

Section 117 Policy

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Responsible committee:	Service Integration Directorate Meeting & Mental Health Law Operational Group Meeting
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Purpose of the Policy:	Ensure that CPFT staff understand their responsibilities and comply with the legal requirements of S117 after-care. Ensure that after-care arrangements of patients eligible for S117 are adequately assessed, reviewed and if applicable, discharged from S117.
If developed in partnership with another agency, ratification details of the relevant agency	Cambridgeshire County Council Peterborough City Council Cambridgeshire & Peterborough Clinical Commissioning Group
Policy in-line with national guidelines:	MHA 1983 MHA CoP 2015 Care Act 2014 MCA 2005

Signed on behalf of the Trust:
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Version Control Sheet

Version	Date	Author	Comments
1.0	March 2015	Orna Clark Mental Health Law Manager	Re-write of policy, which should be read in conjunction with the PCC/CCC s117 policy(ies) New Standard Operating Procedures and guidance for staff New CPFT Documentation to support the process
1.2	October 2015	Orna Clark Mental Health Law Manager	Following a further review with CPFT social care leads the following changes were made: Appendix 1 – SOP V9 Appendix 2 – changed to V2 Appendix 4 – removed (Incorporated to appendix 1)
1.3	November 2015	Orna Clark, Mental Health Law Manager/Social Care Leads	Changes to discharge process Item 8.10, 8.11 and Appendix 2
1.4	January 2016	Orna Clark Mental Health Law Manager	Inclusion of item 13 (training) and item 14 (audit and monitoring)
1.5	February 2016	Orna Clark Mental Health Law Manager following CCC comments	Reference to the role of an advocacy as part of s117 process (including review and discharge) was added to the policy and SOP. Added clarification to appendix 1 and 3 discharge criteria - as sited in 117 (6) of the Care Act 2014 Change of term 'Patient' to Service User throughout the document
1.6	February 2016	Comments and amendments by PCC legal department	Update of section 3.1 – 3.4, 5.1 – 5.4 and minor editing changes (Record of all amendments in reviewed V1.5)
1.7	May 2016	Comments and amendments by Mills & Reeve (CPFT Legal)	Amendments include: Reference to joint responsibilities of CCG/LAs 3.2.1 – Ref from Richard Jones re right of choice of accommodation 4.1 - updated to reflect changes to the residency status as of 01.04.16 Included chapter 10 – S117 and Children. Included Chapter 11 – Advocacy 12.1 complaint guidance updated Appendix 1 updated to include guidance re residency in a different area Appendix 2 first paragraph update to accurately reflect the process which should take as part of the s117 pre discharge assessment. Appendix 5 complaint process updated to include ref to the Parliamentary & Health Service

			Ombudsman. (Record of all amendments in email from M&R)
1.8	August 2016	Orna Clark Mental Health Law Manager Comments and amendments by Katrina Anderson Head of Social Care Cambridgeshire	Insertion of the 'Discharge of an inpatient from detention' form – now appendix 1 7.0 – amended to include additional stages in the management and maintenance of s117 Register 2.6 – Reference to National Framework for NHS Continuing Healthcare was added. 4.1 – Corrected to reflect an accurate definition relating to the CCG's responsibilities (i.e. "GP registration" instead of "Ordinarily registered") 4.5 – Removed. Appendix 2 (under 'Paperwork and Sign off', page 19) – The need to inform the CCG of the outcome of the review, if there is joint funding in place, was added.
1.9	January – April 2017	Orna Clark Mental Health Law Manager Katrina Anderson Head of Social Care Cambridgeshire	Amendments agreed post training sessions/Introduction of draft policy and procedures. Further clarification re determination of funding guidance, as well as escalation process. Additional information re responsibilities around 'Out of Area Placements'. Additional information re S117 and the National Framework for NHS Continuing Health Care and NHS Funded Nursing Care. Additional appendix – definitions. Changes to recording processes following the development of an electronic S117 RiO module

Policy Circulation Information

Notification of policy release: All recipients; Staff Notice Board; Intranet;	Policy should be circulated to all psychiatric community and wards team, including Directorate management, clinical directors and deputies, lead nurses, modern matrons, ward managers, wards staff, as well as on-call doctors and Duty Nursing Officers.
Key words to be used in DtGP search.	MHA, S117, After-Care, CPA.
CQC Standards	Person-centred care, Dignity and respect, Safeguarding from abuse, Staffing, Safety, Premises and equipment,
Other Quality Standards	Legal requirements of the MHA, Care Act and statutory guidance (MHA CoP 2015)

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1.0 Introduction

- 1.1 This document was written in consultation with Cambridgeshire & Peterborough NHS Foundation Trust (thereafter will be referred to as 'the Trust' or CPFT), Local Authorities (LAs) - Cambridgeshire County Council (CCC) and Peterborough City Council (PCC) and Cambridgeshire & Peterborough Clinical Commissioning Group (CCG).

Although, this document outlines CPFT's S117 policy and procedures, it sets out the above partners' responsibilities in respect of the legal duty to provide after-care services for certain Service Users who have been detained for treatment under the Mental Health Act 1983.

- 1.2 Section 117 of the MHA 1983 sets out the joint duty of the relevant clinical commissioning group (CCG), local authority, and health care providers - in co-operation with relevant voluntary agencies, to provide aftercare services for persons who have been detained under certain provisions of the MHA 1983, **until such time that the local authority and CCG are satisfied that the person is no longer in need of such services.** (Section 117 (1) and (2) of the MHA 1983)

- 1.3 The policy should be read in accordance with the Mental Health Act 1983 (MHA), the Mental Health Act Code of Practice 2015 (CoP), the Care Act 2014, associated legislation, case-law and relevant Trust policies and guidance; notably the Care Programme Approach (CPA) Policy.

- 1.4 Given some of the complexities involved in identifying responsibilities and decision-makers, the Trust, LAs and CCG should establish jointly agreed local policies on providing S117 MHA after – care, which would set out clearly the criteria for deciding which services fall under S117 MHA and which authorities should finance them.

- 1.5 As per chapter 33.4 of the MHA CoP 2015 – “CCGs and local authorities should interpret the definition of after-care services broadly. For example, after-care 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 Service User's mental disorder, and help to reduce the risk of deterioration in the Service User's mental condition”.

- 1.6 Appendix 1 outlines common terms and definitions used within the document.

2.0 The Legal Context

- 2.1 Section 117 states that it shall be the duty of the Clinical Commissioning Group (CCG) and local social services authority (LSSA), in cooperation with relevant voluntary agencies, to arrange for the provision of (or in the case of the local social services authority - provide) after-care services for any person to whom S117 applies, until such time as both of those organisations are satisfied that the Service User concerned is no longer in need of any such services (the duty can never end for as long as the Service User remains subject to a Community Treatment Order under section 17A).

- 2.2 Section 40 of the Health and Social Care Act 2012 amended S117 MHA and allowed the Secretary of State for health to publish Regulations that changed CCG responsibility. CCG responsibility for S117 aftercare is now in line with

general commissioning responsibility for healthcare (the CCG area where the person was registered with a GP, or in the absence of this where they were “usually resident”). The main criteria for assessing “usually resident” is the individuals perception of where they are living. This will be explored further later on in this policy.

2.3 The Care Act 2014, which come into effect on 1st April 2015, amended S117 and those changes are summarised below:

- Amended S117 (3) with the effect that the term “resident” now means “ordinarily resident”. This brings determination of LSSA responsibility in line with guidance issued by the Department of Health (Ordinary Residence, Guidance on the identification of the ordinary residence of people in need of community care services, England).
- Introduced a dispute resolution process (S117 (4)).
- Introduced statutory definition of the purpose of aftercare (S117 (5)).
- Introduction of new subsection (s117 (A)) which introduces the statutory duty to offer choice in accommodation for individuals being.

2.4 LAC 2000(3)) requires there to be locally agreed joint agreements around S117.

2.5 Section 117 of the MHA only applies to Service Users who are detained under sections 3, 37, 45A, 47 and 48, and who are subsequently released from liability to be detained in hospital, or who have been granted leave of absence by virtue of S17 leave of absence.

2.6 The effect of this is that the duty under S117 applies to the above qualifying Service Users if they are:

- a) Discharged from detention and remain in hospital as an informal Service Users for a period after that (The duty to provide aftercare arises when the individual finally leaves the hospital);
- b) Discharged from detention and leave hospital;
- c) Released from prison having spent some time of their sentence detained in hospital under a qualifying section listed above;
- d) Re-admitted to hospital informally, or detained under a section of the Act for which the duty under S117 does not apply; for example sections 2, 4, 5(2), 5(4), 35, 36, 38, 44, 135(1) and 136, and the need for after-care services continues.

2.7 The duty under S117 does not automatically apply to Service Users who are subject to Guardianship under section 7, unless they were also previously detained under one of the qualifying sections above and transferred to Guardianship.

2.8 Section 117 does not appear in the list of provisions set out in Schedule 3 of the Nationality, Immigration and Asylum Act 2002, which means that social services authorities are not released from the duty under S117 to provide relevant

support to Service User's who are refugees or asylum seekers (CCGs do not have the power to charge overseas visitors for services provided under S117).

- 2.9** Where a Service User is eligible for services under S117, these should be provided under S117 and not under NHS continuing healthcare. It is possible however, for a Service User in receipt of after-care services under section 117 to have on-going care or support needs that are not related to their mental disorder. These needs would fall outside of the scope of S117 and they would be assessed for NHS continuing care eligibility in the usual way. A Service User receiving services under S117 could also develop physical health needs, which are distinct from their S117 needs. Again, this may trigger NHS continuing healthcare considerations in relation to these separate needs. (National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care November 2012 (Revised))
- 2.10** Section 117 is a 'stand-alone' duty; it is not a 'gateway' for providing services under other legal mechanisms, and because there is no explicit power to charge Service Users for services provided under it, those services must be provided free of charge as per the *Stennett* case (see paragraph 3.1). This also means that Service Users cannot be charged indirectly via any state benefits that they might be entitled to; for instance if supported accommodation is part of their after-care service, housing benefit may not be able to be used to fund that service, unless it was already in place prior to admission and the need for this service does not arise from the person's mental disorder.
- 2.11** It should be noted that this right to free services does not extend to carers of Service Users receiving S117 after-care.
- 2.12** **No Recourse to Public Funds** - Unlike the provision of many community care services, the duty to provide after-care services under S117 applies to Service Users irrespective of their country of origin or immigration status. A Service User with no recourse to public funds in the UK must be provided with after-care services, when they are discharged from detention in hospital under one of the qualifying sections.
- 2.13** Provision of after-care to Service Users with no recourse to public funds may sometimes be difficult where that Service User is also homeless and is not eligible for Housing Act 1996 assistance. As outlined above, ordinary housing is not generally able to be provided under S117. However, proper after-care may be difficult to deliver if the Service User has limited access to provision of ordinary accommodation. Therefore after-care authorities need to work closely with those local social services departments who can advise on matters relating to 'no recourse to public funds' issues.
- 3.0** **The Scope of Aftercare**
- 3.1** After-care Services is defined in the Act (as amended by section 75 Care Act 2014) under subsection 6 as:
- "...services which have the following purposes-*
(a) meeting a need arising from or related to the person's mental disorder; and
(b) reducing the risk of a deterioration of the person's mental condition (and accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder)."

The case of *Stennett* referenced above, reaffirmed the view expressed in *Clunis v Camden and Islington Health Authority* (1998) 1 CCLR, that after-care "would normally include social work, support in helping with problems of employment, accommodation or family relationships, the provision of domiciliary services and the use of day centre and residential facilities." *Stennett* also established that "psychiatric treatment" is after-care.

- 3.2** The Care and Support and After-care (Choice of Accommodation) Regulations 2014 paragraph 4 sets out the grounds and conditions for a Service Users to express a preference where the accommodation is being provided, or arranged under S117. This accommodation could be a care home, Supported Living Arrangements, or Shared Lives Scheme. It should be noted that the high court has established that the provision of 'ordinary' accommodation that meets a basic human need does not fall within the scope of S117, but assistance in obtaining such accommodation may well fall within its scope.

(R (on the application of Mwanza) v 1) Greenwich LBC 2) Bromley LBC [2010] EWHC 1462 and R (Afework) v LB Camden [2013] EWHC 1367 (Admin)

- 3.2.1 Richard Jones (18th edition page 525) notes that s117A give people who receive mental health aftercare broadly the same rights of choice of accommodation as someone who receives care and support under the Care Act 2014. But some differences arise because aftercare is provided free of charge and as the legislative requirement for a care and support plan under the Care Act 2014 does not apply to S117 aftercare, the care plan should instead be drawn up under guidance on the Care Program Approach (CPA). Care planning under the CPA should, if accommodation is an issue, include identifying the type of accommodation which is suitable for the person's need and affording them the right to choice of accommodation set out in the regulations made under S117A. The person should be fully involved in the care planning process.
- 3.2.1 In summary - the provision of accommodation in and of itself is not considered to be an S117 aftercare need unless:
- Need for accommodation is a direct result of the reason that the patient was detained under the MHA; and
 - It is enhanced specialised accommodation to meet needs directly arising from the mental condition; and
 - Ex-patient is being placed in the accommodation on an involuntary (in the sense of being incapacitated) basis arising as a result of the mental condition.

4.0 Funding Responsibility and Residency: General Statement

- 4.1 S117 aftercare responsibility comes into effect at the point of discharge. It is therefore essential as part of the discharge planning process to identify the relevant funding bodies prior to discharge.
- 4.2 As stated in paragraph 2.2 above, the responsibility of CCGs has been changed with regard to residency and is determined in new regulations. The responsibility of the LSSA was changed by the Care Act 2014 and will take effect from April 2015. As these new regulations are not retrospective, the following provisions apply:

Patient's residency **prior to 1st April 2013** should be determined according to their residence prior to detention.

Patient's residency **on/after 1st April 2013** should be determined according to the new regulations, Commissioning Guidance

Patient's residency **on/after 1st April 2015** should be determined in accordance with the amendments made to S117 by the Care Act.

Further details are provided in Paragraph 5, 6 and 7 below.

5. Funding Responsibility and Residency: Discharge Pre 1st April 2013

5.1 The responsible CCG and LAs are identified by the area the patient was resident at the time they were detained under the relevant section of the MHA. If the person did not have a place of residence, the area they are being sent to on discharge would assume responsibility.

5.2 Residency in the context of S117 should be interpreted as a "settled presence in a particular place other than under compulsion" (R.(on the application of Mv Hammersmith and Fullham LBC [2010])). This applies regardless of the duration of the residence. In cases of dispute the matter of residency should be determined on a case by case basis (which includes the Service Users views of where they reside).

5.3 Decisions regarding residence may often be complex and for this reason, advice should be sought via Heads of Social Care/Mental Health Law Manager, who may escalate issues to the relevant Directors and legal services as appropriate.

6. Funding Responsibility and Residency: Discharge on or after 1st April 2013

6.1 The new regulations determine that the CCG's responsibility in these circumstances is as follows:

The CCG responsible for the area where the patient is registered with a GP, or where there is no GP registration - the CCG responsible for the geographic area where the patient is "usually resident"

6.2 For CCGs 'usually resident' is not the same as 'ordinarily resident' and the main criteria for determining is through the individual's perception as to where they are resident in the UK (currently or most recently).

7. Out of Area Placements (Discharge Pre 1st April 2013)

7.1 Out of Area placements are those services which are located outside the catchment areas of the CCG and LSSA and to which patients have moved in accordance with their aftercare needs.

7.2 For Service Users entitled to S117 who were discharged from hospital **before 1st April 2013** the responsible CCG and LSSA is determined by the place they were living **before they were detained**.

7.3 A Care Coordinator/Care Manager will monitor the placement at arm's length and attend the CPA/S117 reviews, to ensure that the issue of whether after-care provided under S117 continues to be appropriate and is actively considered at each review.

7.4 If someone with S117 is subsequently detained under an eligible section of the MHA 1983/2007, the CCG and LAs will be determined in line with the guidance in paragraph 5 above.

7.5 Disputes regarding residency should not delay or prevent the provision of aftercare services.

8. Out of Area Placements (Discharge Post 1st April 2013)

8.1 For Service Users under S117 who moved, or will move to another area and were discharged after 1st April 2013, it will be the CCG where they are registered with a GP, or are usually resident that is responsible for them, until such time that they register with a GP in the new area.

At that point in time the CCG, which the GP practice is registered with, will be responsible for ongoing S117 Health needs. Since this may mean that the current CCG will change immediately on placement it is important that the receiving CCG is involved in the aftercare planning process.

8.2 A Care Coordinator/Care Manager will monitor the placement at arms length and attend the CPA/S117 reviews, to ensure that the issue of whether after-care provided under S117 continues to be appropriate and is actively considered at each review.

8.3 If someone with S117 entitlement moves to another area and is subsequently detained under an eligible section of the MHA 1983/2007, the CCG and LAs where the service user is resident at that time - will be responsible for aftercare provision under S117.

9.0 Section 117 duties of the Local Social Services Authorities (LSSAs/LAs)

9.1 For Social Services Authorities, **the responsibility lies with the area in which the Service User concerned is ordinarily resident**. It is therefore necessary to identify the area in which the discharged Service User was ordinarily resident immediately before they were detained in hospital, even if that Service User is not going to return to that area on discharge.
Section 75(3) Care Act 2014

9.2 The case of Shah (1983) states that 'ordinary residence'
"unless.....it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning I unhesitatingly subscribe to the view that 'ordinarily resident' refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration."

9.3 Sometimes the question of where the Service User was resident prior to detention can be difficult to determine, because the Service User was at the relevant time placed "out-of-borough" in residential care under the Care Act 2014 by another local authority. In this case, whilst the Service User continues to be placed under the Care Act, responsibility for that placement does not change because that Act deems the Service User to remain ordinarily resident in the placing authority's area.

- 9.4** However, as a Care Act placement will usually be ended when the Service User is detained in hospital, the question is whether the placing Social Services Authority has the duty under S117 once the Service User is discharged from hospital, or whether it becomes the responsibility of the authority for the area in which the placement was made.
- 9.5** In practice, this means that where a Service User has been placed in another area and is subsequently detained in hospital and so is owed the duty under S117 upon discharge, it is quite likely that after-care responsibility will fall to the social services authority in the new area, where the Service User was placed, because they will be living in that area for settled purposes as their home and are therefore ordinarily resident in that area. However, practitioners should consider the individual facts of each case and seek advice where necessary.
- 9.6** If responsibility changes as above, practitioners should ensure that appropriate transfer arrangements are made, including in accordance with the S117 and CPA policies and that the receiving organisation is aware of the duty under S117 towards that Service User.

10.0 Planning of Section 117 After-care (See Appendix 3 and 4)

- 10.1** The planning of after-care needs to start when the Service User is admitted to hospital. The Code of Practice states that after-care for all Service Users admitted to hospital for treatment for mental disorder should be planned within the framework of the CPA in accordance with policy. A written care plan, based on a full assessment of the Service User's needs, and which specifies after-care arrangements in respect of the Service User's mental disorder, must be in place before:

- a) Discharge from hospital;
- b) A period of Section 17 leave - except for short periods of leave, when "a less comprehensive review may suffice, but the arrangements for the Service User's care should still be properly recorded" (Code of Practice 33.13). Any period of leave which includes an overnight stay necessitates a full after-care plan;
- c) A Mental Health Tribunal or Associate MHA Managers Hearing - after-care arrangements should be considered in all cases.

- 10.2** The S117 after-care plan should normally be formulated at a multi- disciplinary meeting (which should be participated by the Service User and their carer, the inpatients RC, the nominated Care Coordinator/Social worker, an Independent Mental Health Advocate - if the Service User wishes to have their support, or Independent Mental Capacity Advocate, if applicable).

- 10.3** The Code of Practice contains detailed guidance about the practitioners who should be involved in this process and the considerations to be taken into account (Code of Practice chapter 33.15 and 34.12). The care plan should clearly identify the interventions that are related to after-care under S117 and those that are not, and the Service User should be given a copy. It should be regularly reviewed in accordance with the CPA.

11.0 Register of Service Users and Review of Section 117 After-care

- 11.1** At the point of detention, whenever a Service User is sectioned under a relevant section of the MHA (see 2.2 for eligible sections), the MHA Administrator will enter the S117 status on the patient RiO electronic records. This will trigger an alert in the front page of the Service User's RiO records indicating his/her S117 status.
- 11.2** As part of the discharge from section process, the Service User's inpatient RC must inform the locality MHA Administrator of the Service User's S117 status on the 'Discharge of an inpatient from detention Form' (Appendix 1). The RC should note if the Service User has had a S117 review prior to discharge and the outcome of the review. The RC and nurse in charge must also ensure that this information is recorded on RiO (S117 Status folder). If meeting did not take place, an explanation must be given.
- 11.2.1** The MHA Administrator will update the discharge from section date on the RiO S117 status folder. This will trigger a 6 monthly review alert.
- 11.3** S117 register will be kept electronically on RiO. The care coordinator will be able to see who on their active caseload is subject to S117 and the status of the review (or when a review is due)
- 11.4** The S117 review should specifically consider whether the Service User continues to have a need for after-care and if there is, it should again be made clear which parts of the care plan form part of the duty under S117 (see Appendices 3 and 4 for further guidance)
- 11.5** Information relating to paid packages of care by the LA or CCG should also be recorded by the nurse in charge, or care coordinator on the RiO S117 status folder, if applicable.
- 11.5.1** Following the review, the Service User's RiO records and care plan must be updated and the 'S117 Review Outcome Form' (Appendix 5) must be completed, signed, uploaded onto RiO and sent to the relevant individuals (see Appendices 3 and 4 for further guidance)
- 11.5.2** It should be noted that after-care plans may change and new elements of care that arise from a Service User's mental disorder, if required, will form part of the duty under S117.
- 11.6** Clinicians/Ward Managers/Community Team Managers must ensure that details and information regarding the S117 status of the Service User are recorded on the care plan and in RiO clinical notes. And inform the MHA Administrator of any change to the Service User's S117 status, whenever they occur.
- 11.6.1** This includes informing the MHA Administrator of Service Users who were transferred to Trust and were detained under the relevant sections by other Hospital Managers (Out of area S117).
- 11.6.2** In the event that responsibilities for S117 are transferred from one LA/CCG to another – the Care Coordinator should ensure that the necessary arrangements are in place to continue provision of services as indicated in the care plan. And that comprehensive details of the new arrangement are recorded on the Service User's RiO record.

- 11.6.3 The Team and Service managers are able to review and monitor compliance with S117 review schedule as part of the case-load dashboard.
- 11.6.4 The Mental Health Law Manager will perform quarterly Trust wide S117 compliance reports and include the outcome in the reports to the Directorate Managers and as part of the quarterly Quality Assurance & Compliance report, which is submitted to the Service Integration and MH Law Operational meetings, as well as the Quality, Safety & Governance Committee and the Board.
- 12.0 Discharge from Section 117 - Determining that the duty under S117 has ended (Appendix 3 & 4)**
- 12.1 There is no mechanism in the Act to 'discharge' from S117; it is a duty that ends when both the responsible CCG and social services authority are satisfied that the Service User concerned is no longer in need of any after-care services. Service Users cannot be discharge from S117 while they are subject to Community Treatment Order.
- 12.2 The Code of Practice at 33.20 states that
- "The circumstances in which it is appropriate to end S117 after-care will vary from person to person and according to the nature of the services being provided. The most clear-cut circumstance in which after-care would end is **where the person's mental health improved to a point where they no longer needed services to meet needs arising from or related to their mental disorder**. If these services included, for example, care in a specialist residential setting, the arrangements for their move to more appropriate accommodation would need to be in place before support under S117 is finally withdrawn. Fully involving the patient and (if indicated) their carer and/or advocate in the decision-making process will play an important part in the successful ending of after-care."
- 12.3 The Code confirms at 33.21 that After-care services under S117 should not be withdrawn solely on the grounds that:
- the Service User has been discharged from the care of specialist mental health services
 - an arbitrary period has passed since the care was first provided
 - the Service User is deprived of their liberty under the MCA
 - the Service User has returned to hospital informally or under section 2, or
 - the Service User is no longer on a CTO or section 17 leave.
- 12.4 At 33.23 the Code goes on to state that "Even when the provision of after-care has been successful in that the Service User is now well-settled in the community, the Service User may still continue to need after-care services, e.g. to prevent a relapse or further deterioration in their condition".
- 12.5 The effect of the above is that if, for instance, the Service User was discharged from the care of the Trust's specialist mental health services, but continued to reside in accommodation provided as part of after-care, the duty under S117 remains for both the CCG and the social services authority, **albeit that the duty on the CCG. So for as long as the Service User resides in that accommodation, if he/she were to require specialist mental health services in the future, the responsible CCG would have a duty to provide**

those services. Similarly, the duty would continue if the Service User was discharged from Trust specialist services but was prescribed medication for their mental disorder by their GP.

- 12.6** Some Service Users will have other community care needs not associated with treatment of a mental disorder (for example in respect of their physical illness or disability). Such Service Users should be assessed to determine if they have any eligible needs for services provided under other legislation. If the Service User does appear to have other needs, the treating team should identify that those needs are distinct from after-care services that might form part of the duty under S117.
- 12.7** In order to minimise the risk of legal challenges, if the Trust stops providing after-care covered by S117 to a Service User, confirmation of this and details of their other care arrangements should be forwarded to the responsible CCG and social services authority following the S117 CPA Review. A S117 Review Outcome Form must be completed and distributed to all parties as per Standard Operating Procedure. (Appendices 1, 2 & 3)
- 12.8** As per Chapter 33.22 of the CoP - After-care services may be reinstated if it becomes obvious that they have been withdrawn prematurely, e.g. where a Service User's mental condition begins to deteriorate immediately after services are withdrawn.
- 12.9** Even when the provision of after-care has been successful in that the Service User is now well-settled in the community, the Service User may still continue to need after-care services, eg to prevent a relapse or further deterioration in their condition (Chapter 33.23)
- 12.10** **The following guidance is offered about the factors to be considered regarding whether or not discharge from S117 may be appropriate:**
- What are the Service User's current assessed mental health needs?
 - Have the Service User's needs changed since their discharge from hospital under S117?
 - What are the risks of return to hospital/relapse?
 - Has the provision of after-care services to date served to minimise the risk of the service user being re-admitted to hospital for treatment for mental disorder/experiencing relapse of their mental illness?
 - Are those services still serving the purpose of reducing the prospect of the Service User's re-admission to hospital for treatment for mental disorder/experiencing relapse or has that purpose now been fulfilled?
 - What services are now required in response to the Service User's current mental health needs?
 - Does the service user still require medication for mental disorder?
 - Is there any ongoing need for care under the supervision of a consultant psychiatrist or any ongoing need for involvement of specialist mental health services such as a community mental health team?
- 12.11** The above list is not exhaustive, but indicators that S117 could be discharged may include any of the following:
- Stabilised mental health which no longer requires the level of care that has been provided under S117 in order to be maintained
 - Services no longer needed for the purpose of reducing the risk of return to hospital or relapse

13.0 Refusal of Section 117 After-care

13.1 Section 117 only places a duty on the CCG and LSSA to provide after-care services and gives the Service User an entitlement to such services to meet their assessed needs; there is no power to require a service user to accept the after-care offered.

13.2 However, an unwillingness to accept services does not mean that the service-user has no need of them, nor does it make them ineligible to receive after-care services under S117 should they subsequently change their mind (see Code of Practice 33.24)

14.0 Section 117 and Children

14.1 Prior to their discharge from hospital all children and young people should have an assessment of their needs, on which a care plan for their after-care is based. The CoP guidance on the provision of s117 aftercare is applicable to individuals of all ages, but in relation to children and young people additional factors will need to be considered. This may include ensuring that the after-care integrates with any existing provision made for looked after children and those with special educational needs or disabilities, as well as safeguarding vulnerable children. Whether or not S117 of the Act applies, a child or young person who has been admitted to hospital for assessment and/or treatment of their mental disorder may be 'a child in need' for the purpose of section 17 of the Children Act 1989. (CoP, Chapter 19.111)

14.2 When a child or young person with a statement SEN, a learning difficulty assessment (LDA) or an education, health and care plan (EHC plan) is admitted to hospital under the Act, the local authority who maintains the plan should be informed, so that they can ensure that educational support continues to be provided. If necessary, the plan may be reviewed and amended to ensure targets and provisions remain appropriate. The local authority should also be involved in creating the discharge plan, so that the statement, LDA or EHC plan is revised as necessary to continue to reflect the child or young people educational, health and social care needs. (CoP, Chapter 19.118)

15.0 Access to Advocacy (Statutory Advocacy - IMHA and IMCA)

15.1 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 S.17A 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.

15.2 Under the Mental Capacity Act 2005, there has been a legal duty, since 2007, to refer Service Users to the Independent Mental Capacity Advocate (IMCA) Service, where they have been assessed as requiring to move to new residential accommodation, as part of the S117 MHA aftercare package, if they are deemed to lack capacity and have no relatives or family whom it is appropriate to consult. This referral must be made before the aftercare plan is implemented.

15.3 The IMCA service may also get involved if the person lacking mental capacity is subject to an adult safeguarding investigation or is subject to a formal assessment under the Mental Capacity Act's Deprivation of Liberty Safeguards.

16.0 Complaints

16.1 If a Service User, or their representative, has a complaint regarding the operation of this policy, then this should in the first instance be addressed with their Care Co-ordinator/Care Manager and/or the relevant Team Manager. Where this is not successful then the complaint should be handled in line with the complaints procedures of the lead agency.

17.0 Information to Service Users and Carers

17.1 Professionals should always involve Service Users and their carers (if the Service User consents to sharing information) in the planning of after care. See CoP Chapter one –5 Guiding Principles which must be followed by staff providing care to patients:

- **Least restrictive option and maximising independence**
Where it is possible to treat a patient safely and lawfully without detaining them under the Act, the patient should not be detained. Wherever possible, patients independence should be encouraged and supported with a focus on promoting recovery wherever possible.
 - **Empowerment and involvement**
Patients should be fully involved in decisions about care, support and treatment. The views of families, carers and others, if appropriate, should be fully considered when taking decisions. Where decisions are taken which are contradictory to views expressed, professionals should explain the reasons for this.
 - **Respect and dignity**
Patients, their families and carers should be treated with respect and dignity and listened to by professionals.
 - **Purpose and effectiveness**
Decisions about care and treatment should be appropriate to the patient, with clear therapeutic aims, promote recovery and should be performed to current national guidelines and/or current, available best practice guidelines.
 - **Efficiency and equity**
Providers, commissioners and other relevant organisations should work together to ensure that the quality of commissioning and provision of mental healthcare services are of high quality and are given equal priority to physical health and social care services. All relevant services should work together to facilitate timely, safe and supportive discharge from detention.
- 17.2** An information leaflet for Service Users and their carers outlining the S117 process should be provided prior to the S117 meeting (Appendix 5)

18.0 Training

18.1 Ward and Team Managers are responsible to ensure that all staff who work with Service Users subject to S117 maintain an up to date knowledge of the Mental Health Act 1983 and associated legislation as it applies within their practice.

18.2 All staff working with Service Users who are subject to S117 must complete the section E-Learning training. The learning points from the training should be discussed with staff members as part of their 1:1 supervision/caseload review.

18.3 Compliance with training will be reported to the MHA Legislation Group Meetings and Quality, Safety and Governance Committee on a quarterly basis.

19.0 Monitoring of Section 117 After-Care Arrangements

19.1 Team Managers, in collaboration with the Care Coordinators are responsible for monitoring the S117 aftercare arrangements for service through caseload management and S117/care planning reviews. They must ensure that all aspects of this policy are adhered to including training and appraisal and should report any problems, or concerns to the appropriate Service Manager and Locality Social Care Lead.

19.2 The Mental Health Legislation Manager will report S117 activities as part of Section 75 reporting.
Activity and compliance with the S117 Standard Operating Procedure (Appendix 1) will be monitored - including monitoring that reviews are undertaken on a timely and consistent basis and include all parties - and the outcome will be reported to the Directorates Senior Management, the Mental Health Legislation Group, the Service Integration Directorate Meeting and the Quality, Safety and Governance Committee.

19.3 Service integration Business Manager will perform regular reviews of all Service Users who receive packages of care as part of S117 and will report findings to the Service Integration Business Meetings on a monthly basis.

APPENDIX 1

Definitions

- **Care Coordinator:** A health care provider who has been assigned a caseload of clients and has the responsibility of organising the care provided.

- **Care programme approach (CPA):** Framework of assessment, care planning and review for people who receive mental health services.
- **Clinical Commissioning Group (CCG):** Replaced Primary Care Trusts in April 2013.
- **NHS Continuing Healthcare:** NHS continuing healthcare is the name given to a package of care that is arranged and funded solely by the NHS for individuals who are not in hospital and have been assessed as having a "primary health need".
- **Local Health Authority :**

Relevant sections of MHA 1983:

- **Section 3:** Order detaining an individual in hospital for treatment
- **Section 17 leave:** Period of agreed community leave for a service user currently liable to detention in hospital.
- **Section 17A (Community Treatment Order):** Order providing a legal framework around the care plan of an individual who has been detained under section 3 (or section 37 hospital order), when they are discharged from hospital, although they remain liable for recall or revocation from the Community Treatment Order
- **Section 37:** Hospital Order detaining an individual who has been transferred by the Courts to hospital for treatment. Note: Guardianship under section 37 does not confer S117 status
- **Section 37/41:** Order detaining an individual who has been transferred by the Courts to hospital for treatment, with restrictions
- **Section 37/41 – conditionally discharged Service Users:** section 42 allows the Secretary of State to direct that someone under a restriction order should be discharged from hospital but subject to conditions e.g. place of residence, supervision by psychiatrist and social supervisor
- **Section 45A:** When imposing a prison sentence for an offence other than when the sentence is fixed by law, the Crown Court can give a direction for immediate admission to and detention in a specified hospital, with a limitation direction under Section 41. The directions form part of the sentence and have the same effect as a hospital order. The Home Secretary can approve transfer back to prison at any time.
- **Section 47 or 48:** Orders detaining an individual transferred from prison to hospital for treatment.
- **Section 47/49:** Orders detaining an individual transferred from prison to hospital for treatment, with restrictions

APPENDIX 2

Discharge of an inpatient from detention

Mental Health Act 1983 Section 23

Full name of patient: _____ RiO Number _____

Name of Hospital _____ Ward: _____

I am the Responsible Clinician for the patient named above and I am discharging this patient from

section _____ at (time) _____ on (date) _____

<i>Please tick one outcome</i>	
The patient will remain in hospital informally*	<input type="checkbox"/>
The patient has been discharged to outpatient status <i>Discharge address if different from RiO:</i>	
Other (please specify)	<input type="checkbox"/>

The patient has been informed that they are no longer detained under the Mental Health Act 1983 and are free to leave the hospital.

All patients detained under section 3, 37, 45A, 47 or 48 must have a section 117 review meeting before discharge from the hospital.

The patient has had a S117 review	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
--	-------------------------------------	------------------------------------	-------------------------------------

If review held: The outcome of the s117 review was:	Patient does not require any aftercare arrangements and can be discharged from s117 (The decision must be reasoned and recorded on S117 review outcome form, RiO and in the Care Plan) <input type="checkbox"/>
	Patient requires/or may require aftercare once in the community and should remain on s117 (Details of the aftercare must be recorded in the patient's Care Plan) <input type="checkbox"/>

* If the patient remains on the ward informally you, must inform the locality MHA administrator when the patient is discharged from hospital and their section 117 status at that time.

Signed: _____ Date: _____ Time: _____

Print name: _____ (Responsible Clinician)

Ward Admin: Faxed to patient's GP, scanned to RiO and original sent to MHA Administrator on:

Date: _____ Signed: _____

APPENDIX 3

Received by MHA Admin on: Date: _____ Signed: _____

Section 117 'After-care' – CPFT Standard Operating Procedure (V9)

MHA CoP chapter 33

Has the patient been detained under section 3, 37, 45A, 47 or 48 by the Trust? If yes – MHA Administrator to add them to the Trust's S117 register.

When the patient is ready for discharge from the ward, the RC should follow CPFT discharge planning procedures. A Multi-Disciplinary pre-discharge S117 meeting must take place. (Participation in the meeting should include the patient and their carer, inpatient RC, Care Co-Ordinator/Social Worker, representation from the Community Team and an IMHA, IMCA if applicable). **The outcome of the meeting must be recorded on the RiO care plan and S117 Status folder.**

When the patient is discharged from section, the RC must complete the section '**Discharge Form**' and indicate if the patient is subject to S117 or not. The form is to be signed and sent/faxed/emailed to locality MHA Administrator.

Following discharge from the ward, the patient's Care Co-ordinator must include a review of S117 arrangements as part of any on-going care and support plan review. (As per CPA policy i.e. 7 days, 28 days, 3 months, 6 months thereafter)

The date of the minimum 6 month review requirement for s117 after-care will be as part of the care coordinator's active case load dashboard.

S117 aftercare services are still required - based on whether there are any social care, or health needs arising as a result of mental disorder and those services are designed to reduce the risk of deterioration in that condition and the risk of re-admission to hospital for treatment of that disorder. Where it is deemed appropriate for a patient to be discharged from S117, then '**S117 aftercare is not required**' route should be followed. The patient can only be discharged with the agreement of the S117 CPA review panel.

Care Coordinator/RC to arrange a **S117 Review** - as part of one of the scheduled Team Meetings.
The 'Review Summary', updated Care Plan and relevant risk assessments must be available/ considered.
The CPA/S117 review must involve the patient and their carer and include the patient's Care Coordinator, the patient's Consultant and a Social Worker.

**Following 6 monthly care plan review
S117 aftercare is still required**

**Following 6 monthly care plan review (which should include
the patient/carer) S117 aftercare no longer required**

If following the review it is decided that the patient is still eligible to be subject to S117, then the patient cannot be discharged from CPFT services and will remain on the Care Co-ordinator's caseload.
The **S117 Review Outcome Form** must be completed, signed by all individuals, uploaded onto RiO and emailed to the locality MHA Administrator.

The Care Coordinator will document the outcome of the review on the patient's RiO care plan review, co-produce the care plan with the patient and their carer/relatives. A follow up review should take place when necessary, or within 6 months from last review

If following the review and in collaboration with the patient and their carer/Advocate, the agreed outcome is that the patient should be discharged from S117 – the RiO care plan review must be updated and **S117 Review Outcome Form** must be completed, signed by all individuals, uploaded onto RiO and emailed to the locality MHA Administrator/Locality Social Care Admin.

The Care Coordinator will confirm the outcome with the patient and their carer/relatives in writing.

The Local Authority is responsible for funding and reviewing any social care packages in place for those people subject to S117, even if the patient becomes resident in another area. The Care Coordinator should ensure that the necessary arrangements are in place to continue provision of services as indicated in the Care Plan.

Authorities can agree to a transfer of responsibility for providing S117 services. In this scenario the Care Coordinator should ensure that transfer of all after-care documents are completed and, in consultation with the RC, ensure appropriate transfer of care between the authorities

If a patient subject to s117 becomes resident in a new area and is then detained under one of the above provisions, the relevant bodies for s117 responsibilities may change. The care coordinator must inform the MHA Administrator of any of the above mentioned changes.

APPENDIX 4

S117 ASSESSMENT, REVIEW AND DISCHARGE PROCEDURE V.5

The planning and implementation of S117 Aftercare services should be completed using the existing processes of the Care Programme Approach.

Patients should be the focal point of planning care service provision and should be involved in so far as possible. Their views on what will be needed to support them should be a primary concern for staff planning aftercare and they should be encouraged and supported in planning their future care arrangements. It is the responsibility of the Responsible Clinician to ensure this takes place prior to discharge from the hospital. A care planning meeting should be held;

- Prior to authorisation of Section 17 leave
- If a community treatment order is being considered
- If a Tribunal hearing, or hospital managers hearing is planned
- If discharge from hospital is being considered and implemented

The S117 after care meeting should be initiated by the Responsible Clinician and may include the following people:

- The patient, if he/she wishes and/or a nominated representative or advocate;
- The patient's Responsible Clinician;
- A nurse involved in the care of the patient whilst in hospital;
- A Social Worker/Care Manager;
- A Support Worker;
- G.P. and Primary Care Team;
- A Community Psychiatric/Mental Health Nurse;
- IMHA or IMCA
- In the case of a restricted patient, the Probation Service / MAPPA Coordinator;
- Subject to the patient's consent – patient's carer(s)
- Subject to the patient's consent, his/her nearest relative;
- Employment/Housing/Education as appropriate

Reasonable steps must be taken to ensure the identification of appropriate aftercare facilities and services for the patient before his/her actual discharge from hospital, and the actual cost of such service provision. This should include identification of the relevant CCG/LSSA that will be responsible for aftercare.

In the event that aftercare cannot be provided by already commissioned services and/or universal services, then an application for aftercare funding may be required.

A person in receipt of after-care services under S117 may also have ongoing care/support needs that are not related to their mental disorder and that may, therefore, not fall within the scope of S117. Also a person may be receiving services under S117 and then develop separate physical health needs (e.g. through a stroke) which may then trigger the need to consider NHS continuing healthcare only in

relation to these separate needs, bearing in mind that NHS continuing healthcare should not be used to meet S117 needs.

S117 REVIEW/DISCHARGE PROCEDURE

This procedure must be followed prior to discharge from S117 Register

Service User's Progress:

- Care Co-ordinator monitors Service User progress as per the Aftercare Support/CPA Care Plan
- If progress indicators show that the Service User's needs have been met and there is gradual phasing out of services, the Care Co-ordinator should consider the need for continuation of services under S117.
- The Care Co-ordinator should then liaise with the RC and convene a CPA/ S117 review meeting, which will take place as part of the scheduled team's multi-disciplinary meetings.

The following staff members are required to attend this meeting:

- Consultant Psychiatrist/ Responsible Clinician (RC)
- Care Co-ordinator (CC)
- The Service User and/or subject to Service User 's consent family member, carer or advocate must be consulted with and informed of the process
- Advocacy representation - IMHA, if the Service User wishes them to be involved, and/or IMCA if applicable
- CCG Rep, If there is joint funding in place.

The meeting must include the following agenda (see S117 Review Outcome form):

- Discussion of S117 needs identified on the CPA care plan and whether the needs have been met/continue to exist.
- Discussion as to whether any other S117 needs have been identified.
- Ensure all present have the opportunity to discuss care needs.
- Any additional care needs not subject to s117 should be recorded and addressed in the CPA care/support plan.
- Is there need to consider the Mental Capacity Act and or DOLS

Outcome of the Meeting:

- The discussion and outcome of the meeting should be clearly recorded on the S117 Review Outcome Form and signed, as required.
- Should the person be discharged from S117, the funding arrangements, for a care package need to be considered, and a financial assessment will be

necessary for the person, as they may contribute towards the care package, should it continue. It will also be necessary to consider complexity of need and possible Continuing Health Care or Joint Funding arrangements, if not already in place.

- Where all professionals in attendance agree that the Service User's S117 needs no longer exist, this needs to be clearly evidenced and documented on the CPA documentation, along with the decision to discharge the Service User from S117.
- A S117 Review Outcome Form must be completed, outlines the decision made and signed by decision makers.
- A Service User may continue to require ongoing care services for assessed needs that are not subject to S117 from either the Trust or Local Authority. The Care co-ordinator should ensure that the support plan is updated accordingly, so that the Service User has access to services required.
- Where a Service User and/or their representative don't agree with the decision to discharge from S117, they should be advised of their right to appeal the decision and their views and supporting information on this recorded. If they choose to appeal, the Care co-ordinator should support them with the process.

Paperwork and sign off

- Care Co-ordinator to update the Service User's RiO clinical records of the Panel's decision and outcome, update the Care Plan and upload all documentation (Care Plan and S117 Review Outcome Form – onto the Service User's RiO electronic records)
- The Care Coordinator will fax/email a copy of the S117 Review Outcome form to the locality Mental Health Act Administrator and to the Social Care Administrator. (The CCG must be notified of the outcome, if there is a joint funding in place)
- Ensure that the person is referred through to the Local Authority Financial Assessment Team, to complete the required financial assessment, (unless fully funded by Clinical Commissioning Group)
- Mental Health Act Administrator will update the S117 Register to reflect the outcome of the Panel's review and will remove the Service User's name from the Register – if the Panel decided to discharge the Service User from S117 after-care.

If the Service User, or their representative disagree with the decision to discharge

- If the Service User, or their representative, do not agree with the discharge from S117, the Care Co-ordinator should assist them in the appeal/complaint process and immediately send the complaint/appeal to:

PALS and complaints co-ordinator

Freephone: 0800 376 0775

Tel: 01223 726774 (during office hours)

Email: pals@cpft.nhs.uk

- The appeal will be handled accordingly and the Service User will be updated on progress and final decision in relation to the discharge.
- This decision should also be communicated to the Team's MDT via the Care co-ordinator.
- The Care co-ordinator must update the Service User's RiO records and inform the MHA Administrator of any changes following the appeal which will need to be reflected on the S117 register.

APPENDIX 5

Cambridgeshire and Peterborough 
NHS Foundation Trust

Section 117 Review Outcome Form (V2)

Service User's name		DOB	
Address:			
Care's name:		Date/ time of the Review	

The following decision was taken following the Service User's CPA/s117 review by the individuals signed below.
(Prior to reaching a decision the following questions must be considered and answered)

S117 review questions	Answers/evidence			
Does the Service User need services under S117 after care YES / NO				
If the answer to the above is YES, are the services required (a) To meet a need arising from, or related to the Service User 's mental disorder; and (b) to reduce the risk of a deterioration of the Service User 's mental condition, in the least restrictive way? (and, accordingly, reduce the risk of the Service User requiring admission to a hospital again for treatment for mental disorder)				
Based on the above evidence, does the Service User have s117 aftercare needs ? (Tick)	Yes		No	
Panel Review Outcome (Tick)	Discharge		Remain on S117	

Follow up action required/other comments:

If the Service User is discharged from S117, the RC/Team Manager must write to the relevant Council and inform them of the decision. A copy of the s117 Review Outcome Form must be attached to the letter.

The decision above was made on (date)_____ by:

Name		Profession		Signature	
Name		Profession		Signature	
Name		Profession		Signature	

Once completed and signed, this form must be uploaded onto the Service User 's electronic RiO records and a copy must be emailed for action to:

Locality MHA Administrator - (Cambridge) FulbournMHAAdmin@cpft.nhs.uk OR
(Peterborough and central localities) CavellMHAAdmin@cpft.nhs.uk
Social Care Business Manager: Sally.Bramley@cpft.nhs.uk

APPENDIX 6

Summary of Recent Case Law

R (Mwanza) v Greenwich LBC and Bromley LBC [2010] EWHC 1462 (Admin):

- nature and extent of aftercare facilities must, to a certain degree fall, within the discretion of the authorities which must have regard to other demands in their budget;
- accommodation is a "common need" for all people - s.117 is not concerned with provision of support and accommodation at large;
- can be for "accommodation plus":
 - residential accommodation which is specifically designed to care for the needs of persons who have been detained under section 3 and who have left hospital;
 - Caring residential accommodation (such as supported living) (ensuring for example, that prescribed medication is taken, or providing intensive therapy and treatment)
- just because a former patient is unemployed/homeless and that social situation would increase the chance of deterioration in mental condition does not require S.117 to provide employment/housing – it may give rise to a need for assistance in gaining employment/housing;
- s.117 does not require the relevant authorities to provide a former s.3 patient with any and all services simply because those services do or may prevent deterioration or relapse of a mental condition, or require readmission.

R (on the application of Tewodros Afework) v The Mayor and Burgess of the London Borough of Camden [2013] EWHC 1637 (Admin)

- Accommodation is only after-care if:
 - Need for accommodation is a direct result of the reason that the patient was detained under the MHA; and
 - It is enhanced specialised accommodation to meet needs directly arising from the mental condition; and
 - Ex-patient is being placed in the accommodation on an involuntary (in the sense of being incapacitated) basis arising as a result of the mental condition.

[Wiltshire Council v Hertfordshire County Council and SQ \[2014\] EWCA Civ 712](#)

Giving the judgment of the court, Mr Justice Bean said he considered it “clear that where a person has been made subject to a hospital order with restrictions, then conditionally discharged, then recalled to hospital, and then conditionally discharged for a second time, for the purposes of s. 117(3) of the Act he is still to be treated as ‘resident in the area’ of the same local authority as that in which he lived before the original hospital order was made.

“This makes it unnecessary to consider whether or not a fresh duty to provide after-care services arose on SQ’s second discharge earlier this year. Whether the duty is a fresh one or a continuing one, on the facts of this case it is Wiltshire’s duty.”

APPENDIX 7

THIS IS A POLICY SAMPLE PLEASE USE
ORIGINAL LEAFLET

MENTAL HEALTH ACT 1983

SECTION 117 AFTER-CARE

INFORMATION FOR SERVICE USER S AND CARERS

What is section 117 Aftercare?

Section 117 of the Mental Health Act 1983 (MHA) says that Local Social Service Authorities and Clinical Commissioning Groups must provide certain after-care services free of charge, to people who have been detained under certain sections of the Mental Health Act 1983. These after-care services must be for specific **mental health** and social needs, assessed as necessary by your care co-ordinator and care team in consultation with you. S117 does not include physical health care needs (see separate leaflet).

The purpose of this after-care is to prevent someone needing to go back into hospital. This means that services should meet someone's immediate needs and also support them to gain skills and help them to cope with life outside of hospital.

This may involve a direct service, for example a carer to support you, or it may be through a Direct Payment, which allocates a sum of money which you can use more flexibly for your assessed needs. (For further information on Direct Payment please ask your care co-ordinator)

These services are re-assessed at every review and when the care team have assessed someone's needs as having been met, a formal care review meeting will be set up to discuss discharging them from S117. If you are discharged from S117, you will have a financial assessment completed to determine if you will contribute to any social care package.

When does section 117 start?

Section 117 begins when you finally leave the hospital, although planning for after-care should begin as soon as you are admitted to hospital.

Who is entitled to section 117 Aftercare?

- People who have been detained under the 'treatment' sections of the Mental Health Act. These are sections 3, 37, 45A, 47 or 48.
- People who are discharged from the above sections, but who remain in hospital voluntarily after their discharge
- People who are released from prison, who have also spent some of their sentence in hospital, detained under sections 37, 45A, 47 or 48.
- People granted leave from hospital under section 17 are entitled to services during their period of leave
- People going onto Supervised Community Treatment (SCT) or Guardianship.

Who is responsible for providing the Aftercare?

It is the Clinical Commissioning Groups (CCGs), NHS and the Local Social Services Authority (LSSA) in the area where the person normally lives at the time they were admitted to hospital. There are some exceptions to this, but this responsibility will be dealt with by the care co-ordinator and care team.

Who is involved, and what services count as S117 Aftercare?

You will be directly involved in planning your after-care. Any carers should also be involved as long as you consent. Other people involved could include a psychiatrist, community psychiatric nurse, social worker, occupational therapist, psychologist, advocate, housing officer and people who represent you with your consent like an attorney or deputy.

Factors considered in the assessment will vary from person to person. After-care services could include:

- Provision of domiciliary services
- Specialist accommodation
- Social care support
- Day services e.g. support with employment, social inclusion and relationships
- Medical supervision and psychological support

Your after-care support plan, also called a Care Programme Approach (CPA) care plan must be in writing and include timescales. This will specify your S117 health and social care needs as well as any other needs not identified as S117 needs.

This plan will be reviewed regularly. It is the care co-ordinator's responsibility to arrange reviews, at least 6 monthly.

Discharge of section 117 Aftercare

The duty to provide after-care lasts as long as the care team assess that you continue to have S117 health and/or social care needs. We recognise that even if someone is doing well outside hospital, they may still need after-care services to prevent them becoming unwell again, especially if they have a long history of mental health difficulties.

Section 117 services only end when the section is formally discharged. This must involve a meeting, which includes you and the people you would like to be there, such as a carer or advocate.

If you were not involved in a discharge meeting, then you are still on a section 117. However, please be aware, that if you are invited to the meeting, non-attendance will not prevent discharge from S117 if the care team believes it is appropriate.

If you are discharged from S117, your social care needs (which are not related to your mental health needs) may no longer be provided without charge. Additional information about this will be given to you by your Care coordinator and can be found in the **‘Care Packages and Financial Assessments’** leaflet.

The decision to discharge from S117 lies with your care team and must include your care coordinator and consultant psychiatrist. If you disagree with a decision to discharge from S117, you are entitled to appeal against this decision (see below).

Stopping of services and/or funding under S117.

You should be given two weeks notice before any service provided under S117 ceases. After-care should not be stopped on the following grounds alone:

- You are discharged from specialist mental health services, such as a community mental health team
- A certain length of time has passed since you left hospital
- You return to hospital voluntarily or under section 2
- You are deprived of your liberty under the Mental Capacity Act 2005
- You are no longer on Community Treatment Orders, section 17 leave, or transferred on to a Guardianship from an eligible section.

Appealing against the Decision

If a decision is made to discharge you from S117 and you do not agree with the decision, you have a right to make a formal complaint. Your care co-ordinator can help with this. If you need further information about how to complain against this decision, please contact:

PALS and complaints co-ordinator

Freephone: 0800 376 0775

Tel: 01223 726774 (during office hours)

Email: pals@cpft.nhs.uk

Frequently Asked Questions.

1. **What can I do if I haven't received services under section 117 that I think I'm entitled to?**

- You could contact, either your care co-ordinator, psychiatrist, or local team manager who would be happy to discuss any issues with you.
- You can make a complaint in writing. Your care co-ordinator can assist you with this.
- If still unsatisfied, you can complain to the Parliamentary & Health Service Ombudsman and the Local Government Ombudsman (LGO), who has the power to investigate complaints against councils, including social services departments.
- You could ask a solicitor.

2. **What can I do if I've been charged for services whilst on section 117?**

You may be able to claim this money back. You should do this as soon as possible by writing to the Trust or Local Authority.

The process of reimbursing will raise complicated issues about benefits. You may have received benefits that you wouldn't have been entitled to if you had received free after-care under section 117. You should seek specialist advice if you think you may be in this situation. You may have been topping up the payments for care, it is best to seek advice from Care Coordinator.

3. **What happens if I do not want to receive a service or I change my mind?**

You do not have to accept services if you are offered them. If you change your mind later, you would still be entitled to receive these services if they are still assessed as required to meet your needs.