



# Policy and Guidance on MHA Section 117 Aftercare

## Document Summary

Interim guidance to Trust staff to ensure compliance with MHA Code of Practice (2015) in respect the entitlement to and provision of services under Section 117 of the Mental Health Act (1983) as amended until such time as Health and Social Care service commissioners are in apposition to agree a revised joint policy.

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### Important Note:

**The Intranet version of this document is the only version that is maintained.**

Any printed copies should therefore be viewed as “uncontrolled” and, as such, may not necessarily contain the latest updates and amendments.





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## 1. Introduction

Section 117 of the Mental Health Act 1983, Local Authorities and Clinical Commissioning Groups have a joint duty to provide mental health aftercare services for people who have been detained in hospital for treatment under certain qualifying provisions of the MHA and who require it. Further legislation such as the Health and Social Care Act 2012, the Care Act 2014, along with the various regulations made and statutory guidance issued under these statutes place additional duties on providers in respect of their responsibilities for the aftercare of qualifying patients.

The duty to provide aftercare is not to be interpreted only in general terms through the provision of services for mentally ill people in general, but individually. The aftercare needs of each individual to whom Section 117 applies must be considered and met. Once in place the entitlement to aftercare services is ongoing and remains in place regardless of the patients circumstances. It only ends when both health and social care services agree that aftercare is no longer required. They cannot however, arrive at this decision if the person is subject to the Supervised Community Treatment provisions.

## 2. Purpose

The purpose of this guidance is to:

- Detail the obligations of Cumbria Partnership NHS Foundation Trust under section 117;
- Provide guidance to staff responsible for the delivery of section 117 in our services;
- Ensure the consistency and quality of services provided under section 117 across our service user groups;
- Detail the arrangements and responsibilities for patients who are discharged from secondary care services within CPFT and who remain subject to the provisions of s117;
- Set out the provisions under which a patient can be discharged from section 117.

## 3. Scope

As aftercare is an integral part of care planning, this policy defers to the appropriate sub sections of the Trust Care Co-ordination and Advanced Care Planning policies and should be read in conjunction with such. The need for aftercare for patients on Section 117 should therefore be assessed as part of the care planning process and considered specifically at multidisciplinary care planning meetings and reviews as for the care needs of any other patient. All contributors to the care planning process should be aware of the patient's Section 117 status and the additional statutory duty to provide aftercare services that this entails. The care plan should indicate that Section 117 applies and any care package for a patient, including residential and non-residential services, should be drawn up in awareness of Section 117 rights and responsibilities.



## **4. Duties & Responsibilities**

### **4.1. Section 117(2) Mental Health Act 1983 states:**

“It shall be the duty of the primary care trust or local health board and of the local social services authority to provide, in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies until such time as the primary care trust or Local Health Board and the local social services authority are satisfied that the person concerned is no longer in need of such services; but they should not be so satisfied in the case of a community patient while he remains such a patient”

The duty for section 117 after-care in relation to social care falls in the first place on the authorities for the area in which the patient was resident before being detained in hospital, even if the patient does not return to that area on discharge. If, but only if no residence can be established, the duty will fall on the authorities for the area where the patient is going to be discharged from hospital.

Section 117 after-care NHS services falls to the clinical commissioning group where the service user is registered on the list of NHS patients of a GP practice.

North Cumbria Clinical Commissioning Group, Morecambe Bay Clinical Commissioning Group and Cumbria County Council are the responsible local health boards and local social services authority (respectively) for Cumbrian patients. The CCGs commission CPFT to provide the appropriate secondary mental health care component of a qualifying patient's aftercare plan.

### **4.2. Mental Health Act Hospital Managers**

The Mental Health Act (1983) requires the Trust's Mental Health Act Hospital Managers have in place an inter-agency policy, procedures and guidelines in respect of the provision Section 117 Aftercare under the Act.

### **4.3. Executive Director of Quality & Nursing**

The Executive Director of Quality & Nursing is the accountable Director for this policy.

### **4.4. Network and Team Managers**

The Network and Unit/Ward/Team Leaders/ Managers have management responsibility for ensuring this policy is implemented and delegation of responsibility for patient's Aftercare Plan to identified case managers.

### **4.5. Case Managers**

Case Managers are responsible for the assessment of aftercare needs, formulation of actions to meet those needs into the s117 After Care Plan and the minimum annual review that plan.

## **5. Applicability**

### **5.1. Aftercare**

Section 117 of the Mental Health Act provides the following statutory definition

"In this section, "after-care services, in relation to a person, means services which have both the following purposes –



- (i) meet a need arising from or relating to a person's mental disorder;
- and
- (ii) reducing the risk of a deterioration of a person's mental condition (and accordingly, reduces the risk of the person requiring admission to a hospital again for treatment for the disorder).

Guidance issued under the Care Act 2014 makes it clear that CCGs and LAs should interpret the definition of aftercare services broadly. As such aftercare services could include:-

- Healthcare;
- Social care;
- Employment services;
- Supported accommodation;
- Services to meet the person's wider social, cultural and spiritual needs
- Services that support a person in regaining or enhancing their skills, or learning new skills, in order to cope with life outside the hospital.

Section 117 gives considerable discretion to health and local authorities as to the nature of the services that can be provided. In respect of such, services provided by CPFT would normally include support with management of medication and treatment of mental health needs.

## **5.2. Limitations of s117 Aftercare**

After-Care service should not be confused with providing for the essentials of life, such as food, accommodation, heating and clothing. These remain the responsibility of the individual, except in very special cases where extra services are provided as part of a residential placement or where supported living arrangements exist and supported living support relating to the mental health need is an inseparable part of the placement.

After-Care services only relate to a person's mental health. It may be that the person also requires other community care services which are not part of their plan and which usually relate to physical ill-health. These services will generally be subject to means-tested charging arrangements.

## **5.3. Qualifying Patients**

Entitlement is derived from detention under sections 3, 37, 45A, 47 and 48. Entitlement may not be ended whilst a patient remains subject to a community treatment order. The entitlement is engaged following discharge from hospital and is also applicable in some instances of s17 leave of absence.

Section 117 after-care services are available regardless of a person's immigration status or their nationality and, as there is a statutory obligation to provide after-care services under section 117, immigration exclusions under Schedule 3 Nationality, Immigration and Asylum Act 2002 (i.e. those groups excluded from receiving 'public funding' such as income-based jobseeker's allowance or housing benefit) do not apply.

## **5.4. Provision of accommodation**

The s117 entitlement is only engaged vis-à-vis accommodation if:



- 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 the 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.

Residential care is certainly covered by section 117 after-care, but only if the need for that care arises from the patient’s mental condition which resulted in their detention under section 3 MHA. Ordinary accommodation, e.g. flat or house, is not under any circumstances covered by section 117.

### **5.5. Out of area patients**

Where a service user is placed out of area, their entitlement to section 117 aftercare continues. It is the responsibility of CPFT staff managing the individual’s care to ensure relevant CCG and CCC are informed of such placements in order for them to make the appropriate transfer arrangements and ensure the receiving authority is aware of the patient’s entitlement to care and services under section 117. The CCG where the service user is registered on the list of NHS patients of a GP practice is the responsible for the health component of section 117 after-care.

If a service user is placed in a residential resource within Cumbria by an outside the area which is responsible for providing after-care, that responsibility continues, although arrangements for some aspects of the care plan to be provided in the by CPFT (for example, psychiatric follow-up).

Should the service user be readmitted to hospital under a qualifying section, a new period of entitlement commences; the responsible authorities would then be the ones in which the person was ordinarily resident prior to the readmission.

CPFT staff may be required to participate in the review of aftercare entitlement for out of area patients. Travel to the placement area for the purpose of review should not be usual practice and all alternative mechanisms for participation should be exhausted.

## **6. Ending Entitlement**

Entitlement to after-care provided under section 117 may be terminated for following reasons:

- death of the service user
- emigration of service user (MHA only applies in England and Wales)
- after-care is no longer required

The duty to provide after-care services under section 117 exists until both CCC, and CPFT acting on behalf of the CCG, are satisfied that the patient no longer requires them. Circumstances in which it is appropriate to end such services vary by individual and the nature of the services provided.



If the multi-disciplinary team decide that after-care is no longer required and that its removal will not put the person at risk of readmission to hospital, a decision to discharge the service user from section 117 after-care arrangements should be considered, and action taken where this is found to be substantiated. However, any such decision must be fully justified and preceded by a proper reassessment of the service user's needs.

The assessment must be recorded in writing and signed by the service user, where the service user has capacity. After-Care authorities can only reach the stage of satisfaction required by section 117 by reference to the individual needs of the service user and the decision cannot be dominated by factors such as resources.

Were the patient is discharged from secondary mental health services, it will normally follow that they are also considered for discharged from Section 117. However the following important points must be noted:-

A patient who needs but is refusing treatment in the community may be discharged from services if they are not considered to be 'in contact' with services. If this position changes due to them relapsing and being re-referred or referring themselves they are likely still to be covered by Section 117 if it is considered that the resumption of a service to them is the resumption of aftercare. Any unwillingness to receive aftercare should not be equated with the absence of need for aftercare; therefore Section 117 remains applicable.

A patient discharged from hospital to a nursing home may sometimes be discharged from secondary services after their admission to the home. This will be when it is the home not the specialist mental health service which is now providing all of the patient's aftercare. In other cases where there is still a direct input from the Trust to the patient's care in the home. This will be the case with all patients who have been assessed and accepted against the NHS continuing care eligibility criteria and whose placement is funded by their local CCG. Where there is no input from the Trust, however, and the person is discharged from secondary services, if the nursing home placement still constitutes mental health aftercare directly following on from the patient's treatment in hospital the nursing home episode must be covered under Section 117 provisions and cannot be charged for.

Those individuals who were assessed as lacking mental capacity to make decisions as part of their mental illness at the time they were detained and for whom no recovery of mental capacity is envisaged are unlikely to be considered suitable for discharge from section 117.

After-Care services under section 117 cannot be withdrawn solely on the grounds that:

- the patient has been discharged from the care of specialist mental health services;
- an arbitrary period has passed since the care was first provided;
- the patient is deprived of their liberty under the Mental Capacity Act 2005;



- the patient may return to hospital informally or under section 2; or the patient is no longer on supervised community treatment or section 17 leave

Designations of individuals who can discharge Section 117 patients;

Social Workers employed by CCC, Medical Staff, Psychologists, Registered Nurses and Allied Professionals employed by the CCG or CPFT

Both health and social care representatives must agree on the decision to discharge.

Appeals by patients or their representatives against section 117 discharge can be made via the CPFT complaints procedure and, if unresolved, will ultimately go to the Ombudsman.

## **7. Recording of Aftercare Arrangements**

A clearly identifiable s117 Aftercare Plan documenting the actions required to meet the individual assessed aftercare needs of each patient must be kept on Rio. Staff managing cases on behalf of CPFT are responsible for ensuring compliance with this requirement.

MHLU will maintain a register of all patients detained by the trust or who are within trust provided services who are eligible for aftercare under s117. This register will be available on Rio. Trust staff with delegated responsibility for an individual's After Care Plan will ensure MHLU are informed of each review of that plan, the proposed date of the next review and any change in an individual's eligibility status as a result of review.

## **8. Charges for s117 Aftercare Services**

Section 117 imposes a free-standing duty upon local health and social services authorities which does not include a power to charge for services. No charges will be made to service users receiving after-care services under section 117. This includes both health and social care services. Services not provided under s 117 may be charge for under other legislation.

All trust staff commissioning care packages/services on behalf of a service user must ensure that service users are not charged for services were those services are provided under section 117.

Responsibility for the provision of section 117 services lies jointly with local authorities and the NHS. Where a patient is eligible for services under section 117 these should be provided under section 117 and not under NHS continuing healthcare. It is important for CCGs to be clear in each case whether the individual's needs (or in some cases which elements of the individual's needs) are being funded under section 117, NHS continuing healthcare or any other powers, irrespective of which budget is used to fund those services.

It is not the responsibility of CPFT staff to resolve disputes either within NHS funded services or between the CCG and the local authority. That responsibility remains with relevant responsible body. The costs of providing services are to be met by both



organisations as appropriate; however, funding arrangements must be agreed before the after-care plan is put into place

## 9. Abbreviations

CCC	Cumbria County Council
CCG	Clinic Commissioning Group
CoP	Code of Practice
CPFT	Cumbria Partnership NHS Trust
CTO	Community Treatment Order
DoLS	Deprivation of Liberty Safeguards
LSSA	Local Social Services Authority
MCA	Mental Capacity Act (2005)
MHA (83)	Mental Health Act 1983
MHAHM	Mental Health Act Hospital Manager
MHAHM	Mental Health Act Hospital Manager
MHLO	Mental Health Legislation Officer
MHLU	Mental Health Legislation Unit
NCCCG	North Cumbria Clinical Commissioning Group
RC	Responsible Clinician
Trust	Cumbria Partnership NHS Foundation Trust

## 11. Monitoring Compliance

The table below outlines the Trusts' monitoring arrangements for this policy/document. The Trust reserves the right to commission additional work or change the monitoring arrangements to meet organisational needs.

<b>Aspect of compliance or effectiveness being monitored</b>	<b>Monitoring method</b>	<b>Individual responsible for the monitoring</b>	<b>Frequency of the monitoring activity</b>	<b>Group / committee which will receive the findings / monitoring</b>	<b>Group / committee / individual responsible for ensuring that the</b>
Review the Trust's operation of the s117 aftercare to ensure compliance	Quarterly meeting of the MHAHMA Board	Chair of the Board	Quarterly	CPFT Trust Board Quality & Safety Committee	MHAHMA Board



## 12. References

Care Standards Act 2000 c.14
Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR)
Mental Capacity Act 2005 c.9
Equality Act 2010 c.15
Human Rights Act 1998 c.42
Mental Health Act 1983 c.20