5. PROCEDURE AND IMPLEMENTATION

5.1 What are section 117 after care services

The MHA 1983 does not specify definitively what constitutes after-care services from either the CCG or the Local Authority. However as a result of court decisions the following definitions were included in the Care Act 2014, so that from April 2015 onwards section 117(6) reads as follows:

“In this section, “after care 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).”

Section 117 services are not concerned with support in general but are
those which are required to meet an assessed care need that arises from a person’s mental disorder and are aimed at minimising the need for future readmissions to hospital for treatment for that disorder.

The services may include:

- Provision of domiciliary services;
- Access to accommodation and welfare rights;
- Social work support;
- Day services e.g. support with employment, social inclusion and relationships;
- Medical supervision and psychological support;
- Specialist Welfare Rights and Housing benefit advice; and
- Advice on employment.

Services providing care or support for a physical disability, illness, substance misuse problems, and common needs not arising from the patient's mental health disorder cannot be provided under section 117. These must be met under separate health and community care legislation.

Although accommodation can be provided under section 117 the need for accommodation must be a direct result of the reason that the patient was detained for in the first place. As a matter of law ordinary accommodation can never be a free after-care service under section 117.

In further decisions the court set out three requirements which must be met for accommodation to be provided under section 117. They are:

(i) The need for accommodation is a direct result of the reason that the ex-patient was detained in the first place ("the original condition");
(ii) The requirement is for enhanced specialised accommodation to meet needs directly arising from the original condition; and
(iii) The ex-patient is being placed in the accommodation on an involuntary (in the sense of being incapacitated) basis arising as a result of the original condition.”

In light of the above, accommodation provided under S117 will in most cases go beyond that which can be lawfully commissioned by a Local Authority.

5.2 When is Section 117 applicable?

Section 117 of the MHA 1983 only applies to the following individuals if they have been:
• Detained in a psychiatric hospital under section 3 MHA 1983;
• Admitted to hospital under an order made under section 37 MHA 1983;
• Transferred to a psychiatric hospital from prison or remand centre. This includes those individuals who are on remand, detained in prison under civil law or held under immigration legislation; in pursuance of a transfer direction under sections 45A, 47, 48 of the MHA 1983 who cease to be detained and leave hospital (whether or not immediately after the detention has ended).

In addition section 117 MHA 1983 also applies to any individual who has been subject to section 3, 37, 45A, 47 and 48 of the MHA 1983 who are:

• Subject to Guardianship where the after-care plan included a requirement of Guardianship;
• Given leave of absence under section 17 MHA 1983, as part of the preparation for discharge, and where that care plan is based on jointly assessed (and agreed) health and social care needs;
• Made subject to a Supervised Community Treatment Order under section 17A MHA 1983;
• Assessed as needing residential accommodation or non-residential community care services as a condition of leave under Section 17 MHA 1983 and/or section 117 MHA 1983.

5.3 Section 117 Register

The lead mental health agency is required to have a section 117 database. This database should be a live document that can be shared with all the partners subject to this agreement.

This register will be held by the Trust and will be used to ensure that there is no duplication in the recording of section 117 eligible individuals, funding, or exclusion of people with section 117 entitlement.

5.4 Statutory Advocacy

5.4.1 Independent Mental Capacity Advocate (IMCA)

Under the Mental Capacity Act 2005, there is a legal duty to refer a patient to the IMCA Service, if they have been assessed as lacking capacity in making decisions. Such an advocate must be appointed before any decisions are taken in relation to serious medical treatment or change in accommodation for example. This must also take place even if the person has relatives or carers, unless they have lasting power of attorney which covers an ability to make health related decisions on the person’s behalf.

5.4.2 Independent Mental Health Advocate (IMHA)

Since 2009 IMHA’s have been available as a statutory right to people under certain aspects of the MHA 1983. IMHAs will support individuals to inform
them of their rights under the MHA 1983 and any aspect of their care or treatment under compulsion. This would include information about their rights under section 117, and also their after-care care planning and package of care.

5.5 Care Programme Approach and Section 117 Aftercare

After-care for all patients admitted to hospital for treatment of their mental health needs should be planned for within the framework of the Care Programme Approach (CPA), whether or not they will be entitled to after-care services under section 117 of the MHA 1983.

5.6 Care Planning

Planning for the patients after-care needs should commence on admission. Reasonable steps should be undertaken to identify appropriate services, and make preparations, well before actual discharge from hospital.

The Code of Practice requires that prior to the formulation of any care plan a comprehensive and holistic assessment of need should be undertaken by the Care Co-ordinator and should include a consideration of the sixteen identified aspects of need listed in section 34.19 of the Code of Practice (see Appendix A).

Once a comprehensive assessment of need has been undertaken it is the responsibility of the Responsible Clinician to ensure discussion takes place to develop a care plan to meet the patient's on-going health and social care needs.

This discussion will usually be a multi-professional meeting in the hospital and should involve:

- Responsible Clinician;
- A nurse involved in the hospital care of the patient;
- A social worker (where appropriate);
- A community psychiatric nurse or Register Nurse LD (where appropriate);
- The patient;
- The patient’s relative or nominated representative e.g. Advocate;
- The patient’s GP;
- A representative from relevant voluntary organisation, (where appropriate);
- In the case of a restricted patient, the probation service.

Discharge planning should start at the earliest opportunity to enable funding streams to be agreed in principle, prior to the patient's final discharge to avert any potential delay. It is important that those who are involved in the discharge planning are able to make, as far as possible, decisions regarding their own agency’s involvement. If approval for a plan needs to be obtained from a more senior level (for example, for funding) it is important that this
causes no delay to the implementation of the care plan. Those contributing to after-care planning must always consider:

- The patient’s wishes and needs;
- The views of relatives or friends;
- Establish a Care Plan based on assessment of identified needs; and
- Commissioning of services.

The after-care plan should set out clearly the section 117 after-care services to be provided and record which authority/authorities are funding which parts of the package of care.

Finally the Care Plan must be jointly agreed between health and social care services at a multi-disciplinary discharge meeting. If a social worker is not involved in the care planning, then the Care Co-ordinator must discuss the case with the Social Care Professional Lead or Local Authority Team Manager who will agree and sign the care plan on behalf of the Local Authority.

5.7 Registering Section 117 Aftercare

When a patient is admitted to hospital under one of the relevant sections, the Mental Health Act Office will register the patient on the Trust patient information system as being entitled to after-care under section 117. The MHA Office will maintain an up to date register of people on section 117. Section 117 status will be available to a nominated person at the CCG and LSSA.

5.8 Aftercare arrangements and Section 117

Before deciding to discharge a patient, granting periods of leave or placing a patient on to Supervised Community Treatment, the Responsible Clinician should ensure that the after-care needs for the patient have been fully assessed and discussed with the patient and that confirmation of section 117 funding arrangements have been agreed and recorded. Any period of leave, which includes an overnight stay, will necessitate a full after-care plan.

5.8.1 First Tier Tribunals Service, Hospital Managers Hearings and Section 117 Aftercare

When consideration is given to a First Tier Tribunal and/or a Managers Hearing there is an expectation that a care plan will be made available which includes the patients after-care arrangements should they be discharged.

Where the tribunal has provisionally decided to grant a restricted patient a conditional discharge, and there are funding implications as part of this conditional discharge, the CCG and LSSA are required as far as possible to put in place after-care, which would allow discharge to take place.
5.9 Funding responsibilities

There are three options for funding a person’s health and social care needs:

- **100% CCG Funding** - where a person meets eligibility criteria for fully funded Health Services, the CCG will resource 100% care provision;
- **Shared LSSA and CCG funding** - all section 117 aftercare that have a combination of health and social care requirements, will be funded on a proportional basis, agreed between the commissioners;
- **100% LSSA funding** - when the person meets the eligibility for social care services alone then the LSSA will fund that care provision.

These arrangements apply only to the funding of support packages and additional health and social care provision relating to the person’s section 117 after-care needs.

If individual needs are identified that are unrelated to the mental health condition and aftercare under section 117 these will continue to be subject to the usual eligibility and potential charging under the LSSA eligibility criteria.

*It is therefore important for the Care Co-ordinator to distinguish within the discharge care plan, the care and support that relates to the patients mental disorder which will be provided free of charge, and the physical health difficulties the patient may experience which may be subject to an appropriate charges by the Local Authority.*

5.10 Out of area placements

For those patients being transferred out of area, or, those patients being placed into an area of the Trust, please refer to the Trust Section 117 Operational Protocol for further advice and guidance.

5.11 Review of Section 117 Aftercare

The Trust will arrange a review of the care plan/section 117 eligibility within 6 weeks of discharge from hospital and thereafter at intervals of 6 months and no longer than 12 months, until such time as the care plan and/or section 117 eligibility is no longer required.

5.12 Ending Section 117 Aftercare

The MHA Code of Practice 2015 states that “the duty to provide aftercare services continues until the CCG and LSSA 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. 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.”

Services should not therefore be withdrawn on the basis 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 Mental Capacity Act 2005;
- The patient is re-admitted to hospital informally or under section 2 MHA 1983; or
- The patient is no longer on Supervised Community Treatment or section 17 leave

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

Even where 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 e.g. to prevent a relapse or further deterioration in their condition.

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.

Any recommendation to discharge section 117 aftercare resulting from consideration of the above must be agreed by the Care Team and Responsible Clinician on behalf of both the CCG and the LSSA.

6. TRAINING IMPLICATIONS

<table>
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<tr>
<th>Staff groups requiring training</th>
<th>How often should this be undertaken</th>
<th>Length of training</th>
<th>Delivery method</th>
<th>Training delivered by whom</th>
<th>Where are the records of attendance held?</th>
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<tbody>
<tr>
<td>RDaSH Consultant Psychiatrists</td>
<td>Once when the Policy is launched</td>
<td>2 hour session</td>
<td>Series of presentations on the Policy and implications for practice</td>
<td>MHA Legislation Training Lead</td>
<td>Electronic staff record (ESR)</td>
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<tr>
<td>Registered Clinical staff (across inpatient and community)</td>
<td>Where appropriate bespoke training into</td>
<td>2 hour session</td>
<td>Series of presentations on the</td>
<td>MHA Manager / S117</td>
<td>Electronic staff record (ESR)</td>
</tr>
<tr>
<td>Staff groups requiring training</td>
<td>How often should this be undertaken</td>
<td>Length of training</td>
<td>Delivery method</td>
<td>Training delivered by whom</td>
<td>Where are the records of attendance held?</td>
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<td>services)</td>
<td>teams</td>
<td>Full day</td>
<td>Policy and implications for practice</td>
<td>Project Officers / Local S117 Lead</td>
<td>Electronic staff record (ESR)</td>
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<td></td>
<td>Will form part of the Advanced MHA Legislation Training</td>
<td>To be agreed</td>
<td>Series of presentations on the Policy and implications for practice</td>
<td>MHA Legislation Training Lead</td>
<td>Electronic staff record (ESR)</td>
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<td></td>
<td>Refresher sessions following any legislative change</td>
<td></td>
<td>Series of presentations on the Policy and implications for practice</td>
<td>MHA Legislation Training Lead</td>
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7. MONITORING ARRANGEMENTS

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<th>Area for monitoring</th>
<th>How</th>
<th>Who by</th>
<th>Reported to</th>
<th>Frequency</th>
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<tbody>
<tr>
<td>All patients eligible to S117 Aftercare to have their S117 / eligibility reviewed every 12 months</td>
<td>On-going performance monitoring of the S117 Reviews via Silverlink</td>
<td>RDASH Performance Team</td>
<td>Internally to Care Group performance meetings</td>
<td>Monthly</td>
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<td>Exception reporting to Finance &amp; Performance Information Group</td>
<td>Externally to the CCGs and LSSAs via the Commissioner meetings</td>
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<tr>
<td>All patients eligible to S117 Aftercare who are discharged following S117 Review</td>
<td>On-going monitoring</td>
<td>RDASH Performance Team</td>
<td>Externally to the CCGs and LSSAs via the Commissioner meetings</td>
<td>Quarterly</td>
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8. **EQUALITY IMPACT ASSESSMENT SCREENING**

The completed Equality Impact Assessment for the Section 117 Policy has been published on the Policy’s Trust web page.

8.1 **Privacy, Dignity and Respect**

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<th>Indicate how this will be met</th>
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<tr>
<td>There are no additional requirements in relation to privacy, dignity and respect</td>
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The NHS Constitution states that all patients should feel that their privacy and dignity are respected while they are in hospital. High Quality Care for All (2008), Lord Darzi’s review of the NHS, identifies the need to organise care around the individual, ‘not just clinically but in terms of dignity and respect’. As a consequence the Trust is required to articulate its intent to deliver care with privacy and dignity that treats all service users with respect. Therefore, all procedural documents will be considered, if relevant, to reflect the requirement to treat everyone with privacy, dignity and respect, (when appropriate this should also include how same sex accommodation is provided).

8.2 **Mental Capacity Act**

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<th>Indicate how this will be achieved</th>
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<tr>
<td>All individuals involved in the implementation of this policy should do so in accordance with the Guiding Principles of the Mental Capacity Act 2005. (Section 1)</td>
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Central to any aspect of care delivered to adults and young people aged 16 years or over will be the consideration of the individuals capacity to participate in the decision making process. Consequently, no intervention should be carried out without either the individuals informed consent, or the powers included in a legal framework, or by order of the Court.

Therefore, the Trust is required to make sure that all staff working with individuals who use our service are familiar with the provisions within the Mental Capacity Act 2005. For this reason all procedural documents will be considered, if relevant to reflect the provisions of the Mental Capacity Act 2005 to ensure that the interests of an individual whose capacity is in question can continue to make as many decisions for themselves as possible.

9. **LINKS TO OTHER TRUST PROCEDURAL DOCUMENTS**

CPA Policy

10. **REFERENCES**

Mental Health Act 1983
Mental Health Act 1983: Code of Practice 2015
Mental Capacity Act 2005
Independent Mental Health Advocacy – Guidance for Commissioners (NIMHE) 2008
Who Pays? Establishing the Responsible Commissioner (DoH) 2007
Who Pays? Establishing the Responsible Commissioner (DoH) 2013
Ordinary Residence: Guidance on the identification of the ordinary residence of people in need of community care services England (DoH) 2011
Care Act 2014

11. COURT CASES

R (Mwanza) -v- LBs Greenwich and Bromley [2010]
R (Afework) -v- London Borough Camden (2013)

12. DEFINITIONS

Care programme approach (CPA): Framework of assessment, care planning and review for people who receive mental health services.

Care management: Framework of assessment, care planning, provision of care packages and review for people who receive services via Local Social Services Authorities.

Within adult mental health services, CPA and care management are fully integrated. This is true to a lesser and varied extent where CPA applies for other care groups. Therefore both CPA and care management will be referred to where applicable throughout the policy.

Localism Act 2011: Entitles local authorities to do anything which they consider is likely to achieve the promotion or improvement of the social well-being of their area provided that they are not forbidden from so doing by any prohibition, restriction or limitation on their powers in any enactment.

Mental Health Act 1983:

Section 3:
Order detaining an individual in hospital for treatment

Section 17 leave:
Period of agreed community leave for a patient currently liable to detention in hospital.

Section 17A (Supervised Community Treatment):
Order providing a legal framework around the care of a patient who has been detained under section 3 (or section 37 hospital order) when they are discharged from hospital, although they remain liable for recall or revocation from the Community Treatment Order.

Section 37:
Hospital Order detaining an individual who has been transferred by the
Courts to hospital for treatment. Note: Guardianship under section 37 does not confer section 117 status.

**Section 37/41:**
Order detaining an individual who has been transferred by the Courts to hospital for treatment, with restrictions.

**Section 37/41 – conditionally discharged patients:**
Section 42 allows the Secretary of State to direct that someone under a restriction order should be discharged from hospital but subject to conditions e.g. place of residence, supervision by psychiatrist and social supervisor.

**Section 45A:** When imposing a prison sentence for an offence other than when the sentence is fixed by law, the Crown Court can give a direction for immediate admission to and detention in a specified hospital, with a limitation direction under Section 41. The directions form part of the sentence and have the same effect as a hospital order. The Home Secretary can approve transfer back to prison at any time.

**Section 47 or 48:**
Orders detaining an individual transferred from prison to hospital for treatment.

**Section 47/49:**
Orders detaining an individual transferred from prison to hospital for treatment, with restrictions.

**APPENDICIES**

Appendix A: 16 identified aspects of need
Appendix B: RDASH Section 117 Operational Protocol
Appendix A

16 Identified Aspects of Need
(Code of Practice, Mental Health Act 34.19)

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

For Appendix B please see Operational Protocol which is a separate document available on the Trust Policy web page.