Multi Agency Policy & Practice Guidance

After-care

Section 117

Mental Health Act 1983

(Amended 2007)

Serving Kent, serving you

Document Information

Owners:	
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v.8	Final	Aug 2203	CB	Nov 2023	Worcestershire final judgment (10.08.2023)
v.7	Final	Nov 2022	CB & KS	Nov 2023	Care Act 2014 new statutory definition
v.6	Final	Sept 2022	CB	Oct 2023	Health & Care Bill 2021 (CCGs replaced by ICBs on 01.07.2022) LGSCO decision 2019 for Lewisham reviewed KCC's policy platform changed from Knet to Tri-x
v5	Final	July 2022	CB	July 2023	LGSCO decision for Lewisham
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V.3.1	Draft	May 2022	Catriona Brodie	Nov 2022	Worcestershire interim judgment (22.12.2021) Children & Young People's process
V.3	Final	Nov 2020	Catriona Brodie	Nov 2022	Revised Who Pays Guidance for CCGs Changes to process for KCC register

Document Governance

Sign Off	Date	
KMPT		Mental Health Act Operational Group
KMPT		Mental Health Act Committee
KCC	27.09.2022	Adult Social Care & Health Directorate – Senior Management Team
KCC		Integrated Children's Services – Joint Div. MT
Kent & Medway ICB		

Contents

Glossary

AMHP	Approved Mental Health Professional
CHC	Continuing Health Care
CETR	Care Education Treatment Reviews
CNP	Complex Needs Panel
CoP	Mental Health Act 1983 Code of Practice
CSWS	Children's Social Work Services
CTO	Community Treatment Order
CTR	Care and Treatment Reviews
DoH	Department of Health
ICB	Integrated Care Board
IMHA	Independent Mental Health Advocate
KCC	Kent County Council
KMPT	Kent and Medway NHS and Social Care Partnership Trust
LSSA	Local Social Services Authority
MCA	Mental Capacity Act 2005
MHA	Mental Health Act 1983 (Amended 2007)
NELFT	North East London NHS Foundation Trust
NFA	No Fixed Abode
OPPD	Older People and Physical Disability
Reference Guide	Reference Guide to the MHA
S	Section
SAPT	Specialist Assessment and Placements Team

Part 1: Policy

1. Executive Summary – Purpose of the Policy

1.1. s117, Mental Health Act 1983 (Amended 2007) (MHA) imposes a **joint duty** on the Local Social Services (LSSA) and the Integrated Care Board (ICB) to plan and provide after-care services free of charge to those who have been detained under applicable sections of MHA (S.29.20, Reference Guide to the MHA (Reference Guide)).

1.2. **The ultimate aim of s117 MHA** is to maintain service users in the community, with as few restrictions as are necessary, wherever possible (S.33.3 MHA Code of Practice (CoP); S.29.1 Reference Guide).

1.3. This policy and practice guidance is in accordance with the Health Service Circular HSC 2000/03 and the Local Authority Circular LAC 2000(3) namely:

"Social services and health authorities should establish jointly agreed local policies on providing s117 after-care. Policies should set out clearly the criteria for deciding which services fall under s117 and which authorities should finance them. The s117 after-care plan should indicate which service is provided as part of the plan. After-care provision under s117 does not have to continue indefinitely".

1.4. This Policy has been reviewed to reflect:

1.4.1. The changes to:

- The Care Act 2014
- The MHA Code of Practice (2015)
- The Reference Guide to the MHA (2015)
- Who Pays? Determining responsibility for payments to providers (2020)
- The Local Government Ombudsman decision in relation to the London Borough of Lewisham, South London and Maudsley NHS Foundation Trust and NHS South East London CCG in 2019 following a complaint
- The s117 MHA Worcestershire judgement by the Court of Appeal (22.12.2021).
- The Health & Social Care Bill (01.04.2022)
- The Worcestershire Judgements (23rd December 2021 & 10.08.2023)

1.4.2. The additions of:

- South Kent Coastal CCG adopting the Camberwell Assessment of Need for the Elderly (CANE) tool
- Kent County Council (KCC) developing a new s117 MHA register

for adults and new processes related to this

- The application of the CANFOR tool for those individuals who are subject to s37/41 MHA and being placed in residential care.
- The application of the CANFOR tool for those individuals who are under the age of 65 years and who has mental health needs requiring 24-hour care and support, which are over and above those needs that can be met by commissioned services will be jointly funded by the LSSA and the CCG using either the CANDID or CANFOR tool.

1.4.3. **All actions and decisions** made in response to the duty to provide after-care under s117 MHA **must** be taken with due regard to **the guiding principles** of the MHA (s1 CoP)

Please note:

All five of the Guiding Principles are of ***equal*** *importance (s1.23 CoP)*

For more information please see:
Part 1: Policy, S.2 The guiding principles, page 12

1.5. This policy aims to ensure the following:

1.5.1. The **joint** after-care planning of all individuals admitted to hospital for the purpose of treatment for *"mental disorder"* [1] or mental disorders will be planned and delivered within a multi-agency context. Where relevant this will also include planning and delivering the provision of s117 MHA after-care services under the Care Act 2014 and the Children Act 2004.

Please note:

If the individual is under the Transition pathway this ***must*** *also be carried out in conjunction with her/his Care Treatment Reviews (CTR)*
and
If the individual is a child, this ***must*** *also be carried out in conjunction with her/his Care, (Education) Treatment Reviews (CETR)*

For more information please see:
The Children and Adults Care, (Education) and Treatment Review Kent and Medway Protocol on Knet

[1] *"mental disorder"* is defined by s1 MHA

1.5.2. That arrangements are in place to identify those individuals who are entitled to provision under s117 MHA and processes to maintain registers of them.

- A process has been developed to identify all new individuals (adults, children and young people) subject to s3 MHA and add them to KCC's register where KCC holds the responsibility for their s117 MHA.

- A process has been developed for all new adult individuals who come through the Secure Care pathway and add them to KCC's register where KCC holds the responsibility for their s117 MHA.

- Additional processes will be developed for all new individuals who come through the prison pathway, are admitted immediately to an out of area bed and come through KCC's 'front door' to be added to KCC's register where KCC holds the responsibility for their s117 MHA.

- Kent and Medway NHS and Social Care Partnership Trust (KMPT) will continue to adopt the processes it has for all those individuals who are currently under their services and eligible for s117 MHA.

- Additional processes will be developed for all partners to share their registers (where relevant) to ensure these are validated and up to date.

- Additional processes will be developed to end s117 MHA and remove the individual from the register.

- All additional processes will be developed and agreed by the s117 MHA workstream, which is part of the Mental Health Sustainability and Transformation Partnership - Independence Pathway.

Please note:

The registers held by KMPT, NELFT and the ICB will also include individuals that KCC is ***not*** *currently commissioning and/or providing any social care services to*

1.5.3. That provision is responsive to both the health and social care needs of individuals who are recognised as being entitled to provision under s117 MHA.

Please note:

All *those services provided under s117 MHA* ***must*** *be clearly recorded in* ***all*** *the individual's care plans.*

Where relevant this ***must*** *include*
their care and support plan
and
their Care Treatment Review (CTR) plan
or
their Care Education and treatment Review (CETR) plan
if they are a child or young person

KCC ***will also*** *retain the Corporate Parenting Responsibility if they are a Child in Care or a Care Leaver.*

Where this is the case the Child in Care review process and pathway planning will also be carried out

1.5.4. That those services provided under s117 MHA are clearly identified, done so **free of charge** to the individual and clearly recorded.

1.5.5. That the **LSSA** in which an individual is ***"ordinarily resident"*** immediately prior to being detained is determined in accordance with the Care and support statutory guidance (Department of Health & Social Care, 2018)

For more information please see:
Part 2: Practice guidance, S.11 Commissioning, page 37

1.5.6. That the **ICB** responsible for payment to providers is determined by *"Who Pays? Determining responsibility for payments to providers"* (NHS England, 2013).

Please note:

This has significantly changed over time

For more information please see:
Part 2: Practice guidance, S.11 Commissioning, page 35

1.5.7. Any dispute between two **organisations** about which is responsible for

the payment to providers **must** be resolved **after** the assessment.

Please note:

*The provision of services **must NEVER** be delayed because of any uncertainty regarding which LSSA or ICB is responsible*

1.5.8. All parties agree that once this dispute has been resolved any relevant contribution will be paid back as soon as possible.

1.5.9. That an individual's **preferred** accommodation of the same type is provided or arranged and that either the individual or a third party pay any additional cost.

For more information please see:
Part 2: Practice Guidance S.6 Accommodation, page 26
and ***S.8 Top ups, page 29***

1.5.10. That a **personal budget** if requested is provided under certain conditions.

For more information please see:
Part 2: Practice guidance
S.5 Funding by a social care personal budget, page 25

1.6. This policy and practice guidance **MUST** be read in conjunction with:

- Care and support statutory guidance (issued under the Care Act 2014)
- Children and Adults Care, (Education) and Treatment Review, Kent and Medway Protocol
- National Framework for Children & Young People's Continuing Care (2016)
- Continuing Health Care Framework (2018)
- KCC's Mental Capacity Act and Deprivation of Liberty Safeguards Policy and Practice Guidance
- KMPT's Mental Capacity Act Policy
- KMPT's Deprivation of Liberty Safeguards Policy
- The Mental Health Act 1983 in particular, s117 (After-Care)
- The MHA Code of Practice in particular, s33 (After-care)
- The Reference Guide to the MHA in particular, s29 (After-care)
- Who Pays? Determining responsibility for payments to providers" (NHS England, 2020).

2. The Guiding Principles of the MHA

2.1. People taking decisions and actions under the MHA **must:**

1.2. Purpose:
Minimise the undesirable effects of mental disorder by
maximizing the safety and wellbeing (mental and physical)
of individuals,
promoting their recovery
and protecting other people from harm

1.3. Least restrictive:
Keep to the minimum
the restrictions they impose on the individual's liberty,
having regard to the purpose for which the restrictions are imposed.

1.4. Respect:
Recognise and respect the diverse needs, values and circumstances
of each individual including,
race, religion, culture, gender, age, sexual disability and any disability.

Consider the individual's views, wishes and feelings
(whether expressed at the time or in advance),
so far as they are reasonably ascertainable,
and follow those wishes wherever practicable and consistent
with the purpose of the decision.

There **must** be no unlawful discrimination.

1.5. Participation:
Give the individual the opportunity to be involved
as far as practicable in the circumstances,
in planning, developing and reviewing their own treatment and care
to help ensure that it is delivered in such a way that is
as appropriate and effective for them as possible.

1.6. Effectiveness, efficiency and equity:
Seek to use the resources available to them and to the individual
in the most effective, efficient and equitable way to
meet the needs of the individual
and achieve the purpose for which the decision was taken

Please note:
These principles are statutory guidance, therefore, ***must***
be followed at all times.

Any deviation could give rise to legal challenge
and reasons for any departure ***must*** *be clearly documented*

3. Eligibility for s117 MHA

3.1. s117 MHA applies to those individuals who have been:

3.1.1. Detained in a psychiatric hospital under **s3 MHA** (admission for treatment).

3.1.2. Transferred from the Courts under **s37 MHA** (admission for treatment).

3.1.3. Transferred from the Courts under **s37 MHA** (admission for treatment) and then given restrictions such as, place of residence, supervision by psychiatrist and social supervisor under **s41 MHA.**

3.1.4. Transferred from prison or a remand centre (including those who are detained under the civil law or immigration legislation) to a psychiatric hospital under **s45A MHA** (removal to hospital prior to deciding to impose a sentence of imprisonment for the offence).

3.1.5. Transferred from prison or a remand centre (including those who are detained under the civil law or immigration legislation) to a psychiatric hospital under **s47 MHA** (removal to hospital of a person serving sentences of imprisonment).

3.1.6. Transferred from prison or a remand centre (including, those who are detained under the civil law or immigration legislation) to a psychiatric hospital under **s48 MHA** (removal to hospital of other prisoners who do not fall under s47 MHA).

3.1.7. Those individuals who have been detained under any of the above

AND

Who then **cease to be detained**

AND

Who then **leave hospital** (whether or not immediately after the detention has ended) (s117(1) MHA; S.29.5, Reference Guide).

3.2. In addition, s117 MHA applies to those individuals who:

3.2.1. Were previously detained under any of the Sections above and are then made subject to **Guardianship** (**s7 MHA**).

3.2.2. Were previously detained under s3 MHA or s37 MHA above

AND

Are then made subject to a **Community Treatment Order** (CTO) (**s17A MHA**). They remain liable for re-call to hospital.

3.2.3. Have been assessed as, requiring residential accommodation or to receive other non-residential community care services, as a condition of their **leave** (**s17 MHA**)

3.2.4. Are of **all ages** including, children and young people who meet the legal criteria (S.33.2 CoP)

3.3. Those individuals for who are **NOT** eligible for s117 MHA are detained in hospital under:

- **s2 MHA** (Assessment)
- **s4 MHA** (Assessment in the case of an emergency)
- **s5 MHA** (Holding power)
- **s38 MHA** (Interim hospital order via the courts)

3.4. Those individuals who have no recourse to public funds (NRPF) **are still eligible:**

Please note:

*"…After-care services **must** be provided free of charge and are **not** subject to any immigration exclusions, so, nationality and immigration status are **not** factors that affect whether a person can receive after-care under s117 MHA…"*

(Local Government Association, 2018:42)

Part 2: Practice guidance

1. Processes to add an individual to the s117 MHA registers.

1.1. Process to add an adult detained under s3 MHA to the KCC register

1.1.1. The Approved Mental Health Practitioner (AMHP) Service Administrator must:

- Identify the individual from KMPT's statement of position report from Rio

1.1.2. The Approved Mental Health Practitioner (AMHP) Service Administrator must:

- Add the individual's details from Rio to Mosaic.

1.2. Process to add a child or young person detained under s3 MHA to the KCC register

1.2.1. The AMHP Service Administrator must:

- Complete the data capture form for children and young people
- Send the form to the Front Door at Children's Social Work Services (CSWS)

> ***Please note:***
>
> *For a copy of the **s117 MHA register data capture for children and young people form** please see Tri-x*

1.2.2. The CSWS Front Door Service Administrator must:

- Add the details from the data capture form to Liberi

1.3. Process to add an adult detained under s3 MHA to KMPT's register

1.3.1. The MHA Administrator must:

- Amend the individual's statutory status on Rio to include s117 MHA
- Scan and upload a copy of the s3 MHA statutory forms to Rio

> ***Please note:***
>
> *This is particularly important where an individual is detained in a hospital outside of Kent*

2. Assessment and after-care planning

2.1. Although the duty to provide an individual with after-care begins at the point of discharge from hospital, it is essential that the planning of the individual's needs **start as soon as they are admitted** (S.33.10 CoP).

2.2. **The assessment** of an individual's needs and the planning of their after-care **must:**

- Be comprehensive

AND

- Be within a multi-disciplinary/multi-agency context

AND

- Be carried out at the same time and within the context of their health care planning meeting (where appropriate)

AND

- Be carried out within the agreed relevant timeframe or at least once a year

AND

- Include a needs assessment as defined by the Care Act 2014 or Children Act 1989

AND

- Be carried out within the CTR framework where appropriate

OR

- Be carried out within the CETR framework for children.

For more information please see:

KCC's Assessment policy
KCC's Care & support planning policy

The Children & Adult's Care (education) treatment review, Kent & Medway protocol

on Tri-x and i-connect

2.3. **Both** the health and social care professional **must:**

- Complete the assessment of the individual's needs jointly.

Please note:

*To ensure that the after-care plan reflects the **full range** of the individual's needs please see a list of **all those** who could be involved in this process (S.34.12 CoP).*

2.4. The individual **must:**

- Be at the centre of the assessment and be given every opportunity to participate fully in the process.

Please note:

*For a standard and easy read **information leaflet for adults or children and young people** please see: Tri-x*

2.5. The individual **must:**

- Be asked if they would like the support of an Independent Mental Health Advocate (IMHA) to help them fully participate if they have capacity.

2.6. The individual **must:**

- Be referred to the IMHA service if they **lack** the capacity to make this decision

*For more information and to make a referral please see: **SeAP Advocacy** at: http://www.seap.org.uk*

2.7. The individual's carer/ Nearest Relative **must**:

- Be consulted for their views, **subject to** the individual's consent (S.34.12 CoP).

Please note:

*The individual's carer **must also**, be asked if they would like an assessment of their needs*

*For further information please see: **KCC's Carer's policy** on Tri-x*

2.8. The practitioner **must:**

- Clearly record on the individual's care plans e.g. where appropriate their health care plan and/or care and support plan and/or CTR plan that:

  - They are subject to s117 MHA

  AND

  - Which interventions are being provided under this entitlement

  AND

  - Which interventions are **NOT** being provided under this

entitlement

- Upload the plan on to the appropriate information management system

2.9. The practitioner **must:**

- Clearly record on **a child's or young person's** care plans e.g. where appropriate their health care plan and/or CETR plan**:**

  - They are subject to s117 MHA

  AND

  - Which interventions are being provided under this entitlement

  AND

  - Which interventions are **NOT** being provided under this entitlement

- Upload the plan on to the appropriate information management system

3. Advocacy

3.1. An **IMHA** provides an additional safeguard to an individual who is subject to the MHA (S.6.3 CoP).

Please note:

To ensure IMHAs are as independent as possible they are commissioned by the LSSA (S.6.6 CoP)

For more information and to make a referral please see: ***SeAP Advocacy*** *at: http://www.seap.org.uk*

3.2. The individual **must:**

- Be given information about IMHA services both orally and in writing.

Please note:

For a standard and easy read ***information leaflet*** *please see Tri-x*

3.3. The individual **must:**

- Be given (wherever practicable) the opportunity to decide for themselves whether they wish to request the help of an IMHA (S.6.24 CoP).

3.4. Those individuals (irrespective of their age) who qualify for the help of an IMHA are:

- Detained under the MHA

Or

- Liable to be detained under the MHA including, those who are currently on leave (s17 MHA).

Or

- Conditionally discharged

Or

- Subject to Guardianship (s7 MHA)

Or

- Subject to a CTO (s17A MHA)

3.5. The help IMHAs provide to individuals includes:

- Information about their rights
- Help in understanding their rights
- Help in exercising their rights including, speaking on their behalf
- Information about their treatment
- A range of ways to ensure they can participate in decision-making
- Help in accessing legal advice (S.6.12-6.24 CoP).

3.6. Those who can request the help of an IMHA on behalf of the individual are:

- The Responsible Clinician
- An AMHP
- The Hospital Managers
- The individual's Nearest Relative

Please note:

The individual can refuse to be interviewed by an IMHA,
*does **not** have to accept their help*
or can end this help at any time (S.6.25 CoP)

3.7. The hospital managers **must:**

- Refer an individual who **lacks the capacity** to make the decision to obtain help from an IMHA (S.6.16 CoP).

3.8. **An Independent Mental Capacity Advocate** (IMCA) provides an additional safeguard to an individual

Please note:

To ensure IMCAs are as independent as possible
they are commissioned by the LSSA

For more information and to make a referral please see:
***SeAP Advocacy** at: http://www.seap.org.uk*

3.9. Those individuals who qualify for the help of an IMCA:

- Lack capacity to make a specific decision at the time it needs to be made

AND

- Is facing a decision about a long-term move or about serious medical treatment

AND

- Has nobody else who is willing and able to represent them or be consulted in the process of working out their best interests (S.10.1 MCA CoP).

3.9. The help IMCAs provide to individuals includes:

- Support for the individual
- Represent the individual in discussions
- Provide information to help work out the individual's best interests
- Raise questions or challenge decisions, which appear not to be in the individual's best interest (S.10.4 MCA CoP).

3.10. KCC and NHS organisations **must:**

- Refer an individual to an IMCA when they:
  - Lacks capacity to make a specific decision at the time it needs to be made

AND

  - Is aged 16 years or over

AND

  - Is facing a decision about a long-term move or about serious medical treatment

AND

  - Has nobody else who is willing and able to represent them or be consulted in the process of working out their best interests

AND

  - When the individual is moving into accommodation[2] for **8 weeks**

[2] *"Accommodation"* may mean a care home, a nursing home, ordinary and sheltered housing, housing association or other registered social housing, private sector housing provided by the LSSA or hostel accommodation (s10.11 MCA CoP).

or longer or about to change accommodation (s10.11 & s10.12 MCA CoP).

Please note:

*It is the Responsible Body who **must** make the referral*

For more information please see:
***KCC's MCA & DoLS Policy and Practice Guidance** on Tri-x*

*or **KMPT's MCA Policy** on i-connect*

4. After-care services

4.1. *"After-care services"* have been defined as those services, which have both of the following purposes:

***(a)** meeting a need **arising from or related to** the individual's mental disorder*
AND
***(b) reducing the risk** of a deterioration of the individual's mental condition (and accordingly, reduce the risk of the individual requiring admission to hospital **again** for treatment for mental disorder)"* (s117(6), MHA)[3].

4.2. Most individuals who are eligible for S117 MHA **can:**

- Have their mental health needs met via **NHS universal** care services, which have already been commissioned by the ICB.

4.3. NHS universal care services **can** include:

- Community Mental Health Services provided by KMPT.
- Mental Health Services for Children and Young People provided by North East London NHS Foundation Trust (NELFT)
- Psychological Services
- Rehabilitation Services

Please note:

*This list is **not** exhaustive*

4.4. The MHA does **not** prescribe the formulation of:

[3] This definition was inserted into s117 MHA by the Care Act 2014

- Assessing the individual's needs

AND

- How these will be funded for the purposes of s117 MHA

4.5. The ICB and KCC **must:**

- Interpret the definition of after-care services **broadly** (s33.4 CoP).

4.6. After-care services **must:**

- Meet the individual's immediate health and/or social care needs

4.7. After-care services **should:**

- Aim to support the individual in:

  - Regaining or enhancing their skills

  OR

  - Learning new skills

  in order to cope with life outside of hospital (s33.5 CoP).

4.8. After-care services **can also** include:

- meeting the individual's:

  - wider social needs

  OR

  - cultural needs

  OR

  - spiritual needs

  (s33.4 CoP; s29.3 Reference Guide)

Please note:

*Any services provided are still **conditional** on an assessment of the individual's needs and them meeting the statutory criteria of s117 MHA*

4.9. After-care services **can** include:

- An outpatient appointment with a Consultant Psychiatrist

And/or

- Support from a social care worker

And/or

- Provision of appropriate education

And/or

- Assistance with employment

And/or

- Supported accommodation

> ***Please note:***
>
> *This list is **not** exhaustive*
>
> *When an individual is placed in supported accommodation s117 After-care services does **not** include the rent or utilities*

4.10. After-care services **can** include:

- The provision of appropriate education for children or for adults with an Education, Health, and Care Plan, up to age 25.

4.11. An individual is under **no obligation** to:

- Accept the after-care services they are offered.

> ***Please note:***
>
> *The individual's decision to decline these services **must*** be a fully informed one

4.12. An individual's unwillingness to accept services does **not** mean:

- They **no longer** need these services

AND

- They are therefore **automatically** discharged from s117 MHA

> ***Please note:***
>
> *Complaint against York CC (LGO, 2016)*
>
> *The individual **has the right** to change their mind at any time (S.33.24 CoP)*

5. Funding by a social care direct payment

5.1. KCC **may:**

- Make a personal budget to pay for an individual's after-care services (s75(7) the Care Act 2014)

5.2. KCC **can:**

- Make a personal budget when:

  - The individual has capacity

AND

  - The individual requests it

AND

  - On the condition that is it **only** used to pay for the arrangements of these after-care services under s117 MHA.

> ***Please note:***
>
> *A direct payment will **not** be made if the individual has previously been in debt*
>
> *For more information, please see **KCC's Direct payment policy** on Tri-x*

5.3. KCC **may:**

- Make a direct payment to an **authorised person** if:

  - The individual lacks capacity

AND

  - KCC is satisfied the authorised person will act in the individual's best interests

AND

  - KCC considers making the direct payment is an appropriate way to discharge its duty under s117 MHA

5.4. KCC **will:**

- Visit the individual (following an assessment) in order to clarify what their role and responsibilities are for arranging and paying for their own support

> ***Please note:***
>
> *Even at this point the individual **may** choose to opt out*

6. Accommodation

6.1. **Ordinary** accommodation does **not:**

- Come within the scope of s117 MHA after-care but rather is a basic human need that applies to **all** individuals e.g. a private tenancy.

Please note:

(R (Afework) v LB Camden (2013))

6.2. Types of accommodation, which can be provided as part of s117 MHA are:

- A residential care home
- A residential education placement for children and young adults
- A nursing home
- A shared lives scheme
- Supported living accommodation
- An extra care setting

Please note:

*Rent, utility bills and service charges where they apply **will remain** the responsibility of the individual although they may be eligible for housing benefit and universal credit and, if so, should be encouraged and where necessary supported to make a claim*

6.3. Practitioners **must:**

- Determine the type of accommodation that an individual needs as part of:
  - The care and support planning process

Or

  - The CTR planning process (where relevant).

Or

  - The CETR planning process for a child (where relevant).

AND

  - Within the context of their health care planning meeting (where relevant).

Please note:

*An individual's need for a certain type of accommodation can change over time and therefore, **must** be reviewed regularly*

6.4. An adult **has the right:**

- To express **a preference** for a particular type of accommodation and this can include the whole of Kent

6.5. An adult's preference **must:**

- Be suitable to meet their needs arising from or related to their

mental disorder and to reduce the risk of deterioration of their mental condition and thereby reduce the risk of further hospital admission for treatment for mental disorder

AND

- Be the specific type defined in their care and support plan

For more information please see:

The Care & Support & After-care (Choice of Accommodation) Regulations 2014

6.6. The **choice** of accommodation **only applies:**

- Between providers of the same type, as specified in the individuals' care and support plan.

6.7. If an adult's preferred accommodation is **not** immediately available:

- Interim arrangements **can** be made **without** the individuals' agreement.

Please note:

*These **must** be an adequate alternative, detail how long they will be for and **not exceed 12 weeks***

6.8. The adult **must:**

- Be re-assessed in exceptional circumstances where an extension is required beyond the 12-week period.

6.9. The practitioner **must establish:**

- The interim and preferred option is still able to meet the adult's needs

AND

- This still remains the adult's choice.

Please note:

*All requests for an extension **must** be referred back to the appropriate authorisation panel*

7. Charging

7.1. The individual is **not:**

- Liable for a financial assessment or charging for any services they receive from KCC or the ICB as part of s117 MHA.

> ***Please note:***
>
> *This includes any medication for the relevant mental disorder as NHS (Charges for Drugs and Appliances) Regulations 2015 do **not** apply*

7.2. The individual **may:**

- Also have needs that fall **outside** the scope of s117 MHA for example:

- A need that is associated with their physical health such as, a stroke

AND/OR

- A need that is unrelated to their mental disorder for which they are eligible for s117 MHA

> ***Please note:***
>
> *Determining whether a need is **"related to"** the individual's mental disorder will not always be easy.*
>
> *There **must** be a clear connection (not necessarily a casual connection) between the individual's need and her/his mental disorder*
>
> *If an individual's need for residential care arises from her/his physical disability which requires full-time support the fact that they continue to suffer from the symptoms of a mental disorder **does not** bring the residential care within the scope of s117 MHA*
>
> *(Report by HSO & LGO, 2012)*

7.3. An adult **must:**

- Be subject to KCC charging policies

AND/OR

- Be assessed as eligible for NHS Continuing Health Care for any needs that fall outside of the scope of s117 MHA.

7.4. The Practitioner must:

- Notify KCC's finance department of the adult's legal status to ensure that

no charges are made for those services provided or commissioned by KCC under s117 MHA.

8. Top ups

8.1. A top up **can** be made:

- To fund an individual in their preferred accommodation that provides a higher level of service or accommodation.

8.2. A top up **can** be made by **either:**

- The individual receiving the s117 MHA after-care service

OR

- A third party such as, a family member

8.3. A top up can be made **if:**

- The individual has been **assessed as needing** accommodation under the *"Care and Support Statutory Guidance"* (issued under the Care Act, 2014)

AND

- A suitable placement at the usual level of funding **is** available.

AND

- KCC **commits** itself to providing a level of funding that will adequately meet the assessed needs of the individual for accommodation

AND

- There is a written agreement with KCC that **the payer** is both **willing and able** to pay the additional cost.

Please note:

*This does **not** apply to individuals solely funded by the NHS*

9. Reviewing and discharge from s117 MHA

9.1. The duty to provide after-care services **exists until:**

- **Both** the ICB and KCC are **jointly** satisfied that the individual **no longer** requires them (s117(2) MHA).

Please note:

*This means services are **no longer** required to:*

***a)** meet a need*
arising from/related to the individual's mental disorder
and
***b)** reduce the risk of deterioration of her/his mental condition*
(and accordingly,
reduce the risk of her/him requiring admission to hospital again
for treatment of that mental disorder)

(s117(6) MHA)

9.2. The ICB and KCC **must jointly:**

- Ensure the individual **still** requires the need for s117 MHA after-care services at **every** review of the individual's care.

Please note:

The nature of the individual's mental condition
might have changed since her/his discharge from hospital
(Jones, 2017:522)

9.3. The individual **must:**

- Be **fully involved** in every review of their care and the decision to discharge her/him from s117 MHA (S.33.20 CoP).

Please note:

*The individual **has the right***
to have support at this meeting from an IMHA
and
***the right** to challenge the decision to discharge her/him*

9.4. The ICB and KCC **must:**

- Make their decision to either continue to provide services to the individual or discharge her/him from s117 MHA by consulting **all** those involved in their care (Local Authority Circular, 2000).

9.5. The ICB and KCC **must:**

- Include the individual's carer and/or Nearest Relative at the review meeting (subject to the individual's consent).

9.6. The ICB and KCC **can only:**

- Decide an individual **no longer** qualifies for services under s117 MHA **if** they have continued to monitor their progress in the community since their discharge from hospital (Jones, 2017:514).

9.7. The individual **can:**

- Express a wish to be **discharged** from s117 MHA but this has **no legal effect if** they continue to have a need for after-care services.

Please note:

In these circumstances, please escalate to management
and
*where necessary **must** include consultation with*
the KCC Policy, Practice and Quality Assurance team

9.8. The individual **must not:**

- Be discharged **solely** on the grounds that:

- They have been discharged from specialist mental health services (i.e. KMPT/NELFT).
  OR
- An arbitrary period of time has passed since the care was first provided
  OR
- They have now been made subject to a Deprivation of Liberty Safeguard (DoLS) under the MCA
  OR
- They have now been re-admitted to hospital either informally or under s2 MHA
  OR
- They are no longer subject to a CTO
  OR
- They are currently subject to s17 MHA leave

Please note:

*An individual who is subject to a CTO **must***
be provided with after-care services for the entire period of the CTO
and
may still require them even after
they have been discharged from their CTO (S.33.6 CoP)

9.9. The individual **may:**

- Still continue to need the provision of after-care services **even when** they have been successful.

Please note:

*This means that an individual can be well-settled in the community but **still requires** after-care services in order to prevent a relapse or further deterioration in their condition*

(S.33.23 CoP)

9.10. The ICB **will:**

- Delegate their responsibility to discharge an individual from s117 MHA to the Responsible Clinician within KMPT/NELFT if they are under their care.

9.11. The individual **must:**

- Remain eligible for s117 MHA **if** one responsible authority discharges **without** the agreement of the other.

9.12. The two responsible authorities **must:**

- Initially attempt to resolve any dispute between them at an operational level

AND

- Escalate further if agreement still cannot be reached

Please note:

*This can and where necessary **must** include consultation with the KCC Policy, Practice and Quality Assurance team*

For more information please see:
Part 2: Practice guidance S.32 Escalation, page 43

9.13. The practitioners **must:**

- Clearly record on the adult's care plans e.g. where relevant on their health care plan and/or care and support plan and/or CTR plan that:
  - They are discharged from s117 MHA

  AND
  - The reasons for this
- Upload the plan on to the appropriate information management system

9.14. The practitioner **must:**

- Clearly record on **a child's** care plans e.g. where relevant health care plan and/or their CETR plan that**:**

- They are discharged from s117 MHA

AND

- The reasons for this

- Upload the plan on to the appropriate information management system

9.15. The individual **may:**

- Be provided with after-care services again **even after** they was discharged from s117 MHA **if:**

  - It becomes obvious that they were withdrawn prematurely

> ***Please note:***
>
> *This **could be** when the individual's mental health begins to deteriorate immediately after services are withdrawn (S.33.22 CoP)*

10. Processes to remove an individual from the s117 MHA registers.

10.1. Process to remove an **adult** from the **KCC** register

10.1.1. The Practitioner **must:**

- Complete the discharge from s117 MHA form for adults
- Send this form to the AMHP Administrator as soon as practicable at: mhsection117@kent.gov.uk

> ***Please note:***
>
> *For a copy of the **s117 MHA register data capture for adults form** please see Tri-x*

10.1.2. The AMHP Administrator **must:**

- Update Mosaic as soon as practicable.

10.2. Process to remove a **child or young person** from the **KCC** register

10.2.1. The Practitioner **must:**

- Update Liberi

10.3. Process to remove an **adult** from **KMPT's** register

10.3.1. The Practitioner **must:**

- Inform the MHA Administrator

10.3.2. The MHA Administrator **must:**

- Amend the individual's statutory status on Rio

11. Commissioning

11.1. The ICB and KCC **have a duty:**

- To provide and/or commission (arrange for the provision of) after-care services (s117(2) MHA).

11.2. The term **residence** in s117 MHA was amended to **ordinarily resident** (s117(3)(a) MHA.

11.3. The ICB responsible:

- For payment to providers is set out in *"Who Pays?"* (NHS England, 2020), which has significantly changed over time:

11.3.1. From 1st April 2016:

- The rule was the ICB where the individual was **resident** immediately prior to their detention under MHA.

For more information please see:

R (Hall) v MHRT (1999)

https://www.local.gov.uk/ordinary-residence-guide-determining-local-authority-responsibilities-under-care-act-and-mental

11.3.2. The Who Pays guidance (2020) was recently changed so the new rules are:

- Where an individual is registered with a GP practice, the responsible ICB will be the one where the GP practice is a member
- Where an individual is not registered with a GP, the responsible ICB will be where the individual is "usually resident".

11.3.3. For those individuals who are eligible for s117 MHA these rules will

be:

- Applied at the point of the individual's **initial detention** in hospital (whether for assessment or treatment). This ICB will be known as the **"originating ICB"**

11.3.4. The originating ICB will:

- Retain responsibility for payment throughout the initial detention, for the whole period for which any s117 MHA after-care is provided and for any subsequent repeat detentions or voluntary admissions from after-care until such time that the individual is finally discharged from s117 MHA

Please note:

This is regardless of where the individual is treated or placed, where they live or which GP practice they are registered with

for more information please see:

https://www.england.nhs.uk/publication/who-pays-determining-responsibility-for-nhs-payments-to-providers/

11.3.5. The two ICBs **must:**

- Initially attempt to resolve any dispute between them at an operational level

AND

- Escalate further if agreement still cannot be reached.

Please note:

The safety and well-being of the individual is paramount.

*Services **must not be** refused or delayed due to any uncertainty or ambiguity as to who the responsible authority is*

For more information please see:
Part 2: Practice Guidance S.13 Escalation, page 43

11.4. The LSSA responsible:

- For payment to providers is set out in s39 Care Act 2014

11.4.1. The rule is:

- The LSSA where the individual was **resident immediately prior** to their detention under MHA is responsible.

Please note:

*This remains the case **even if** the individual will **not** be returning to that area following her/his discharge from hospital*

11.4.2. This means that when the individual who is:

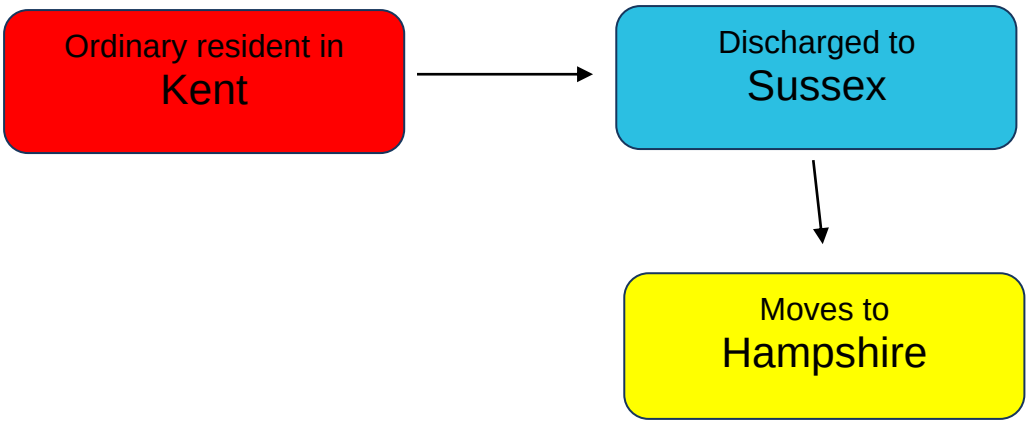
- Ordinary resident in LSSA **(A)**'s area

AND

- Is discharged to LSSA **(B)**'s area

AND

- Moves again, to LSSA **(C)**'s area



Then LSSA **(A)** will remain the responsible authority.

11.4.3. The rule to establish is the "Shah test":

- When the individual has mental capacity and has adopted a place voluntarily and for settled purposes whether for short or long term i.e.:

a) where they are physically to eat and sleep
b) "voluntary" means it is their choice (so not a prisoner)
c) "for settled purposes long or short" can include a university student or for work

For more information please see:

(Shah v London Borough of Barnett (1983))

11.4.4. The rule is the "Vale test":

- When the individual **lacks the mental capacity** to decide where to live the following applies:

a) where they are physically to eat and sleep
b) "for settled purposes long or short" can include a university student or for work

For more information please see:

(R v Waltham Forest London Borough Council, ex Parte Vale (1985))

11.4.5. If the individual was not ordinary resident anywhere immediately before they were detained

- Then responsibility for their s117 after-care will fall to the LSSA in whose area they are resident or to whose area they are sent on discharge.

11.4.6. The exception to this rule is when the individual who is:

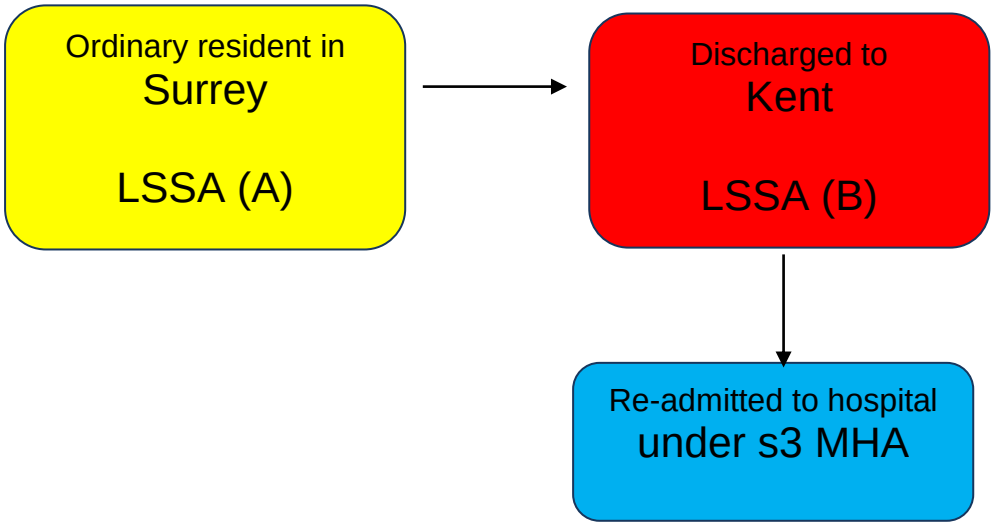
- Ordinary resident in LSSA **(A)**'s area

AND

- Is discharged to LSSA **(B)**'s area

AND

- Is **re-admitted to hospital under the MHA** (which makes her/him eligible for S.117, MHA again)



Then LSSA **(B)** will become the responsible authority.

So, basically every time someone is re-detained under s3 MHA it ends the previous responsibility for s117 After-care services.

11.4.7. Identifying t**he LSSA responsible:**

- For payment can be a complex matter and **must** be considered on a case by case basis.

11.4.8. The two LSSAs **must:**

- Attempt to resolve any dispute between them initially at an operational level
- Escalate further if agreement still cannot be reached

Please note:

The safety and well-being of the individual is paramount.

*Services **must not be** refused or delayed due to any uncertainty ambiguity as to who the responsible authority is*

*This can and where necessary **must** include consultation with the KCC Policy, Practice and Quality Assurance team*

For more information please see:
Part 2: Practice Guidance S.13 Escalation, page 43

12. Dividing the funding between the responsible bodies

12.1. The MHA **does not** define **how** the responsible authorities will determine the apportionment of funding for services provided under s117 MHA.

12.2. The responsible authorities **must:**

- Be identified (where possible) **prior to** an assessment of the individual's needs in order that they can be involved in the process.

Please note:

*If an individual is placed out of Kent and the responsible ICB is **not** Kent then the s117 MHA policy for that area **must** be followed as some areas apply a 50:50 funding split*

12.3. An individual **might:**

- Have or develop physical health needs, which are distinct from their s117 MHA needs.

12.4. The responsible authorities **must**:

- Be clear whether the individual's needs (or in some cases, which elements of the individual's needs) are to be funded under s117 MHA or Continuing Health Care (CHC) or any other powers.

Please note:

Only *those needs that are* ***not eligible*** *for s117 MHA should be considered for CHC*

(Framework for CHC & NHS funded Nursing Care, 2018:83)

12.5. An individual **can:**

- Present with complex needs and therefore, in some cases it may **not** be clear whether they arise from a health or a social care issue.

12.6. KCC and the Kent ICB **have agreed** that where**:**

12.6.1 An individual **who is over 65 years of age** and who is placed in a residential care home will usually **only** be funded by the **LSSA**.

12.6.2 An individual who is placed in a residential care home and who is also subject to s37/41 MHA will be jointly funded by the LSSA and the ICB using the CANFOR tool

12.6.3 An individual who is under the age of 65 years and who has mental health needs requiring 24-hour care and support, which are over and above those needs that can be met by commissioned services will be jointly funded by the LSSA and the ICB using either the CANDID or CANFOR tool

For more information, please see
Part 2: Practice Guidance S.12.7.2 *(below)*

12.7. KCC and the Kent ICB **have agreed:**

12.7.1. **Both** a health and social care professional **must:**

- **Jointly** carry out a **comprehensive assessment** of the individual's needs.

12.7.2. **Both** a health and social care professional **must:**

- **Jointly** complete the appropriate Camberwell Assessment of Need tool whenever this additional element is required.

Please note:

For individuals with a learning disability this will be the ***CANDID***

For individuals with mental health and with/without forensic needs, this will be the ***CANFOR***

For adults of any age who have an organic impairment, this will be the ***CANE***

For a copy of each tool template, aide memoir and matrix please see Tri-x

12.7.3. The KCC practitioner **must:**

- Complete the Camberwell Assessment of Need tool **jointly** with a Mental Health/Learning Disability practitioner from the Specialist Assessment and Placements Team when the individual is the responsibility of **North or West Kent.**

For more information, please contact ***the Specialist Assessment and Placements Team*** *at:* nkccg.placements@nhs.net

12.7.4. The KCC practitioner **must:**

- Complete the appropriate funding matrix following the application of the relevant Camberwell Assessment of Need tool.

12.7.5. The KCC practitioner and Service Manager **must:**
Follow the **Guidance for the authorization of funding**

For more information, please contact ***Tri-x***

12.7.6. The KCC practitioner **must:**

- Liaise with the Special Education Needs department for a child or young person requiring an education placement to identify a suitable placement.

12.7.7. The KCC practitioner **must:**

- Complete an application to NHS South Central and West Commissioning support unit for both East & West Kent

Please note:

For a copy of ***the application form*** *please see Tri-x*

For more information, please contact
NHS South Central and West Commissioning support unit at:
scwcsu.117@nhs.net

12.7.8. The two responsible authorities **must:**

- Attempt to resolve any dispute between them initially at an operational level

AND

- Escalate further if agreement still cannot be reached.

Please note:

The safety and well-being of the individual is paramount.

Services ***must not be*** *refused or delayed due to any uncertainty ambiguity as to who the responsible authority is*

This can and where necessary ***must*** *include consultation with the KCC Policy, Practice and Quality Assurance team*

For more information please see:
Part 2: Practice Guidance S.13 Escalation *(below)*

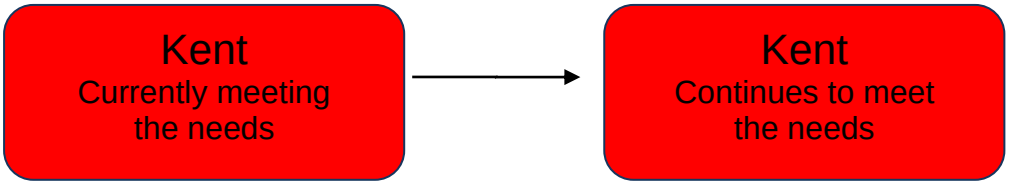
13. Escalation – When there is disagreement between the responsible authorities.

13.1. The responsible authorities **must not:**

- Allow the existence of any dispute to prevent, delay, interrupt or otherwise adversely affect the meeting of the individual's needs or their carer's needs to whom the dispute relates.

13.1.1. **This means** that when an individual's needs are:

- Currently being met by a responsible authority in **Kent**



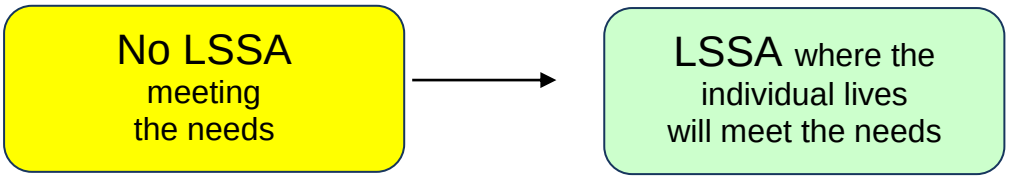
- Then **Kent must** continue to meet the individual's needs until the dispute has been resolved.

13.1.2. **This means** that:

- When an individual's needs are **not yet** being met

AND

- A LSSA has yet to be identified as the responsible authority



13.2. The two LSSAs **must:**

- Initially attempt to resolve any dispute about where an individual is **ordinarily resident** between them at an operational level

AND

- Escalate further if agreement still cannot be reached

Please note:

The safety and well-being of the individual is paramount.

*Services **must not be** refused or delayed due to any uncertainty ambiguity as to who the responsible authority is*

*This can and where necessary **must** include consultation with the KCC Policy, Practice and Quality Assurance team*

13.3. The two ICBs **must:**

- Initially attempt to resolve any dispute about where an individual is **ordinarily resident** between them at an operational level

AND

- Escalate further if agreement still cannot be reached

Please note:

In some cases, legal advice might need to be sought

13.4. KCC and the ICB **must:**

- Initially attempt to resolve any dispute about **how much** should be paid by each responsible authority between them at an operational level

AND

- Escalate further if agreement still cannot be reached

Please note:

The safety and well-being of the individual is paramount.

*Services **must not be** refused or delayed due to any uncertainty or ambiguity as to who the responsible authority is*

*This can and where necessary **must** include consultation with the KCC Policy, Practice and Quality Assurance team*

13.5. The KCC Service Manager **must:**

- Escalate to their relevant Assistant Director

And

- If still unable to resolve, then they must escalate to:
  - Their relevant Director within Adult Social Care & Health

Or

  - Their relevant Director within CSWS

13.6. The NHS South Central and West Commissioning support unit **must:**

- Escalate to NHS Kent and Medway Adult Mental Health Commissioning Team

- If unable to resolve, then escalate to the Chief Nurse (ICB)