



# **Section 117**

## **After-Care under the Mental Health Act 1983**

## Information Sheet

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# 1. Definitions of Terms

<b>Terms</b>	<b>Definition</b>
<b>After Care</b>	Care services provided to patients who have been discharged from hospital following admission under the following Sections of the Mental Health Act 1983 s.3, s.37, s.45A, s.47 or s. 48. A patient's entitlement to after-care section 117 begins when they are detained under the above sections. The duty to provide after-care is triggered at the point of discharge.
<b>Care Programme Approach (CPA) Assessment. Care co-ordinator</b>	CPA is a way of co-ordinating community health services for people with mental health problems. It means that once you have an assessment detailing your needs, one person will be able to co-ordinate all aspects of your care for example, this could be your medical and social care and community services available to you. This assessment will be carried out by a care co-ordinator. Care co-ordinators are also sometimes called keyworkers or case managers
<b>Clinical Commissioning Group</b>	Clinical commissioning groups are groups of GPs that are responsible for designing local health services in England. They will do this by commissioning or buying health and care services. Clinical commissioning groups will work with patients and healthcare professionals and in partnership with local communities and local authorities.
<b>Community Mental Health Team</b>	Community mental health teams support people with mental health problems who are living in the community. Teams include a range of professionals such as community mental health nurses, social workers, occupational therapists, clinical psychologists etc.
<b>Continuing Healthcare</b>	NHS continuing healthcare is arranged and funded solely by the NHS. To be eligible, the main or primary need must relate to the person's health.
<b>Local Authority</b>	At a local level, the country is divided into a series of local authorities or councils. These authorities are responsible for providing local services to the community such as education, adult and children social care, regeneration, leisure, housing and environmental services
<b>Mental Health Act 1983</b>	An act of parliament that governs the treatment and care of some individuals incapacitated through mental illness.
<b>Mental Health Law Administrator (MHLA)</b>	Previously referred to as mental health act administrators (MHAA). MHLAs manage the administrative aspects of mental health law in general and the Mental Health Act in particular.
<b>Mental Health</b>	There are two levels of mental health review tribunals

<b>Review Tribunal</b>	1 <sup>st</sup> tier and upper. 1 <sup>st</sup> tier Tribunals hear applications and references for people detained under the Mental Health Act 1983 (as amended by the Mental Health Act 2007) or living in the community following the making of a conditional discharge, or a community treatment or a guardianship order. The main purpose of the tribunals is to review the cases of patients detained under the Mental Health Act and to direct the discharge of any patients where the statutory criteria for detention are not met. The Upper tribunal hears appeals from decisions from the 1 <sup>st</sup> tier Tribunal. Both tiers are normally held in private and take place in the hospital where the patient is or used to be detained or a convenient community unit.
<b>Multi Disciplinary Team</b>	A multidisciplinary team (MDT) is a group of professionals from diverse disciplines who come together to provide comprehensive assessment and consultation in cases.
<b>Nursing Care Contribution</b>	The money paid by the NHS for the nursing care component of a person's care package is known as the registered nursing care contribution (RNCC)
<b>Pooled Budget</b>	A pooled budget in this example refers to the pooling of financial and non-financial resources from Liverpool Clinical Commissioning Group and Liverpool City Council with the common aim of providing services for those who have a specified disability.
<b>Responsible Clinician (RC)</b>	A patient's responsible clinician is defined as the approved clinician with overall responsibility for the patient's case. All patients subject to detention or Supervised Community Treatment have a responsible clinician; nurse, occupational therapist, psychiatrist, psychologist or social worker
<b>Section 117 Register</b>	Register of service users on section 117. This register is maintained by the MHL administration department who should be notified of any changes e.g. discharge from section 117 or transfer.
<b>Service User</b>	A service user is a person receiving any health or social care services, from going to the family doctor, the pharmacist, to accessing social services such as home care or direct payments.
<b>Third Party Contribution</b>	A Third Party contribution is a payment made to a residential or nursing home on your behalf. Where a local authority are contributing to the cost of your care they may only pay up to certain amount.
<b>Trust</b>	For the purpose of this policy this refers to Mersey Care NHS Trust

## **2. Introduction**

**2.1** Section 117 (s.117) of the Mental Health Act 1983 places a statutory duty upon health and local authorities to provide after-care to persons who have been detained under specific sections of the Act.

**2.2** The purpose of this guidance is to:

- set out the joint agreement of Liverpool City Council and Liverpool Clinical Commissioning Group which outlines their obligations under section 117;
- provide guidance to staff responsible for the delivery of section 117 in Liverpool; and
- ensure the consistency and quality of services provided under section 117 across Liverpool;
- set out the arrangements under which a patient can be discharged from section 117;
- aid the establishment of agreed funding arrangements between Liverpool City Council and Liverpool Clinical Commissioning Group for existing and future service users.

**2.3** This guidance has been developed in partnership with Liverpool Clinical Commissioning Group and Mersey Care NHS Trust. Although every attempt has been made to ensure that information in this document is correct at the time of distribution there are likely to be changes and amendments on an ongoing basis.

**2.4** This guidance is by no means exhaustive and must not be used as a substitute for seeking legal advice as appropriate.

## **3. Definition of Section 117 After-Care**

**3.1** There is no definition of “After-Care” in the Mental Health Act but section 117 services are considered to be services which:

- are provided in order to meet the individual’s mental health needs;
- enable a person to return to their home or other community-based accommodation; and
- minimise the likelihood of re-admission to psychiatric in-patient care.

**3.2** Section 117 gives considerable discretion to health and local authorities as to the nature of the services that can be provided, but they normally include support with management of medication and mental health needs and

activities of daily living which enables a person to remain a full part of their community.

**3.3** 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.

**3.4** 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. NHS care is free at the point of delivery.

**3.5** If a person was receiving services relating to their mental health in the community and being charged for those services, following admission under the Mental Health Act pursuant to section 3, 37, 45A, 47 and 48, and subsequent discharge from hospital under section 117, those services would no longer be chargeable.

**3.6** The court judgement *R v LB Camden*, [2013] EWHC 1637 June 2013 has clarified further what is covered by section 117 After-Care. This case concerned a man, Mr Tewodros Afework, who had been detained under section 3 MHA in 1992 and 1993. He had then lived in a number of local authority flats with his sister, for which they needed housing benefit.

In 2000, he was assaulted and incurred significant brain damage. As a consequence he was no longer able to live independently and had to live in specialist accommodation. Section 21 National Assistance Act 1948 applied, but he was not charged for his accommodation on the grounds of low income.

It would appear that the application arose as a result of Mr Afework being awarded a considerable sum of money in criminal injuries compensation, which it was likely the local authority providing accommodation would take into account when assessing his contribution to his accommodation charges.

Mr Justice Mostyn, the judge in the case, reiterated a number of previous cases which looked at issues of accommodation and section 117 after-care. Based on these cases Mr Justice Mostyn therefore held that:

“ As a matter of law s.117(2) 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”

As he found that the applicant’s need for residential care arose entirely from his head injury, and was not the result of his underlying mental illness, then section 117 did not apply.

The conclusion to be drawn from these cases therefore could not be clearer:

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

## **4. Entitlement to Section 117**

**4.1** A patient’s entitlement to after-care under section 117 begins when they are detained under the following sections of the Mental Health Act 1983:

Section 3	An application for admission for treatment
Section 37	A hospital order (with or without a restriction)
Section 45A	A hospital direction (with or without a limitation direction)
Section 47 or s.48	A transfer direction (with or without a restriction order)

**4.2** This includes all supervised community treatment patients and all conditionally discharged patients. Section 117 does not automatically apply to guardianship (section 7) unless they have been detained under one of the above sections.

**4.3** A patient’s entitlement to section 117 continues even if they are:

- discharged from their section and remain in hospital as an informal patient
- returned to prison after being detained in hospital; or
- re-admitted to hospital either informally or under another section of the Act, e.g. section 2.

**4.4** Section 117(2) Mental Health Act 1983 states that:

“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”



**4.5** 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. Responsibility for Section 117 After-Care**

**5.1** Case law has established that 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. (See DH Mental health aftercare in England and Wales).

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/416555/MH\\_aftercare.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416555/MH_aftercare.pdf)

**5.2** 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. See link below NHS England Who Pays? Determining responsibility for payment to providers:

<http://www.england.nhs.uk/wp-content/uploads/2014/05/who-pays.pdf>

**5.3** If a service user is out of the area, their entitlement to section 117 after-care continues. It is the responsibility of the care co-ordinator on behalf of Mersey Care NHS Trust to ensure that appropriate transfer arrangements are made, and that the receiving authority is aware of the patient's entitlement to care and services under section 117.

**5.4** If a service user is placed in a residential resource 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 new area (for example, psychiatric follow-up).

**5.5** The CCG where the service user is registered on the list of NHS patients of a GP practice will become responsible for the health component of section 117 after-care. It is the responsibility of the care co-ordinator on behalf of Mersey Care NHS Trust to ensure that appropriate transfer arrangements are made.

**5.6** 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.

## **6. Planning of Section 117 After-Care**

**6.1** A patient's entitlement to section 117 after-care begins when they are detained under the sections of the Mental Health Act as detailed above. The planning of after-care needs to start when the patient is admitted to hospital (Code of Practice, 33, 10, 2015). (See appendix A flow chart section 117 care pathway)

**6.2** Within the framework of the Care Programme Approach (CPA), a written careplan, based on a full assessment of the patient's needs, and which specifies S117 after-care arrangements must be in place before:

- Discharge from hospital
- A period of section 17 leave - except for short periods of leave, when "a less comprehensive review may suffice, but the arrangements for the patient's care should still be properly recorded" (Code of Practice, 33.13, 2015). Any period of leave which includes an overnight stay necessitates a full after-care plan.
- A Mental Health Tribunal

**6.3** The hospital managers must ensure that Liverpool Clinical Commissioning Group and Liverpool City Council are aware of the hearing so that they are able to consider after-care arrangements in all cases; however this is particularly important when discharge is a strong possibility and appropriate after-care is a key factor in the decision.

**6.4** The Responsible Clinician (RC) shall ensure that the patient's after-care needs have been fully assessed. The section 117 after-care plan should normally be formulated at a multi-disciplinary meeting; this meeting shall also identify the care co-ordinator. The code of practice contains detailed guidance about the people who should be involved in this process and the considerations to be taken into account (<sup>1</sup>Code of practice, chapter 33)

**6.5** Contributors to the CPA process should be aware of the patient's section 117 status and the additional statutory duty to provide after-care services that this entails.

**6.6** The CPA meeting should specifically be described as a CPA/section 117 meeting. To avoid duplication and confusion the documentation for both the CPA and section117 is the same.

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<sup>1</sup> Department of Health Mental Health Act 1983: Code of Practice 2015

**6.7** Any care package for a patient, including residential care should be drawn up on awareness of section 117 after-care rights and responsibilities with the involvement of the service user.

**6.8** The care plan must clearly identify the interventions that are related to section 117 after-care entitlement and those that are not.

**6.9** The care coordinator must write to the service user informing them that the after-care provision under section 117 is not chargeable and inform the service user that the after-care provision will be reviewed on a regular basis.

**6.10** This information must be recorded on Liverpool City Council and Mersey Care management information systems.

**6.11** All CPA/Section 117 care planning must comply with the guidance and standards outlined in Mersey Care policy and procedure for the care programme approach which can be accessed via the link below:

[http://www.MerseyCare.nhs.uk/Library/Who\\_we\\_are/Policies\\_and\\_Procedures/SD21-3CPA%20Rev%20Mar%202012.doc](http://www.MerseyCare.nhs.uk/Library/Who_we_are/Policies_and_Procedures/SD21-3CPA%20Rev%20Mar%202012.doc)

1. Mersey Care NHS Website, web address: [www.MerseyCare.nhs.uk](http://www.MerseyCare.nhs.uk)
2. From *Home Page* click on *Working For us* – drop-down menu on left hand side of the page
3. Click on *Policies and Procedures*
4. Scroll down to *Service Delivery* and click on *SD21: Care Programme Approach*

## **7. Review of Section 117 After-Care**

**7.1** Liverpool City Council, and Mersey Care NHS Trust acting on behalf of Liverpool Clinical Commissioning Group, will ensure that all service users subject to section 117 will be subject to full CPA procedures. This includes assessment, care planning and reviews agreed under the CPA policies and procedures. Users or carers (where appropriate) will be informed of these policies and will have copies of all their care plans, incorporating the section 117 arrangements.

**7.2** The care coordinator will be responsible for ensuring that relevant practitioners/clinicians are invited to the CPA/Section 117 reviews, giving at least 14 days notice of the date the review is to be held. The care coordinator will record the names of the relevant professionals on the CPA documentation.

**7.3** The first section 117 review meeting must take place within 4 weeks of discharge from hospital.

**7.4** Care plans for service users receiving after-care under section 117 should be regularly reviewed, at least once every 12 months, within the CPA process.

**7.5** The review must specifically consider if it is appropriate for the care plan to continue to be provided under section 117. It must be made clear which parts of the care plan are section 117 services and which are not. Where discharge of section 117 is being considered at review, and a social worker is not present, the review must be reconvened. The care coordinator shall arrange a new date for the review and invite a social worker to attend giving 14 days notice of the date of the reconvened review.

**7.6** While the service user is eligible for section 117 after-care, any additional services to address mental health needs are also section 117 services.

**7.7** Where an individual is discharged from Merseycare they should also be considered for discharge from section 117 prior to transfer back to primary care.

**7.8** Where a patient has not been discharged from section 117 but has been transferred to primary care, responsibility for the individual's section 117 reviews remains with Merseycare NHS Trust.

## **8. Discharge of Section 117 (or Discharge from Section 117)**

**8.1** The duty to provide after-care services under section 117 exists until both Liverpool City Council, and Mersey Care NHS Trust acting on behalf of Liverpool Clinical Commissioning Group, 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.

**8.2** The Court of Appeal Judgement of July 2000 (London Borough Richmond & others ex parte Watson & others) highlighted the importance of having an agreed policy to outline the circumstances in which service users are discharged from S117. Any agreed policy should incorporate the CPA.

**8.3** The judgement indicates that "After-Care provision does not have to continue indefinitely. It must continue until such time as the health authority and local authority are satisfied that the individual is no longer in need of such services. There may be cases where, in due course there will be no need for after-care services for the person's mental condition, but he or she will still need social service provision for other needs, for example, physical disability. Such cases will have to be examined individually on their facts, through the assessment process provided for by section 47 [of the National Health Service and Community Care Act 1990]. In a case such as [X], where the illness is dementia, it is difficult to see how such a situation could arise in practice". This judgment is not saying that people with dementia cannot be discharged from after-care. Each case will have to be examined individually on their facts (R v Richmond LBC ex parte Watson 2001).

**8.4** 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.

**8.5** The Local Government Ombudsman helped clarify this issue in investigating a complaint made against Bath and North Somerset Council (Report 12/2007).

A lady who resided in a residential home had been discharged from section 117 on the basis that:

- her dementia was improving and her mental health was stable;
- she was not at risk of readmission to hospital, and;
- she was accepting of her residential placement and the care she needed.

**8.6** In finding the council criteria to be maladministrative the ombudsman concluded "Whether or not a person is 'settled in a nursing or residential home' is an irrelevant consideration. The key question must be, would removal of this person (settled or not) from this nursing or residential home mean that she is at risk of readmission to hospital. If the answer is yes then the person cannot be discharged from after-care".

**8.7** This 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.

**8.8** Where both Liverpool City Council and Mersey Care NHS Trust acting on behalf of Liverpool Clinical Commissioning Group are satisfied upon re-assessment of the service user's current needs that after-care is no longer necessary, and can properly be discharged, there is scope thereafter for the social services authority to look to other community care provisions. This is provided the authorities are satisfied that such other services are available to the service-user; that they are appropriate having regard to the care and support eligibility criteria and that they will adequately meet the service user's assessed care and support needs.

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

**8.10** The duty under section 117 cannot be ended retrospectively. Once it ceases, for whatever reason, a fresh duty can only arise where the service

user is again detained under a section of the Mental Health Act for which section 117 applies.

**8.11** In conducting a discharge review, the following should be considered and the outcome and impact on the decision reached, recorded. These are indicative and not exhaustive:

- If a service user refuses the after-care plan, they must remain on the register of people entitled to section 117 after-care as the duty remains until discharged. A refusal to accept services will not in itself lead to discharge; any discharge must be based on the needs of the patient as outlined above.
- Discharge from section 117 must be agreed by **both** Liverpool City Council and Mersey Care NHS Trust acting on behalf of Liverpool Clinical Commissioning Group and should be discussed in detail at a CPA review meeting. The final decision should be clearly recorded indicating the name of LCC and health practitioner/clinician on the CPA documentation and on the notification of discharge from section 117 form (See appendix B). There should be a smooth transition from services provided under section 117 to any subsequent services, including those provided under other legislation. While continuing involvement with specialist mental health services (or other adult services client group) does not necessarily mean that section 117 must continue, it is difficult to envisage a situation where discharge would be appropriate.

**8.12** After-Care services under section 117 should not 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

## **9. Ending of entitlement to section 117 after-care**

**9.1** Entitlement to after-care provided under section 117 may be terminated for any of the following reasons:

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

**9.2** After-Care services must be provided until such time as **both** Liverpool City Council and Mersey Care NHS Trust acting on behalf of Liverpool Clinical Commissioning Group are satisfied that the service user is no longer in need of such services by virtue of their mental disorder.

**9.3** A CPA/Section 117 review shall be arranged by the care coordinator to discuss discharge at which the responsible clinician/consultant psychiatrist for health, social worker, patient and/or carer(s) should be invited to attend.

**9.4** When considering the individual's section 117 status, the care team must give consideration to the implications of discharge from the section 117 register for the service user and the effect that the ending of services or the transfer to chargeable community care services may have on them when making a recommendation for ending section 117 after-care.

**9.5** The multi-disciplinary team responsible for dissolution of section 117 arrangements shall include people able to make the decision to discharge section 117 services from health services and the local authority these people may be:

- responsible clinician/consultant psychiatrist for health
- social worker for the local authority

**9.6** If any of the above are unable to attend, a suitable representative from both health and social services, with a knowledge of the individual, shall attend to undertake relevant decision making.

**9.7** In the event that a decision cannot be reached by the multi-disciplinary team then the decision shall be made by **both** the council lead and an appropriate lead clinician from the mental health service. In cases where a decision cannot be reached then section 117 after-care should continue. When a decision is made at review to end after-care under s.117, the care coordinator shall notify in writing (including the reasons for the decision) the following people:

- service user
- carer
- responsible clinician
- general practitioner
- mental health law administrator (MHLA)
- LCC quality improvement administrator

**9.8** This letter should give the service user one month to challenge the decision before services are withdrawn. If there are no challenges, the care co-ordinator shall inform the MHL administrator and LCC business support manager by completing a section 117 discharge form (see appendix B) and recorded on Mersey Care and LCC management information systems.

## **10. Appeals Against Supervised Discharge of Section 117**

**10.1** Appeals against section 117 discharge can be made via the relevant organisations complaints procedure and, if unresolved, will ultimately go to the Ombudsman. (See section 16 Complaints)

## **11. Recording of Section 117 After-Care Arrangements**

**11.1** Section 117 after-care arrangements shall be recorded on the relevant care planning documentation and IT systems. The care co-ordinator is responsible for ensuring that this information is kept up to date and that the care plan clearly identifies which parts of it are provided under section 117 and which (if any) are not.

**11.2** A section 117 register is to be kept and maintained by the mental health law administration (MHLA) at Mersey Care NHS Trust. It records all Liverpool residents who are eligible for section 117 after-care, whether or not they receive such services. The MHLA will send the monthly section 117 list to an LCC secure email address. The register will then be uploaded on to a shared Portal for access by Liverpool city council business support team and the income and assessment team.

**11.3** All health and social care staff commissioning care packages/services on behalf of a service user must ensure that service users are not charged for services provided under section 117 of the Mental Health Act. Practitioners/clinicians can contact the administrators at Mersey Care Trusts to check the section 117 status of a service user on:

Clock View:	0151 330 7244/7243/7245
Rathbone Hospital:	0151 471 7713
Broad oak Unit:	0151 250/5023/5077/5210
Scott Clinic:	0151 431 5119

**11.4** The Mental Health Law Administrator Mersey Care NHS Trust is responsible for ensuring that the section 117 register is kept up to date and, as a consequence, must be informed by the service user's care co-ordinator of any significant changes with regard to section 117, in particular

- the date section 117 after-care ends, or
- if responsibility for section 117 after-care is transferred to another authority

**11.5** The care co-ordinator is responsible for ensuring that all data to be entered on the relevant IT system is up to date and accurate. If section 117



after-care ends the care coordinator must complete a section 117 notification of discharge form (See appendix A) within 48 hours and send to:

Mental Health Law Administrator  
Legal Management Team  
Mersey Care NHS Trust Offices  
V7 Building  
Kings Business Park  
Prescot  
Merseyside  
L34 1PJ

Adults Health and Social Care  
Performance Improvement Team  
Liverpool City Council,  
Municipal Buildings  
Dale Street  
Liverpool L2 2DH

## **12. Charges to Service Users for Section 117 After-Care**

**12.1** 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.

**12.2** This provision does not extend to carers of service users receiving section 117 after-care. Social care services provided to carers in their own right may be charged for in accordance with the Council's charging policy.

**12.3** Liverpool City Council and Liverpool Clinical Commissioning Group will only pay for services which are identified in the agreed CPA care plan as section 117 after-care. Changes to the care plan may only be made as part of the CPA review process.

**12.4** Services (including residential care) which were provided to a service user living in the community and means tested for prior to admission to hospital under one of the relevant sections will be provided free of charge on discharge from hospital if the provision of that service is part of the section 117 after-care plan.

**12.5** Section 117 funding will cover agreed increases in services for a service user already receiving section 117 after-care when needed to sustain them in the community and avoid future hospital admission. This must be agreed through the care programme approach process.

**12.6** Service users, relative or carers who choose a service provision whose charge is above that which the local authority would normally pay **and** can provide, then the additional cost will not fall within the section 117 funding arrangements. Such costs (known as third party top-ups) will be the responsibility of the service user, relative or carer.

## **13. Funding of Section 117 After-Care Services**

**13.1** Liverpool City Council and Mersey Care NHS Trust acting on behalf of Liverpool Clinical Commissioning Group have an enforceable responsibility for providing/commissioning after-care services under section 117. The cost of providing such services will be met by both organisations as appropriate. Funding arrangements must be agreed before the after-care plan is put into place.

**13.2** Section 117 services that may be provided are: hospital based care, rehabilitation, residential or nursing care, domiciliary care, day services, personal budgets/individual budgets as well as contact and interventions by relevant care professionals and other community based services provided or commissioned by either the Council and/or Liverpool Clinical Commissioning Group, it should be noted this is not a definitive list of section 117 services available.

**13.3** The service user's care pathway will not be affected by financial arrangements and shall continue to access services in a way most convenient to the service user.

## **14. Relationships Between Section 117, Continuing Health Care Eligibility and Nursing Care Contributions**

**14.1** 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.

**14.2** There are no powers to charge for services provided under section 117, regardless of whether they are provided by the NHS or local authorities. Accordingly, the question of whether services should be 'free' NHS services (rather than potentially charged-for social services) does not arise. It is not, therefore, necessary to assess eligibility for NHS Continuing Healthcare if all

the services in question are to be provided as after-care services under section 117.

**14.3** However, a person in receipt of after-care services under section 117 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 section 117. Also a person may be receiving services under section 117 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 section 117 needs. Where an individual in receipt of section 117 services develops physical care needs resulting in a rapidly deteriorating condition which may be entering a terminal phase, consideration should be given to the use of the Fast Track Pathway Tool.

**14.4** The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care November 2012 (Revised) outlines in its Practice Guidance Section 64.1 that services for needs that fall to be met as after-care services under section 117 of the Mental Health Act 1983 should be provided under that legislation rather than as NHS continuing healthcare. Only needs that are not section 117 after-care needs should be considered for NHS continuing healthcare eligibility in the usual way. For example, the individual might have or develop physical health needs which are distinct from the section 117 needs, and which separately constitute a primary health need. There should be no charge to the individual for section 117 services, regardless of whether they are being funded by a CCG or LA

**14.5** Section 64.2 states that LAs and CCGs should have agreements in place detailing how they will carry out their section 117 responsibilities, and these agreements should clarify which services fall under section 117 and which authority should fund them. LAs and CCGs may use a variety of different models and tools as a basis for working out how section 117 funding costs should be apportioned. However, where this results in a CCG fully funding a section 117 package this does not constitute NHS Continuing Healthcare.

**14.6** Section 64.3 states that it is preferable for the CCG to have separate budgets for funding section 117 and NHS continuing healthcare. Where they are funded from the same budget they still continue to be distinct and separate entitlements.

**14.7** Arrangements under the Mental Health Act are separate and different from NHS Continuing Healthcare and the two should not be confused. The above guidance particularly deals with section 117, however the same principle (regarding the need to determine whether the services are provided under the Mental Health Act or under NHS continuing healthcare) applies where an individual is subject to section 17 leave or to a section 17A supervised community treatment order.

**14.8** NHS-funded Nursing Care payments are made where people are placed in nursing homes. See The National Health Service Commissioning Board

and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 which can be accessed via the link below:

<http://www.nhs.uk/choiceintheNHS/Rightsandpledges/Waitingtimes/Documents/nhs-england-and-ccg-regulations.pdf>

## **15. Refusal of Section 117 after-care**

**15.1** Section 117 places a duty on Liverpool City Council and Liverpool Clinical Commissioning Group to provide after-care services and give the service user an entitlement to such services. There is no requirement for a service user to accept the after-care offered. However, a refusal to accept the after-care plan may affect the appropriateness of discharge from detention/hospital. Such a situation must be reviewed by the care team, with a revised risk assessment in the light of all or part of the after-care plan not being in place.

**15.2** Refusal of services does not of itself indicate discharge from s.117 after-care.

**15.3** For a more detailed explanation of where specific section 117 responsibilities lie please see section 5, paras. 5.1-5.5 above.

## **16. Complaints**

**16.1** Any complaints regarding section 117 after-care will be dealt with within the usual complaints procedures of the respective organisations which are party to this guidance. Complaints should be sent to the relevant organisation responsible for dealing with the specific issue.

**16.2** Within Liverpool City Council, adult services complaints regarding section 117 after-care can be made via the organisations 'Have Your Say' complaints procedure. Leaflets are available in all one stop shops across the city. Alternatively complaints can be made via telephone 0151 233 3000 or email: [AdultServiceComplaints@liverpool.gov.uk](mailto:AdultServiceComplaints@liverpool.gov.uk).

**16.3** Complaints received will be acknowledged by letter within 3 working days with a final response within 20 working days. If for any reason the timescale cannot be met the individual will be contacted and advised of a date when the response will be provided. If the individual remains dissatisfied with the outcome of their complaint they can request that their complaint is re-assessed or advised that they have the right to pursue the complaint via the Local Government Ombudsman.

**16.4** Complaints to Liverpool Clinical Commissioning Group regarding section 117 can be made via the following:

Telephone: 0151-296-7449 or  
Email: [complaints@liverpoolccg.nhs.uk](mailto:complaints@liverpoolccg.nhs.uk)

Complaints can also be made in writing to:

Corporate Services Manager –  
NHS Liverpool CCG  
The Department  
2 Renshaw Street  
Liverpool  
L1 2SA

**16.5** At Mersey Care NHS Trust, complaints regarding section 117 after-care can be made via the Trust's complaints procedure. Complaint leaflets are available on all trust sites. Alternatively, anyone wishing to make a complaint can telephone 0151 471 2219 or email [complaints@Mersey Care.nhs.uk](mailto:complaints@Mersey Care.nhs.uk)

Complaints can also be made in writing to:

Complaints Department  
V7 Building  
Kings Business Park  
Prescot  
Merseyside  
L34 1PJ

**16.6** All complaints will be acknowledged by letter or phone within 3 working days and the complainant is contacted by the trust to agree the most appropriate way of taking their concerns forward, and to discuss the timescales involved in providing a response. Whilst Mersey Care NHS Trust always aim to respond as quickly as possible, this may not always be possible, for example when a member of staff who is key to the investigation may be on holiday or ill. Any delays will be communicated to the complainant.

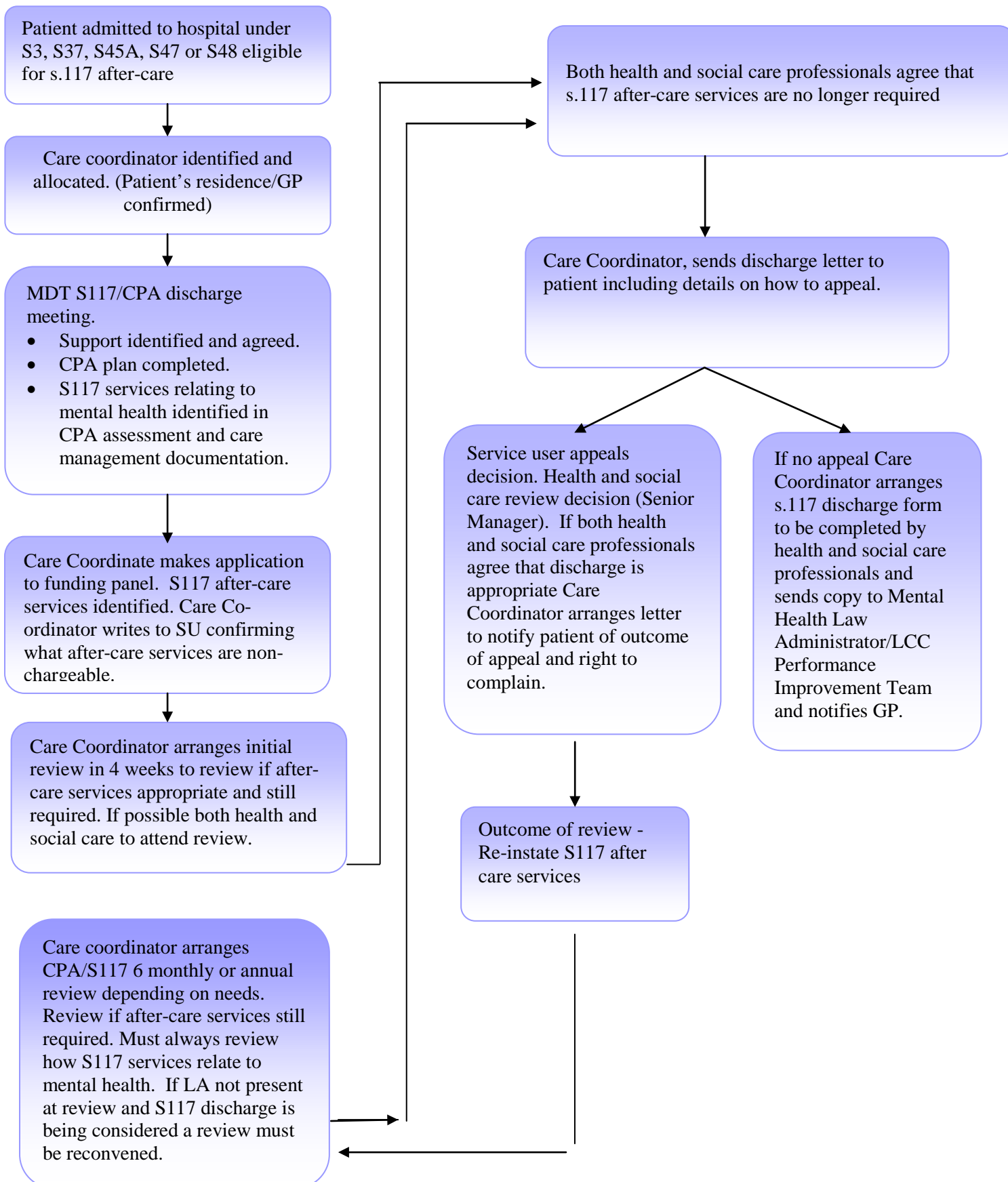
**16.7** If the person making the complaint is still unhappy with the outcome of their complaint, they have the right to ask the Parliamentary and Health Service Ombudsman to review their case.

## 17. References

Bolton Council Policy Development in relation to section 117 after-care  
Code of Practice to the Mental Health Act 1983, 2015  
Joint funding arrangements between Halton Borough Council and NHS Halton  
and St Helens under section 117 Mental Health Act 1983 policy, procedure  
and practice May 2011  
Health Service Circular 2000/3: Local Authority Circular (2000)3  
Mental Health Act 1983, 2007  
Mental Health Law on-line  
Mersey Care NHS Trust Care Programme Approach Policy  
NHS Walsall S117 Policy  
NHS Worcestershire section 117 after-care policy  
Reference Guide to the Mental Health Act 1983  
R v (Mwanza) v Greenwich LBC and Bromley LBC (2010) EWHHC 1462  
(Admin)  
R V Mental Health Review Tribunal ex.P Hall (1999)  
MHRT & Others ex parte Hall April 1999  
R (Hertfordshire CC) v LB Hammersmith and Fulham (2011) EWCA Civ 77  
R v Richmond Upon Thames LBC ex p Watson (1999) 28 July QBD  
R v Richmond ex p Watson – Court of Appeal July 2003  
Surrey and Borders PCT S117 policy  
DH National Framework for NHS Continuing Health Care and NHS funded  
Nursing Care  
The Care Act 2014 Statutory Guidance

## 18. Appendices

### Appendix A Section 117 Care Pathway



## Appendix B Notification of Discharge from S117

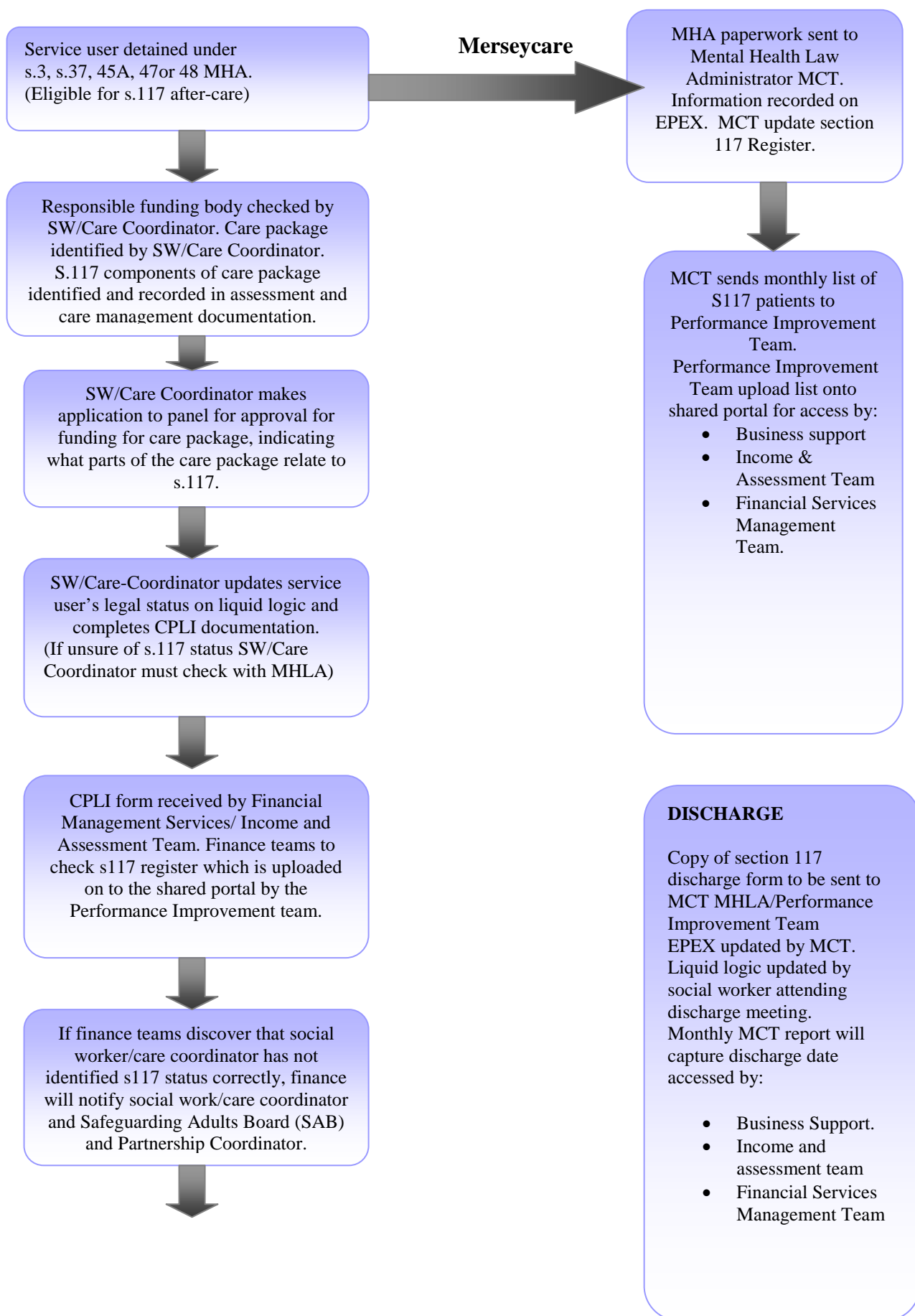
This form must be completed if the patient/service user is discharged from section 117.

Name and address of Patient:
D.O.B.
EPEX Number:
Service User ID Number:
Date of S117 CPA/Review Meeting:
CPA/S117 Meeting Attended by:
Reason for Discharge from Section 117 After-Care
Date:
Name of Responsible Clinician :
Signature:
Date:
Name of Local Authority Officer
Signature:
Date:

**This form must to be sent to Mersey Care MHL Administrator, Legal Management Team, Mersey Care NHS Trust Offices, ,V7 Building Kings Business Park Prescot Merseyside L34 1PJ and Liverpool City Council, Performance Improvement Team, Adult Services, Municipal Buildings, Dale Street L2 2DH.**



## Appendix C Merseycare NHS Trust Section 117 checklist (Person currently detained in hospital under MHA)



SAB coordinator to log and refer back to Senior Manager

## Appendix D Section 117 Checklist (Person previously detained in hospital and entitled S117 After-Care services)

Referral received by Careline.  
Careline allocate to relevant team.

Team Manager allocates case to social worker. Social Worker undertakes assessment and identifies needs. Social worker completes assessment and care management documentation including history of mental health. (Social Worker will need to confirm where person lived when/if they were detained under MHA)

SW contacts MHLA to check if SU on s.117 register. SW makes application to panel for approval for funding for care package indicating what parts of the care package relates to s.117.

SW updates service user's legal status on liquid logic.  
CPLI documents completed by Social Worker.

CPLI received by Financial Services Management/Income and Assessment Team. Finance teams check s.117 register on shared portal

If finance discovers that Social Worker/Care Coordinator has not identified s.117 status correctly finance to notify SW/Care co-ordinator and SAB partnership coordinator.

SAB partnership coordinator to log and refer back to Senior Manager

MCT sends monthly list of section 117 patients to Performance Improvement Team.

Performance Improvement Team upload list onto share portal to be accessed by:

- Business support
- Income and Assessment Team
- Financial Services Management Team

### DISCHARGE

Copy of section 117 discharge form to be sent to MCT MHLA.

EPEX updated by MCT.

Liquid Logic updated by social worker attending discharge meeting.

Monthly MCT report will capture discharge date accessed by:

- Business Support.
- Income and assessment team.
- Financial Services Management Team.

## **Appendix E Information held on Section 117 Register:**

- EPEX Number
- Cluster Locality
- NHS Number
- Patient's Name
- Patient's D.O.B.
- Patient's Address
- Responsible Clinician
- Current GP
- GP Practice Address
- Name of Care Coordinator
- Community Mental Health Team
- Date of Last Review
- Date Review Due
- Section 117 Start Date
- Section 117 Discharge Date
- Discharged By (Name of MerseyCare RC and Local Authority Social Worker)
- Date of Death (If applicable)

## APPENDIX F

### Liverpool City Council Equality Impact Assessment Template



<b>Business Unit : Personalised Assessment and Care Management Adult Social Care and Health</b>	
<b>Assistant Director : Dyane Aspinall</b>	
<b>Lead Officer : Chris Ferns</b>	
<b>Name of policy/function/project/service area to be assessed:</b> S117 Mental Health Act 1983 Aftercare Services guidance and procedures	
<b>Brief description of policy/function/service area to be assessed:</b>  Liverpool City Council's policy in relation to S117, Mental Health Act 1983 amended 2007  This joint guidance describes the process and procedures for compliance with S117 of the Mental Health Act 1983 amended 2007.  Any services provided Under S117 of the Mental Health Act cannot incur a charge to the service user/patient or discharged without the joint agreement of the local authority and Mersey Care NHS trust acting on behalf of the primary care trust.	
<b>Date of Assessment:</b> <b>17 September 2012</b>	<b>Person Responsible for Completing the Assessment:</b> Jan Summerville  <b>Contact Details:</b> 0151 233 4235
<b>Brief description of the anticipated outcomes of the proposal:</b>  Compliance with S117 Mental Health Act 1983 (MHA) amended 2007 in relation to the provision and discharge of services provided under S117 MHA.	
<b>1. Impact</b> <b>Summarise any positive impact(s) (benefits) or any negative impact(s) (i.e. potential for discrimination, disadvantage or disproportionate treatment) this proposal may have for people with protected characteristics, and the evidence you have taken into account to reach this conclusion:</b>	

Protected Characteristic	Impact			Explanation	Evidence
	Pos	Neg	Neu		
Age			√	<p>The Act does not have a lower age limit, however this will generally affect people 16 years and over.</p> <p>S117 is dependent on the section of Mental Health Act the individual is detained under: S3 S37 S45a S47 or S48.</p>	<p><b>S117 Implementation</b> Health Professionals and Social Care Professionals responsible for providing/commissioning, reviewing and discharging Care packages e.g. social workers, responsible clinicians etc have been consulted in relation to the S117 aftercare guidance and procedures and their responsibility in relation to the planning, reviewing, and discharging services provided under S117 Aftercare, whether or not these services are provided direct or commissioned by the local authority/primary care trust.</p> <p><b>Charges</b> Service Users/Patients who are eligible for S117 e.g. patients detained under S3 will be entitled to aftercare services to meet their mental health needs e.g. social worker, community support worker, CPN, responsible clinician, domiciliary support, Residential Care etc whether provided direct by the local authority or the primary care trust or commissioned by the LA or primary care trust. Service users/patients receiving services under S117 will not be charged for these services.</p> <p><b>Reviews</b> All service users/patients in receipt of services under S117 of the Mental Health Act will have reviews on a regular basis. Any service provided will take into account the individual needs. Please see link to Care Programme Approach. <a href="http://www.MerseyCare.nhs.uk/Library/Who_we_are/Policies_and_Procedures/SD21-3CPA%20Rev%20Mar%202012.doc">http://www.MerseyCare.nhs.uk/Library/Who we are/Policies and Procedures/SD21-3CPA%20Rev%20Mar%202012.doc</a></p> <p><b>Discharge</b> Service users/patients will not be discharged from S117 without the agreement of both the local authority and health service.</p>
Disability			√	Refer to	Refer to age above

				age above	
Gender Reassignment (Transgender)			√	Refer to age above	Refer to age Above
Sex (Gender),			√	Refer to age above	Refer to age above
Race			√	Refer to age above	Refer to age above
Religion/Belief			√	Refer to age above	Refer to age above
Sexual Orientation (Lesbian, Gay and Bisexual)			√	Refer to age above	Refer to age above
Pregnancy and Maternity			√	Refer to age above	Refer to age above
Marriage and Civil Partnership			√	Refer to age above	Refer to age above

## 2. Consideration of Alternatives

Describe what actions will be taken to remove or minimise any potential negative effect identified above (attach evidence or provide link to appropriate data, reports etc):

## 3. Consultation

Brief description of any consultation with stakeholders. Please attach evidence or provide link to appropriate data, reports etc):


**Stakeholder/group consulted**  
**Service User/Carer Mental Health Group**

**Evidence/Link to data, reports etc**

Jan Summerville and Martin Lawton Delivered Briefing at Service User/Carer Mental Health Forum on the 11 September 2012.



Z:\Groupman\MHA\  
S117 After-care\S117

<p><b>Staff</b></p>  <p>Z:\Groupman\MHA\ S117 After-care\S117</p> <p>S117 briefing delivered to staff 13 September 2012 via the Approved Mental Health Professional Forum.</p> <p>Guidance sent to Consultants, Approved Mental Professionals, SW and Community Mental Health Team Managers PCT commissioners between January 2012- July 2012</p>
<p><b>4. Monitoring Arrangements</b> Briefly describe the monitoring arrangements/systems that will be put in place to monitor the effects of this proposal:</p> <p>S117 will be monitored 6 monthly by the Mental Health Law Administrator and Performance Improvement Team and reports will be sent to Senior Management.</p>
<p><b>5. Publication</b> Where will this Equality Impact Assessment be Reported: Published: Date:</p>
<p><b>Proposed implementation date of project/proposal: 1 October 2012</b></p> <p><b>Funding arrangements: Joint funding arrangements in place with the PCT and LA LCC funded from Community Care Grant.</b></p>
<p><b>Recorded on SharePoint by :</b> <b>Date: 8.10.2012</b></p>

NB: This equality impact assessment needs to be reviewed and approved by the Equal Opportunities Service prior to publishing or implementation.  
[equal.opportunitesservice@liverpool.gov.uk](mailto:equal.opportunitesservice@liverpool.gov.uk)

<p><b>Equal Opportunities Service Use Only</b></p> <p>Reviewed and Approved <span style="float: right;">Date: April 2016</span></p>
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Appendix 1

# Single Equality and Human Rights Screen

Name of Document
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Who does it relate to	Staff		Service Users		Carers	
-----------------------	-------	--	---------------	--	--------	--

Area of Trust it covers Trustwide
--------------------------------------

Names of people completing screen (Minimum of 3)

<b>What is the purpose of policy / service change /strategy. what is your this document trying to achieve</b>

The screening of any document is completed to ensure that it does not have either a **Direct** or **Indirect** impact on any members from particular protected Equality Groups.

Equality Strand	Y	N	Reasoning
Age			
Disability inc Learning Disability			
Gender			
Race Inc Gypsies and travellers and Asylum Seekers			
Religion and Belief			
Sexual Orientation			
Transgender			
Cross cutting			
<b>Total</b>			

### **Accessibility**

Is it clear that this document is available in other formats:	Yes	No	comment
Other comments noted from the assessment.			

Any areas highlighted by the EIA assessors must be put into an action plan. This must record all areas noted even when it can be rectified immediately. The document with the

assessment, which includes the action plan, must be available for scrutiny and be able to show:-

- What has been highlighted
- What has been done to rectify immediately
- What time frame has been agreed to rectify in the future

## HUMAN RIGHTS IMPACT ASSESSMENT

<b>Right of freedom from inhuman and degrading treatment (Article 3)</b>	
Does this policy ensure people are treated with dignity and respect	
Could this policy lead to degrading or inhuman treatment (eg lack of dignity in care, excessive force in restraint) How could this right be protected?	
<b>Right to life (Article 2)</b>	
Does this policy help protect a persons right to life?	
Does this policy have the potential to result in a persons loss of life?	
How could this right be protected?	
<b>Right to a fair trial (Article 6)</b>	
Does this policy support the right to a fair trial?	
Does this policy threaten the right to a fair trial? (eg no appeals process)	
How could this right be protected?	
<b>Right to liberty (Article 5)</b>	
Does this policy support the right to liberty?	
Does this policy restrict the right to liberty?	
Is the restriction prescribed by law?	

<b>Right to private and family life (Article 8)</b>	
Does this policy support a persons right to private and family life	
Does this policy have the potential to restrict the right to private and family life	
How could this right be protected?	
Is it prescribed by law?	
Is it necessary?	
Is it proportionate?	
<b>Right to freedom of expression Note: this does not include insulting language such as racism (Article 10)</b>	
Does this policy support a persons ability to express opinions and share information	
Does this policy interfere with a person's ability to express opinions and share information?	
Is it in pursuit of legitimate aim?	
Is it prescribed by law?	
Is it necessary?	
Is it proportionate?	
<b>Right of freedom of religion or belief (Article 9)</b>	
Does this policy support a person's right to freedom of religion or belief?	
Does this policy interfere with a person's right to freedom of religion or beliefs? (eg prevention of a person practising their religion Is it in pursuit of legitimate aim? Is it prescribed by law? Is it necessary? Is it proportionate?	
<b>Right freedom from discrimination (Article 14)</b>	
If you have identified an impact, will this discriminate against anyone group in particular?	
NO	

Is the Document:-

Compliant

 Y/N

Non compliant -  
With actions immediately taken  
to make compliant

 Y/N

Action Plan completed

 Y/N

Full Impact Assessment Required

 Y/N

Lead Assessor \_\_\_\_\_

Date \_\_\_\_\_

**ACTION PLAN**

<b>Age</b>	<b>Impact Noted</b>	<b>Action Required</b>	<b>Action Taken</b>	<b>Date to be completed.</b>
Disability				
Gender				
Race				
Religion and Belief				
Sexual Orientation				

Transgender				
Cross cutting				
Human Rights				