South London and Maudsley NHS Foundation Trust

Section 117 (Mental Health Act 1983)

After-care Policy and Procedures

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Responsible Director:	Director of Nursing
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Section 117 (Mental Health Act 1983) After-care Policy and Procedures, revised January 2021

Document History

Version Control

Version No.	Date	Summary of Changes	Major (must go to an exec meeting) or minor changes	Author
1.	02/07/2018	New policy		Cath Gormally
2.	21/01/2021	**Appendix 5** – *Lewisham Council/ CCG and SLAM Guidance* note adopted within S117 Policy and Procedure.		Lewisham Council, CCG and SLAM

Consultation

Stakeholder/Committee/ Group Consulted	Date	Changes Made as a Result of Consultation
Heads of Social Care in the local authorities and health/joint commissioners in the Clinical Commissioning Groups (CCG) in Lewisham, Lambeth, Croydon and Southwark.	July 2018	New policy. Partners have been involved in the co-production of the policy throughout the process
Macius Kurowski, Equality and Diversity Manager	July 2018	Development of the EIA and HRA impact assessment
Service and clinical directors across all directorates/borough in the Operations Senior Management Team	July 2018	None required
Heads of Social Care in Lewisham Council and health/joint commissioners in the Clinical Commissioning Groups (CCG) and SLAM Service Director and Director of Social Care	September 2020–January 2021	**Appendix 5** – *Lewisham Council/ CCG and SLAM S117 Guidance* adopted within S117 Policy and Procedure. This is in response to recommendations made by the Ombudsman and provide further clarity on the (non)/ charging of accommodation.
Service Users/Carers consulted	**Date**	**Changes Made as a Result of Consultation**
Not consulted directly but represented at the MH Law Committee		None

Plan for Dissemination of Policy

Audience(s)	Dissemination Method	Paper or Electronic	Person Responsible
All clinical and social work staff	To place on the intranet. Dissemination to all relevant operational staff via e mail and relevant training To put in SLaM News/ Blue light bulletin	Electronic	Carla Fourie Director of Social Care

Key changes to policy:
- **Appendix 5 –** Guidance for practitioners on the provision of accommodation under S117 - **Insertion of 12.4, to cross reference with Appendix 5** - Updated reference to revised NHS England's 'Who Pays guidance: What CCG's need to know', published September 2020

Plan for Implementation of Policy

Details on Implementation	Person Responsible
Each borough LA and CCG to complete the individual borough procedures and documentation for discharge from s117. Dissemination to all relevant operational staff. To consider case vignettes delivered on different social media: YouTube videos etc, especially updating staff on new case law, recommendations and lessons learnt.	Director of Social Care

Contents

1	Introduction and purpose of the policy	Page 6
2	Section 117 MHA and main policy	Page 7
3	What are aftercare services?	Page 8
4	Eligibility for aftercare under Section 117	Page 8
5	Complying with Tribunal Conditions	Page 9
6	Operational Procedures: Record keeping for patients eligible for s117 aftercare	Page 9
7	How to identify the responsible Aftercare Bodies (and Commissioners): ordinary residence	Page 9
8	People who move to other areas	Page 10
9	People on s117 who move into area	Page 11
10	Section 117 After-care Planning Process	Page 11
11	Voluntary Sector Involvement	Page 14
12	Charging	Page 14
13	Third party top ups	Page 15
14	Information to be provided to patients and carers	Page 16
15	Monitoring of patients subject to Section 117	Page 16
16	Review of patients subject to Section 117	Page 17
17	Ending Section 117 and authorisation	Page 18
18	The Assessment	Page 19
19	The Authorisation	Page 19
20	Resumption of Section 117 status	Page 20
21	Supervised Community Treatment and After-Care	Page 20
22	Monitoring Compliance	Page 21
23	References	Page 20
24	Freedom of Information Act 2000	Page 21
	Appendix 1: Clinical Commissioning Groups (CCG's) Appendix 2: Examples of Aftercare Services Appendix 3: Procedure for discharge from section 117 Appendix 4: Discharge from s117 Pro forma Appendix 5: Lewisham *Guidance for practitioners on the provision of accommodation under S117* Appendix 5: Equality Impact Assessment Appendix 6: Human Rights Act Assessment	

1. Introduction and purpose of the policy

1.1 Section 117 of the Mental Health Act 1983, requires Clinical Commissioning Groups (CCGs) and local authorities, in co-operation with voluntary agencies, to provide or arrange for the provision of after-care to particular patients detained in hospital for treatment who then cease to be detained. (Mental Health Act 1983, revised Code of Practice 2015, Chapter 33).

1.2 This document summarises the legal responsibilities of Health Authorities and Local Social Services Authorities ("the responsible after-care bodies") under section 117 of the Mental Health Act 1983 (MHA), and describes the procedures by which South London and Maudsley NHS Foundation Trust (SLaM) exercises those functions of the responsible after care bodies.

1.3 This document should be read in the context of existing arrangements under Section 75 of the National Health Service Act 2006, which specifically addresses partnership working arrangements and the ADASS Guidance and Principles for Aftercare Services under Section 117, January 2018.

1.4 The Care Act 2014 amends s.117 of the Mental Health Act 1983 and makes changes in relation to the definition of aftercare services, ordinary residence and choice of accommodation. This document should therefore, be read in conjunction with the Care Act 2014 and associated guidance and the revised Code of Practice to the Mental Health Act 1983.

1.5 As an organisation which provides integrated mental health services, SLaM has been commissioned by its associated Clinical Commissioning Groups (CCGs), which have also been delegated the health functions of the Local Social Services Authorities, to administer the section 117 responsibilities of both the health and local social services authorities in Lewisham, Croydon and Lambeth.

1.6 References to "Clinical Commissioning Groups" in the Mental Health Act refer to CCGs which have been exercising those functions of funding and commissioning responsibilities on behalf of the Secretary of State in this area.

1.7 This policy and attached procedures are intended to guide staff employed by SLaM and Southwark, Lewisham, Croydon and Lambeth local authorities, through the process of considering:

- the changes made to section 117 of the Mental Health Act by Section 75 of the Care Act 2014
- definition of aftercare services
- eligibility for aftercare services under section 117
- identifying the responsible after care bodies
- formulation of an after care plan and the procedure to review and assess the continuing eligibility to services under section 117
- the procedure to end aftercare services

1.8 The operational procedures are intended to assist all staff in the integrated mental health services. It is not intended to be a comprehensive summary of the law. It is essential that all health and social care staff keep up to date with all relevant changes relating to the provision of after-care services, so as to ensure that when exercising functions on behalf of the responsible after-care bodies, the law, and any relevant guidance in operation at the time is complied with.

2 Section 117 MHA – Policy

2.1 Section 117 of the Mental Health Act 1983, provides:

After Care:
117. --- (1) This section applies to persons who are detained under section 3 above, or admitted to a hospital in pursuance of a hospital order made under section 37 above, or transferred to a hospital in pursuance of [a hospital direction made under section 45A above or] a transfer direction made under section 47 or 48 above, and then cease to be detained and [(whether or not immediately after so ceasing)] leave hospital.

(2) It shall be the duty of the [Clinical Commissioning Group or] [Local Health Board] and of the local social services authority to provide, [or arrange for the provision of] in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies until such time as the [Clinical Commissioning Group 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 shall not be so satisfied in the case of a [community patient while he remains such a patient.

[(2B)] Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.]

[(2C)] References in this Act to after-care services provided for a patient under this section include references to services provided for the patient –
a. in respect of which direct payments are made under
(i) sections 31 to 33 of the Care Act 2014 (as applied by Schedule 4 to that Act)
(ii) regulations under section 12A(4) of the National Health Service Act 2006 and

b. which would be provided under this section apart from [those sections (as so supplied) or] the regulations.] (Mental Health Act 1983).

2.2 (3) In this [section "the [Clinical Commissioning Group or] [Local Health Board]" means the [Clinical Commissioning Group or] [Local Health Board], and "the local social services authority" means the local social services authority[(a) if, immediately before being detained the …..the area… in which he was ordinarily resident…. or (c) in any other case… the area in which the person concerned is resident or to which he is sent on discharge by the hospital in which he was detained.

2.3 *Note: The responsible social services authority is identified by reference to where the person was ordinarily resident immediately before being detained in hospital even if their ordinary residence changes in the future. If this cannot be identified or the person has no ordinary residence then local authority responsibility is identified as where the person is ordinarily resident (as a matter of fact) or the area where the person is discharged (see also para 6.3 below) ; the relevant CCG is identified by reference to the CCG area where the person is registered with a GP or, if not registered, then where the person is usually resident (i.e. where they believe they are resident or are in fact resident) or, if none then the location of the unit where they are present.(see para 6.4 below). It is very important to establish who is the responsible local authority and CCG commissioners of after care services applying the correct rules.* In summary, section 117 of the Mental Health Act requires the responsible after-care bodies, in co-operation with relevant voluntary agencies, to provide after-care for patients detained, transferred, or admitted under sections 3, 37, 45A, 47 or 48 MHA, who then cease to be detained. The duty to provide such services continues until such time as the person is no longer in need of such services.

2.4 The provisions of s117 aftercare are equally applicable to people of all ages but additional factors may need to be considered in relation to children and young people. For example, s117 aftercare may need to combine with any existing health and social care provision for children who are looked after, have special educational needs, disabilities or vulnerabilities. A child, who has been admitted to hospital for assessment and/or treatment of a mental disorder, may also be a 'child in need' under s17 of the Children Act 1989, regardless of whether s117 applies.

3. What are aftercare services?

3.1 The Care Act 2014, amends s.117 of the Mental Health Act 1983, and provides, for the first time, a definition of aftercare services as services which have both of the following purposes- s.117 (6) (a) *"meeting a need arising from or related to the person's mental disorder: and (b) reducing the risk of a deterioration of the person's mental condition (and accordingly, reducing the risk of the person requiring admission to hospital again for treatment of mental disorder)"*

3.1 The revised MHA Code of Practice, 2015 (the Code) states that the ultimate aim of aftercare services is to maintain people in the community with as few restrictions as necessary, wherever possible. The Code also advises that the definition of aftercare services should be interpreted broadly to include, for example, health and social care, employment services, supported accommodation and services which meet the patient's wider social, cultural and spiritual needs. However, that is, if **these services meet a need that directly arises from or is related to the particular patient's mental disorder and helps to reduce the risk of deterioration in the patient's mental condition.** Aftercare should also aim to support patients to regain or enhance skills in order to cope better with life outside hospital.

3.2 The specific type of aftercare services which are required for an individual will be determined by a thorough assessment of the individual's need for care and support and wishes, in accordance with the revised Code of Practice 2015.

4 Eligibility for aftercare under Section 117

4.1 The wording of s117 is clear and unequivocal. A patient admitted under the relevant sections of the MHA, as referred to above in point 2.1; who then ceases to be detained is eligible for s117 after-care services.

4.2 The duty to provide after-care services applies irrespective of a patient's immigration status in the UK. Section 117 is not listed under Schedule 3 of the Nationality, Immigration and Asylum Act 2002 which, together with Section 54 of that Act has the effect of prohibiting Local Authorities from providing specific services listed in the schedule unless certain exceptions apply.

4.3 Section 117 is a standalone duty. Unlike some other community care services, the responsible aftercare bodies cannot charge a patient for after-care services under s117. Establishing which aftercare body is responsible for providing after-care to an eligible patient is vital given the potential resource commitment. However, this should never delay the provision of services.

4.4 **A patient is eligible to aftercare when he or she is a patient on a leave of absence from hospital under Section 17 MHA**. (confirmed by the Court in R v Richmond LBC ex parte W [1999] M.H.L.R. 149). Any services provided to a patient whilst on leave should be

specifically tailored for that purpose.

5 Complying with Tribunal Conditions

5.1 The Court of Appeal summarised the obligations on aftercare bodies to comply with conditions for aftercare services provided by Tribunals in the case of W v Doncaster MBC [2004] EWCA Civ 378 at paragraph 73 as follows:

If such treatment is an essential pre-requisite of discharge (as it was in IH), but it proves impossible to provide, then continuing detention is lawful, although the impossibility of providing the treatment envisaged by the Tribunal means that the matter will have to return to the Tribunal for reconsideration: [2003] UKHL 59, paragraph 27. If such treatment is not an essential pre-requisite to discharge, then, although discharge may be delayed for a period while efforts are made to arrange the expected treatment, discharge cannot be unreasonably delayed, even if it proves impossible to arrange it: see Johnson v. UK (1997) 27 EHRR 296.

5.2 This echoes what the revised Code of Practice says at paragraph 33.12:
"Where the Tribunal has provisionally decided to give a restricted patient a conditional discharge, the CCG and local authority should do their best to put after-care in place which would allow that discharge to take place."

6 Operational Procedures: Record keeping for patients eligible for s117 aftercare

6.1 It is the responsibility of all health and social care professionals to ascertain if a person under their care is subject to s117. All new patients placed on sections 3, 37, 45A, 47 and 48 will be placed on s.117 by the ePJS system, and this can be checked under the MHA Tab and on other relevant local authority IT systems where applicable. The professionals completing detentions under these relevant sections should ensure that the s117 status is recorded on ePJS and then identify the relevant aftercare bodies.

6.2 Due to the specific statutory obligation of s.117, the revised Code of Practice at para 33.7, states, "Mental health after-care services must be jointly provided or commissioned by local authorities and CCGs. They should maintain a record of patients for whom they provide or commission after-care and what after-care services are provided." **A list of such patients can be generated from the ePJS by the Business Department (BI), and a register of all patients subject to s.117 will be kept**. All record keeping must be in full compliance with the Data Protection Act 1998. The revised Code of Practice under 34.8 provides the following guidance:

"Because of the specific statutory obligation, however, it is important that all patients who are entitled to after-care are identified and that records are kept of what is provided to them under that section."

7 How to identify the responsible Aftercare Bodies (and Commissioners): ordinary residence

7.1 Deciding which health and local social service authorities are responsible for commissioning after-care services under s117 for a person is the vital first step of the planning process. However, any dispute as to responsibility for providing such services should never delay the provision of required services, nor prejudice a patient/service user.

7.2 Staff in integrated mental health services must also be aware that there is a possibility that the joint duty to provide after-care services may rest with health and local social services

authorities from different areas.

7.3 Section 75 of the Care Act 2014 makes amendments to s117 with regard to 'ordinary residence' and the guidance to the Care Act states the following in regard to mental health after-care:

- "the duty on local authorities to commission or provide mental health after-care rests with the local authority for the area in which the person concerned was ordinarily resident immediately before they were detained under the 1983 Act, even if the person becomes ordinarily resident in another area after leaving hospital.:
- "As amended by the Care Act 2014, section 117 provides that, if a person is ordinarily resident in local authority area (A) immediately before detention under the 1983 Act, and moves, on discharge, to local authority area (B) and moves again to local authority area (C). local authority area (A) will remain responsible for providing or commissioning their after-care. However, if the patient, having become ordinarily resident after discharge in local authority area (B) or (C), is subsequently detained in hospital for treatment again, the local authority in whose area the person was ordinarily resident immediately before their subsequent admission (local authority (B) or (C)) will be responsible for their after-care when they are discharged from hospital."
- If there is a dispute between local authorities in England about where the person was ordinarily resident, then the process set out in section 40 of the Care Act 2014 should be followed.

7.4 **The Relevant CCG**: In September 2020 the NHS England published a revised, **'Who Pays guidance**: **What CCG's need to know'**, a framework for Clinical Commissioning Groups on establishing responsibility for commissioning an individual's care within the NHS. The *general rule* is that responsibility for commissioning and paying for health services (other than the specific services which NHS England is responsible for commissioning itself) will fall to the CCG of which the patient's GP practice is a member, or, if the patient is not registered with a GP, to the CCG in whose area the patient is 'usually resident'. This means that commissioning (and paying) responsibility will generally move from one CCG to another when a person changes their GP registration to a different CCG areaThis general rule is subject to a number of exceptions. For further detailed guidance, including relevance to S117 aftercare, please visit https://www.england.nhs.uk/wp-content/uploads/2020/08/Who-Pays-final-24082020-v2.pdf

7.5 Staff are also encouraged to seek clarification on responsible authorities from the *Heads of Social Care* in the boroughs or mental health commissioners from the local CCG.

8 People who move to other areas

8.1 In the event that a person who is subject to s.117 moves to another area, the care co-ordinator or social worker/care manager must inform the local integrated mental health service (local health and social services providers) of the person's presence in the new area. The care co-ordinator or social worker/care manager must forward a copy of the relevant assessment.

8.2 The responsibility for providing after-care remains with the originally identified responsible local authority, notwithstanding that the patient may have moved outside of their area and become ordinarily resident in another area. NHS responsibility for aftercare will be determined according to the CCG area where the patient is registered with a GP. The aftercare duty will continue until such time as one of the events that may lawfully bring about the current aftercare body's responsibility to an end has occurred and as referred to above, determined by where the patient is ordinarily resident and is registered with a GP. (See paragraph 6.3 and 6.4 above).

8.3 There is no statutory mechanism for transfer of s117 statutory obligations while the duty is owed by the relevant local authority and CCG. Any transfer of responsibility, where applicable, should be agreed between each health and social services authority on a case by case basis, and all employees should speak to the Head of Social Care in the relevant borough about any issues with regard to local authority and CCG s.117 responsibility.

8.4 Where a patient who is entitled to s.117 after-care was ordinarily resident in an area prior to admission but is to be discharged from hospital to an area different from that where s/he was resident at the time of admission, the responsible local authority after-care body will be where s/he was 'ordinarily resident' prior to admission. The responsible CCG after- care body will be where s/he is registered with a GP which may be different. Where out of area authorities are responsible for aftercare they may need to purchase services in the local area.

8.5 Where a patient is located out of area or responsibility for aftercare services changes, then the relevant authorities (local authority and CCG) should inform the health and social services authorities in the patient's new area of the arrangements made for the patient's after-care and ensure a proper transfer of responsibility where appropriate.

8.6 The responsibility for purchasing after-care services in the new area where the patient has moved to, will remain with the responsible after-care bodies until such time as responsibility is transferred to another commissioner or one of the events occur that bring the s117 duty to an end. Further guidance regarding when the s.117 duty ends is set out in the procedures below.

8.6 The above does not preclude the responsible after care bodies agreeing to contract the care package out to local providers in advance of formal transfer. Any such action should be discussed with the patient, and with the patient's wishes, and that of any carer, taken into account. Care must be taken to ensure that any newly commissioned services meet the patient's assessed needs.

9 People on s117 who move into area

9.1 If any member of staff working in the integrated adult mental health services receives a request to accept the transfer of a s.117 eligible patient, they should discuss this with the Head of Social Care for their borough before any agreement is made.

10 Section 117 After-care Planning Process

10.1 There is a need for good practice in all after-care planning. The MHA Code of Practice, 2015 at Chapters 33 and 34 provide helpful guidance in relation to the responsible after-care bodies obligations when delivering after-care services.

10.2 The Code of Practice makes it clear that while the duty to provide after-care services begins when the patient leaves hospital, good practice requires the planning of after-care services to begin as soon as the patient is admitted to hospital (paragraph 33.1). Staff in integrated mental health services, acting on behalf of the responsible after-care bodies should therefore identify appropriate after-care services for the patient as soon as possible.

10.3 'When considering relevant patients' cases, the Tribunal and hospital managers will expect to be provided with information from the professionals concerned on what aftercare arrangements might be made if they were to be discharged. Some discussion of aftercare arrangements involving local authorities, other relevant agencies and families or carers (where appropriate) should take place in advance of the Tribunal hearing.' (Code of Practice 2015)

'Where a Tribunal or hospital managers' hearing has been arranged for a patient who might be entitled to after-care under section 117 of the Act, the hospital managers should ensure that the relevant CCG and local authority have been informed. The CCG and local authority should consider putting practical preparations in hand for after-care in every case, but should in particular consider doing so where there is a strong possibility that the patient will be discharged if appropriate after-care can be arranged. Where the Tribunal has provisionally decided to give a restricted patient a conditional discharge, the CCG and local authority should do their best to put after-care in place which would allow that discharge to take place. (Code of Practice 2015)

10.4 This planning would also be required for an Associate Hospital Manager's Hearing.

10.5 All patients detained under one of the qualifying sections of the MHA should be allocated a care co-ordinator/social worker or care manager as soon as possible to ensure adequate care planning for discharge. The patient's responsible consultant psychiatrist and the ward manager should notify the relevant Community Mental Health Team (CMHT) that the patient is likely to be discharged and specify when the discharge is likely to take place.

10.6 CPA discharge planning, and s117 after-care meetings will be arranged to facilitate the attendance and participation of all relevant and interested parties. The allocated care co-ordinator/social worker or care manager will be responsible for arranging the CPA /Local Authority review meetings

10.7 Putting in place suitable aftercare services is an essential component of discharge from hospital. The revised Code of Practice to MHA 34.12 details the persons, in addition to the patient, who may need to be involved in such a process, to ensure that the aftercare plan reflects the needs of the patient. This may include:

- the patient's responsible clinician;
- nurses and other professionals involved in caring for the patient in hospital
- a practitioner psychologist registered with the Health and Care Professions Council, community mental health nurse and other members of the community team
- the patient's GP and primary care team;
- any carer who will be involved in looking after them outside hospital (including, in the case of children and young people, those with parental responsibility)
- the patient's nearest relative (if there is one) or other carers
- a representative of any relevant voluntary organisations
- in the case of a restricted patient, multi-agency public protection arrangements (MAPPA) co-ordinator
- a representative of housing authorities, if accommodation is an issue;
- an employment expert, if employment is an issue
- the CCGs appointed clinical representative (if appropriate)
- an independent mental health advocate, if the patient has one
- an independent mental capacity advocate, if the patient has one
- the patient's attorney or deputy, if the patient has one
- a person to whom the local authority is considering making direct payments for the patient
- any other representative nominated by the patient, and
- anyone with authority under the Mental Capacity Act 2005 (MCA) to act on the patient's behalf.

10.8 It must be made clear to those in attendance that the CPA meeting has been convened specifically to consider the after-care plan within the context of s117 of MHA. The meeting must explicitly consider the fact that the patient is subject to s117 after-care and both

health and social care staff are jointly responsible for providing any after-care services.

10.9 The allocated care co-ordinator or social worker/care manager, will take responsibility for co-ordinating a health and social care needs assessment for after-care services under s117 duties. The care co-ordinator or social worker/care manager will take into account the assessment of the responsible consultant psychiatrist and any other relevant information provided by multi-disciplinary team colleagues to determine what, if any, services are called for under s117 and/ or any other statutory duties. The revised Code of Practice to MHA indicates what a thorough assessment would be likely to include consideration of, under 34.19. and is included in the in Appendix 2. The Code provides that aftercare should be planned within the framework of the Care Programme Approach (or its equivalent for patients not on CPA).

10.10 Section 130A of the MHA requires the Secretary of State to make arrangements for independent mental health advocates to provide assistance to those who are eligible for aftercare services to provide them information about this. The care co-ordinator or social worker/care manager should ensure that such assistance has been offered to the patient in advance of the finalising of any care plan.

10.11 In addition for those patients who lack capacity to make decisions about their residence, the Mental Capacity Act requires certain patients to be provided with an Independent Mental Capacity Advocate (IMCA) where a change in the patient's accommodation to another hospital or care home is being considered and there is no person with whom it would be appropriate to consult with in the patient's best interests (see section 38). Care co-ordinators, social workers and care managers should be aware of this and ensure that an IMCA is appointed and consulted prior to the implementation of any aftercare plan in which a change in the patient's residence is involved.

10.12 Consideration should be given by the care co-ordinator or social worker/care manager as to whether the patient has the capacity to reject or accept after-care services. In the event that a patient is deemed to lack capacity in this regard and is non-compliant with the proposed care plans, consideration will need to be given as to

a. whether the care plan can be imposed upon the patient pursuant to the Mental Capacity Act;

b. whether the care plan may amount to a deprivation of the patient's liberty requiring a request to be made to the Supervising Authority for the requisite assessments to be carried out with a view to granting an Urgent or Standard Authorisation; or

c. whether the matter needs to be brought before the court to obtain lawful authority to impose the care plan.

10.13 The focus of the after-care plan will be to provide such support for a period, to equip the patient to cope with life outside hospital and to assist them to progress to the stage where they will no longer need services to meet needs arising from or related to their mental disorder, and to prevent the need for re-admission in order to receive treatment.

10.14 The Code of Practice to MHA requires that the after-care plan is recorded in writing. Once the plan is agreed it is essential that any changes are discussed both with the patient and others involved with the patient before it is implemented. All services provided on discharge will be recorded in the person's discharge plan, as well as in the assessment and care plan.

10.15 The revised Code of Practice, sections 33.17 – 33.19 gives the following guidance on after-care payments;

"*A local authority may make direct payments to pay for after-care services under section 117 of the Act. An adult who is eligible for after-care can request the local authority to make direct payments to them, if they have capacity to do this. If the adult lacks capacity to do so, the local authority can make direct payments to an 'authorised person' or suitable person if certain conditions are met. A key condition is that the local authority must consider that making the direct payments to the authorised person is an appropriate way to discharge their section 117 duty, and that they must be satisfied the 'authorised person' will act in the adult's best interests in arranging for the after-care."*

If a local authority is providing or arranging accommodation as part of a patient's after- care, the patient and/or friends or relatives identified in regulations may make top-up payments to enable the patient to live in their preferred accommodation if certain conditions are met.

A CCG or the NHS Commissioning Board may also make direct payment in respect of after-care to the patient or, where the patient is a child or a person who lacks capacity, to a representative who consents to the making of direct payments in respect of the patient. A payment can only be made if valid consent has been given. In determining whether a direct payment should be made, a CCG or the NHS Commissioning Board is required to have regard to whether it is appropriate for a person with that person's condition, the impact of that condition on the person's life and whether a direct payment represents value for money. A payment can also, in certain circumstances, be made to a nominee.

11. Voluntary Sector Involvement

11.1 Section 117 refers to the duty to provide after-care services in co-operation with relevant voluntary agencies.

11.2 When the care co-ordinator or social worker/care manager is arranging the CPA or equivalent review meetings, including the review of after-care services, they should also liaise with any voluntary agencies who may be involved in providing the after-care, and any advocates working with the patient (see para 9.8 above).

12. Charging

12.1 In the case of Stennett, the House of Lords confirmed that there is no power to charge for services provided under s 117, with the effect that persons cannot be charged for services provided under it, which must be provided free of charge. However, there is a right for the person to top up payments to live in their preferred accommodation where a local authority is making the accommodation arrangements (See paragraphs 4 -5 of the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014).

12.2 The Department of Health National Framework for NHS Continuing Healthcare and NHS funded Nursing Care (November 2012), guidance states:

Responsibility for the provision of section 117 services lies jointly with LA s 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.

There are no powers to charge for services provided under section 117*, regardless of*

whether they are provided by the NHS or LA s. 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.

Further guidance on the relationship between NHS continuing healthcare and s117 after-care and the interface between the physical and mental health needs can be found in Practice Guidance notes of part 2 of the above document.

12.3 The **completion of a detailed assessment** is therefore very important in identifying any needs and what services are required to meet those needs, and informing the aftercare plan so it is **explicit as to what services are required under s117 in the after-care plan**, **and those services that are outside of it, which the local social services authority may be required to charge for**. Such decisions would need to be discussed with the service manager from the responsible local social services authority team and be well documented.

12.4 **Provision of Accommodation under s117:**

Accommodation is a need that everyone has and is therefore not automatically an after –care service unless the accommodation specifically required is to address an assessed need **arising from a person's mental disorder and reduces the risk of a deterioration and readmission**, e.g. 24 hour supervised accommodation.

Accommodation can generally only be part of section 117 aftercare if:

- the need is for enhanced specialised accommodation ("accommodation plus");
- the need for the accommodation arises from, or is related to, the reason the person was detained in the first place ("the original condition"); and
- the "accommodation plus" reduces the risk of the person's mental condition worsening and the likelihood of the person returning to hospital for treatment for mental disorder.

If accommodation is included as part of after-care, it should not be charged for, nor should person be told to claim Housing Benefit. Service and utility charges should be deemed part of the s117 accommodation.

For more information on accommodation as part of the s117 aftercare package, see **Appendix 5** which is a guidance note for practitioners on the provision of accommodation under s117 produced by LB Lewisham which is a reflection of the current law and guidance.

12.5 Consideration within the detailed assessment should also be given in appropriate cases to whether or not the patient meets the criteria for continuing healthcare funding.

12.6 Staff in the integrated mental health service, are therefore required to complete relevant assessments in a timely and thorough manner, and in accordance with any published guidance.

12.7 When services are being provided under s117, which if they were not included on the after-care plan they would otherwise be charged for by the local authority, the person (as well as relatives and/or carers where appropriate) **must be made aware of the implications** as to how the position will change should there be a subsequent review decision that the service will no longer be provided under s117.

13 Third party top ups

13.1 The Care Act 2014 makes a significant change under section 75 (6). S117A, allows for individuals to pay a top up fee for preferred accommodation which is arranged by the local authority, if that accommodation is more than the local authority's usual cost.

13.2 If the local authority is arranging accommodation as part of the aftercare, then the patient or someone on their behalf can make top-up payments to enable the person to live in their preferred accommodation. The top up payments can be arranged to be paid via the local authority.

13.3 A person receiving accommodation as part of an aftercare plan has broadly the same rights to choice of accommodation as someone who receives care and support under the Care Act 2014 as set out in the Regulations Care and Support and Aftercare (Choice of Accommodation) Regulations 2014

14 Information to be provided to patients and carers

14.1 Patients subject to s117 must be provided with information in relation to any aftercare services and any changes to such services.

14.2 The patient needs to be informed in writing of the purposes of the review procedures for s.117. As part of this, it is essential that the patient is informed that, upon discharge from s.117, they may become liable for charges for certain elements of the social care package. (see paragraphs above for further information on charging.)

14.3 The revised Code of Practice to MHA provides detailed guidance on the involvement of carers and makes clear the importance of involving carers in the process.

14.4 Staff should also be aware that carers may have a right of their own to an assessment of their needs as carers. It is important that carers are advised of their right to have a carer's assessment completed, in appropriate cases.

15 Monitoring of patients subject to Section 117

15.1 It is the responsibility of all health and social service professionals to ascertain if a patient under their care is subject to s 117.

15.2 It is important that SLaM, in making recommendations to the aftercare bodies, ensures that all patients who are subject to s 117 are identified and that up to date records are kept of them.

15.3 A register of s.117 patients can be extracted from the ePJS. This will mean that the Mental Health Minimum Dataset for CPA will always identify whether a patient is subject to s.117.

15.4 The patient's need for aftercare services would usually change over time. The fact that the services that are currently being provided differ from those which were provided at the time of the person's discharge, does not have the effect of extinguishing the duty to provide after-care services under this section.

15.5 A patient will only be removed from the s.117 register after a thorough and lawful reassessment which determines that s/he is no longer eligible for s.117 MHA aftercare services. In such circumstances, clear records relating to the services that the person is entitled to must be kept up to date in the usual way. The discharge procedure is detailed below.

15.6 Audits of CPA documentation will be carried out on a regular basis. This will include whether

s117 status is recorded appropriately and that the care plan clearly shows which services are provided under s 117 and which are not. This should be built into the Trust's Clinical Audit regime.

16 Review of patients subject to Section 117

16.1 SLaM and local authority staff members working on behalf of the responsible aftercare bodies, are responsible for re-assessing the person's s.117 status at regular intervals, and in response to any change in needs.

16.2 Most people who are subject to s117 will fall under the criteria for CPA but not all will. Patients who are on CPA and those who are not on CPA, should all have a thorough and regular review of their care and support needs. For review of aftercare plans for people subject to CPA, the revised Code of Practice suggests, '*The care plan should be regularly reviewed. It will be the responsibility of the care co-ordinator (or other officer responsible for its review) to arrange reviews of the plan until it is agreed that it is no longer necessary.'*

16.3 The after-care plan, within the CPA, will be monitored and reviewed by the care co-coordinator or social worker/care manager and responsible consultant psychiatrist. The aim will be to ensure that the after-care plan objectives are followed and to ensure that the services provided remain relevant to the objective of equipping the person for life outside hospital and reducing the need for the patient to be re-admitted to hospital for the provision of treatment, and to ensure that eligible needs arising from the patient's mental disorder are met.

16.4 The review of those subject to s117 will follow the principles of the Care Programme Approach (CPA) Policy for those service users subject to CPA and those who are not. After-care plan reviews should be held at a frequency based on clinical need and risk management in response to any developments and needs of the patient and any carer(s).

16.5 The patient, carer/s or any member of the patient's care team may request an earlier review, and it is essential that staff are aware of the patient's and carer's changing needs, and to respond to the same to reflect any change in services that may be required.

16.6 If possible the patient, their carer/s, and any advocate if requested, as well as any other organisations or persons concerned should be present at a review meeting. The after- care review meeting must always consider the following elements;

- What after-care needs the patient has arising from or relating to his/her mental disorder that require a service
- What community care services the patient still requires relating to their mental disorder, and identify/review any new community care or health needs unrelated to that disorder which may nonetheless call for the provision of services;
- The services needed to meet any identified needs and their purpose (including the differentiation between those services being provided under section 117 and those provided under the Care Act or NHS Continuing Healthcare (CHC).)
- The patient may still require support/care but not necessarily to meet needs arising from or relating to their mental disorder. This situation would require an assessment for care and support under the Care Act 2014 from the responsible local authority, or an assessment under NHS Continuing Healthcare from the CCG, depending on the patient's needs.

16.7 Each of the respective social services authorities has policies regarding the review of residential care placements within a specific timeframe of the placement commencing. That time frame must be recorded in each CPA aftercare plan.

16.8 At the conclusion of the after-care review meeting, recommendations may be made by the consultant psychiatrist in conjunction with the relevant team members and taking into account the views of the patient, family members, any carers, and any other person concerned as to whether:

- The s.117 after-care plan needs to continue, or
- The s117 after-care plan needs to be modified in response to changing needs, or
- The need for a s.117 after-care plan has come to an end.

16.9 If the patient or their carer is unhappy with the recommendation decision, they have recourse to SLAM and/or the Local Authority's complaints procedure.

17. Ending Section 117 and authorisation

The revised MHA Code of Practice, 2015 under Chapter 33.20 states:
"The duty to provide after-care services exists until both the CCG and the local authority are satisfied that the patient no longer required them. The circumstances in which it is appropriate to end section 117 after-care will vary from person to person and according to the nature of the services being provided. The most clear-cut circumstances in which after-care would end is where the person's mental health improved to a point where they

no longer needed services to meet needs arising from or related to their mental disorder. If these services included, for example, care in a specialist residential setting, the arrangements for their move to more appropriate accommodation would need to be in place before support under section 117 is finally withdrawn. Fully involving the patient and (if indicated) their carer and /or advocate in the decision-making process will play an important part in the successful ending of after-care." And under 33.21 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 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.

17.2 To lawfully discharge a person from s117, the responsible after-care bodies should receive recommendations from a multi-disciplinary assessment and be satisfied that the person is no longer in need of such services. For patients who are receiving secondary care services from SLaM and have an allocated consultant psychiatrist, the medical input into the multi-disciplinary team will be provided by this allocated consultant psychiatrist. For patients who are not receiving secondary care services and/or do not have an allocated consultant psychiatrist, the medical input into the multi-disciplinary team, can be provided by the patient's GP. In cases where the GP does not feel able to provide a medical opinion to inform the potential discharge from s117, it may be necessary to re-refer the patient to secondary services for an opinion from a consultant psychiatrist.

17.3 An exception to the above is where a person is subsequently once more detained in hospital under section 3, 37, 47, 48, or 45A MHA 1983. In these circumstances any existing after care duty owed to that patient ceases, but a new entitlement would start when discharged from hospital following the new period of detention. The process of identifying the responsible after care bodies and making an aftercare plan would start again. SLaM and LA staff must check upon each admission under these sections of MHA where the patient was ordinarily resident prior to admission and where the patient was registered with a GP to determine the responsible after care bodies on each occasion. In circumstances where a patient was living in another area prior to being compulsorily detained under any of the provisions that give rise to after care duties under s.117 MHA 1983, the responsible after care bodies may have changed and should be clarified.

17.4 A patient subject to section 17A aftercare under supervision, or a patient who is conditionally discharged or a patient on section 17 leave cannot be discharged from section 117 aftercare services.

18. The Assessment

18.1 SLaM and local authority staff are required to conduct multi-disciplinary assessments to inform the decision as to whether or not a person may be discharged from s117, which will be made by the after-care bodies.

18.2 The assessment recommending discharge from after-care services which will be based upon a multi-disciplinary assessment/review, must be signed by both the person's care co-ordinator (if the person is on CPA or the social worker/care manager for patients not on CPA) and the responsible consultant psychiatrist or GP. If they are not in agreement, the patient cannot be discharged from s.117 aftercare until they do reach agreement. This

is to ensure that all relevant factors have been considered and to ensure that *both* the health body and local social services authority are satisfied that the patient is no longer in need of such services.

18.3 Details of the circumstances in which the duty under s117 may end are set out below. At all times those operating and using the procedures on a day to day basis, will be expected to do so in accordance with the current law and guidance at any given time.

18.4 The patient subject to s117 and their carer/s (where the person consents) should be fully consulted throughout the whole process, as should any other member of the multi-disciplinary team concerned with the patient's care.

18.5 The responsible after-care bodies cannot be satisfied that the patient no longer needs after care services for his or her mental health needs where the patient is still a community patient i.e. a patient subject to a Community Treatment Order pursuant to s17A MHA 1983.

18.6 Both the responsible after-care bodies can only be "satisfied" that services under s.117 are no longer required after a lawful multi-disciplinary reassessment has been conducted which concludes that the person no longer requires any section 117 services and a decision made that aftercare services are no longer required.

18.7 The following areas should be considered as part of the assessment:

a. What the patient's current assessed mental health needs are and what services are required to meet those needs. This should include consideration of the patient's medication needs and the need for ongoing care under the supervision of a psychiatrist or specialist mental health services.

b. Whether the patient's needs have changed since discharge from hospital pursuant to section 117.

c. What the risks of a return to hospital/relapse are.

d. How successful the aftercare services have been in reducing the risk of relapse/return to hospital

e. Where the person's mental health has improved to a point where they no longer need services to meet the needs arising from or related to their mental disorder

19. The Authorisation

19.1 If, following the completion of an assessment of the patient's needs, both the decision-makers for the responsible CCG and local authority are satisfied that the patient is no longer in need of s.117 aftercare services, a decision may be taken that such services be brought to an end.

19.2 As noted above, there may be situations where a patient no longer requires after-care for their mental illness but does require social services provision for other needs, for example; a physical disability. In such cases, care must be taken before deciding to discharge a patient from s117. A care and support assessment will be required to properly determine what community care needs the patient has and what duty the local authority may owe them. Where a patient appears to have a primary health need, the relevant CCG should be notified so that eligibility for NHS Continuing Healthcare (CHC) can be assessed.

19.3 The recommendation to discharge from s117, made by the multi-disciplinary team, will be presented to the local borough aftercare bodies: the local authority and the CCG. The aftercare bodies will make the decision on whether to support the recommendation and discharge from s117 and will inform the patient in writing.

20. Resumption of Section 117 status

20.1 A patient who has previously been subject to s117 but was discharged (in accordance with the correct procedure) is not entitled to further cost free care, except where these are services free at the point of delivery, provided to meet an assessed need.

20.2 If the responsible after care bodies lawfully discharge their s117 responsibility to a patient but the patient's mental health deteriorates again and they are detained under Section 3, 37, 47, 48, 45A a new entitlement to s117 after-care will arise. As indicated above, staff must conduct necessary checks to establish who the responsible after care bodies are on each occasion

20.3 Aftercare may be re-instated if it becomes obvious that it may have been withdrawn prematurely, e.g. where a person's mental health immediately deteriorates

21. Supervised Community Treatment and After-Care

21.1 Section 117 entitlement applies when a patient is subject to a Community Treatment Order (CTO) under section 17A of the Act. A CTO constitutes part of a patient's s.117 aftercare arrangements. Only unrestricted Part III patients (s37, 47, 48 and 45A) are eligible for CTOs. CTO patients are eligible for direct payments.

21.2 The 2015 Code of Practice sets out, at Chapter 32, the procedure to be followed where a patient is discharged under section 17A. It should be noted that where a patient is formally recalled to hospital, and the patient arrives at hospital after the recall, the patient may be detained in hospital for a maximum of 72 hours after the recall to allow the responsible clinician to determine what should happen next. During this period the patient remains a Supervised Community Treatment (SCT) patient, even if they remain in hospital for one or more nights. Should the responsible clinician and the AMHP agree that the CTO should be revoked, upon legal revocation of the CTO, the patient is then detained again under the powers of the Act exactly as before going onto the SCT, except that a new detention period of six months begins for the purpose of review and applications to the Tribunal.

22. Monitoring Compliance

What will be monitored i.e. measurable policy objective	Method of Monitoring	Monitoring frequency	Position responsible for performing the monitoring/ performing co-ordinating	Group(s)/committee(s) monitoring is reported to, inc responsibility for action plans and changes in practice as a result
Any positive benefits to black, African Caribbean service users.	Conduct an audit in November 2019	To be agreed following first audit in 2019	Director of Social Care	Mental Health Law Committee
Review actual equality impact of policy	Review EIA on renewal of policy	Every 3 years	Director of Social Care	Mental Health Law Committee

23. References

- Mental Health Act 1983
- Mental Health Act 1983: Code of Practice (revised 2015)
- The Care Act 2015
- Care and Support Statutory Guidance 2014 (Department of Health)
- Department of Health National Framework for NHS Continuing Healthcare (2012)
- Guidance and Principles for Aftercare Services Under S117 ADASS January 2018

24. Freedom of Information Act 2000

All Trust policies are public documents. They will be listed on the Trusts FOI document schedule and may be requested by any member of the public under the Freedom of Information Act (2000).

Appendix 1 - Clinical Commissioning Groups (CCG's)

South East London (SEL) Clinical Commissioning Group

Kenneth Gregory
Assistant Director, Adult Integrated Commissioning (AMH)
SEL Clinical Commissioning Group **and** London Borough of Lewisham

Email: Kenneth.gregory@lewisham.gov.uk

Placeholder: Further details to be updated.

Appendix 2 - Examples of Aftercare Services

The type of after-care services that may be provided under s.117 MHA are very wide and must be tailored to meet the patient's needs.

After-care services are defined in the Mental Health Act 1983, as amended by the Care Act 2014 and as set out in statutory guidance.

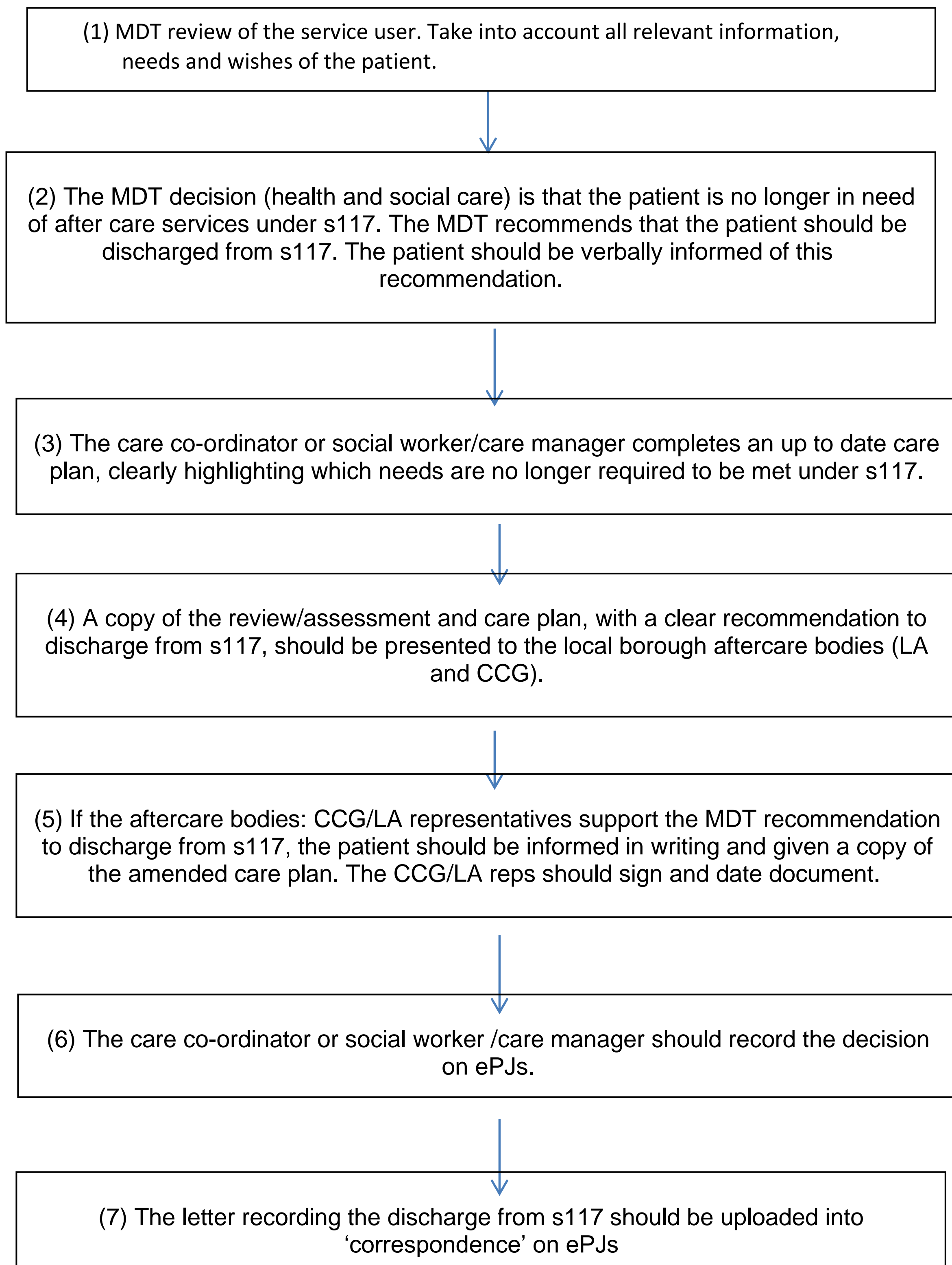
The 2015 MHA Code of Practice provides assistance in the type of after-care services that *may* be appropriate. It is essential that staff are fully familiar with the Code of Practice. In particular, Chapters 33 and 34 of the Code confirms that a thorough assessment is likely to involve consideration of:

- Continuing mental health care, whether in the community or on an out-patient basis;
- psychological needs of the patient and, where appropriate, of their family and carers;
- Physical healthcare;
- Daytime activities or employment;
- Appropriate accommodation;
- Identified risks and safety issues;
- Any specific needs arising from, for example, a co-existing physical disability, sensory impairment, learning disability or autistic spectrum disorder;
- Any specific needs arising from drug, alcohol or substance misuse (if relevant);
- Any parenting or caring needs;
- Social, cultural or spiritual needs;
- Counselling and personal support;
- Assistance in welfare rights and managing finances;
- Involvement of authorities and agencies in a different area, if the patient is going to live locally;
- Involvement of other agencies, for example the Probation Service or voluntary organisations;
- For a restricted patient, the conditions of which the Secretary of State for Justice or the Tribunal has imposed or is likely to impose on their conditional discharge; and
- Contingency plans, should the patient's mental health deteriorate (and crisis contact details). See Chapter 34.19 of the 2015 Code of Practice

Increasingly, these types of need for care and support should be met through personal budgets and direct payments when appropriate.

This list is not exhaustive but is meant to act as a guide to staff when considering if a person is still in need of aftercare services

Appendix 3 – Procedure for discharge from Section 117



Appendix 4 - DISCHARGE FROM S117 PRO FORMA

Discharge from Section 117 Mental Health Act 1983					
Name		**DOB**			
NHS Number					
S117 Review Meeting Date					
People present at the review meeting					
We are satisfied that the above individual is no longer in need of S117 services as specified below.					
This form must be signed by representatives from both organisations. If you are uncertain if you are able to sign this form please consult with a Senior Manager prior					
Signed		**Name**		**Date**	
On behalf of X Clinical		**Title**			
Signed		**Name**		**Date**	
On behalf of X Local Authority		**Title**			

Appendix 5

LONDON BOROUGH OF LEWISHAM

GUIDANCE FOR PRACTIONERS ON THE PROVISION OF ACCOMMODATION UNDER S117of THE MENTAL HEALTH ACT 1983 (AS AMENDED 2007)

1. INTRODUCTION

This guidance considers the statutory duty to provide after-care for patients under section 117 of the Mental Health Act 1983 (MHA). It will endeavour to explain the legislative requirements around section 117 and the standard procedures that follow.

(1) s117; this section applies to persons who are detained under s3 (MHA'83), or admitted to a hospital in pursuance of a hospital order made under s37 (MHA'83), or transferred to a hospital in pursuance of (a hospital direction made under s45A (MHA'83) or a transfer direction made under s47or 48 (MHA'83) and then cease to be detained and leave hospital.

(2) It shall be the duty of the CCG and 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 CCG and Local Social Services Authority are satisfied that the person concerned is no longer in need of such services.

The local CCG or the LA will maintain an up to date register of people entitled to s117 and what after care services are provided.

2. PURPOSE OF GUIDANCE

1. To comply with the legislative requirements of the MHA 1983 and associated Code of Practice.
2. To comply with the requirements of the Care Act 2014.
3. To provide clarity in relation to roles and responsibilities.

3. AIMS OF GUIDANCE

1. To ensure all relevant staff, including LA, CCG, MH Trust and others are aware of the requirements under s117 in relation to accommodation.
2. To ensure there is clear, concise guidance around "eligible" Service Users.
3. To provide a local framework and procedure to ensure that the procedural requirements of s117 are, understood, adhered to and recorded appropriately.
4. To ensure that all eligible Service Users 'aftercare is planned for, provided and ended equitably with a clear rationale for provision, refusal (Service Users right to refuse) and termination.

4. GUIDANCE

The Care Act 2014 defines after-care services for the first time.

After-care services must have both the purposes of meeting a need arising from or related to a patient's mental disorder and reducing the risk of a deterioration of the patients mental condition and so reducing the risk of a person requiring re-admission for treatment for mental disorder.

The MHA'83 Code of Practice (COP) states;

CCG's and LA's should interpret the definition of after care services broadly. For example, after-care can encompass healthcare, social care, employment services, supported accommodation and services to meet the person's wider social, cultural and spiritual needs, if these services meet a need that arises directly from or is related to the particular patient's mental disorder, and help to reduce the risk of deterioration in the person's mental condition.

Services provided under s117 can include services provided directly by the LA, CCG and any services that they commission from other providers.

Services that fall under s117 are provided free of charge to the Service User.

4.1. ELIGIBLE SECTIONS

A person becomes eligible for s117 Aftercare when the person ceases to be detained on one of the following sections and leaves hospital;

- Civil Section; Treatment Order s3
- Forensic Sections; 37,45A, 47, 48
- Eligibility extends to a patient who goes on s17 leave, a patient going on a Community Treatment Order (CTO) or a restricted patient who is conditionally discharged.

4.2. DETERMINING RESPONSIBLE AUTHORITIES

The relevant LA is: Under Ss117 (MHA'83) the LA in whose area the person was ordinarily resident immediately before subsequent detention/admission under Sections 3,37, 45A,47, 48 will be responsible for their aftercare on discharge.

Sometimes it is not always possible to identify the relevant LA and legal advice should be sought at an early stage but any dispute should not delay aftercare planning and provision.

The relevant CCG is: Prior to 2013 and after April 2016, the definition of the responsible CCG is the one where the patient was registered with a GP prior to hospital admission.

Where a patient is not registered with a GP practice, the responsible commissioner will be the CCG in whose geographic area the patient is "usually resident".

If GP or usual residence cannot be established and the patient refuses to assist than as a last resort the responsible commissioner should be determined by the location of the unit providing treatment.
Further guidance in relation to CCG can be found in "Who pays" guidance

4.3. PLANS FOR AFTERCARE

Planning for after-care should start soon after the Service User is detained on a treatment order, both LA's and CCG's have a statutory duty to ensure that those persons with eligible needs are considered for after-care and that:

- Health and social care assessments are co-ordinated during the period of inpatient treatment with plans developed jointly and discussed as part of the CPA.
- An appropriate after-care plan is agreed by the Service User, their carer and all involved agencies and others.
- It is clear that services provided under s117 that would incur a charge if not provided under s117, are clearly indicated on the after-care plan and that it is noted that these will not be charged. Service charges and charges for utilities can be included under s117 and should not be charged for if they form part of the package of accommodation.

Any services provided under s117 must:

- Meet a need arising from or related to the mental disorder for which the person was detained; and
- Have the purpose of reducing the risk of the person's mental condition worsening and the person returning to hospital for treatment for the mental disorder.

4.4. PROVISION OF ACCOMMODATION UNDER S117

Accommodation is a need that everyone has and is therefore not automatically an after –care service unless the accommodation specifically required is to address an assessed need arising from a person's mental disorder and reduces the risk of a deterioration and readmission, e.g. 24 hour supervised accommodation.

Accommodation can generally only be part of section 117 aftercare if:

- the need is for enhanced specialised accommodation ("accommodation plus");
- the need for the accommodation arises from, or is related to, the reason the person was detained in the first place ("the original condition"); and
- the "accommodation plus" reduces the risk of the person's mental condition worsening and the likelihood of the person returning to hospital for treatment for mental disorder.

"Care and support statutory guidance" (CSSG) is guidance on the Care Act 2014. It says that care planning under the CPA should, if accommodation is an issue:

- identify the type of accommodation which is suitable for the person's needs;
- afford the person the right to a choice of accommodation; and
- involve the person in their care planning.

Where accommodation is to be provided to meet after –care needs, the after-care plan must clearly identify how the need for accommodation directly arises from the person's mental disorder and how the provision of accommodation reduces the risk of deterioration and re-admittance to hospital. The after –care plan should identify the key outcome required by the accommodation in order to be able to determine if eligibility continues to apply so that this can be kept under review.

If accommodation is to be provided to meet after-care needs because amongst other reasons, a person is in need of accommodation due to the risk to themselves or others

arising from their mental disorder, this must be clearly recorded.

A person who is being provided with accommodation in order to meet their after- care needs should not be asked to claim Housing Benefit.

A discharge care plan should have been considered and recorded prior to;

- Hospital Managers Hearing/Mental Health Tribunal
- Community Leave under s17 MHA'83
- Making of a Community Treatment Order (CTO)
- Transference into Guardianship (s7 MHS'83)

Patients are not obliged to accept any after-care services as offered, but any decision to decline must be an informed decision. A refusal to accept does not mean the patient has no need of after-care and cannot be the sole reason to end s117 after-care. If a Service User does refuse after-care services, professionals should try to engage with them to agree an after-care package. If the Service User continues to refuse, this should be formally documented and a plan made to review the available after-care services with the Service User in an appropriate forum, such as the CPA.

After-care: direct payments - a LA may make direct payments to pay for after-care services under s117. An eligible adult with capacity can request payments be made to them. If an adult lacks capacity to do so, the local authority can make direct payments to an authorised person if the authority is satisfied that making direct payments to the authorised person is an appropriate way to discharge their s117 duty and that the authorised person will act in the adult's best interests in arranging the after-care.

Community Treatment Orders **-** Persons made subject to a CTO are entitled to services under s117. The CCG & LA must continue to provide after-care services under s117 for the life of the CTO. On discharge from a CTO or Guardianship, the service user will continue be eligible for s117 until the criteria for discharge from s117 are met.

4.5. REVIEW OF s117.

In terms of s117, the continued eligibility for s117 after-care services must be reviewed by the relevant LA/CCG (or delegated partners i.e. MH Trust)

Reviews should be coordinated and undertaken at regular intervals (bearing in mind changing needs) at least annually and should include specific consideration of ongoing s117 needs and eligibility. Reviews must be formally documented and recorded.

This is to include reviews of those persons placed "out of area" but for whom s117 responsibility is still held.

4.6. DISCHARGE FROM s117

The duty of after-care (s117) exists until both the CCG and LA agree the patient is no longer in need of any after-care services arising from the mental disorder.

Eligibility for s117 CANNOT be withdrawn solely on the grounds that;

- The patient has been discharged from the care of specialist mental health services.
- An arbitrary period of time has passed since the service first provided
- The patient is deprived of their Liberty (MCA 2005)

- The patient may have, or has been readmitted to hospital informally or detained on s 2 MHA'83.
- The patient is no longer subject to CTO or Guardianship or s17 leave.

This is not an exhaustive list of reasons.

Eligibility for s117 can be ended where a person's mental health has improved to a point where they no longer require services to meet needs arising from or related to their mental disorder. However, even when aftercare provision has been successful in that a person is well-settled in the community, the person may still need aftercare services to prevent a relapse.

Accommodation and associated service and utilities charges should be treated as section 117 aftercare until the LA and CCG can show that a proper review conducted by a multi-disciplinary team of the Service User's section 117 aftercare has concluded he or she no longer needs it. They cannot end the entitlement retrospectively.

In order to end a person's eligibility to s117 after-care a clear rationale at the s117/CPA review needs to be fully recorded and the person informed. The pro –forma at Appendix 1 also needs to be completed.

In accordance with the MHA Code of Practice, where specialist accommodation is part of section 117 aftercare, the Council and CCG should:

- put in place arrangements for a move to more appropriate accommodation before finally withdrawing support; and
- fully involve the patient and their carer or advocate in the decision-making process.

4.7. DISPUTES

There are at times disagreements involving s117, such as ordinary residence. Where issues cannot be resolved at a local level then Heads of Service in CCG and LA need to be made aware and legal advice should be sought at an early stage.

Appendix 6

PART 1: Equality relevance checklist

The following questions can help you to determine whether the policy, function or service development is **relevant to equality, discrimination or good relations:**

- Does it affect service users, employees or the wider community? Note: relevance depends not just on the number of those affected but on the significance of the impact on them.
- Is it likely to affect people with any of the protected characteristics (see below) differently?
- Is it a major change significantly affecting how functions are delivered?
- Will it have a significant impact on how the organisation operates in terms of equality, discrimination or good relations?
- Does it relate to functions that are important to people with particular protected characteristics or to an area with known inequalities, discrimination or prejudice?

<table>
<tr><td colspan="9">Name of the policy or service development: Section 117Aftercare (MHA 1983) policy and procedures</td></tr>
<tr><td colspan="9">Is the policy or service development relevant to equality, discrimination or good relations for people with protected characteristics below?

Please select yes or no for each protected characteristic below</td></tr>
<tr><td>Age</td><td>Disability</td><td>Gender re-assignment</td><td>Pregnancy & Maternity</td><td>Race</td><td>Religion and Belief</td><td>Sex</td><td>Sexual Orientation</td><td>Marriage & Civil Partnership (Only if considering employment issues)</td></tr>
<tr><td>Yes</td><td>Yes</td><td>Yes</td><td>Yes</td><td>Yes</td><td>Yes</td><td>Yes</td><td>Yes</td><td>N/A</td></tr>
<tr><td colspan="9">If yes to any, please complete Part 2: Equality Impact Assessment
Relevant to all people subject to s117 aftercare services.
If not relevant to any please state why:</td></tr>
</table>

Date completed: 18/01/21
Name of person completing: Carla Fourie, Director of Social Care
Service / Department:
Please send an electronic copy of the completed EIA relevance checklist to:
macius.kurowski@slam.nhs.uk
Your Directorate/borough Equality Lead

PART 2: Equality Impact Assessment

1. Name of policy or service development being assessed?

Section 117 aftercare (Mental Health Act 1983) policy and procedures

2. Name of lead person responsible for the policy or service development?

Carla Fourie, Director of Social Care

3. Describe the policy or service development

What is its main aim?

To provide clear policy and procedure, with additional guidance for staff on the application of S117 aftercare, when people have
been detained on sections 3, 37, 45a, 47 and 48 of the MHA

What are its objectives and intended outcomes?

To provide a clear process for staff when assessing, reviewing and discharging from s117 aftercare services.

What are the main changes being made?

Updated policy to reflect the recommendations made by the Ombudsman.

What is the timetable for its development and implementation?

To be implemented with immediate effect when ratified.

4. What evidence have you considered to understand the impact of the policy or service development on people with different protected characteristics?

(Evidence can include demographic, ePJS or PEDIC data, clinical audits, national or local research or surveys, focus groups or consultation with service users, carers, staff or other relevant parties).

Section 117 aftercare services are a legal right for people who have been detained on sections 3, 37, 45a, 47 and 48 of the Mental Health Act 1983. This gives people a legal right to aftercare on discharge from hospital which is not subject to charging. This is a positive measure which is not

thought to affect people adversely according to protected characteristics. However, the fact that black African Caribbean men are more likely to be detained under the MHA may mean that they are more likely to be subject to s117. However, this means that they will have a right to aftercare services and not that they will be adversely affected by it.

5. Have you explained, consulted or involved people who might be affected by the policy or service development?

No.

(Please let us know who you have spoken to and what developments or action has come out of this

6. Does the evidence you have considered suggest that the policy or service development could have a potentially positive or negative impact on equality, discrimination or good relations for people with protected characteristics?

(Please select yes or no for each relevant protected characteristic below)

Age	**Positive impact:** Yes	**Negative impact:** No

Please summarise potential impacts:

Section 117 aftercare services are a legal right for people who have been detained on sections 3, 37, 45a, 47 and 48 of the Mental Health Act 1983. This gives people a legal right to aftercare on discharge from hospital which is not subject to charging. This is a positive measure which will have potential positive impacts for all service users and is not thought to affect people adversely according to protected characteristics.

Disability	**Positive impact:** Yes	**Negative impact:** No

Please summarise potential impacts:

Section 117 aftercare services are a legal right for people who have been detained on sections 3, 37, 45a, 47 and 48 of the Mental Health Act 1983. This gives people a legal right to aftercare on discharge from hospital which is not subject to charging. This is a positive measure which will has potential positive impacts for all service users and is not thought to affect people adversely according to protected characteristics.

Gender re-assignment	**Positive impact:** Yes	**Negative impact:** No

Please summarise potential impacts:

Section 117 aftercare services are a legal right for people who have been detained on sections 3, 37, 45a, 47 and 48 of the Mental Health Act 1983. This gives people a legal right to aftercare on discharge from hospital which is not subject to charging. This is a positive measure which will has potential positive impacts for all service users and is not thought to affect people adversely according to protected characteristics.

Race	**Positive impact:** Yes	**Negative impact:** No

Please summarise potential impacts:

Section 117 aftercare services are a legal right for people who have been detained on sections 3, 37, 45a, 47 and 48 of the Mental Health Act 1983. This gives people a legal right to aftercare on discharge from hospital which is not subject to charging. This is a positive measure which is not thought to affect people adversely according to protected characteristics. However, the fact that Black African Caribbean men are more likely to be detained under the MHA may mean that they are more likely to be subject to s117. This right to aftercare services has potential positive impacts for this group of service users and they should not be adversely affected by it.

Therefore, it is important for the Trust (and its partners providing wider Section 117) should monitor whether the policy is achieving the desired positive equality impacts in relation to ethnicity especially for Black African Caribbean males.

Pregnancy & Maternity	**Positive impact:** Yes	**Negative impact:** No

Please summarise potential impacts:

Section 117 aftercare services are a legal right for people who have been detained on sections 3, 37, 45a, 47 and 48 of the Mental Health Act 1983. This gives people a legal right to aftercare on discharge from hospital which is not subject to charging. This is a positive measure which will has potential positive impacts for all service users and is not thought to affect people adversely according to protected characteristics.

Religion and Belief	**Positive impact:** Yes	**Negative impact:** No

Please summarise potential impacts:

Section 117 aftercare services are a legal right for people who have been detained on sections 3, 37, 45a, 47 and 48 of the Mental Health Act 1983. This gives people a legal right to aftercare on discharge from hospital which is not subject to charging. This is a positive measure which will has potential positive impacts for all service users and is not thought to affect people adversely according

to protected characteristics.		
Sex	**Positive impact:** Yes	**Negative impact:** No
Please summarise potential impacts: Section 117 aftercare services are a legal right for people who have been detained on sections 3, 37, 45a, 47 and 48 of the Mental Health Act 1983. This gives people a legal right to aftercare on discharge from hospital which is not subject to charging. This is a positive measure which will has potential positive impacts for all service users and is not thought to affect people adversely according to protected characteristics.		
Sexual Orientation	**Positive impact:** Yes	**Negative impact:** No
Please summarise potential impacts: Section 117 aftercare services are a legal right for people who have been detained on sections 3, 37, 45a, 47 and 48 of the Mental Health Act 1983. This gives people a legal right to aftercare on discharge from hospital which is not subject to charging. This is a positive measure which will has potential positive impacts for all service users and is not thought to affect people adversely according to protected characteristics.		
Marriage & Civil Partnership *(Only if considering employment issues)*	**Positive impact:** N/A	**Negative impact:** N/A
Please summarise potential impacts: N/A – as policy only has implications for service delivery and not staffing.		
Other (e.g. Carers)	**Positive impact:** Yes or No	**Negative impact:** Yes or No
Please summarise potential impacts:		

7. Are there changes or practical measures that you can take to mitigate negative impacts or maximise positive impacts you have identified?
No negative impacts identified.

8. What process has been established to review the effects of the policy or service

development on equality, discrimination and good relations once it is implemented?
The policy will have a formal review date in 3 years but an audit will be undertaken in 12 months to review the implementation and assess if there have been any positive benefits to black African Caribbean service users.

Date completed: 14th January 2021
Name of person completing: Carla Fourie, Director of Social Care

Directorate/borough: Nursing Directorate

Service / Department:

Please send an electronic copy of the completed EIA relevance checklist to:

1. macius.kurowski@slam.nhs.uk
2. Your Directorate/borough Equality Lead

PART 3: Equality Impact Assessment Action plan

Potential impact	Proposed actions	Responsible/ lead person	Timescale	Progress
Positive benefits to black, African Caribbean service users.	Conduct an audit in November 2019	Director of Social Care	Nov 2019	Not started
Review actual equality impact of policy	Review EIA	Policy Lead	Jul 2021	

Date completed: 14th January 2021
Name of person completing: Carla Fourie, Director of Social Care

Directorate/borough:

Service / Department:

Please send an electronic copy of your completed action plan to:

1. macius.kurowski@slam.nhs.uk
2. Your Directorate/borough Equality Lead

Appendix 7 - HUMAN RIGHTS ACT IMPACT ASSESSMENT

To be completed and attached to any procedural document when submitted to an appropriate committee for consideration and approval. If any potential infringements of Human Rights are identified, i.e. by answering Yes to any of the sections below, note them in the Comments box and then refer the documents to SLaM Legal Services for further review.

For advice in completing the Assessment please contact Anthony Konzon, Claims and Litigation Manager [anthony.konzon@slam.nhs.uk]

HRA Act 1998 Impact Assessment	Yes/No	If Yes, add relevant comments
The Human Rights Act allows for the following relevant rights listed below. Does the policy/guidance NEGATIVELY affect any of these rights?	No	
Article 2 - Right to Life [Resuscitation /experimental treatments, care of at risk patients]	No	
• Article 3 - Freedom from torture, inhumane or degrading treatment or punishment [physical & mental wellbeing - potentially this could apply to some forms of treatment or patient management]	No	
• Article 5 – Right to Liberty and security of persons i.e. freedom from detention unless justified in law e.g. detained under the Mental Health Act [Safeguarding issues]	No	
• Article 6 – Right to a Fair Trial, public hearing before an independent and impartial tribunal within a reasonable time [complaints/grievances]	No	
• Article 8 – Respect for Private and Family Life, home and correspondence / all other communications [right to choose, right to bodily integrity i.e. consent to treatment, Restrictions on visitors, Disclosure issues]	No	
• Article 9 - Freedom of thought, conscience and religion [Religious and language issues]	No	
• Article 10 - Freedom of expression and to receive and impart information and ideas without interference. [withholding information]	No	
• Article 11 - Freedom of assembly and association	No	

HRA Act 1998 Impact Assessment	Yes/No	If Yes, add relevant comments
• Article 14 - Freedom from all discrimination	No	

Name of person completing the Initial HRA Assessment:	Carla Fourie Director of Social Care
Date:	21/01/21
Person in Legal Services completing the further HRA Assessment (if required):	
Date:	