Nottinghamshire Healthcare NHS Foundation Trust

Nottinghamshire County Council

Nottingham City Council

SECTION 117 AFTER-CARE LOCAL POLICY AND GUIDANCE: NOTTINGHAM CITY AND NOTTINGHAMSHIRE COUNTY COUNCILS, NOTTINGHAMSHIRE HEALTHCARE NHS FOUNDATION TRUST, CLINICAL COMMISSIONING GROUPS

Contents:

1. INTRODUCTION

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 after-care services is provided.

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.

The Health and Social Care Act 2012 inserted a new section (s117 (2D)) into the Mental Health Act which makes it clear that the duty on the CCG or NHS England (formerly known as the NHS Commissioning Board) is to commission rather than provide after – care services.

This guidance must be cross referenced with:

- The Mental Health Act 1983 Code of Practice (2015) Chapter 33
- The Reference Guide to the Mental Health Act (2015) Chapter 29

The Trust referred to in this document is Nottinghamshire Healthcare NHS Foundation Trust.

2. WHO DOES SECTION 117 APPLY TO?

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]

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
- 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.

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

3. THE MEANING AND SCOPE OF SECTION 117 AFTERCARE

The Care Act 2014 s75 (5) defines after care services as those services which have both of the following purposes;

a) Meeting a need arising from or related to the person's mental disorder;

and

b) 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)

Further guidance can be taken from the MHA Code of Practice which states that "CCGs and LAs should interpret the definition of after care services broadly…can encompass healthcare, social care…and services to meet the person's wider social, cultural and spiritual needs, if these services meet a need that arises directly from or is related to the particular patent's mental disorder, and help to reduce the risk of deterioration in the patient's mental condition"

In 2002 the House of Lords held that as s117 is a freestanding provision which imposes a duty on LSSAs and CCGs to provide aftercare services until such a time as the person is no longer in need of them free of charge. LSSAs are not entitled to charge for residential accommodation provided by them pursuant to their s117 duty.[2]

The duty will last until the after-care bodies are satisfied (not just the LSSA) that the patient no longer needs any after-care services for their mental disorder.

3.1. Adaptations

Adaptations to accommodation may also fall within the remit of s117 services, but only where they are related to a person's mental disorder. The Code of Practice, in Chapter 33, makes it clear that after care services are principally concerned with assisting an ex patient to "cope with life outside hospital". If it could be evidenced that a significant element of the patient being able to cope may include suitably adapted accommodation then the duty to provide may arise.

CoP Chapter 33

4. REFUSAL OF SERVICES

There is no obligation upon the ex-patient to take up s117 after-care services that they are offered, but any decisions they may make to decline them should be fully informed. An unwillingness to accept services should not be equated

[2] *R v Manchester City Council ex parte Stennett [2002] UKHL 34*

with not needing those services of s117, nor should it preclude them from receiving them under s117 if they change their mind. The refusal does not discharge the s117 duty. A decision by the ex-patient to refuse should be clearly recorded. Where capacity to make that decision is in doubt, there should be evidence of an assessment of capacity in accordance with the Mental Capacity Act 2005. Where capacity is found to be lacking, any decision must be taken with regard to section 4 of the Mental Capacity Act, in the person's best interests.

4.1. Process

A care plan and risk assessment should be completed stating the intervals at which the patient's refusal should be re-assessed. If the person continues to refuse services, a Care Programme Approach review meeting would decide if the person requires after-care services. A Community Treatment Order or Guardianship should be considered at a pre discharge meeting, when planning after-care services for in patients who in the past have refused services and become unwell again.

CoP Chapter 33

5. WHO IS RESPONSIBLE FOR AFTERCARE SERVICES UNDER SECTION 117?

Local Social Services Authorities (LSSAs);

'the duty on LAs to commission or provide mental health after-care rests with the LA for the area in which the person concerned was ordinarily resident immediately before they were detained under any of the relevant sections of the Mental Health Act, even if they are discharged to another LA are upon discharge.'

Only if the person could not be considered ordinarily resident anywhere, at that point, will the original residence rule apply and in default of that, it will be where the person was sent on discharge by the hospital in which the person was detained.

When there is a dispute about ordinary residence in England, Section 40 of the Care Act 2014 provides that the local authorities in England may request a determination of ordinary residence to be made by the Secretary of State. The procedure is contained in the Care and Support (Disputes between Local Authorities) Regulations 2014.

<u>The meaning of 'ordinarily resident'</u>

The House of Lords stated that 'ordinarily resident' *"… refers to a person's abode in a particular place or country which the person has adopted voluntarily and for settled purposes as part of the regular order of their life for the time being, whether of short or of long duration… This is not to say that the person intends to stay where they are indefinitely… all that is necessary is*

that the purpose of living where one does have sufficient degree of continuity to be properly described as settled…" [3]

The duty under s117 rests with the Local Authority for the area in which the person concerned was 'ordinarily resident' immediately before they were detained under the Mental Health Act even if the person becomes ordinarily resident in another area after leaving hospital.

The (updated August) 20176 DOH 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.

Clinical Commissioning Groups (CCGs);

The identity of the relevant CCG is governed by Regs 14 and 15 NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regs 2013, as amended by 2016 Regs. As detailed in the guidance: 'Who Pays?' Determining responsibility for payments to providers' issued in 2013 and revised in 2016, the responsible CCG will be largely dependent of GP registration.

The guidance notes that the responsible CCG should be established by the usual means (GP registration) but if a patient who is resident in one area (CCG A) is discharged to another area, (CCG B), it is then the responsibility of the CCG in the area where the patient moves (CCG B) to jointly work with CCG A, who will retain the responsibility to pay for their aftercare under s117 of the Act as agreed with the Local Authority.

[3] *R V Barnet LBC, ex parte Shah [1983] 2 AC 309*

If a detained person in receipt of s117 services is subsequently readmitted or recalled to hospital, the responsible CCG will continue to be the CCG that is currently responsible for their s117 aftercare.

If a detained person who was registered with a GP in one area (CCG A) is discharged to another area (CCG B) and in receipt of s117 services is subsequently readmitted or recalled to hospital, the originating CCG (CCG A) would retain responsibility for their s117 aftercare.

The table below provides a distinction of the changing commissioner responsibilities for patients discharged under s117. However, the guidance should not be applied retrospectively in order to rebase or transfer commissioners' responsibilities. As this appears to be quoted from Jones, you will need to reference this

• *Patients discharged pre 1 April 2013 come under the pre August 2013 PCT Who Pays Guidance and the legacy/originating CCG continues to be responsible for subsequent compulsory admissions under the MHA, and current and subsequent S117 services until such time as they are assessed to no longer need these services.*
• *Patients discharged between 1 April 2013 and 31 March 2016 fall under August 2013 Who Pays Guidance –CCG B would be responsible if a patient is discharged into a location in CCG B and registers with a GP in CCG B.*
• *New revised guidance from 1 April 2016 will revert back to the pre 1 April 2013 position where the legacy/originating CCG continues to be responsible in most cases.''*

6. AFTERCARE PLANNING

The duty of both the health authorities and the LSSA is to identify appropriate after-care facilities for the patient before his/her actual discharge from hospital, and inform the patient of the options available. Good practice would be to commence after-care planning from the point of admission to hospital (MHA Code 33.10). It is certainly not acceptable to start to address this at the ward discharge meeting. **Appendix 1** outlines the discharge process in the form of a flow chart.

CoP 33.10

It is the Trust's responsibility to ensure the patient has a s117 meeting. The Trust also needs to ensure the relevant CCG is aware of individuals' funding requirements arising from the duty to provide s117 services.

Those patients who do not retain a right to an Independent Mental Health Advocate (IMHA), whose care and support needs are being assessed, planned or reviewed should be considered for an advocate under the Care Act, if they have substantial difficulty in being involved and if there is no appropriate person to support their involvement.

Local Authority staff should be informed of and invited to any s117 planning meetings. It should be noted that the Local Authority cannot be committed to

providing a service and/or funding unless their staff have been involved in the after-care planning meeting. There is no duty to provide s117 services until the patient is discharged but effective planning is imperative so as not to delay a patient's discharge.[4]

The Code of Practice reminds us:

- S117 applies also to the defined categories of patients given leave of absence under s117. We should also ensure some joint planning occurs in this situation.
- There needs to be s117 after-care planning before a First Tier Tribunal (Mental Health) is held. The joint plan should be included in the report to the Tribunal.
- This joint planning would also be required for an Associate Hospital Managers' Panel.

CoP 33.12

7. MONITORING/ RECORDING

It is important that all patients who are entitled to after-care under s117 are identified and that records are kept of what after-care is provided under that section. The after-care planning of detained patients should be included in the general arrangements for implementing Care Programme Approach (CPA), but because of the specific statutory obligation, it is important that the section 117 planning is documented separately. The form attached in **Appendix 2** needs to be completed and uploaded onto each organisations records. This form also needs to be forwarded to the MHA office by the person completing it.

The patient should be fully involved in the after-care planning process and their involvement recorded on the form.

8. FINANCE AND SECTION 117

8.1. Charging

There is no express statutory power to charge for s117 after-care services and as such services must be provided free of charge.[5] It is therefore the policy of Nottingham City and Nottinghamshire County Councils that no person subject to s117 shall be charged for services relevant to support their assessed mental health needs. This includes:

- Domiciliary services
- Meals at home
- Day Centre services
- Residential services. (*Nottingham City staff: Please complete Exemption form and return to Adult Residential Services, Loxley House, Station*

[4] *B v Camden LBC (1) and Camden & Islington Mental Health & Social Care Trust [2005] EWHC 1366*
[5] *R v Manchester City Council ex parte Stennett [2002] UKHL 34*

Street, Nottingham; Nottinghamshire County staff: please note in relevant section in Mosaic)

The LSSA must have assessed eligibility for these services before they are offered to the patient.

It is worth noting that the DOH LAC 2000(3) guidance states "Occasionally, there may be other non-residential community care services which are not part of the s117 aftercare plan. These may relate to physical disabilities or illnesses which have no direct bearing on the person's mental health. Such services will generally fall outside s117 after-care." In those situations it is important to discuss the matter with the relevant manager and it might be appropriate to assess the eligibility of the person for NHS Continuing Healthcare (CHC).

8.2. Key principles in relation to charging:

The following key principles are accepted as Nottingham City and Nottinghamshire County Council policy in regard to financial aspects of s117:

- There will be no retrospective assessments which attempt to remove a person from s117 status in order to avoid local authority liability for charges.
- People who have paid for their own s117 aftercare will receive financial restitution.

The City and County CCGs and LSSAs have agreed local funding arrangements for new s117 cases and reviews which are detailed in separate policies; these were updated in 2016. Joint funding will generally be agreed on one of the following splits:

1. 70% CCG/30% LSSA– where the assessment indicates that health needs are significantly higher than social care needs
2. 30% CCG/70% LSSA– where the assessment indicates that health needs are significantly lower than social care needs.
3. 50% CCG/50% LSSA – where the assessment indicates little difference in the respective health and social care needs.

It is difficult to be prescriptive regarding the above as there may be some exceptions based on national strategic policy developments. Each case should be considered separately and the final decision will be made upon professional judgement of the relevant CHC panel members from the CCG and LSSA based upon a recommendation from the Nurse Assessor and Social Worker who completed the assessments.

8.3. Choice of Accommodation and top up funding

The Care Act Guidance Annex A (Paragraphs 44 – 50) (but also inserted by s.75 (6) of the Care Act 2014 concerns the choice of accommodation and aftercare: The Care and Support and After-Care (Choice of Accommodation)

Regs 2014 made under the Mental Health Act 1983 enable persons who qualify for aftercare under s117 to express a preference for particular accommodation if accommodation of the types specified in the Regulations are to be provided as part of that after-care. (LSSAs) are required to provide or arrange the provision of the preferred accommodation if the conditions in the Care and Support and After-care (Choice of Accommodation) Regulations 2014 are met. Where the cost of the person's preferred accommodation exceeds the standard LSSA rate then a top up agreement must be made with the patient or a third party on their behalf for some or all of the additional cost prior to a placement being made.

Section 39(4) of the Care Act is a deeming provision that applies to any person who is provided with accommodation as part of their after-care. The effect of section 39(4) is that the person is deemed, for the purposes of Part 1 of the Care Act, to be ordinarily resident in the area of the local authority responsible for the person's after-care. There are only three types of accommodation to which this provision applies, which are; nursing and care homes, supported living/ extra care housing and shared lives schemes.

Section 39(4) will apply to any person who receives after-care on leaving hospital on or after 1 April 2015, irrespective of the date that they were discharged from detention under any of the relevant provisions cited in section 117(1).

As the legislative requirement for a care and support plan under the Care Act 2014 does not apply to s117 after-care, the after-care plan should instead be drawn up under guidance on the Care Programme Approach (CPA). Care planning under the CPA should, if accommodation is an issue, include identifying the type of accommodation which is suitable for the person's needs and affording them the right to choice of accommodation set out in the regulations made under s117A. The person should be fully involved in the care planning process.

9. INTERFACE WITH OTHER LEGISLATION AND GUIDANCE

9.1. Section 117 and the Nationality, Immigration and Asylum Act 2002

The duty to provide after-care services applies to patients irrespective of their country of origin. S117 after-care does not exclude services within the meaning of Schedule 3 of the Nationality Immigration and Asylum Act 2002 and therefore nationality and immigration status is irrelevant to the consideration of whether such a duty to provide such services is owed.

It may be necessary to refer to your Legal Services for legal advice on a case by case basis.

9.2. Care Act 2014

As s117 is a freestanding provision, the Care Act (and the eligibility regulations) does not govern who should get what. The question under s117 is; what does a person need to prevent deterioration in their mental condition

and re-admission to hospital having regard to those needs that arise directly from or are related to the patient's particular mental disorder?

A person can qualify for Care Act services in parallel to those provided under s117.

9.3. Supported Housing

If supported living schemes and housing related support are part of a patient's care plan then these costs should be met under s117 responsibilities. Also if accessing such support generates any costs to the person themselves then again these costs should be met under s117 responsibilities.

9.4. Direct Payments

Direct payments are monetary payments made to individuals who request to receive one to meet some or all of their eligible social care and support needs. The legislative context for direct payments in social care is set out in section 75(7)Care Act 2014 which allows a LSSA to discharge its section 117 duty by making direct payments., and also s117 (2C) of the Mental Health Act 1983 and the Care and Support (Direct Payments) Regulations 2014.

Direct payments are also available to meet an individual's health needs. The CCGs are expanding the offer of Personal health budgets to people under s117, and direct payments are one option. The legislative context for direct payments in the NHS is set out in the National Health Service (Direct Payments) Regulations 2013, as amended by the National Health Service (Direct Payments) (Amendments) Regulations 2013. Health and social care are working together to ensure people are able to have an integrated budget and payment, when they opt for a direct payment.

The effect of the Care Act 2014 is that one of the conditions to be met for direct payments is that in respect of after-care services, it is an appropriate way to discharge its duty under s117 of the 1983 Act.

9.5. Part 3 Mental Health Act 1983 patients (concerned in criminal proceedings or under sentence)

If a person is required to live in a residential home as part of the conditions of a section 37/41 restriction order then that placement would not be chargeable.

Entitlement to aftercare applies when patients are released from prison, having spent part of their sentence detained in hospital under a relevant section of the Act.

CoP 33.9

Serving prisoners who were transferred to secure hospital facilities under Part 3 and then returned to prison to complete their sentence following an assessment or treatment episode will require a review following the end of their sentence to assess whether or not there should be a continuation of s117 liability. (See section 10)

Further guidance should be sought from your Legal Services on a case by case basis.

9.6. Care Programme Approach

The Care Programme Approach (CPA) is an overarching system for co-ordinating the care of people with mental disorders. It should be used in secondary mental healthcare to assess, plan, review, and co-ordinate the range of treatment, care and support needs of those people in contact with secondary mental health services. The CPA should be used for individuals who are at high risk of suffering deterioration in their mental condition and who need multi agency support, active engagement, intensive intervention and or support with dual diagnoses.

CoP 34.6 - 34.7

Care Act guidance: Annex A states the following…..the legislative requirement for a care and support plan under the Care Act 2014 does not apply to s117 after-care, the care plan should be drawn up under guidance on the CPA.

9.7. The Mental Capacity Act 2005

The application of the principles and legal requirements of the Mental Capacity Act 2005 must be considered. In particular, health and social care staff need to establish whether a Lasting Power of Attorney is in place for the person concerned (registered at the Office of The Public Guardian) and to consult with them where required and also to be aware of, and take into account relevant advance statements when the person is being considered for s117 after-care services.

CoP Chapter 9

Where the effect of after-care arrangements might be that the person who lacks capacity is ‘deprived of liberty’ (continuous supervision/control and not free to leave), such arrangements must be authorised by the Court of Protection or the MCA Deprivation of Liberty Safeguards process as applicable.

9.8. NHS Continuing Healthcare

(See paragraphs 118-122 of the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care, November 2015)

Where a patient is eligible for services under s117, these should be provided under s117 and not under NHS continuing healthcare.

There are no powers to charge for services provided under s117 and it is not necessary to assess eligibility for NHS continuing healthcare if all the services in question are to be provided as aftercare services under s117.

However, a person in receipt of s117 aftercare services may also have needs that are not related to their mental disorder and that may, therefore, not fall within the scope of s117. Also, a person may be receiving s117 services and then develop physical health care needs (e.g. through a stroke) which may then trigger the need to consider NHS continuing healthcare only in relation to

these separate needs, bearing in mind that NHS continuing healthcare should not be used to meet s117 needs.

Where an individual in receipt of s117 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.

10. SECTION 117 REVIEWS

People receiving services under s117 may be part of the CPA. These people will have a review at least once a year which will include all the people involved in the patient's care (similar to those invited to the original after-care planning meeting) and should include the patient, their carer and an advocate, if requested. 34.15 of the MHA 1983 Code of Practice recommends "the care plan should be regularly reviewed. It will be the responsibility of the care coordinator (or other officer responsible for its review) to arrange reviews of the plan until it is agreed between all parties, including the patient, that it is no longer necessary". The continuing status of s117 eligibility should be a fixed agenda item at these meetings. The outcome of the review, plus any recommendation to discharge from s117 after-care will be submitted to the relevant CHC Panel.

Where people are not part of a CPA they should still have as a minimum an annual review where the continued status of s117 should be considered. Where these people are in receipt of services commissioned by the LAAS then these reviews will be initiated by the LA as part of the regular review of the care and support services they receive. Again any recommendation to discharge from s117 after-care will be submitted to the relevant CHC Panel.

11. WHEN SECTION 117 RESPONSIBILITY ENDS

S117 (2) imposes the duty to provide services until such time as the CCG and LSSA are satisfied that the person concerned is no longer in need of such services.

The Code of Practice states: '…The duty to provide after-care services exists until both the CCG and the LSSA are satisfied that the patient no longer requires them…' The duty to provide aftercare services includes patients who, following detention under s 3, are granted leave of absence under s 17.[6]

CoP 33.20

Aftercare under s117 may be terminated for the following reasons:

- Death of a service user
- A review has determined that aftercare is no longer required

[6] *R v Richmond LBC ex p. Watson [1999] MHLR 155*

The authority responsible for commissioning the particular services should consider whether ending s117 is appropriate, closely consulting with the patient, nearest relative and other agencies and individuals involved. S117 obligations end only at the point when both the CCG and LSSA have come to a decision that the person no longer needs any after-care service for their mental health needs (if both involved in provision as would generally be the case). There needs to be positive evidence that a person no longer needs s117 after-care services otherwise their discharge from s117 is considered unlawful.

Aftercare services under s117 should not be withdrawn solely on the grounds that:

CoP 33.21

- 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 liberty under the MCA.
- The patient has returned to hospital informally or under section 2 or
- The patient is no longer on a CTO or section 17 leave.

Even where the provision of aftercare has been successful in that the patient is now well settled in the community, the patient may still continue to need aftercare services e.g. to prevent a relapse or further deterioration in their condition.

CoP 33.22

The following guidance is offered about the factors to be considered regarding whether or not discharge from s117 may be appropriate:

- What are the Service User's current assessed mental health needs?
- Have the Service User's needs changed since their discharge from hospital under s117?
- What are the risks of return to hospital/relapse?
- Has the provision of after-care services to date served to minimise the risk of the service user being re-admitted to hospital for treatment for mental disorder/experiencing relapse of their mental illness?
- Are those services still serving the purpose of reducing the prospect of the Service User's re-admission to hospital for treatment for mental disorder/experiencing relapse or has that purpose now been fulfilled?
- What services are now required in response to the Service User's current mental health needs?
- Does the service user still require medication for mental disorder?

- Is there any ongoing need for care under the supervision of a consultant psychiatrist or any ongoing need for involvement of specialist mental health services such as a community mental health team?

The above list is not exhaustive, but indicators that s117 could be discharged may include any of the following:

- Stabilised mental health which no longer requires the level of care that has been provided under s117 in order to be maintained
- Services no longer needed for the purpose of reducing the risk of return to hospital or relapse
- No ongoing need for involvement of a consultant psychiatrist or specialist mental health services or for medication.

However, any decision should be taken with reference to the individual circumstances of each case and none of the indicators above should be used solely as grounds for discharge.

12. PROCEDURE FOR ENDING SECTION 117 ENTITLEMENT

The entitlement to s117 services only ends when it is discharged:

- The initial recommendation to end s117 would be made at a multi-disciplinary CPA / s117 review. The patient and carer should be present or represented and kept informed. Representatives of the LSSA, and the Trust (on behalf of the CCG) must be present in order to formulate the recommendation.
- Any recommendation to discharge must be agreed by the relevant Social Care manager and the Responsible Clinician (Consultant Psychiatrist) on behalf of the CCG.
- If there is a difference of opinion between the Trust and LSSA regarding the decision to discharge from s117, which cannot be resolved at operational level, this will need to be escalated to Senior Management within the CCG and the relevant Adult Social Care & Health department with the LSSA
- Only when representatives from the two separate organisations agree, can s117 be discharged.
- The decision to end s117 must be recorded using the proforma in **Appendix 3** and uploaded on the databases of the relevant organisations. This proforma should also be forwarded to the MHA office by the person completing it and the relevant CCG CHC Panel. The patient/their representatives must be informed of this decision in writing, which should include the relevant factors/reasoning.
- Aftercare services may be reinstated if it becomes obvious that they have been withdrawn prematurely. For example, where a patient begins to deteriorate immediately after services are withdrawn.

13. TRANSFER TO OTHER AREAS

If a person moves to a different area and residence from where s/he was admitted, then the responsible authorities, in the area of the original residence and admission, may need to purchase and /or arrange services in the new area.[7] The only time the responsibility may change to the authorities in the new area of residence is when the person is detained again under one of the s117 applicable sections.

If the person is leaving the area – it is important to notify the relevant LSSA and Health Trusts of his/her being subject to s117 and it will be the responsibility of the Trust to arrange a joint CPA meeting to arrange the appropriate services.

Special provisions apply to the transfer of patients from England and Wales to Scotland, Northern Island, the Channel Islands and the Isle of Man and a pro forma is available on the Department of Health website to complete for cross border patient transfers.

14. RESUMPTION OF SECTION 117 STATUS

If someone has been subject to s117 status in the past and then requires services for his/her mental health again, then their section 117 status should be reviewed. S117 would automatically apply if they were admitted under the qualifying section again. It could apply to informal or patients in the community if the care team considered that the requirement for services was part of the same episode of mental illness and that it was in the patient's best interests to receive the services.

15. COMPLAINTS/APPEALS

LSSAs should show that they have carefully considered the needs of or requests from individual patients arising from or related to their mental disorder and carefully documented the reasons why services are either agreed or refused.

Although there is a positive duty to provide after-care services under s117, there is discretion by the after-care bodies as to level of provision. If there are any concerns regarding the s.117 after-care provision, the patient or their representative should be referred to the relevant after-care bodies complaints procedures.

The patient also has right to apply for consideration by the Local Government Ombudsman and/or Judicial Review.

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[7] *R v MHRT Ex p Hall [1999] 3 All ER 1323, Department of Health Circular LAC (2000) 3 Paragraph 9.*

16. LINKED DOCUMENTS / FURTHER GUIDANCE

Refocusing the Care Programme Approach: Policy and Positive Practice Guidance March 2008.

The National Framework for NHS Continuing Healthcare and NHS-Funded Nursing Care - November 2012 (revised)

Department of Health (2015) Code of Practice Mental Health Act 1983

Department of Health (2015) Reference Guide to the Mental Health Act 1983

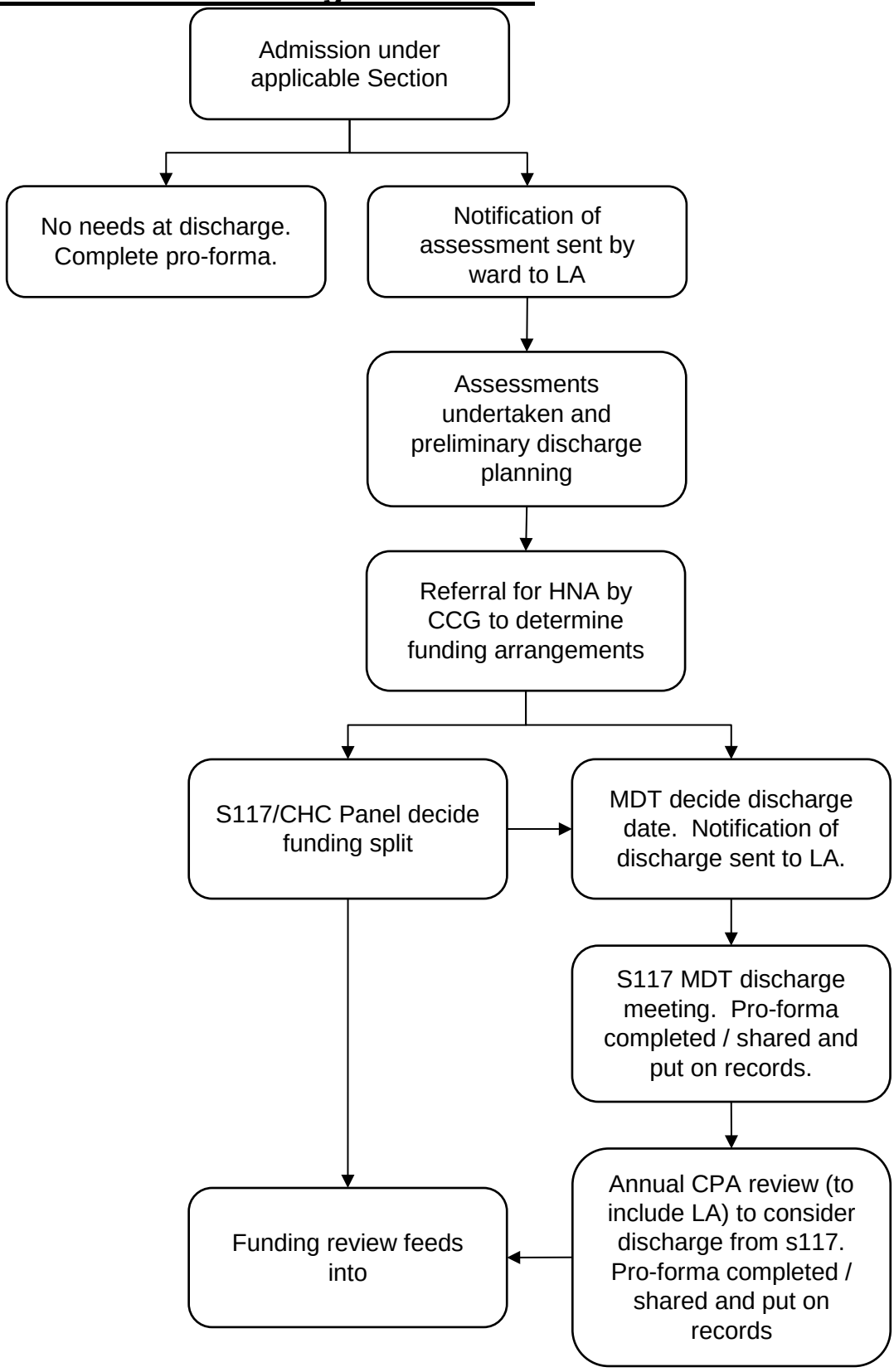
Department of Health (2013) Ordinary Residence: guidance on the identification of ordinary residence of people in need of community care services, England.

Chapter 19 and Annex H of the Care Act 2014 guidance titled 'Ordinary Residence', provides information and advice on determining ordinary residence for people requiring local community care services from 1 April 2015

Department of Health (2014) Care and Support Statutory Guidance.

'Who Pays' amendment to the section on 'persons detained under the Mental Health Act 1983', April 2016

Appendix 1 Section 117 discharge flowchart



Appendix 2

Nottinghamshire Healthcare NHS
NHS Foundation Trust

Nottinghamshire County Council

Nottingham City Council

Section 117 MHA 1983 Form

Patient Name _____ **Date of Birth** _____

RiO Number _____

Mosaic and/or Liquidlogic number_____

Care Coordinator _____

Responsible Clinician _____

General Practitioner _____

Social Worker _____

Carer _____
Next Review Date _____

People present at the meeting _____

Services identified to meet Section 117 after-care needs:

Services identified that are outside of Section 117 after-care arrangements

Signed on behalf of the CCG by- name/title/date

Signed on behalf of ASCH by- name/title/date

Appendix 3

Nottinghamshire Healthcare NHS
NHS Foundation Trust

Nottinghamshire County Council

Nottingham City Council

Discharge from Section 117 MHA 1983 Form

Patient Name _____ **Date of Birth** _____

RiO Number _____

Mosaic and/or Liquidlogic number_____

Care Coordinator _____

Responsible Clinician _____

General Practitioner _____

Social Worker _____

Carer _____

Review Date _____

People present at the meeting _____

Reason for Discharge from Section 117 after-care:

Signed on behalf of the CCG by- name/title/date

Signed on behalf of ASCH by- name/title/date