

10 September 2018

Agenda Item: 9

**REPORT OF THE SERVICE DIRECTOR, STRATEGIC COMMISSIONING,
SAFEGUARDING AND ACCESS**

REFRESH OF SECTION 117 AFTERCARE LOCAL POLICY AND GUIDANCE

Purpose of the Report

1. To update Committee on changes made to the Section 117 (s117) Aftercare Local Policy and Guidance, and invite the Committee to recommend the proposed changes to Policy Committee for approval.

Information

2. The purpose of this policy is to summarise the requirements of s117 of the Mental Health Act 1983 (as amended in 2007) and provide operational guidance for implementation across Nottinghamshire County and Nottingham City. The aim is to ensure that a lawful and consistent quality of aftercare services is provided.
3. S117 of the Mental Health Act places a statutory duty of aftercare on Clinical Commissioning Groups (CCGs) and Local Social Service Authorities (LSSAs), in cooperation with voluntary agencies, to provide, or arrange to provide, aftercare services free of charge for all clients who have been detained in hospital under certain qualifying sections of the Mental Health Act 1983.
4. The previous policy was last updated in 2011 and changes to legislation and case law meant an update was required. Nottinghamshire County Council took the lead on this piece of work, however all relevant parties were involved in the refresh.
5. A person is entitled to the provision of aftercare under the following circumstances:
 - When they have been detained in hospital for treatment under sections 3, 37, 45A, 47 or 48 of the Mental Health Act, and then cease to be detained and leave hospital.
 - When they are on a Community Treatment Order (CTO) and then continue to require s117 provision after discharge from the CTO
 - When they are on section 17 Leave of Absence on the above sections.¹
6. The person's entitlement to s117 aftercare continues if:
 - The person is on authorised leave from hospital
 - He/she is discharged from the Section and remains in hospital informally

¹ *R v Richmond LBC ex parte W [1999] MHLR 149*

- He/she is returned to prison following a period of detention in hospital
 - He/she is discharged from the Section and hospital into the community.
7. The Care Act 2014 s75 (5) defines after care services as those services which have both of the following purposes:
- Meeting a need arising from or related to the person's mental disorder; and
 - Reducing the risk of 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).

Summary of amendments made to the policy

8. The proposed amendments are as follows:
- a. Clarification in relation to ordinary residence. The (updated August) 2017 Department of Health Care and Support Guidance (19.654 – 19.66) indicates under s.117 of the Mental Health Act, as amended by the Care Act 2014:
 - If a person is ordinarily resident in Local Authority area A immediately before detention under the 1983 Act, and moves on to be discharged to Local Authority area B and moves again to Local Authority area C, Local Authority A will remain responsible for providing or commissioning their aftercare.
 - Should the person become ordinarily resident after discharge in Local Authority areas B or C, and subsequently detained, it would be B or C who would be responsible for aftercare. If the patient's ordinary residence immediately before detention cannot be established, the Local Authority will be the one for the area in which the patient was resident before detention.
 - Only if that cannot be established either, will the responsible Local Authority be the one for the area to which the patient is sent on discharge. However, this should be relied upon as a last resort.
 - b. Now includes a flowchart which outlines the discharge process and highlights the importance of commencing aftercare planning at the point of admission to hospital. It also confirms that it is the responsibility of Nottinghamshire NHS Foundation Trust to ensure the patient has a s117 meeting and ensure the relevant CCG is aware of individuals' funding requirements arising from the duty to provide s117 services.
 - c. Stresses the importance that all patients who are entitled to aftercare under s117 are identified and that records are kept of what aftercare is provided under that section. There is now a form which needs to be completed and uploaded onto each organisations records. This form also needs to be forwarded to the Mental Health Assessment office by the person completing it.
 - d. There is no change to the local funding arrangements that the City and County CCGs and LSSAs have agreed for new s117 cases and reviews. Joint funding will generally be agreed on one of the following splits:

- i. 70% CCG/30% LSSA – where the assessment indicates that health needs are significantly higher than social care needs
- ii. 30% CCG/70% LSSA – where the assessment indicates that health needs are significantly lower than social care needs.
- iii. 50% CCG/50% LSSA – where the assessment indicates little difference in the respective health and social care needs.

However, a paragraph was included which states that there may be some exceptions so each case should be considered separately. The final decision will be made upon professional judgement of the relevant section 117 panel members from the CCG and LSSA based upon a recommendation from the Nurse Assessor and Social Worker who completed the assessments.

- e. Under the Care Act 2014 a direct payment may be given to a person on a s117, if it is an appropriate way to discharge its duty under s117 of the 1983 Act.
- f. Emphasises the importance of regularly reviewing people receiving services under s117. Eligibility should be a fixed agenda item at review meetings. This will ensure that people are discharged from s117 as appropriate. Currently individuals are very rarely discharged and may therefore receive service without making an assessed contribution.
- g. Provides detailed guidance regarding the factors to be considered when deciding whether or not a discharge from s117 may be appropriate. Also outlines the procedure for ending s117 entitlement and includes a pro-forma that needs to be completed and uploaded on the databases of the relevant organisations when the decision to end s117 has been taken. This pro-forma should also be forwarded to the MHA office by the person completing it and to the relevant CCG Section 117 panel. The patient/their representatives must also be informed of this decision in writing, which should include the relevant factors and reasoning.

- 9. The revised policy and guidance is attached as **Appendix A**.

Other Options Considered

- 10. To not update the policy in line with current legislation and case law which could lead the Council and its partners vulnerable to upheld complaints and potential Judicial Review.

Reason/s for Recommendation/s

- 11. To ensure current local policy is in line with national legislation and all parties agree on the policy to be implemented.

Statutory and Policy Implications

- 12. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Data Protection and Information Governance

13. A Data Protection Impact Assessment will be undertaken in relation to this initiative/arrangement to ensure that all necessary information governance arrangements are in place.

Financial Implications

14. There are no changes to the Health/Social Care split of funding around individual packages. However, being more proactive around discharging people from a s117 may mean that service users pay a contribution for social care services in future. The review of the s117 could also increase or decrease the proportion of CCG funding in a package.

Human Resources Implications

15. No direct impact on staff posts has been identified in any of the changes described.

Implications for Service Users

16. Service users discharged from s117 may become liable for contributions relating to social care services. They would, however, be subject to fairer charging policy, which means that any contribution would be on the basis of a financial assessment.

RECOMMENDATION/S

- 1) That the Committee recommends the proposed changes to the Section 117 Aftercare Local Policy and Guidance to Policy Committee for approval.

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Constitutional Comments (AK 23/08/18)

17. The recommendation falls within the remit of the Adult Social Care and Public Health Committee by virtue of the terms of reference.

Financial Comments (DG 22/08/18)

18. The financial implications are contained within paragraph 14 of this report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

None.

Electoral Division(s) and Member(s) Affected

All.

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