POLICY AND GUIDANCE ON MENTAL HEALTH ACT 2007 SECTION 117 AFTERCARE
(Joint with partner local authorities)
1. Introduction

Under Section 117 of the Mental Health Act 2007, it is the duty of the Strategic Health Authority (delegated to the Primary Care Trust\(^1\)) and the local Social Services authority to provide after care services for certain categories of detained patients when they cease to be detained and (whether or not immediately after so ceasing) leave hospital.

The Primary Care Trust, in conjunction with Avon and Wiltshire Mental Health Partnership NHS Trust or other designated provider) and partner Social Services authorities should provide such services in co-operation with the relevant voluntary agencies.

This policy sets out the procedures, processes and guidance to ensure that the legal and practice responsibilities set out in Section 117 Aftercare are discharged consistently and appropriately by the staff delegated to implement, review and discharge service users who are subject to Section 117 aftercare arrangements.

2. Purpose of the Policy and Guidance

This policy has been developed to ensure that there is a consistent policy framework, procedures and processes for staff in making decisions on Section 117 Aftercare.

Section 117 Aftercare is intended to provide sufficient support for an individual who has been compulsorily detained so that they can leave hospital and return to their home or other accommodation in a manner that minimises the risk of deterioration of their mental health and the chances of their needing further hospital treatment.

It is therefore important that Section 117 Aftercare is effectively managed and delivered to improve the outcomes for service users, carers and families.

3. Scope of the Policy and Guidance

Within secondary mental health and social care services, the policy and guidance provides information, guidance and direction to staff, service users and carers and families, on Section 117 Aftercare, when it is applicable, within the Avon, Wiltshire and Swindon area(s).

4. Legal and other Definitions

a) Section 117 of the Mental Health Act of 2007

Requires Health and Local Authorities to provide, in co-operation with relevant voluntary agencies, aftercare services, until they are satisfied that this is no longer necessary, for:

- Service users who are or have been detained under Section 3.

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\(^1\) Duty delegated from April 2002 under “Shifting the Balance of Power” guidance.
• Service users who are or have been admitted to a hospital in pursuance of a hospital order made under Section 37 (whether or not with restrictions under Section 41)
• Service users transferred to a hospital in pursuance of a hospital direction made under Section 45A.
• Service users subject to a transfer direction made under Section 47 or 48.
• Service users, as set out above, on leave of absence authorised by the Responsible Clinician

b) District or area of residence

The duty to provide Section 117 services is a joint responsibility of the Strategic Health Authority (delegated to PCT’s) and the Local Authority for the area in which the service user concerned is resident or, if the service user had no place of residence at the time of detention, to which the service user is sent on discharge by the hospital in which they were detained.

Service Users who are placed out of area remain the responsibility of the original Strategic Health Authority and the Social Services Authority. However this duty would be refreshed by a qualifying detention under a different authority and would then be the responsibility of the new area. Those who are self funding out of area become the responsibility of the Strategic Health Authority and the Local Authority at their new address.

c) Responsible authority

The responsible authority is the one within whose area the service user concerned was ordinarily resident at the time of the application of the relevant Section of the Mental Health Act 1983 as indicated above, whether the arrangements were made by that authority or another.

d) Effective aftercare services

In order for the Health and Social Services Authorities to fulfil their obligations under Section 117(2) they must take reasonable steps to identify appropriate aftercare facilities for the service user before their actual discharge from hospital. Proper preparation by the aftercare bodies is required for a service user who is subject to this provision and makes an application to a Mental Health Review service user Tribunal, to present to the Tribunal an up-to-date care plan with a proposal as to how it can be implemented.

The duty to provide aftercare services is not broken by the service user’s subsequent re-admission to hospital for assessment under Section 2.

Although there is a positive duty to provide the aftercare services there is clear discretion as to the level of provision, bearing in mind that the obligation is to each individual service user and circumscribed by the need of that service user.

e) After-care services

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2 National Assistance Act 1946, Department of Health Local Authority Circular LAC (93)7 “Ordinary Residence” and guidance “Establishing the Responsible Commissioner”.
3 R v MHRT ex parte Hall 1999.
After-care services are not defined in the Act. They can include:

- Social work support
- Assistance from community psychiatric nurses
- Medical supervision through out-patient appointments
- Prescribing and administration of medication
- The provision of domiciliary services
- Use of day centre facilities
- Accommodation in a residential care or nursing home.

f) Community Care Act 1990

Services provided under Section 117 are community care services for the purposes of the National Health Service and Community Care Act 1990.

A person who may be in need of community care services (Section 47(1) of the National Health Service and Community Care Act 1990) must be assessed by the local authority under Section 47(1) (b). Then having regard to the results of that assessment, the local authority shall decide whether the assessed needs call for the provision by them of any services.

As Section 117 places a duty on a local authority to provide aftercare services, the interpretation of Section 47(1) (b) is that when the assessment identifies the need for aftercare services then the authority must determine that such needs call for the provision of those services.

Although the authority is placed under an obligation to provide a service that it has determined will meet an assessed need, it has discretion in identifying the level and the precise nature of the service to be provided given resource constraints.

Community care services are free to those people who are subject to Section 117 Aftercare, therefore no charges can be made for section 117 after-care services, whereas there is provision for locality Authorities to take a financial contribution from those people who receive services provided under the National Assistance Act of 1948 with the Community Care Act of 1980 to meet other social care needs. Chapter 27 of the Code of Practice Mental Health Act 2007 gives guidance on procedures for the proper planning of after care services.

The purpose of after care services under Section 117 is to reduce the prospect of compulsory or informal readmission to hospital on mental health grounds. This is distinct from residential, day and domiciliary services which are routinely provided under Section 47 or other legislation to help people with a mental illness to live, with care or support, in the community.

Mental Health Services provided specifically in relation to S117 after care should be explicitly recorded in the care plan.

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5 Special Report by the Local Government Ombudsmen: Advice and Guidance on the Funding of Aftercare under section 117 of the Mental Health Act 1983 (June 2003)
Services will be provided under section 117 until the authorities are satisfied that the person is no longer in need of them.6

5. Statement of procedures and guidance

All individuals with enduring mental illness and complex care needs should be assessed and their care planned within the Integrated Care Plan Approach (ICPA). These are joint health and social service responsibilities. Both the CPA both require that every individual discharged from hospital has an individually tailored care plan agreed with the service user and carer (where appropriate). This care plan will ensure: that appropriate social and health care is provided, that a Care Co-ordinator is appointed and there is good communication between all involved. The CPA system will ensure that care plans are documented and regularly reviewed. It should be a standard part of the CPA review that S117 entitlement is reviewed and the outcome recorded at the same time. As part of those reviews the multidisciplinary team with the user and carer (as appropriate) will then determine whether care and support should be changed, increased or decreased, to match changing requirements and recovery. Reviews will usually be carried out immediately prior to and after discharge from hospital and thereafter, for a service user on Section 117 Aftercare, six months and then at least annually.

The service user, his/her carers, and other agencies involved should always be consulted at each stage of the Section 117 Aftercare process.

a) Acceptance of Section 117

Information regarding section 117 will be included in the patients’ rights information leaflet. It is not useful to record details of the care the person will receive at this point. A letter will be sent to the relevant team manager by the Mental Health Act administrator when the detained person is discharged from inpatient care, at the point of discharge.

The responsibility for the decision lies with health and social services and will be informed by the CPA process.

b) Review of Section 117 following discharge from hospital

Under the hospital discharge procedures, a Care Programme Approach meeting will be held at which all after-care needs will be discussed. The Care Co-ordinator will be responsible for producing the appropriate care plan. After-care services under Section 117 are intended to reduce the prospect of readmission to hospital. The

6 R v Richmond LBC ex parte Watson 2001. “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 aftercare. Each case will have to be examined individually on their facts (move to page above?)

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meeting must decide which aspects of aftercare come under Section 117 and which come under other legislation and this must be specified in the care plan\textsuperscript{7}. Initially, it is likely that all services in the discharge care plan will constitute Section 117 after-care services.

The Care Co-ordinator is responsible for eliciting the Health and Social Services authorities’ acceptance of responsibility for the relevant aspects of the care plan and that this is recorded on the CPA (and/or SAP) documentation.

The High Court\textsuperscript{8} and Department of Health guidance\textsuperscript{9} have confirmed that after-care provision does not have to continue indefinitely.

The service user and his/her carers should always be advised before services are provided that Section 117 status will be reviewed and can be discharged.

Section 117 status should be recorded on ICPA documentation. When Section 117 is discharged, the Care Co-ordinator should complete and distribute the form “Discharge from Section 117 After-Care”.

After discharge from hospital, there should be a review meeting, as agreed at the discharge ICPA meeting and normally within 3 months of discharge or sooner. Each review should consider whether or not after-care needs are continuing or whether there should be an assessment under Section 47 of the National Health Service and Community Care Act to plan community care services. The question to be addressed is – “whether the services being provided are necessary to prevent further admission to hospital?” I.e. If the section 117 were discharged on the basis that services were not required to prevent readmission to hospital, consideration should be given to the provision of services under other legislation such as the NHS & CCA 1990.

Factors that will be taken into consideration are set out in page 12/13 of this policy.

\textbf{c) Discharge of Section 117 [or discharge from Section 117]}

The Act does not define a process by which people can be discharged from Section 117 and it had been the custom nationally for local social service and health authorities not to formalise this process. A 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 Section 117. Any agreed policy should incorporate the Care Plan approach (CPA) and/or Single Assessment Process (SAP)

\textsuperscript{7} HSC 2000/003; LAC (2000)3.
\textsuperscript{8} R v Richmond LBC ex parte Watson 2001.
There is Section 117 Aftercare entitlement when the patient leaves hospital (whether or not immediately after the period of compulsory detention) and also when a patient is released from prison, if they have spent part of their sentence detained in hospital.

The Association of Directors of Social Services (ADSS) suggest the following means of determining the point at which a person might reasonably be deemed no longer to require the provision of services under Section 117;

“this position can properly be arrived at when it becomes clear that the provision of aftercare services no longer fulfils the purpose of reducing the prospect of compulsory or informal admission to hospital on mental health grounds, i.e. things have reached the stage where services, whether residential, day or domiciliary, are now to be provided in the fulfilment of a person’s community care (including health needs) but without reference to the need for readmission to hospital within the foreseeable future” i.e. the service provided is no longer reducing the prospect of a service user being readmitted to hospital for treatment of their mental disorder.

Therefore, if the multidisciplinary team decide that aftercare is no longer reducing the risk of readmission to hospital for treatment, a decision to discharge the user from Section 117 aftercare 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 re-assessment of the service-user’s needs.
This assessment must be reduced to writing and agreed with the service-user and/or his/her family if possible.
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 extraneous factors such as resources. However, where the authorities are reasonably satisfied upon re-assessment of the service-user’s current needs that after-care is no longer necessary for him or her, and can properly be discharged, there is scope thereafter for the social services authority to look to other community care provisions which are more cost-effective provided the authorities are satisfied that such other services are available to the service-user; that they are appropriate having regard to the FACS guidance and that they will adequately meet their assessed needs.

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, de facto unlikely to be considered suitable for discharge from section 117, subject to the exceptions where they are deemed to have primarily physical, nursing care needs not present at the time of their original detention set out elsewhere in this policy.

Health & Social Services will ensure that all patients subject to Section 117 will be subject to full CPA (and/or SAP) procedures which include proper joint assessments, care planning and reviews agreed under the CPA (and/or SAP) policies and procedures. Users and Carers (where appropriate) will be informed of these policies and will have copies of all their care plans, incorporating the Section 117 arrangements.

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 qualifying (for section 117) section.
In conducting a discharge assessment, the following questions should be considered, assessed and the outcome, and impact on the decision reached, and recorded. These are indicative and not exhaustive and the final decision should be taken with reference to all the circumstances of the particular case. None of the questions should individually be treated as determinative. For example, it may be relevant that a service-user has been discharged from the care of her/his consultant psychiatrist, but that factor alone should not give rise to a discharge of after-care services. A separate check list is attached (appendix A) that can be used to demonstrate that each pointer has been considered at the meeting.

If the service user refuses the after-care plan, s/he must remain on the register of people entitled to Section 117 aftercare as the duty remains until discharged.

Discharge from Section 117 must be a joint decision between Health and Social Services and should be discussed in detail at the Care Programme Approach Review (and/or SAP) meeting. The final decision should be clearly recorded and there should be a smooth transition from services provided under section 117 to any subsequent services, including those provided under other legislation. The fact that the Community Mental Health Team is to remain involved, and the person remains subject to the Care Programme Approach, does not mean that Section 117 has to continue.

This assessment to discharge from Section 117 must be recorded on relevant form and must be signed by representatives of both agencies as discharge is a joint decision between Health & Social Services. (In AWP this is form eICPA3b)

**d) Management of, and authority to accept or discharge Section 117**

Discharges from S117 have to be accepted by representatives from both agencies (Health and LSSA) and joint agreement between those with the authority to agree discharge.

**Social Care**

Where a service user is known to have an entitlement to aftercare services, the Social Worker/Care Co-ordinator should discuss and agree the Section 117 responsibilities in advance of the Care Programme Approach meeting with their line manager. If the issues about accepting/discharging section 117 are clear (e.g. accepting - not continuing health care; discharging - the services are no longer related to the hospital admission) then the Social Worker/Care Co-ordinator can accept/discharge the section 117 responsibilities on behalf of the Local Authority in the meeting.

Normally this power is delegated on behalf of the LSSA to head of Social work- In North Somerset to Approved Social Work Professional lead

If the issues are not clear, then the line manager should be invited to attend the Integrated Care Programme Approach meeting and take responsibility for accepting/discharging section 117.

**Health**
The Consultant Psychiatrist or Approved Clinician has overall responsibility for accepting/discharging Section 117 on behalf of the Primary Care Trust.

The Consultant Psychiatrist or Approved Clinician should attend the Care Programme Approach meeting and take responsibility for accepting/discharging section 117 on behalf of the Primary Care Trust when discharge from Section 117 is being proposed.

Where there is a dispute about accepting/discharging Section 117, provision of care to the service user must continue until the dispute is resolved.

Where agreement cannot be reached in an Care Programme Approach meeting, the issues should be taken to the Head of Social Work for the Local Authority and to the appropriate Lead Clinician within the mental health service provider or the decision may be referred to a review panel, in local authority areas where there are arrangements in place for such a panel (normally consisting of senior representatives from the Health provider, Social Services and the PCTs).

If users and/or carers disagreed with decisions the complaints procedures for the relevant health and social services organisations would be available. These generally contain options for resolution, including access to independent review and/or external scrutiny.

e) Transfer of Section 117 responsibilities to another authority

If the service user moves to another Local Authority area, responsibility rests with the original authority until it is formally transferred. This should be arranged in advance of the move.

When Section 117 is transferred, this should be confirmed by the Care Co-ordinator completing and distributing the form “Transfer of Responsibility for User’s After-Care under Section 117”.

f) Related Procedural Documents

Integrated Care Programme Approach and the Assessment and Management of Risk Policy, Procedures and Guidance – AWP 2006
Code of Practice – Mental Health Act 1983 and 2007 (amendments)

6. Roles and Responsibilities

a) AWP

The policy will be distributed through the trust policy electronic dissemination process, and promoted by SBU Clinical Directors. Advice will be available to staff from local Mental Health Act Administrators.

Board Chair
Has overall Board responsibility for the oversight of the Mental Health Act and chairs the Trust Mental Health Act Committee

Mental Health Act Committee

Is responsible for the effective implementation and delivery of the Mental Health Act within the Trust, and on reporting compliance to the Trust Board and Mental Health Act Commission.

Deputy Director of Nursing

Is the lead manager for the trust and Mental Health Act Committee, and responsible for the required annual action planning and assurance processes.

All Clinicians and Practitioners

Are responsible for taking responsibility in complying with the requirement set out in the Mental Health Act (1983 and 2007 amendment), Code of Practice (MHA) and MHA policies, including in regard to Section 117 Aftercare

b) Other Providers

TBC

c) Social Services

TBC

d) PCT’s

TBC

7. Standards (Monitoring and Audit)

The standards set out in the Mental Health Act (1983 and 2007 amendment) and attached Codes of Practice will apply.

a) AWP

Compliance with these standards and the recording of Section 117 activity will be monitored and audited (audits as required) by the mental health act administrators, and reported to the Mental Health Act Committee, within their annual reporting framework to the Board.

b) Other Providers

TBC

c) Social Services

TBC
d) PCT’s

TBC

7. Appendices

Appendix A – Pointers for S117 Discharge

Appendix A

POUTERS FOR S117 DISCHARGE

N.B. THESE ARE INDICATIVE BUT NOT EXHAUSTIVE AND THE FINAL DECISION SHOULD BE TAKEN WITH REFERENCE TO ALL THE CIRCUMSTANCES OF THE PARTICULAR CASE. NONE OF THE QUESTIONS SHOULD BE INDIVIDUALLY TREATED AS DETERMINATIVE.

<table>
<thead>
<tr>
<th>DATE OF MEETING:</th>
<th>SERVICE USER DETAILS:</th>
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<tbody>
<tr>
<td>PRESENT:</td>
<td>NAME</td>
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<td>ADDRESS</td>
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<td>D.O.B.</td>
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<td>HOSPITAL NUMBER</td>
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Consultant Psychiatrist (R.M.O or Approved Clinician):

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>How frequently should these reviews be held for this client?</td>
<td></td>
<td></td>
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<tr>
<td>How long has the section 117 applied - the longer the time between the hospital stay and the review the more likely it is section 117 can be discharged</td>
<td></td>
<td></td>
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<tr>
<td>We did not regard this sentence as useful</td>
<td></td>
<td></td>
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<tr>
<td>What are the service users current mental health needs and to what extent, if any, have these improved or stabilised since his/her discharge from hospital?</td>
<td>yes</td>
<td></td>
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<tr>
<td>To what extend is the provision of aftercare preventing a return to hospital or relapse?</td>
<td>yes</td>
<td></td>
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<tr>
<td>Are they regularly seeing a GP and if so what treatment or medication if any is s/he receiving?</td>
<td>yes</td>
<td></td>
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<tr>
<td>Question</td>
<td>Answer</td>
<td></td>
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<tr>
<td>Is any provision currently being made by the health authority? If so, what provision and how frequently is it being made? Is any provision currently being made by the Mental health trust with regard to services</td>
<td></td>
<td></td>
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<tr>
<td>What is the likelihood of the service-user returning to hospital and/or suffering a relapse?</td>
<td>yes</td>
<td></td>
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<tr>
<td>Do the physical health needs of the client outweigh the mental health needs?</td>
<td>yes</td>
<td></td>
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<tr>
<td>Are the needs of the person no longer the needs which caused the person to be detained?</td>
<td>yes</td>
<td></td>
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<tr>
<td>Has there been a continued period of compliance? Is there shared agreement with the service user with regard to the care plan?</td>
<td>YES/NO</td>
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<tr>
<td>In the case of dementia is client settled in a nursing/residential home and is he/she unlikely to be readmitted to hospital? (If the service was withdrawn would this increase the prospect of the client being readmitted to hospital for treatment of their mental disorder?) We agreed that dementia would preclude the possibility of discharge from Section 117 due to the degenerative nature of the condition</td>
<td>No delete entirelyYES/NO</td>
<td></td>
</tr>
<tr>
<td>Can the clients needs be met in a general needs placement rather than a specialist mental health placement?</td>
<td>no</td>
<td></td>
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<tr>
<td>Are they still under the care of a Consultant Psychiatrist?</td>
<td>no</td>
<td></td>
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<tr>
<td>Are they attending, or being invited to attend, outpatient appointments, if so how often?</td>
<td>no</td>
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<tr>
<td>Could any such treatment or medication be safely (from the point of view of both the service used and others) conveniently and effectively be administered in ordinary residential care?</td>
<td>Yes-YES/NO</td>
<td></td>
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<tr>
<td>Are they in a specialist mental health placement or a general needs one?</td>
<td>Yes-YES/NO</td>
<td></td>
</tr>
<tr>
<td>Will community care provision adequately meet her/his ongoing mental health needs (depending on circumstances it may be necessary to seek medical advice on this question?)- Could services be safely provided under legislation other than section 117</td>
<td>YES/NO</td>
<td></td>
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**VIEWS OF SERVICE USER, CARERS AND RELATIVES:**

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ERROR: undefined
OFFENDING COMMAND:

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