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Camden

S 117 POLICY

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This policy supersedes all previous policies relating to S 117 of the Mental Health Act 1983.

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INTRODUCTION

1.1. The commissioning of mental health aftercare services is a joint responsibility between Local Authorities (LAs) and Integrated Care Boards (ICBs).

1.2. This policy summarises the legal responsibilities placed on Camden and Islington LAs and NCL ICBs by s 117 (s117) of the Mental Health Act 1983 ("the MHA 1983").

1.3. This statutory duty is to consider the aftercare needs of everyone to whom s117 applies. A process must be in place to show that a full consideration of the person's needs has taken place, recorded and that where required, there is a plan in place to ensure their mental health needs are met.

1.4. The duty continues until such time as the ICB and LA are satisfied that the person concerned is no longer in need of such services.[1]

1.5. It is important to be aware that people can be in receipt of both s117 aftercare services and other social care and NHS support, including continuing healthcare (CHC) which is free and non-means tested.

1.6. Aftercare services provided under s117 are not chargeable, so the person does not have to contribute to the cost of any support provided to them under s117.

1.7. For further guidance refer to the Mental Health Act 1983 - revised Code of Practice (January 2015)[2] which applies to all professionals working with people under the MHA 1983.

At a Glance
s117 is a statutory duty on both health and local authorities to provide aftercare for people who have been detained under certain sections of the Mental Health Act (1983/2007) See section 3.
Services provided under s117 are specifically intended to reduce the prospect of compulsory or informal readmission to hospital on mental health grounds.
Services provided under s117 are not chargeable (see section 10).
Needs that relate **only** to the physical health or disability of the person (and not related to mental health needs) are not subject to s117.
The duties to provide aftercare services continue until the responsible Local Authority (LA) and Integrated Care Board (ICB) are "satisfied" that the person no longer needs any aftercare services.

DEFINITION OF AFTERCARE SERVICES

2.1 s117 of the Mental Health Act 1983 ('the MHA 1983') is a free-standing provision which imposes a joint duty upon the relevant health and social services authorities to provide or to arrange for the provision of, in co-operation with voluntary agencies, after-care for persons who have ceased to be detained under the qualifying provisions (see paragraph 3.0 – Eligibility).

2.2 S.117 (6) (as amended by Section 75 (5) of the Care Act 2014) states that "aftercare services" means services which have both of the following purposes:

- To meet a need arising from or related to the person's mental disorder

[1] S 117(1) - (2) of the Mental Health Act 1983

[2] The code of practice was last updated on 31 October 2017 and does not reflect the abolition of CCGs and their replacement if ICBs under the HCA 2022 which took effect from 1 July 2022.

- To reduce the risk of a deterioration of the person's mental condition, (and accordingly reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder).

2.3 Paragraph 33.4 of the Mental Health Act Code of Practice 2015 ("the Code of Practice") says that ICBs and LAs should interpret the definition of aftercare services broadly and that aftercare can encompass healthcare, social care and employment services, supported accommodation and services to meet the person's wider social, cultural and spiritual needs, if these services meet a need that arises directly from or is related to the particular person's mental disorder, and can help to reduce the risk of a deterioration in the person's mental condition.

2.4 Paragraph 33.5 of the Code of Practice takes a broad-based approach to the scope of s.117

'As well as meeting their immediate needs for health and social care, after-care should aim to support them in regaining or enhancing their skills, or learning new skills, in order to cope with life outside hospital.'

2.5 Paragraph 34.19 of the Code of Practice also sets out a wide range of areas that s.117 **care planning** is likely to involve consideration of; these go beyond traditional mental health, physical and psychological health care needs and extends to:

- continuing mental healthcare, whether in the community or on an outpatient 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, e.g. 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
- involvement of authorities and agencies in a different area, if the patient is not going to live locally
- the involvement of other agencies, e.g. 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 – or is likely to – impose on their conditional discharge, and contingency plans (should the patient's mental health deteriorate) and crisis contact details.

ELIGIBILITY

3.1 s117 (1) provides that a person is eligible for aftercare services under s117 of the Mental Health Act 1983 **if he/she ceases to be detained under any of the following:**

- S3 (admission for treatment)
- S37 (with or without a restriction order) (hospital orders)
- S45A (with or without a limitation direction) (powers of higher courts to direct hospital admission when imposing a prison sentence on mentally disordered offender)
- S47 or S48 (with or without a restriction direction) (removal to hospital of persons serving sentences of imprisonment)

Also entitled to s 117 after-care are eligible patients who:

- Have remained in hospital informally for a period of time after ceasing to be detained and then leave hospital.

- Are released from prison having spent part of their sentence detained in hospital under relevant provisions of the MHA 1983 (*paragraph 33.9, MHA code of practice*).
- Are discharged (but liable to recall to hospital) on community treatment orders (CTOs) under *section 17A* of the MHA 1983.

3.2 This includes people granted leave of absence under s17 who have ceased to be detained and have left the hospital including those on Supervised Community Treatment Orders (CTOs). Note the duty under s117 will not apply to a person granted leave of absence from hospital under s17 to go on a short, escorted trip and who then returns to hospital[1]. This is because the person would be regarded 'as absent from a hospital' rather than having 'left the hospital'.

3.3 It applies to people of all ages, including children and young people.

IMMIGRATION STATUS

4.1 Eligibility for s117 is not affected by immigration status so it applies to people who have 'no recourse to public funds.

4.2 People from abroad are entitled to receive s 117 after-care irrespective of their nationality, country of origin or immigration status in the UK. This is because s 117 after-care is not included in the list of statutory provisions in *Schedule 3* to the Nationality, Immigration and Asylum Act 2002 that provides for the withholding and withdrawal of support (such as local authority care and support or housing) from certain categories of people from abroad.

4.3 Section 53 of the Act makes further provision for the detainees and their transfer to hospital or back to custody, and when a transfer direction ceases to have effect.

IDENTIFYING THE RESPONSIBLE AFTERCARE LOCAL AUTHORITY AND ICB

5.1 Identifying the responsible aftercare local authority and ICB has recently been subject to rapid changes in case law and guidance. The complexity of ascertaining responsibility can be difficult to navigate and matters that could involve a dispute should be referred to your manager and then ultimately to legal services.

No officer should accept a person subject to s.117 from another local authority and any such case should be referred to your senior manager immediately.

5.2 Who are the responsible after-care bodies?

The responsible after-care bodies are the relevant:

- ICB (or in Wales, the Local Health Board); and
- Local Authority.
- (S 117(2) and (3), *MHA 1983*).

ICBs replaced clinical commissioning groups (which were the clinically led statutory NHS bodies responsible for planning commissioning health care services for their local area established under the Health and Social Care Social Care Act 2012) with effect from 1 July 2022. In conjunction with integrated care partnerships, ICBs are responsible for bringing together NHS partners with local authority social care, mental health services and public health advice, to deliver more joined-up care in the local area.

LOCAL AUTHORITY

6.1 The local social services authority for the area (in England or Wales) where the patient was ordinarily resident immediately before being detained in hospital, even if the person will not be returning to live in that area when they leave hospital.

Example 1: Person A is a resident of LA1 and is detained in hospital in LA2. Upon discharge, person A is sent to LA2 where she remains to date. Responsibility for her aftercare will be with LA1 who is considered to be the originating authority.

Example 2: A was resident in LA1 immediately before being detained in hospital under section 3 of the MHA 1983. After spending four years in hospital A is ready to be discharged to supported living accommodation in the community. The responsible after-care authorities identify suitable accommodation for A that is located in the area of LA2. Although A will not be returning to live in that area, LA1 is responsible for providing or commissioning his after-care services in conjunction with the responsible CCG. That is because LA1 is the area where A was either:

- Ordinarily resident if the legal test in R (Shah) v London Borough of Barnet [1982] UKHL 14 is met *(see The leading authority on ordinary residence in the context of adult social care and support is . In this case, the court considered the meaning of the term "ordinarily resident in the UK" in the Education Acts, to determine the respondents' eligibility for local education authority grants. Lord Scarman, who gave the leading judgment in that case, described the meaning of "ordinary residence" (or "ordinarily resident") in the following terms:*).
- Resident immediately before he was discharged from hospital.

6.2 It is important to note that any change in the person's ordinary residence after their discharge from hospital, will affect the LA that will be responsible for providing and care and support needs that fall outside the ambit of s 117 of the MHA 1983 (such as services that are required to meet their physical health needs), but will not affect their LA responsible for commissioning after-care services under s 117 (*paragraphs 19.63 - 19.69, CA 2014 statutory guidance*)

6.3 In any other case (for example where a patient's ordinary residence immediately prior to their detention in hospital cannot be established), the local social services authority for the area where the patient was resident, or as a last resort, the area to which they are sent to live by the hospital in which they were detained. In the Care Act 2014, there are deeming provisions[3], which place financial responsibility for the provision of services on the placing local authority if the person has been placed out of area. The Care Act 2014 contains explicit deeming provisions for out of area placements. However, the Care Act statutory guidance[4] states that these deeming provisions[5] do not apply to s117 aftercare, nor have they been incorporated into s 117(3) (*paragraph 19.68 Care and support statutory guidance.*

6.4 Section 39(4) of the Care Act states that if the individual is eligible for accommodation under s117 and requires additional care and support, the Local Authority providing s117 aftercare would be considered their ordinary residence. The usual rules under the Care Act apply if accommodation is not being provided under s117. For example, if an individual is eligible for accommodation under s117 provided by LA1, any additional care and support needs which are not part of their s117 aftercare plan will be

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[3] Sections 39 (1) – (3) and (5) – (7) & para schedule 1 Care Act 2014

[4] The Care and Support Statutory Guidance should be read alongside the DHSC's note on the position on the determination of ordinary residence disputes found in the link at footnote 5 above.

[5] See footnote 7

10 Mohamed v Hammersmith and Fulham London Borough Council: HL 1 Nov 2001
https://publications.parliament.uk/pa/ld200102/ldjudgmt/jd011101/moham-1.htm

provided by LA1 under their care act duties. If the person has additional health needs, they may also be eligible for NHS funding. Please see section 18.

Worcestershire County Council v Secretary of State for Health and Social Care [2023] UKSC 31, In 2020, the SoS advised that the CA 2014 statutory guidance and, particularly paragraphs 19.62 to 19.68, did not represent the DHSC's current position in s 117 cases. The SoS's view, was set out in eight determinations concerning the identification of ordinary residence for the purposes of s 117(3) and is that the person's ordinary residence does not change, even if they are detained under the MHA 1983 on multiple occasions from different areas, see Legal update, DHSC publishes updated guidance on the determination of ordinary residence for the purpose of s 117(3) of the Mental Health Act 1983. In other words, the LA for the area where the person was first detained would retain responsibility for the person's after-care. The SoS indicated that this revised position took into account the Supreme Court's ruling in R (Cornwall Council) v Secretary of State for Health [2015] UKSC 46, asserting that this also applied to s 117 of the MHA 1983. Therefore, as a matter of policy, a former patient placed in accommodation out of area under the s 117 duty, should be treated as ordinarily resident in the area of the LA that arranged the placement.

In *R (Worcestershire County Council) v Secretary of State for Health and Social Care [2021] EWCA Civ 1957* the Court of Appeal overturned a decision of the High Court which had found that Worcestershire CCG's (now ICB) duty to the patient (JG) ceased by operation of law when JG was released from the second period of detention and was transferred to Swindon BC (see *Legal updates, Secretary of State for Health and Social Care wins appeal over which local authority responsible for s 117 after-care (Court of Appeal)* and *High Court clarifies process for identifying ordinary residence of patients requiring after-care under s 117 of Mental Health Act 1983*). The Court of Appeal found that the duty under s 117 of the MHA 1983 continues until it comes to an end by communicating a decision, pursuant to s 117(2), that the relevant medical or social care staff at the authority is satisfied that the individual concerned is no longer in need of after-care services. There had been no such decision in relation to JG and therefore Worcestershire CC's duty continued throughout both the second period of JG's detention and beyond.

The Supreme Court in *R (Worcestershire County Council) v Secretary of State for Health and Social Care [2023] UKSC 31Opens in a new window*, upheld the Court of Appeal's decision, finding that where a patient in receipt of after-care had been detained for a second time under section 3 of the Mental Health Act 1983, and moved to a different LA's area after their first detention, the s 117(2) duty on the first LA ended upon the second detention (see *Legal update, Duty to provide after-care services under s 117 of Mental Health Act 1983 ceases upon second section 3 detention (Supreme Court)*. The court found that at that point, s 117(1) ceased to apply to the patient and that a new duty to provide after-care services arose when they were discharged. This duty would apply to the LA for the area in which the person was ordinarily resident. In JG's case, and on the classic statement of "ordinarily resident" in R v Barnet London Borough Council, ex p Shah [1983] 2 AC 309 this was Swindon's area immediately before her second detention.

Identifying the responsible NHS commissioner

7.1 On 14 June 2022, NHS England published *Who Pays? Determining which NHS commissioner is responsible for commissioning healthcare services and making payments to providers* (2022 guidance) [6]which replaces the previous version of the guidance published in August 2020 *guidance*.

[6] B1578_i_who-pays-framework-final.pdf (england.nhs.uk)

The 2022 guidance sets out the framework for establishing which NHS commissioner will be responsible for commissioning and paying for an individual's NHS care and reflects the abolition of CCGs and the introduction of ICBs under the HCA 2022.

7.2 GP practices will not be members of ICBs in the same way as CCGs. For services that fall within the commissioning responsibility of ICBs, the HCA 2022 provides that NHS England must publish rules for determining the group of people for whom each ICB has core responsibility (*section 20*, HCA 2022). A *list* of GP practices associated with each ICB has been published by NHS Digital and responsibility will fall to the ICB with which the patient's registered practice is associated. The association of practices with ICBs is based on the historic CCG membership of each practice, which means that there will be continuity under the new arrangements.

The changes brought in by the HCA 2022 have resulted in a more complex set of rules, including transitional arrangements, for determining which ICB is responsible for commissioning and funding s 117 after-care. The general rules for determining core responsibility between ICBs are summarised in paragraph 10.2 of the 2022 guidance and are as follows:

- Where an individual is registered on the list of NHS patients of a GP practice, the ICB with core responsibility for the individual will be the ICB with which that GP practice is associated.
- Where an individual is not registered with a GP practice, the ICB with core responsibility for the individual will be the ICB in whose geographic area the individual is "usually resident". The rules on determining usual residence are set out in Appendix 2 of the *2022 guidance.*
- Any one GP practice may have some individuals registered with it who are usually resident in one ICB and others who are usually resident in another. In that situation, the responsible ICB for all of the individuals registered with that practice will be the ICB with which that practice is associated.
- Where an individual is registered with a GP practice which is associated with ICB A but has then been accepted as a temporary resident by a GP practice which is associated with ICB B, the individual becomes the core responsibility of ICB B for that period of temporary residence.
- Where a patient has "no fixed abode" and is not registered with a GP practice, then the responsible ICB should be determined by reference to the usual residence test in Appendix A of the 2022 guidance (see *Usual residence*).

NHS England and ICB commissioning responsibility for s 117 after-care from 1 July 2022

Under the previous CCG arrangements, the 2020 guidance established a separate rule on CCG responsibility funding detention under the MHA 1983 and after-care services, so that the CCG responsible for the patient at the point of initial detention under the MHA 1983 retained responsibility for funding detention, subsequent *s 117* after-care and any further periods of detention and after-care until the patient was ultimately discharged from after-care (*chapter 18, 2020 guidance*.

The exception in relation to commissioning responsibility for s 117 after-care, now provides that for individuals who are detained under the MHA 1983 for the first time on or after 1 July 2022 (including where they are detained for the first time following discharge from s 117 after-care provided after a previous detention) commissioning and funding responsibility is as follows:

- NHS England will be responsible for commissioning and funding for any period where the patient is treated by a prescribed specialised service.
- In respect of ICB-commissioned detention and after-care services, the ICB responsible for commissioning and payment will be determined on the basis of the general rules at paragraph 10.2 of the *2022 guidance* applied at the point of the patient's initial detention in hospital under the MHA 1983, whether that is for assessment or treatment (the originating ICB).
- The originating ICB will then retain responsibility for commissioning and payment throughout the initial detention (including any period of informal admission following detention, during which the patient is no longer detained but remains in hospital voluntarily), for the whole period for which any s 117 after-care is provided and for any subsequent repeat detentions or voluntary admissions

from after-care, until such point as the patient is finally discharged from after-care. This applies irrespective of where the patient is treated or placed, where they live or which GP practice they are registered with.
(*Paragraphs 18.1 to 4, 2022 guidance*.

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The exception in relation to commissioning responsibility for s 117 after-care, now provides that for individuals who are detained under the MHA 1983 for the first time on or after 1 July 2022 (including where they are detained for the first time following discharge from s 117 after-care provided after a previous detention) commissioning and funding responsibility is as follows:

- NHS England will be responsible for commissioning and funding for any period where the patient is treated by a prescribed specialised service.
- In respect of ICB-commissioned detention and after-care services, the ICB responsible for commissioning and payment will be determined on the basis of the general rules at paragraph 10.2 of the *2022 guidance* applied at the point of the patient's initial detention in hospital under the MHA 1983, whether that is for assessment or treatment (the originating ICB).
- The originating ICB will then retain responsibility for commissioning and payment throughout the initial detention (including any period of informal admission following detention, during which the patient is no longer detained but remains in hospital voluntarily), for the whole period for which any s 117 after-care is provided and for any subsequent repeat detentions or voluntary admissions from after-care, until such point as the patient is finally discharged from after-care. This applies irrespective of where the patient is treated or placed, where they live or which GP practice they are registered with.
(*Paragraphs 18.1 to 4, 2022 guidance*).

Transitional arrangements for commissioning and funding after-care
The transitional arrangements for commissioning and funding s 117 after-care are set out in paragraph 18.7 of the *2022 guidance* and are as follows:

- Where a patient is detained in hospital for the first time on or after 1 July 2022, responsibility for commissioning and payment will be determined on the basis of the arrangements set out in paragraphs 18.3-4 of the 2022 guidance.
- For patients already detained in hospital or receiving after-care before 1 July 2022, NHS England continues to mandate (using its powers under *section 14Z50* of the National Health Service Act 2006) transitional requirements, which were first set out in the *2020 guidance*, in relation to payment responsibility for detention and after-care. These transitional arrangements continue to operate by reference to 1 September 2020, the date when the 2020 guidance came into effect, which provide that:
- Where, at 1 September 2020:
- a patient had been discharged from detention and was already receiving s117 after-care, funded in part or whole by a CCG, that CCG (and its successor ICB where applicable) will remain responsible for funding the aftercare and any subsequent further detentions or voluntary admissions, until such point as the patient is discharged from aftercare.
- a patient was detained in hospital funded by a CCG, that CCG (and its successor ICB where applicable) 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 patient is discharged from s 117 after-care.
- a patient was detained in hospital funded by NHS England, the CCG or ICB which will be responsible for funding any further detention in a CCG or ICB-funded hospital setting and any

necessary NHS after-care (including any subsequent further detentions or voluntary admissions, until such point as the patient is discharged from s117 aftercare) will be determined as set out in paragraph 18.3 of the 2022 guidance, applied at the point of the patient's initial detention in hospital.
Illustrative scenarios that set out how responsibility for funding is to be determined in specific situations are contained in paragraphs 18.9 to 18.17 of the *2022 guidance*.

Usual residence
The criteria for determining "usual residence" are set out in Appendix 2 to the *2022 guidance*. "Usual residence" is not the same as "ordinary residence", which is the criterion for determining which local authority is responsible for providing support.

The "usually resident" test must only be used to establish the responsible commissioner when this cannot be established based on the patient's GP practice registration.

The main criterion for assessing usual residence is the patient's perception of where they are resident in the UK, either currently, or failing that most recently. Where the patient gives an address, they should be treated as usually resident at that address. It is sufficient for the purpose of establishing usual residence that a patient is resident in a location (or postal district) within the ICB geographical area, without needing a precise address. Where there is any uncertainty, the provider should ask the patient where they usually live. Individuals are free to give their perception of where they consider themselves resident. Holiday or second homes should not be considered as "usual" residences.

Power to impose the after-care duty on another ICB or on NHS England

The National Health Service (Integrated Care Boards: Responsibilities) Regulations 2022 (*SI 2022/635*) (2022 Regulations) make provision for the duty to provide mental health after-care services to be imposed on an ICB other than the ICB subject to the duty imposed by *s 117(2)* of the MHA 1983 (*regulation 7*). The 2022 Regulations also set out the circumstances in which that duty is imposed on NHS England (*regulation 8*).

Regulation 7 of the 2022 Regulations imposes the duty to provide mental health after-care services on another ICB (ICB A) in one of four specified circumstances below, namely where:

- ICB A has responsibility to arrange for the provision of mental health services to the person during the detention to which the after-care services relate and the person is usually resident in England (*regulation 7(2)*).
- The after-care services:
- relate to a period of detention from which the person was discharged before the 2022 Regulations came into force.
- ICB A has core responsibility for the person when the 2022 Regulations came into force; and
- the person is usually resident in England.
(*Regulation 7(3)*).

- The after-care services:
- relate to a period of detention the provision of which was arranged by NHS England.
- the period of detention began before the 2022 Regulations came into force.
- the person was discharged from that period of detention on, or after, the coming into force of the 2022 Regulations.
- ICB A had core responsibility for the person on the date of their discharge from detention.
- regulation 8 of the 2022 Regulations does not apply to the after-care services; and
- the person is usually resident in England.
(*Regulation 7(4)*).

- The after-care services:
- relate to a period of detention the provision of which was arranged by NHS England.
- the period of detention began on, or after, the coming into force of the 2022 Regulations.

- ICB A had core responsibility for the person on the first day of the person's detention.
- regulation 8 does not apply to the after-care services; and
- the person is usually resident in England.
  (*Regulation 7(5)*).

  Regulation 8 of the 2022 Regulations imposes the duty to arrange for the provision of after-care services on NHS England, where the person is receiving after-care services under s 117 of the MHA 1983 which, if it were being provided under the *NHS Act 2006*, would be a service the provision of which NHS England had a duty to arrange.

THE PERSON'S RIGHTS UNDER s117

8.1 People who are eligible for s117 aftercare services should have their rights explained and be given the appropriate information in accordance with Section 132 of the Mental Health Act 1983, and Chapter 4 of the Mental Health Code of Practice 1983. This should be recorded on the person's notes including the assessment tab on CareNotes and the equivalent recording process in Mosaic (Camden) and LAS (Islington).

8.2 Within the care planning process, a person is entitled to the following:

- a meeting before discharge from hospital to talk about his/her needs once s/he has left, to be recorded on S117 planning form.
- the person and/or their carer, relative and/or representative has the right to attend this meeting where the person gives permission for their attendance. The right to meetings to review his/her support needs.
- the right to refuse services unless there are restrictions under a Community Treatment Order.

8.3 People who are eligible for s117 aftercare services **must be** given a copy of their care plan and understand the range of services they will be offered. When chargeable services are being provided at nil charge as part of s117 aftercare, the person, their relatives and/or carers, where appropriate, must be made aware of the implications of such provision and of how the position will change should there be a subsequent review decision that the service will no longer be provided under s117.

8.4 The person needs to be informed in writing of the purpose of s117 and the review procedures for s117. As part of this it is essential that the person is informed that upon discharge from s117, if they continue to receive services, they may become liable for charges for certain elements of the social care package.

PLANNING OF s117 AFTERCARE

9.1 Although the duty to provide aftercare begins when the person leaves hospital the planning of aftercare should start as soon as the person is admitted to hospital[7].

9.2 Planning an s117 aftercare meeting should take place within 21 working days of X's admission for assessment and for planning purposes. This has to include all relevant parties who are, or will be actively involved in the person's care, including the person themselves and/or their representative.

9.3 See section 9 - re advocacy in s117 and the interaction with the Mental Capacity Act for people who lack capacity to consent to their aftercare plan.

[7] Para 33.10 MHA Code of Practice

9.4 The planning for After-care: s117 meetings will be convened and managed by the relevant ward staff.

9.5 The following **must be** in attendance at the pre-discharge s117 aftercare meeting:

- The person subject to s117 and/or their representative
- Responsible clinician (RC)
- Care Coordinator

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At a Glance
The pre aftercare meeting will take place not more than 21 days from admission.
All s117 aftercare meetings must be attended by the Responsible Clinician (or appropriate medical other), Care Coordinator, the person concerned and or their representative.
The aftercare meeting will confirm the needs and support requirements of the individual and be clear which are s117 related and which are "other".
S117 is the responsibility of all key agencies. The appropriate agencies (the Trust, Local Authority and ICB) must agree to accept the shared responsibilities and prioritise staff to deliver s117 processes within a legal framework.

ASSESSMENT and SUPPORT PLANNING

10.1 When Should it Start?

The duty to provide after-care starts when the patient leaves hospital. However, after-care planning should start as soon as the patient is admitted to hospital (*paragraph 33.10, MHA code of practice*). ICBs and local authorities are therefore required to take reasonable steps to identify appropriate after-care services for patients, to ensure that these are ready and in place when they are eventually discharged from hospital (*paragraph 34.17, MHA code of practice*).

10.2 An assessment for services under s.117 MHA 1983 should be completed under the ambit of s.47 NHS & Community Care Act 1990[8] which has been specifically amended to include s.117 to ensure that clear distinction is drawn between after-care services and other social care provisions.

10.3 **Community mental health framework**

The *Community mental health framework for adults and older adults (2019)Opens in a new window* (2019 framework) replaced the care programme approach (CPA) (see *DH: Refocusing the Care Programme Approach, Policy and Positive Practice Guidance (March 2008)* which was the system previously used for planning after-care for all patients admitted to hospital for treatment for mental disorders. The aim of the 2019 framework is to "enable services to shift away from an inequitable, rigid and arbitrary CPA classification and bring up the standard of care towards a minimum universal standard of high-quality care for everyone in need of community mental healthcare" (see *NHS England: Care Programme Approach: position statement (2021)*.

The 2019 framework subsumes key aspects of the CPA for community mental health services, including care planning and care coordination, and reframes them in a system that will work for everyone, with a focus on improved outcomes. It envisages a shift away from risk assessments and ineffective predictive approaches to safety planning and "positive risk taking" (*paragraph 3.2.2, 2019 framework*).

[8] Amended by schedule 1, paragraph 51(2) Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (SI/914)

The 2019 framework proposes a core community mental health service, which will bring together what is currently provided in primary care for people with less complex as well as complex needs with that provided by secondary care CMHTs and in residential settings (including supported housing and care homes) (*paragraph 3.1.2, 2019 framework*).

The framework, which sets out a revised approach in which place-based and integrated mental health support, care and treatment are situated and provided in the community, for people with any level of mental health need, is based on the following five principles:

- A shift from generic care co-ordination to meaningful intervention-based care and delivery of high-quality, safe and meaningful care which helps people to recover and stay well, with documentation and processes that are proportionate and enable the delivery of high-quality care.
- A named key worker for all service users with a clearer multidisciplinary team approach to both assess and meet the needs of service users.
- High quality co-produced, holistic, personalised care and support planning for people with severe mental health problems living in the community, facilitated by the use of digital shared care records and integration with other relevant care planning processes (including in relation to s 117 after-care). Service users will actively co-producing brief and relevant care plans with staff, and with active input from non-NHS partners where appropriate including social care to ensure compliance with the CA 2014.
- Better support for and involvement of carers as a means to provide safer and more effective care.
- A more accessible, responsive and flexible system in which approaches are tailored to the health, care and life needs, and circumstances of an individual, their carers and family members, services' abilities and approaches to engaging an individual, and the complexity and severity of the individual's condition(s), which may fluctuate over time.

10.4 Assessments should complement each other for example, any other assessment and planning carried out as part of determining the individual's needs; for example, any DST assessment for NHS continuing care, Care Programme Approach, Care Treatment and Review, Care Act review and physical health reviews. Where possible there should be **one** comprehensive assessment/review document that covers all requirements.

10.5 Any assessment should be undertaken within a strengths-based framework building on the individual's strengths, informal supports and assets.

10.6 An assessment to clearly identify which needs are s117 aftercare needs alongside the requisite s117 aftercare services and which are for other care and support not related to their mental health, since some care/support may fall under social care or health responsibility. Additional social care services for physical health for example will require a financial assessment. In such cases, it is envisaged that assessments may run concurrently.

10.7 There are cases where the person's entitlement to aftercare ends, and they will be discharged from s.117: as they no longer have a need for mental health aftercare services. However, the person may still require further support/services in the community not related to their mental health. The needs assessment for any of these support/services should be completed under s9 - 13 of the Care Act 2014. If it is felt that there may be an eligibility for NHS CHC a checklist should be completed.

10.8 People who refuse services or disengage from services are still eligible for s117 services. A care plan should still be prepared, a risk assessment should be completed, and a review date should be set.

10.9 It is important to ensure that there is a written document setting out the aftercare programme approach/aftercare plan to identify the needs being met under s117 and formal monitoring and review process together with a clear record of the package of s117 support.

10.10 The care plan should state accurately details of the s117 aftercare services provided:

- Health needs (non-chargeable)
- Social care needs (non-chargeable)
- Other needs identified outside s117 aftercare services (chargeable). For example, the person has developed a physical disability and because of this requires care services to meet those needs.

ACCESS TO ADVOCACY (Statutory Advocacy – Independent Mental Health Advocate (IMHA) and Independent Mental Capacity Advocate (IMCA)

11.1 Section 130A MHA 1983 established arrangements for statutory MHA advocacy from 2009. The IMHA Service provides advocacy for people who have mental capacity but who are subject to compulsory powers under the MHA. This includes people who are in a psychiatric hospital and others who are subject to either s17A Community Treatment Orders or Guardianship. Anyone who is directly involved in a person's care or treatment can refer to the IMHA Service, as can the individual themselves.

11.2 Under the Mental Capacity Act 2005, there is a legal duty, since 2007, to refer people lacking capacity to the IMCA Service, where they are unable to make a decision about their s117 MHA aftercare package and have no relatives or family whom it is appropriate to consult. This referral must be made before the aftercare plan is implemented.

CHARGING AND FINANCIAL ASSESSMENT FOR ADULT SOCIAL CARE SERVICES

12.1 For people with eligible care and support needs (who **are not** receiving services under s117), any social care service provided (except where there is eligibility for continuing health care, or an NHS funded Personal Health budget) is chargeable and the person must undergo a financial assessment.

12.2 A financial assessment should be undertaken to assess whether the person will be required to make a contribution to their care in accordance with the LA's charging policy. This will relate to any services which fall outside the scope of s117 aftercare.

12.3 The Care Act also now allows a person the option to 'top-up' the cost of their care under s117 should they wish to select a provider of their choice whose costs exceed the LA's funding cap. For Camden, further information on top ups can be found in the Camden ASC Practice Guide. For Islington, further information on top ups can be found in the Charges for Care Homes . All healthcare is exempt from financial assessment and charging including care provided via continuing healthcare or a personal health budget.

12.4 **Aftercare services provided under s117 are non-chargeable** and therefore a financial assessment is not required. However, a **contractual arrangement** must be entered into if a 'top up' to accommodation costs is required. A financial assessment will be required if the person has other physical care needs that are met under other legislative requirements.

DIRECT PAYMENTS AND PERSONAL HEALTH BUDGETS

13.1 s117 aftercare services can be provided through a direct payment or personal health budget. Further guidance can be found in Camden's direct payments policy and NHS England's personal health budgets website. For Islington, further information on direct payments can be found on the Direct Payments for Social Care page on the council's website.

13.2 A personal health budget is an amount of money to support the health, and wellbeing needs of an individual, which is planned and agreed between the individual, their support network and the local ICB. People can use their personal health budget to meet a range of health and wellbeing outcomes, such as by purchasing therapies, personal care and equipment as agreed in their personalised care and support plan.

13.3 The legal right to a personal health budget has been extended to people eligible for s117 aftercare services. This came into effect from 2nd December 2019.

PROFESSIONAL RESPONSIBILITY TO RECORD INFORMATION ACCURATELY

14.1 The statutory responsibility and accountability for keeping a register of people subject to s117 lies with LAs. Each LA will keep a register using information supplied by the Trust.

14.2 A person's s117 status should be recorded on relevant IT systems. It is the responsibility of Camden and Islington Foundation Trust to ensure that this information is recorded on their information system and on assessments and care plans, via CareNotes. It is the responsibility of each Local Authority to ensure that this information is recorded on their information system when aftercare funded by the ICB, or Local Authority is being provided. Camden ICB will be responsible for entering this information on to Care Track for those packages that are partly or fully funded by Camden ICB. In Islington the Trust under its responsibilities agreed in the S75 Partnership Arrangement is responsible for recording this information on LAS.

14.3 There must be clear written information in the person's care plan giving accurate details of the s117 aftercare services, for example:

- State the person's s117 needs and the person's aftercare services that he/she requires to meet those needs
- The date when he/she is due to be discharged from s3
- Accommodation needs
- Support in the community
- Any services required that relate to needs that are not aftercare services under s117
- Frequency of meetings with the Care Coordinator.

This is not an exhaustive list.

14.4 Where Adult Social Care (ASC) services are in place, s117 information should be recorded in the assessment, support plan and review documentation and also the LA case management system.

14.5 Care Coordinators are responsible for finding out and recording relevant information in the CPA and/or care plan e.g. whether a person is eligible for s117 aftercare services.

REVIEW OF PEOPLE SUBJECT TO s117

15.1 The review of those subject to s117 who receive services **must be held at every CPA/care planning meeting, or at least every 12 months**. The person, carer/s and advocate should be invited with the person's permission. This includes those who are eligible to s117 and live out of area. If a person placed out of area has been detained under the Mental Health Act again this should trigger a new s117 plan.

15.2 The person, carer/s or any member of the person's care team may request an earlier review. The LA and ICB will consider the merits of conducting a review but should not withhold permission to carry out an early review unnecessarily.

15.3 If a person no longer requires mental health care and treatment, they will be discharged from s117 however, the following should be taken into consideration:

- If the person no longer requires care/case management, but still requires s117 services such as residential care or supported housing they will remain under review of s117 and require annual reviews in line with the guidance. The case should remain allocated to a team/worker.

15.4 The aftercare plan which would usually be the care plan should be monitored and reviewed by the Care Coordinator, and multidisciplinary team. The aim will be that the aftercare plan objectives are followed to ensure that the services provided continue to aid the individual's recovery.

15.5 At the conclusion of the review meeting, recommendations must be made as to whether:

- The aftercare plan needs to continue, or
- The aftercare plan needs to be modified in response to changing needs, or the need for specific services to avoid a readmission comes to an end, or
- The aftercare plan can be ended, and the person discharged from s117. This decision will be made at an MDT meeting with final approval from the Mental Health Funding Panel or CLDS Quality Assurance Panel in the relevant borough.

15.6 The review meeting must always consider the following elements:

- The services needed to meet the person's needs and their purpose (including the differentiation between those services being provided under s117 and those provided as part of the person's care and support package or universal services)
- If any changes to services require charging assessment

The care coordinator is responsible for recording the review on the s117 form in the assessment tab on CareNotes electronic patient record. If an Adult Social Care review has been carried out, then this document must state whether that the person is eligible for s117 aftercare or not. It is the responsibly of Camden and Islington local authorities to ensure that this information is recorded on their information systems by introduction of local processes with CandI.

ACCOMMODATION

16.1 In terms of case law, the lead case on accommodation is *R (Afework) v Mayor and Burgess of the London Borough of Camden [2013] EWHC 1637.* The court ruled that "basic or pure, or ordinary accommodation does not come within the concept of aftercare services."

16.2 Accommodation may only be provided under s117 if:

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

PEOPLE WHO MOVE TO OTHER AREAS

17.1 Should a person move to another area the Care Coordinator must inform the local mental health service (local health and social services providers) of the presence in their area and forward a copy of the care plan documentation and any agreed package of care. The responsibility for s117 will remain with the originating LA and ICB but please read the relevant section of the Who Pays Guidance 2022) to ensure that the particular case is in accordance with this.

17.2 If the person is detained under an s3 again the responsibility for providing s117 aftercare services is the LA where the person is ordinarily resident, but the responsibility remains with the originating ICB. Detention under the mental health should trigger a new s117 plan, this will determine aftercare needs and ensure the responsible authorities are involved prior to discharge.

PRISONERS

18.1 Prisoners transferred to hospital under section 47 or section 48 are eligible for s117 aftercare services, or when they are released from prison, having spent part of their sentence detained in hospital under a relevant section of the Mental Health Act.

18.2 The area in which the person was ordinarily resident prior to going to prison remains the responsible authority.

18.3 The Care and Support Statutory Guidance (Care Act 2014) makes it clear prisoners detained under the Mental Health Act 1983 are entitled to the same process of assessments, care planning, and the CPA as other persons detained under the MHA 1983.

18.4 The s.47 assessment process and CPA should be completed, including the “needs” assessment – s9 -13 Care Act 2014 if there are needs outside of s.117 MHA 1983. The care plan should be prepared before the discharge from hospital or prison.

CHOICE OF ACCOMMODATION

19.1 A person who requires accommodation as an aftercare service can express a preference for accommodation.[9] There is a duty on a LA to take into account the person’s preference when providing or arranging for a care home; shared lives; or supported living accommodation. The person must be over 18 years, the preferred accommodation must be of the type that it has been assessed that the person requires and on the terms that are acceptable to the LA.

19.2 A person has the right to choose accommodation provided that:

- The preferred accommodation is of the same type that the local authority has decided to provide or arrange
- It is suitable for person’s needs (‘assessed needs’ means needs identified in the CPA care plan)
- **It is available.**
- Where the accommodation is not provided by the local authority, the provider of the accommodation agrees to provide the accommodation to the person on the local authority’s terms.

[9] S 117A together with Regulation 4 of the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014

19.3 Care planning should identify and consider the type of accommodation which is suitable for the person's needs and afford them the right to choice of accommodation set out in the regulations.

19.4 It is now permitted for the person or a third party to agree in writing to pay the "additional cost' over the amount that the LA would expect to be the usual cost of accommodation. The LA must be satisfied that the person, or another person on his/her behalf is able and willing to pay the additional cost, and they must enter into an agreement with the LA to meet the additional cost. A financial assessment must be completed before the LA agrees the choice of accommodation with the person to ensure he/she, or their representative can pay the additional costs. Further guidance on choice of accommodation and 'top ups' can be found in the Camden ASC Practice Guide and for Islington in the Charges for Care Homes .

19.5 The LA must give written reasons for refusing a preferred accommodation.

FUNDING FOR INDIVIDUALS WITH PHYSICAL AND MENTAL HEALTH NEEDS

20.1 Additional funding to meet an individual's physical health needs are not funded under s117 unless they directly impact the individual's mental health i.e. HIV induced psychosis or HIV induced dementia. Where this is the case primary health services already commissioned by the ICB i.e. GPs, District Nurses, Tissue Viability etc. to support people with physical health needs should be accessed in the first instance.

NHS CONTINUING HEALTHCARE FUNDING

21.1 Individuals who are eligible for s117 aftercare to meet their mental health needs have the same right to NHS continuing health care (CHC) as anybody else regarding their physical or other health care needs that fall outside of their s117 aftercare plan. This may include an assessment to see if their physical or other health needs (outside of those being met as part of their s117 aftercare plan for their mental health needs) are such that they qualify for NHS CHC.

22.2 To be eligible for NHS CHC an individual must fulfil the NHS CHC eligibility criteria as outlined in the NHS CHC Framework (revised October 2018). Remember you need to record the physical needs clearly on the CHC Checklist.

22.3 A CHC checklist should be completed when referring an individual for NHS CHC. The CHC checklist is a pre-screening tool that is used to indicate when an individual should have a full CHC assessment. A positive CHC checklist indicates that a full CHC assessment is required, and a negative checklist indicates that a full CHC assessment is not required. If the checklist is positive, a Decision Support Tool (DST) must be completed as part of the full CHC assessment. A DST is a national tool designed by the Department of Health (DH) to assist ICBs in making CHC funding eligibility decisions in a consistent way. NHS CHC eligibility for individuals subject to s117 aftercare can only be considered against those needs that are not being met by the person's s117 aftercare.

22.4 An example of this might include a person who is already subject to an s117 and then has a stroke or traumatic incident and sustains a significant brain injury resulting in low level consciousness and the need to be mechanically ventilated. These needs would be considered separately to the original mental health aftercare needs and would be assessed for eligibility under the NHS CHC framework.

22.5 In cases where NHS CHC is indicated the CPA Care Coordinator has a duty to complete, (with the multi-disciplinary team (MDT) as appropriate), the CHC Checklist and if this is positive they then submit this to the appropriate Directorate (Camden or Islington) of NHS NCL ICB, Continuing

Healthcare Team (or CLDS Nurse Consultant for people with a learning disability) as the first stage of the referral process. The ICB or CLDS Nurse Consultant will then ratify the checklist and if they agree that the checklist is positive, they will instruct a CHC assessor to co-ordinate and complete a full NHS CHC determination with the treating MDT, the individual and their family within 28 days. Using all of the evidence collated in the Decision Support Tool the MDT, with the CHC assessor, will then make a recommendation on CHC eligibility which is presented to the ICB or the CLDS Quality Assurance Panel for ratification.

22.6 If following the full CHC assessment the individual is deemed eligible for NHS CHC funding, the ICB will then take responsibility for meeting that individual's health and care needs but not those aftercare needs being met under their s117 which related to their mental health diagnosis. The ICB will arrange and jointly fund an appropriate care package between the CHC assessor and the mental health care coordinator to ensure that both physical and mental health needs are being met appropriately in line with the NHS National Continuing Healthcare Framework (revised 2018).

NHS FUNDED NURSING CARE

23.1 Following the completion of a CHC checklist or full CHC assessment an individual that is ratified as not eligible for NHS CHC funding may be ratified as eligible for NHS Funded Nursing Care (FNC) contribution if they meet the criteria.

23.2 NHS FNC contribution is a weekly amount paid by the ICB towards an individual's nursing home fees for people that have been deemed to have registered nursing needs related to their physical health and who are placed in a registered nursing home environment. The weekly amount as determined by the Department of Health is subject to annual inflationary increases. NHS FNC contribution is paid directly to the nursing care home and not the individual.

23.3 If the ICB determines that an individual who is subject to s117 aftercare is eligible for NHS FNC contribution the ICB will contribute towards the individual's s117 aftercare to meet their mental health needs. In addition to paying NHS FNC contribution for the individual's nursing care needs related to their physical health needs if they are placed in a nursing home environment.

23.4 Further information can be found in the National Framework for NHS Continuing Healthcare and NHS Funded Nursing care (revised 2018).

DETERMINING s117 FUNDING RESPONSIBILITY

24.1 Generally, s117 aftercare funding is funded via a pooled budget to which both the local authority and ICB contribute.

24.2 In some complex, high-cost cases funding arrangements may need to be agreed outside this pooled budget, such as

- Patients who due to complaints or disputes cannot be supported by the local NHS Trust but who qualify for s117 health aftercare
- Patients who require s117 health aftercare but who cannot have their needs met in locally commissioned services
- Individuals who for reasons of risk or vulnerability require a single-sex health placement that is not available locally
- Those that present with a high level of needs that mean they require an intensive level of health input, therapy and security to meet these needs.

Circumstances where ICB funding is applicable

25.1 The ICB would fund s117 aftercare services for the provision of health care for these patients who have health needs arising from their mental illness and where the provision of such health care prevents a deterioration of mental illness and supports the avoidance of re-admission to hospital. Individuals may also require social care funding. This includes the following (this is not an exhaustive list):

- Provision of medication to treat mental illness including prescription charges for this medication
- Treatment and care provided by health professionals, including doctors, nurses, psychologists, etc.

Circumstances where social care funding is applicable

26.1 The assessment of need should determine if the person has any eligible social care needs under s117 which would prevent a deterioration of mental illness and support the avoidance of re-admission to hospital. Individuals may also require health funding. This includes the following (this is not an exhaustive list):

- Managing and maintaining nutrition
- Maintaining personal hygiene
- Being appropriately clothed
- Being able to make use of the home safely
- Maintaining a habitable home environment
- Developing and maintaining family or other personal relationships
- Accessing and engaging in work, training, education or volunteering

26.2 Preventative services should be supported with the aim to help people look after their mental health and prevent mental health problems.

26.3 Eligibility for social care or health support may be long term or short term so the social care contribution to a person's s117 aftercare plan should be kept under regular review.

Limits to Local Authority Duty under the Care Act 2014

27.1 Section 22 of the Care Act places a limit on the support that a Local Authority can provide under that Act. It states that local authorities are prohibited from providing support that is required to be provided under the NHS Act 2006 unless—

a. Doing so would be merely incidental or ancillary to doing something else to meet needs under those sections, and
b. The service or facility in question would be of a nature that the Local Authority could be expected to provide.

DISCHARGE FROM s117 AND AUTHORISATION

- Plan
- Review
- Reduce aftercare services
- Discharge

28.1 The duty to provide after-care services exists until both the ICB and the local authority are satisfied that the patient no longer requires them (*paragraph 33.20, MHA code of practice*). The question as to whether a person no longer requires s 117 after-care is one that the relevant after-care bodies are entitled to determine on the individual merits of each case. The decision to end s 117 after-care should only be taken following a proper re-assessment of the person's needs.

The person should be fully involved in the decision-making process to ensure the successful ending of aftercare (*paragraph 33.20, MHA code of practice*).

S 117 after-care services should not be withdrawn solely because:

- The person has been discharged from the care of specialist mental health services.
- An arbitrary period of time has passed since the care was first provided.
- The person:
- is deprived of their liberty under the MCA 2005 (see *Practice note, Deprivation of liberty and mental capacity: overview*);
- has returned to hospital as a voluntary patient or is subsequently detained under *section 2* of the MHA 1983; or
- is no longer on a CTO

28.2 A person should only be discharged from the aftercare provisions of s117 if the responsible multi-disciplinary team (MDT) and mental health quality assurance panel or CLDS/ILDP quality assurance panel are satisfied that the person is now equipped to manage life in the community without services to prevent readmission for treatment of a mental disorder.

28.3 If the MDT consider that a person no longer requires s117 aftercare, a representative from the MDT will present the recommendation and reasoning to the mental health quality assurance panel or the CLDS quality assurance panel, who will make the final decision regarding discharge. If the MDT do not agree on discharge both the responsible clinician and care coordinator should attend the appropriate panel to present both opinions and clinical views.

28.4 Panel members can also request a discharge from s117 aftercare.

28.5 If the panel cannot reach a decision this should discussed at mental health quality assurance panel or the CLDS quality assurance panel first before escalating to Director Level of both Adult Social Care and the ICB if required.

28.6 When a person is discharged from s117 aftercare this will be recorded on a Discharge from s117 aftercare form (Appendix 2) and contain:

- A full explanation of how the decision was reached,
- The plans to provide any other care outside of s117 and
- The names of the decision makers involved in this process.

28.7 This information will be uploaded on the local authority data base as well as CareNotes and shared with any future care providers. The intention for all service users is to improve mental health and recovery.

28.8 The person will be notified of the decision using the confirmation of discharge pro forma letter (Appendix 3). The person and carer/s (where the user consents) will be consulted, but cannot veto decisions, which rest with Health and Adult Social Care professionals.

28.9 The Care Coordinator is responsible for recording the discharge on the s117 form in the assessment tab on the appropriate local authority database.

PROCESS FOR RESOLVING DISPUTES

29.1 Any disputes relating to s117 should be discussed initially at the MDT meeting. If a decision is not reached the individual's psychiatrist and Care Coordinator should present both opinions and clinical views to the Mental Health Panel or the CLDS Quality Assurance panel. If the panel do not agree this should be escalated to Director Level of both the ICB and Adult Social Care.

COMPLAINTS

30.1 If the person, or their representative, has a complaint regarding the operation of this policy, then this should in the first instance be addressed with their Care Coordinator and/or the relevant team manager. If this is not successful then the complaint should be handled in line with the complaint procedures of the lead agency.

RESUMPTION OF s117 STATUS

31.1 If a person who has previously been subject to s117 but was discharged and is readmitted under Sections 3, 37, 41, 47, 48, 45A they would again become entitled to s117 aftercare services upon discharge from hospital.

Appendix 1: REFERENCES AND BIBLIOGRAPHY

1. The Care Act 2014 http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted

2. The Care and Support Regulations and Statutory Guidance https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance

3. The Mental Health Act 1983 Revised Code of Practice (January 2015) https://www/gov.uk/government/publications/code-of-pratcice-mental-health- act-1983

4. R (Afework) v Mayor and Burgess of the London Borough of Camden [2013] EWHC 1637

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6. Department of Health (1990) The Care Programme Approach HC (90)23/LASSL (90)11]

7. Effective care co-ordination in mental health services: modernising the care programme approach - A policy booklet (1999)

8. Human Rights Act 1998

9. Jones, R. (2019) Mental Health Act Manual 22nd Edition, London, Sweet & Maxwell.

10. A report by the Health Service Ombudsman and the Local Government Ombudsman about the provision of s 117 aftercare (2012)

11. Mental Health Act 1983 (amended 2007)

12. Mental Health Policy Implementation Guide: Adult Acute Inpatient Care Provision, June 2002, Ref: 28165 http://www.p3-info.es/PDF/MHpolicy.pdf

13. R v Manchester City Council ex parte. Stennett (2002)

14. R v Mental Health Review Tribunal, Torfaen County Borough Council and Gwent Health Authority, ex parte Russell Hall Divisional Court (1999) 23 April, CO/2874/98 Court of Appeal (30 July 1999), The Times, 5 October 1999

15. Department of Health S117 Who pays guidance 2022

16. Guidance on the Legal Rights to Personal Health Budgets and Personal Wheel Chair Budgets December 2019 https://www.england.nhs.uk/wp-content/uploads/2014/09/guidance-on-the-legal-rights-to-personal-health-budgets.pdf

Appendix 2: Confirmation of discharge pro forma letter

[Issue on Headed Paper]

Dear [name]

Re: Mental Health Act 1983 – Aftercare under S 117 – Notification of discharge

S 117 of the Mental Health Act 1983 places a joint duty on local NHS and adult social services commissioners to provide free aftercare services for people that have previously been sectioned under the treatment sections of the Mental Health Act.

Eligibility for S 117 aftercare remains in force until the responsible authorities (the Local Authority and Integrated Care Board (ICB)), are satisfied that the person concerned is no longer in need of these services.

Records show that you were detained in hospital under a treatment order of the Mental Health Act [Section] on [date]. S 117 Aftercare commenced when you left hospital.

On [date] a review of your circumstances was undertaken at the [team name].

This review concluded that you no longer require aftercare services under s 117 that meets a need arising from or related to your mental health disorder and reducing the risk of a deterioration of your mental health condition and so reducing the risk of you requiring re-admission for treatment for mental disorder.

I am writing to confirm that this recommendation has been accepted and that you are discharged from the S 117 Aftercare register as of the date of the review above.

Yours sincerely

[Full Name]

[Job Title]

Appendix 3[10]: Extract from Who Pays Guidance – Update August 2020

18. Detention under the Mental Health Act and s 117 aftercare Background

18.1 In recent years, there has been some confusion over NHS responsibilities for commissioning and payment where, under the Mental Health Act, patients (whether adults or children) are detained in hospital and where, following discharge, they then receive aftercare ("s 117 aftercare"). Pending any new legislation to be put forward or guidance to be published, in due course, by the Government (including in response to the independent review of the Mental Health Act, https://www.gov.uk/government/groups/independentreview-of-the-mental-health-act), we are therefore clarifying the position as set out below.

18.2 For simplicity, we refer throughout this section to patients being "detained". Note, however, that the arrangements set out here apply to all those who are "liable to be detained"; this includes those patients in fact detained, as well as others such as patients who have been given a leave of absence from hospital (such as s17 leave) or are subject to an application but not yet physically detained. (See Reference Guide to the Mental Health Act 1983, paragraphs 1.37-38.)

What is the exception in relation to commissioning responsibility and who does it apply to?

18.3 The position on commissioning responsibility for s117 aftercare services changed as of 1 April 2016, when the Standing Rules Regulations were amended. Since then, the position on commissioning responsibility for detention and s117 aftercare has been that

- The responsible NHS commissioner for a patient who undergoes a period of detention in hospital under the Act is the commissioner in whose area the provider of the detention service is based; and
- the responsible NHS commissioner for a patient receiving s117 aftercare is the ICB in whose area the patient was ordinarily resident, immediately prior to being detained in hospital under the Act.

Effect on responsibility for payment

18.4 If this position on commissioning responsibility applied equally to responsibility for payment, it would create a financial incentive for ICBs not to commission local capacity for detained patients – because, if patients were instead detained in a hospital outside their local area, they could escape responsibility for paying for the period of detention. Such a position would be entirely perverse, acting against the direction of national policy, which is to support the provision of care as close to patients' homes as possible and to minimise reliance on out-of-area placements.

18.5 To avoid this situation, therefore, NHS England is making explicit use of its section 14Z7 powers to state that the rules for determining responsibility for payment are to be different from the legal position on responsibility for commissioning.

18.6 The following rules on payment responsibility will apply.

- NHS England will be responsible for payment for any period where the patient is treated by a prescribed specialised service.
- In respect of ICB-commissioned detention and aftercare services, the ICB responsible for payment will be determined on the basis of the general rules at paragraph 10.2 above, applied at the point of the patient's initial detention in hospital under the Act (whether for assessment or treatment). This ICB will be known as the "originating ICB".

[10] https://www.england.nhs.uk/wp-content/uploads/2020/08/Who-Pays-final-24082020-v2.pdf - pages 40 - 47 Section D, part 18 – Detention under the Mental Health Act and s 117 aftercare

• This originating ICB will then retain responsibility for payment throughout the initial detention (including any period of informal admission following detention, during which the patient is no longer detained but remains in hospital voluntarily), for the whole period for which any s117 aftercare is provided and for any subsequent repeat detentions or voluntary admissions from aftercare, until such point as the patient is finally discharged from s117 aftercare – regardless of where the patient is treated or placed, where he or she lives or which GP practice he or she is registered with.

18.7 To clarify further:

- Detention for assessment under s2 of the Mental Health Act does not trigger a right to s117 aftercare – but it does constitute detention for the purposes of the rule at paragraph 18.6.
- Removal by the police to a place of safety under s136 of the Act does not constitute detention for the purposes of the rule at paragraph 18.6 (other rules set out in Who Pays? will apply as relevant, including those on emergency services in paragraph 17).
- the arrangements set out in paragraph 18.6 do not apply where an individual is deprived of their liberty under the Mental Capacity Act but is not detained pursuant to the Mental Health Act; in that instance, the general rule at paragraph 10.2 applies; and
- s117 aftercare services are services which are intended to meet a need that arises from or relates to an individual's mental health condition and which reduce the risk of deterioration in the individual's mental health which could otherwise lead to re-admission to hospital; an individual receiving s117 aftercare may therefore also be eligible for FNC or continuing care (see paragraph 39 of the NHS-funded Nursing Care Practice Guidance and paragraph 315 of the National Framework respectively); in such cases, payment responsibility for the FNC / continuing care will be determined separately under the rules in paragraphs 11.15-19 and paragraph 14 as applicable.

In this guidance we do not seek to describe how mental health services should be commissioned or how ICBs should work together to ensure that patients receive care that is appropriate to their needs, for example where a patient receiving s117 aftercare that is organised and paid for by ICB A but is actually delivered by a provider located in the area of ICB B where the patient is now resident. Materials are available to support commissioners and providers, such as the DHSC's Mental Health Act Code of Practice which sets out to "encourage commissioners of services, health and care providers and professionals to deliver a holistic, whole person approach to care that is reflective of clinical best practice and quality." Transition to these new arrangements

18.8 This approach is broadly in line with the intended effect of the addendum to Who Pays? published in 2016, and its effect will be, broadly, to mirror the arrangements for continuing care and children set out above, with the ICB responsible for the patient at the outset of a period of detention and aftercare retaining responsibility for payment throughout. This will avoid any perverse incentives to maximise out-of-area placements. 43

18.9 Where a patient is detained in hospital for the first time on or after 1 September 2020, responsibility for payment will be determined on the basis of the arrangements set out in paragraphs 18.4-7 above.

18.10 We recognise, however, that practice across the country has varied. We have therefore set out below mandatory transitional requirements which will apply in relation to responsibility for payment for detention and aftercare.

• Where, at 1 September 2020, a patient has been discharged from detention and is already receiving s117 aftercare, funded in part or whole by a ICB, that ICB will remain responsible for

funding the aftercare – and any subsequent further detentions or voluntary admissions – until such point as the patient is discharged from s117 aftercare.

• Where, at 1 September 2020, a patient is detained in hospital funded by an ICB, that ICB 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 patient is discharged from s117 aftercare.

• Where, at 1 September 2020, a patient is detained in hospital funded by NHS England, the ICB which will be responsible for funding any further detention in a ICB-funded hospital setting and any necessary NHS aftercare (including any subsequent further detentions or voluntary admissions, until such point as the patient is discharged from s117 aftercare) will be determined as set out in paragraph 18.6 above – that is, on the basis of the general rules at paragraph 10.2 above, applied at the point of the patient's initial detention in hospital under the Act. Illustrative scenarios

18.11 The table below sets out how responsibility for payment is to be determined in specific scenarios.

18.12 Scenario 1a describes a straightforward situation where a patient is detained in hospital in, and receives after care in, his own local area, with no change in GP registration.

	Scenario	**Responsibility for payment**
1a	Patient 1 is registered with a GP in, and lives in the area of, ICB A. He is then detained under the Mental Health Act and placed in a hospital in the area of ICB A. On discharge from hospital, he is then provided with a package of s117 aftercare in the community; he remains registered with the same GP and continues to live in the area of ICB A.	ICB A is responsible for meeting all the NHS costs

18.13 Scenarios 1b, 2a and 2b illustrate that the originating ICB retains responsibility for payment for detention and s117 aftercare, regardless of 44 registered GP and location of treatment or residence – but that responsibility for payment for other NHS services is determined on the basis of the general GP registration rule at paragraph 10.2.

	Scenario	**Responsibility for payment**
1b	Continuing from scenario 1, some months after discharge from hospital but while still in receipt of s117 aftercare, Patient 1 moves house to ICB B and registers with a GP there.	ICB A remains responsible for the costs of the NHS element of the s117 aftercare package. From the point of re-registration, ICB B is responsible for the costs of other health needs which may arise
2a	Patient 2 is registered with a GP in, and lives in the area of, ICB C. She is then detained under the Mental Health Act and placed in a hospital in the area of ICB D; in order to continue to receive primary medical care, she re-registers with a GP in ICB D. On discharge from hospital, she is then provided with a package of s117 aftercare in the community; she chooses to return to the area of ICB C to live and re-registers with a GP there.	ICB C is responsible for the costs of detention in hospital and the NHS element of the s117 aftercare package – and for the costs of any health needs which arise after patient 2's final re-registration. ICB D would only be responsible for the costs of any other health needs (that is, other than the

		detention in hospital) which arose while Patient 2 was registered with its GP.
2b	As an alternative to scenario 2a, on discharge from hospital, Patient 2 is again provided with a package of s117 aftercare in the community, but remains registered with the same GP in ICB D and chooses to live in the area of ICB D.	ICB C is responsible for the costs of the NHS element of the s117 aftercare package. ICB D is responsible for the costs of other health needs (that is, other than the s117 aftercare package) which may arise after discharge

18.14 Scenario 2c demonstrates that the originating ICB retains responsibility for payment for detention and aftercare, even where – while still in receipt of aftercare – a patient has to be detained in hospital for a second time.

	Scenario	**Responsibility for payment**
2c	Continuing from scenario 2b, whilst she is still receiving s117 aftercare, Patient 2's condition deteriorates, and she has to be detained again in hospital under the Mental Health Act. After some months, she is then discharged with a new package of s117 aftercare. She again chooses to live in the area of ICB D, and she remains registered with the ICB D GP throughout.	ICB C is responsible for the costs of the second detention in hospital and for the NHS element of the s117 aftercare package. ICB D is responsible for the costs of other health needs (that is, other than the detention in hospital and s117 aftercare package) which may arise.

18.15 Some services in which patients are detained in hospital are commissioned by NHS England as prescribed specialised services, whereas others are 45 commissioned by ICBs. Scenarios 3 and 4 illustrate how the rules apply where an individual is first detained in NHS England-commissioned accommodation and is then, while still detained, "stepped-down" into a ICB commissioned setting

	Scenario	**Responsibility for payment**
3	Patient 3 is registered with a GP in, and lives in the area of, ICB E. She is then detained under the Mental Health Act and placed in a secure hospital in the area of ICB F, commissioned by NHS England as a specialist service. In order to continue to receive primary medical care, she re-registers with a GP in ICB F. As Patient 3's condition improves, her clinicians seek to arrange a step-down placement in ICB-funded accommodation, in which she will remain detained under the Mental Health Act. ICBs E and F are unable to agree who should fund the step-down arrangement.	ICB E is responsible for meeting the costs of the proposed detention in ICB-funded accommodation and of the NHS element of any s117 aftercare package which is subsequently required. Assuming no change in GP registration, ICB F is responsible for the costs of other health needs (that is, other than the detention in hospital or s117 aftercare package) which may arise.
4.	Patient 4 has a long and complex case history; he has been in prison or detained in secure hospital settings for most of his adult life. Exact details are hard to establish, but he has been in NHS England-funded secure hospital accommodation since 2013. Patient 4 is now	So that Patient 4's transfer is not delayed, then – as set out in paragraph 4d) of Appendix 1 – ICBs G and H must agree that one of them will arrange

	ready to be moved to ICB-funded step-down accommodation, in which he will continue to be detained under the Mental Health Act. He has had no registered GP for many years, and there is uncertainty as to his address before he entered the prison system, although it is believed he may have lived in the area of ICB G at some point. It is proposed that Patient 4 be moved into step-down hospital accommodation in the area of ICB H, where some of his family live. ICBs G and H are unable to agree who should fund the stepdown arrangement.	Patient 4's step-down transfer and that they will, initially, fund it on a 50/50 "without prejudice" basis. Ultimately, if it cannot genuinely be established which ICB (or predecessor body) was responsible for the Patient 4, at the point of initial detention, on the basis of GP registration, and if there is no clarity on the Patient 4's usual residence at the point of detention, then the default position set out in Appendix 2 must be applied. In this instance, if Patient 4 is indeed discharged to step-down hospital accommodation in the area of ICB H, ICB H would become responsible, on the basis that this is where Patient 4 is now physically present. In that case, ICB H would then reimburse ICB G for the 50% payment ICB G had made.

18.16 Following a period of detention, some patients may stay in hospital on a voluntary basis, prior to discharge and s117 aftercare. Scenario 5 makes clear that, in this situation, responsibility for payment remains with the originating ICB, including for the voluntary stay in hospital.

	Scenario	**Responsibility for payment**
5	Patient 5 is registered with a GP in, and lives in the area of, ICB I. She is then detained under the Mental Health Act and placed in an independent sector hospital in the area of ICB J; in order to continue to receive primary medical care, she re-registers with a GP in ICB J, but ICB I continue to fund the hospital detention. Following clinical review, Patient 5 is discharged from her detention under the Act, but she remains in hospital as a voluntary inpatient. Six months later, she is discharged from hospital with a package of s117 aftercare in place; she chooses to move to ICB K to live and registers with a GP there. ICBs I, J and K cannot agree who should fund the aftercare package	ICB I is responsible for the costs of the NHS element of the s117 aftercare package. From the point of reregistration, ICB K is responsible for the costs of other health needs (that is, other than the s117 aftercare package) which may arise.

18.17 Scenario 6 shows that the originating ICB ceases to retain responsibility for payment for detention and aftercare once a patient has been discharged from aftercare. If the same patient is then detained in hospital again after this point, responsibility for payment is determined afresh, on the basis of the rule set in paragraph 18.6 above.

	Scenario	**Responsibility for payment**
6	Patient 6 has been detained in hospital under the Mental Health Act in the past and has, following	ICB M will be responsible for meeting the costs of this new

	discharge, been provided with a package of s117 aftercare – all funded by ICB L on the basis of GP registration at the point of detention. All has gone well, and Patient 6 has been formally discharged from aftercare. He has also moved house and is now registered with a GP belonging to ICB M. Six months after this re-registration, however, Patient 6 suffers a crisis and has to be detained again in hospital under the Act.	detention and any subsequent NHS aftercare.

18.18 Scenario 7 addresses a scenario involving crossover between the arrangements for children placed out-of-area (under paragraph 15 above) and for detention in hospital under the Mental Health Act and subsequent s117 aftercare (in this section).

	Scenario	**Responsibility for payment**
7	Individual 7 is registered with a GP belonging to ICB N and is resident in the geographical area of ICB N. Aged 15, he is then placed, by Local Authority N, in a children's home out-of-area in ICB O and reregisters with a GP belonging to ICB O. Aged 16, he is then sectioned under the Mental Health Act and is admitted to a hospital in the area of ICB O, remaining registered with ICB O's GP. Aged 19, he is then discharged from hospital, supported by a package of s117 aftercare; he chooses to move back to the area of ICB N and re-registers with a GP there. The package of aftercare remains in place until Individual 7 is 22, by which point his condition has improved sufficiently for him to be discharged from aftercare.	Consistent with the approach in paragraph 15, ICB N is responsible for meeting Individual 7's health needs during his out of area placement and must therefore fund his detention in hospital under the Act (assuming that this is in an ICB-commissioned service, not one commissioned by NHS England). Because ICB N is responsible for Individual 7 at the point of detention, it then remains – consistent with the approach in this paragraph 18 – responsible for paying for Individual 7's detention and aftercare until his eventual discharge from aftercare at the age of 22. In terms of any other healthcare needs which Individual 7 might have (beyond those addressed through his detention and aftercare), responsibility for paying for these would rest with ICB N as originating ICB while Individual 7 is under 18 but would thereafter be determined on the basis of the general GP registration rule at paragraph 10.2.

18.19 Paragraph 18.7 above clarifies the interplay between these arrangements for s117 aftercare under the Mental Health Act and the arrangements in paragraphs 11.15-19 for FNC and in paragraph 14 for continuing care. But it is also important to consider a situation where an adult patient receiving a package of continuing care (whether in their own home or in a residential care setting) is detained in hospital under the Mental Health Act. In such a case, responsibility

for commissioning and payment will be determined afresh, using the rules set out in this paragraph 18, as illustrated in scenario 8 below.

	Scenario	Responsibility for payment
8	Patient 8 is an adult registered with a GP belonging to ICB P and is then placed out-of-area for a package of NHS CHC in a care home in ICB Q. She immediately registers with a GP belonging to ICB Q. A year after being placed, she suffers serious mental health problems and has to be detained in hospital under the Mental Health Act.	The rule at paragraph 18.6 above applies, and ICB Q is responsible for meeting the costs of patient 8's detention in hospital and any subsequent s117 aftercare.