

## PWYLLGOR MONITRO'R DDEDDF IECHYD MEDDWL MENTAL HEALTH LEGISLATION ASSURANCE COMMITTEE

<b>DYDDIAD Y CYFARFOD: DATE OF MEETING:</b>	19 September 2022
<b>EITEM AR YR AGENDA: TITLE OF REPORT:</b>	Section 117 procedure
<b>ARWEINYDD CYFARWYDDWR: EXECUTIVE LEAD:</b>	Mr Andrew Carruthers, Director of Operations
<b>SWYDDOG ADRODD: REPORTING OFFICER:</b>	Sarah Roberts, Mental Health Legislation Manager

**Pwrpas yr Adroddiad (dewiswch fel yn addas)  
Purpose of the Report (select as appropriate)**

Ar Gyfer Penderfyniad/For Decision

### ADRODDIAD SCAA SBAR REPORT

#### Sefyllfa / Situation

The Section 117 procedure has been updated as part of its three yearly review. Following the Committee's approval it will be presented to the Clinical Written Control Documents Group.

Sec 117 requires Health Boards and Local Authorities to provide or arrange for the provision of after-care to patients detained in hospital for treatment under relevant sections of the MHA. The duty to provide after-care services continues for as long as the patient is in need of services.

The procedure has been updated to guide staff on the use of Sec 117 and its implication in accordance with the Mental Health Act 1983 and Code of Practice for Wales 2016.

#### Cefndir / Background

In March 2022 a two month extension was sought from the Committee in relation to the extension to the review date of the Sec 117 policy. The three Local Authorities and Health Board could not agree to the wording in relation to funding arrangements which the 3 LAs requested to be included within the document. As no solution could be found a decision was taken by the Chair of the Written Control Documents Group to amend the Policy to a Procedure for Health Board staff to ensure there is up to date guidance for staff to follow.

#### Assesiad / Assessment

This procedure applies to the agreed working arrangements of Hywel Dda UHB

with a duty to assess, plan and deliver aftercare services under S117 of the MHA and to all persons entitled to receive it under qualifying sections of the MHA. Multi-Disciplinary Team staff have a duty under the MHA and Mental Health Measure to identify aftercare services following discharge from hospital and aftercare plans must be formulated.

**Argymhelliad / Recommendation**

For Mental Health Legislation Committee to approve the Section 117 procedure.

<b>Amcanion: (rhaid cwblhau) Objectives: (must be completed)</b>	
Cyfeirnod Cofrestr Risg Risk Register Reference:	Not applicable
Safon(au) Gofal ac Iechyd: Health and Care Standard(s): <a href="#">Hyperlink to NHS Wales Health &amp; Care Standards</a>	Governance, Leadership and Accountability
Amcanion Strategol y BIP: UHB Strategic Objectives: <a href="#">Hyperlink to HDdUHB Strategic Objectives</a>	All Strategic Objectives are applicable
Amcanion Llesiant BIP: UHB Well-being Objectives: <a href="#">Hyperlink to HDdUHB Well-being Statement</a>	<ol style="list-style-type: none"> <li>1. Improve population health through prevention and early intervention</li> <li>2. Support people to live active, happy and healthy lives</li> <li>3. Improve efficiency and quality of services through collaboration with people, communities and partners</li> </ol>
Deddf Llesiant Cenedlaethau'r Dyfodol (Cymru) 2015 - Pum dull o weithio:  The Well-being of Future Generations (Wales) Act 2015 - 5 Ways of Working:  <a href="#">Hyperlink to Well-being and Future Generations Act 2015 - The Essentials Guide</a>	Please explain how each of the '5 Ways of Working' will be demonstrated
	Long term – can you evidence that the long term needs of the population and organisation have been considered in this work?
	Prevention – can you evidence that this work will prevent issues or challenges within, for example, service delivery, finance, workforce, and/or population health?
	Integration – can you evidence that this work supports the objectives and goals of either internal or external partners?
	Collaboration – The Mental Health Legislation Committee comprises external agencies, carer representatives and local authorities

Involvement – can you evidence involvement of people with an interest in the service change/development and that this reflects the diversity of our population?

**Gwybodaeth Ychwanegol:  
Further Information:**

Ar sail tystiolaeth: Evidence Base:	Agendas, papers and minutes of the Mental Health Legislation Committee, Power of Discharge sub committee and scrutiny group
Rhestr Termau: Glossary of Terms:	Included within the body of the report.
Partion / Pwyllgorau â ymgynhorwyd ymlaen llaw y Cyfarfod Bwrdd Iechyd Prifysgol: Parties / Committees consulted prior to University Health Board:	The Mental Health Legislation Scrutiny Group

**Effaith: (rhaid cwblhau)  
Impact: (must be completed)**

<b>Ariannol / Gwerth am Arian: Financial / Service:</b>	Not Applicable
<b>Ansawdd / Gofal Claf: Quality / Patient Care:</b>	SBAR template in use for all relevant papers and reports.
<b>Gweithlu: Workforce:</b>	Not Applicable
<b>Risg: Risk:</b>	Risk of non-compliance with the 1983 Act and with the Welsh Government's <i>Mental Health Act 1983 Code of Practice for Wales</i> ; the <i>Mental Health (Wales) Measure 2010 Code of Practice</i> ; and with the <i>Good Governance Practice Guide – Effective Board Committees (Supplementary Guidance) Guidance</i> .  Safety of patients  Assurance – use of statutory mechanisms
<b>Cyfreithiol: Legal:</b>	Non-compliance with the Mental Health Act could result in legal proceedings being brought against the Health Board who is the detaining authority.
<b>Enw Da: Reputational:</b>	Not Applicable
<b>Gyfrinachedd: Privacy:</b>	Not Applicable
<b>Cydraddoldeb: Equality:</b>	Not Applicable

# Section 117 After-Care Procedure Mental Health Act 1983

## DRAFT FOR GLOBAL CONSULTATION

### Procedure information

Procedure number: 688

Classification:  
Clinical

Supersedes:  
Previous Version

Local Safety Standard for Invasive Procedures (LOCSSIP) reference:  
N/A

National Safety Standards for Invasive Procedures (NatSSIPs) standards:  
N/A

Version number:  
2.0

Date of Equality Impact Assessment:  
*04/07/2022*

### Approval information

Approved by: Clinical Written Control Documentation Group

Date of approval:  
*Enter approval date*

Date made active:  
*Enter date made active (completion by policy team)*

Review date:  
*Enter review date (normally three years from approval date)*

## Summary of document:

Section 117 of the Mental Health Act requires Local Health Boards and Local Authorities, in co-operation with other relevant non-statutory agencies, to provide, or arrange for the provision of, aftercare to persons detained in hospital for treatment under certain Sections of the Mental Health Act who cease to be detained and leave hospital.

## Scope:

It applies to people of all ages, including children who have been detained under relevant sections of the Mental Health Act.

## To be read in conjunction with:

[625 - Community Treatment Order Policy](#)

[731 - Leave of Absence Policy](#)

## Patient information:

Include links to [Patient Information Library](#)

## Owning group:

Mental Health Legislation Committee

*Date signed off by owning group*

## Executive Director job title:

Andrew Carruthers – Director of Operations

## Reviews and updates:

*1.0 – New Procedure*

## Keywords

Section 117, Aftercare, Mental Health Act

## Glossary of terms

Term	Definition
Care and Treatment planning (CTP)	A statutory plan prepared for the purpose of achieving the outcomes which the provision of mental health services for a relevant mental health patient are designed to achieve.
Care Coordinator	Care Coordinators are the principal source of information for the relevant patient and are responsible for seeking their active involvement and engagement in the care planning process.
Section 117 coordinator	CMHT Manager and manager from LA within CMHT/CTLD, with the exception of CAMHS
Community Mental Health Services	Community mental health services support individuals with mental health problems who are living in the community. Teams include a range of professionals drawn from the local National Health Service (NHS) and Local Social Services Authorities.

Community Treatment Orders (CTOs)	The legal authority for the discharge of a patient from detention in hospital, subject to the possibility of recall to hospital for further medical treatment if necessary.
Community Mental Health Team (CMHT)	A team of mental health professionals who support people with mental health problems living in the community.
Community Team Learning Disabilities (CTLD)	A team of mental health professionals who support people with learning disabilities living in the community.
Continuing Health Care (CHC)	A package of care arranged and funded solely by the NHS where it has been assessed that the individual's primary need is a health need. When an individual has been assessed as having a primary health need, and is therefore eligible for CHC, the NHS has responsibility for funding the full pack of health and social care.
Direct Payments	A direct payment is a monetary amount paid directly to the service user or their representative to pay for their own care or support
Independent Mental Capacity Advocates	Under the Mental Capacity Act (MCA), in certain circumstances NHS bodies or Local Authorities (as appropriate) are required to instruct Independent Mental Capacity Advocates (IMCA's) to represent people who have no family or friends who it would be appropriate to consult.
Independent Mental Health Advocates (IMHA)	An advocate independent of the team involved in patient care available to offer support to patients. The IMHA is not the same as an ordinary advocate or an Independent Mental Capacity Advocate (IMCA).
LAC	Local Authority Circular alerts convey important information for local authorities
Local Authorities Social Services (LASS)	At a local level, the country is divided into a series of local authorities or councils. These authorities are responsible for providing local services to the community such as education, adult and children social care, regeneration, support for carers, leisure, housing and environmental services.
Mental Health Act 1983 (MHA)	An Act of Parliament which governs the assessment, treatment and rights of people with a mental health disorder.
Mental Capacity Act (2005)	An Act of Parliament that governs assessments of capacity to make a decision at a particular time and decision-making on behalf of people who lack capacity, both where they lose capacity to make a particular decision at some point in their lives.

Mental Health (Wales) Measure 2010	The Mental Health (Wales) Measure 2010 is a unique piece of legislation designed to provide a legal framework to improve mental health services in Wales
Multidisciplinary team (MDT)	A multidisciplinary team (MDT) is a group of professionals from diverse disciplines who come together to provide comprehensive assessment and consultation in cases.
NHS Funded Nursing Care	The money paid by the NHS for the nursing care component of a person's care package is known as the NHS Funded Nursing Care.
Primary Care	Primary Care is the care provided by people you normally see when you first have a health problem. For example, a doctor or dentist, an optician for an eye test, a pharmacist. NHS Walk-in Centres, and the phone line service NHS Direct, are also part of primary care.
Responsible clinician (RC)	A patient's Responsible Clinician is defined as the Approved Clinician with overall responsibility for the patient's case. All patients subject to detention or Community Treatment Order have a Responsible Clinician.
Social Services & Wellbeing (Wales) Act 2014	Act of Welsh Government providing the statutory framework for health and social care in Wales.
Section 17 Leave of Absence	Formal permission for a patient who is detained in hospital to be absent from the hospital for a period of time.
Section 117 Aftercare Responsibilities	Services provided following discharge from hospital; especially the duty of health and social services to provide after-care under Section 117 of the Act following the discharge of a patient from detention for treatment under the Act. The duty applies to CTO patients and conditionally discharged patients, as well as those who have been absolutely discharged.
Service user /Client/ Patient	A person receiving any health or social care services, from going to the family doctor, the pharmacist, to accessing social services such as home care or direct payments.

## Contents

Procedure information.....	1
Approval information .....	1
Introduction .....	6
Procedure Statement.....	6
Scope.....	6
Aim.....	7
Objectives .....	7
Planning of Section 117 Aftercare .....	7
S117 Register .....	8
Reviewing Section 117 .....	8
Residence .....	9
Charging Patients for Aftercare Services.....	10
Continuing NHS Healthcare and its Relationship with Section 117 .....	10
Accommodation Under S117 .....	11
Direct Payments.....	11
Transfer of Persons to and from other Areas.....	11
Discharge from S117 Aftercare.....	12
Section 117 Register.....	13
Complaints .....	14
Responsibilities .....	14
Monitoring of Section 117 Aftercare Arrangements .....	14
References.....	14
Appendix 1 – Discharge Proforma .....	16



## Introduction

Under Section 117 of the Mental Health Act, 1983 (MHA) a person detained for treatment under the MHA is entitled to aftercare, provided or funded jointly by a local authority and relevant NHS commissioning body, in co-operation with other relevant non-statutory agencies, following discharge, until the two bodies are satisfied the person no longer requires it. This includes patients who have been granted Section 17 leave and patients subject to Community Treatment Orders (CTOs). It applies to people of all ages, including children.

The Health Service Circular 2000/003 and Local Authority Circular 2000(3) states that:

*Aftercare provision under S117 MHA does not have to continue indefinitely. It is for the responsible health and social services authorities to decide in each case when aftercare provided under S117 should end, taking account of the patient's needs at the time. It is for the authority responsible for providing particular services to take the lead in deciding when those services are no longer required. The patient, their carers, and other agencies should always be consulted'*

## Procedure Statement

Hywel Dda University Health Board is committed to arranging and providing appropriate aftercare services to eligible people according to need.

The Mental Health Act Code of Practice for Wales stipulates that “*aftercare services*” mean services which have the purpose of meeting a need arising from, or related to the patient's mental disorder, and which reduce the risk of a deterioration of the patient's mental condition (and accordingly, reduce the risk of the patient requiring admission to hospital again for treatment for mental disorder).

It is the intention of this procedure to articulate a clear process by which care planning in the context of S117 should be undertaken to deliver these objectives, to ensure that S117 status is reviewed in a timely manner and that all decisions in respect of this are clearly documented.

Patients and their carers/representatives, where appropriate, should be included throughout this process. Patients will be eligible for the help and assistance of Independent Mental Health Advocates (IMHAs) or Independent Mental Capacity Advocates (IMCAs) as appropriate.

## Scope

This procedure applies to the agreed working arrangements of Hywel Dda UHB with a duty to assess, plan and deliver aftercare services under S117 of the MHA and to all persons entitled to receive it.

Duties and responsibilities for S117 are shared between health and local authorities. It is a shared joint responsibility for meeting aftercare needs.

S117 is applicable to people within Hywel Dda UHB (the UHB) who meet the criteria for S117 aftercare and those that provide services to them. Although the duty to provide aftercare begins when the person leaves hospital, the planning of aftercare should commence whilst the person is in hospital thus aiming to reduce the risk of deterioration of the persons mental health and ultimately reduce the risk of readmission to hospital.

S117 of the MHA only applies to the following patients if they have been:

- Detained in a psychiatric hospital under Section 3 of MHA;
- Admitted to hospital under an order made under Section 37 of the MHA;
- Transferred to a psychiatric hospital from prison or remand centre. This includes those individuals who are on remand, detained in prison under civil law or held under immigration legislation, in pursuance of a transfer direction under Sections 45A, 47 or 48 of the MHA who cease to be detained and leave hospital (whether or not immediately after the detention has ended).

In addition S117 also applies to individuals who have been subject to section 3, 37, 45A, 47 and 48 of the MHA who are:

- Subject to Guardianship – Section 7 MHA
- Given leave of absence from inpatient wards under Section 17 leave of the MHA in circumstances which give rise to an entitlement to S117 after care.
- Those who are subject to Community Treatment Orders (CTOs).

Aftercare services could include a combination of health and social care services to ensure that issues relating to an individual's mental health and social care needs are met through the appropriate professionals.

## Aim

This document aims to give staff an understanding of their responsibilities with respect to planning, providing, reviewing and ending aftercare services. It also gives guidance on the duties of practitioners involved in the management of those people eligible to receive such aftercare.

## Objectives

The aim of this document will be achieved by the following objectives:

- To describe the following with regard to S117 aftercare:
  - The purpose of S117 aftercare
  - The process for eligibility for S117 aftercare
  - The duties of the practitioners and agencies involved in the management of people eligible to receive S117 aftercare

## Planning of Section 117 Aftercare

Although the duty to provide aftercare begins when the patient leaves hospital, the planning of aftercare should start whilst the patient is in hospital. The UHB and the local authority, in consultation with the service user, their family or carer, Care Coordinator and other members of the Multi-Disciplinary Team (MDT), identify appropriate aftercare services for the person in good time for their eventual discharge from hospital, or release from prison.

The S117 aftercare plan should normally be considered at a Multi-Disciplinary Team (MDT) care and treatment planning (CTP) meeting; this meeting will also identify the Care Coordinator (if not already identified). The MHA Code of Practice for Wales contains detailed guidance about the people who should be involved in this process and the considerations to be taken into account.

The CTP is the framework for care coordination and resource allocation within mental health and should be an effective, efficient and transparent process of care coordination and care delivery that encompasses all the relevant responsibilities of the UHB and LA. It must be based on a

full assessment of the person's needs, which specifies S117 aftercare arrangements, must be in place before:-

- Discharge from hospital
- A period of S17 leave - except for short periods of leave, when "a less comprehensive review may suffice, but the arrangements for the persons care should still be properly recorded". Any period of leave which includes an overnight stay necessitates a full aftercare plan.
- A Mental Health Review Tribunal for Wales or Hospital Managers Hearing. The Hospital Managers must ensure that the UHB and the LA are aware of the hearing so that they are able to consider aftercare arrangements in all cases; however, this is particularly important when discharge is a strong possibility and appropriate aftercare is a key factor in the decision.

Carers play an important role and Part 2 of the MH (Wales) Measure requires Care Coordinators to take all practicable steps to consult with carers during the preparation or review of the persons CTP. Consultation may go ahead even if the person has indicated that they do not wish for the carer to be consulted, provided that due consideration has been given to the person's wishes.

An integral part of the management process should be for the person to accept responsibility for their own actions and associated risks supported by the CTP and the team's interventions based on the principles of positive risk management.

Failure to implement discharge planning arrangements within a reasonable time is in breach of Article 5 of the European Convention on Human Rights, and therefore in breach of the 1998 Human Rights Act. UHB staff responsible for discharge planning need to ensure that the reasons for any delay are well documented and evidenced. Discharging remains a joint responsibility between the UHB and the LA.

## **S117 Register**

The UHB must maintain a record of people entitled to S117 aftercare. The Health Board will retain details of those patients subject to S117 and CMHT's, the Mental Health Act Administration Team and the Commissioning Team will ensure that this information is accurate and kept up to date.

## **Reviewing Section 117**

The Care Coordinator under Part 2 of the Measure will arrange an initial review of the care plan within an appropriate timescale (to be determined on a case by case basis according to need). CTPs for persons receiving aftercare under S117 should be reviewed as often as required but once every twelve months as a statutory minimum, within the CTP process.

All CTPs should include specific detail of which services are to be provided under S117 and must clearly identify the interventions that are related to S117 entitlement and those that are not. Staff should enable notifications on Care Partner so that the S117 status is recorded under the alert system on the summary page, recording the S117 status and local authority area.

Persons who are subject to S117 and receiving community services should be offered an IMHA to support them at reviews by their Care Coordinator.

Each review must include an explicit decision on whether the person continues to be eligible for S117 and what services are required to support them and this must be recorded within the persons records and within their CTP. Representation from both Health and LA must attend the meetings, those experienced staff should understand what the implications are for making S117 decisions.

It is important to distinguish within CTP and S117 documentation those items of care and support that relate to mental health needs and are provided free of charge, and those items that relate to community care needs unrelated to the relevant mental disorder, which may be subject to a financial assessment by the LA. It is therefore important that the Care Coordinator in the aftercare planning arrangements is fully aware of the legal position and any funding commitments that may result.

Persons who are subject to S117 but not open to CTP would receive a review once every 12 months as a statutory minimum but this could be more often if required. The responsibility for ensuring this review takes place would rest with the CMHT/CTLD manager and CMHT manager for Social services.

## Residence

The responsible aftercare bodies in Wales are the UHB and LA in which the person concerned was ordinarily resident prior to being detained under a qualifying Section of the MHA, or in any other case, the area in which the person is resident, or sent on discharge by the hospital in which they were detained. The critical first enquiry, therefore, is whether someone has an 'ordinary residence' and, if so, where that ordinary residence is.

Section 117(3) of the MHA sets out a three strand test:

*In this section "the clinical commissioning group or Local Health Board" means the Local Health Board and "the Local Social Services Authority" means the local social services authority –*

- a. if, immediately before being detained, the person concerned was ordinarily resident in England, for the area in England in which they were ordinarily resident; or*
- b. if, immediately before being detained, the person concerned was ordinarily resident in Wales, for the area in Wales in which they were ordinarily resident; or*
- c. in any other case, for the area in which the person concerned is resident or to which they are sent on discharge by the hospital in which they were detained.*

Identifying the responsible LA and LHB should be established as soon as the requirement to provide s117 aftercare services is established.

The responsible LA will be the one in which the person was ordinarily resident in England and Wales immediately before being detained or if the person was not ordinarily resident in England or Wales immediately before detention, for the area in which the person is resident or to which he is sent on discharge by the hospital in which they were detained.'

Health determines ordinary residence by persons address. These are historical arrangements that are in place and this system will remain.

Where two or more LA's are in dispute over a person's ordinary residence in respect of their responsibilities under s117 then s195 SSWBA 2014 and the Care and Support (Disputes about

Ordinary Residence etc) (Wales) Regulations 2015 provide that the question (if not resolved beforehand having taken legal advice at the earliest opportunity) is to be determined by the Welsh Ministers. The SSWBA 2014 Part 11 Code of Practice provides that : -

- That it is 'critical that the person does not go without the care they need' during the dispute process;
- That one of the authorities involved in the dispute must provisionally accept responsibility for the person at the centre of the dispute and be providing services.
- Where LA's cannot agree which authority should accept provisional responsibility for the provision of services , the LA in which the person is living or is physically present must accept responsibility until the dispute is resolved.

Disputes over a person's ordinary residence between a LA in Wales and a LA in England will be determined according to arrangements between the Welsh Ministers and the Secretary of State for Health.'

## Charging Patients for Aftercare Services

Aftercare services provided under S117 must be provided free of charge. The regular sharing of the register and notification processes should reduce the likelihood of charges being made against S117 aftercare provision.

S117 concerns needs arising from or relating to the person's mental disorder and hospital admission. It is therefore important to recognise that an individual may have care and/or health needs that fall outside the scope of S117. For example, this may relate to physical disability or illness that has no direct bearing on the person's mental health. It can therefore be the case that an individual may be S117 eligible, as well as having additional care and support needs (that generally fall outside S117) that will be met under the Social Services and Wellbeing (Wales) Act 2014 (SSWA), or NHS continuing health care subject to eligibility criteria being met.

The provision of aftercare services under S117 should not be confused with providing essentials such as food, clothing, heating etc. These remain the responsibility of the individual except in the very special cases where accommodation heating etc are provided as part of a residential placement and are an inseparable part of the aftercare plan.

If the aftercare to be provided includes housing-related support that would normally be funded by Housing Support grants, this will be paid by the LA.

## Continuing NHS Healthcare and its Relationship with Section 117

If all the required aftercare services are to be provided under S117 it is not necessary to assess for eligibility for NHS continuing healthcare (CHC) funding. In other words, a primary healthcare need does not need to be established to require the UHB to fund, and in most cases the complexity of a persons need will require both the Health Board and the LA to work collaboratively to achieve the outcome set out in S117. However, if the persons needs arise from needs unrelated to their S117 needs consideration of a primary health need must be considered in the usual way.

The general approach set out in this framework of considering the totality of need in assessing eligibility for CHC still applies. The individual may as a result, have the services required to meet their total care needs provided or funded by the NHS, but this does not necessarily remove the joint duty under S117.

The S117 joint duty remains unless a joint assessment and agreement by both the LA and the LHB determines that those arrangements are no longer needed.

Where an individual in receipt of S117 services develops physical care needs resulting in a rapidly deteriorating condition which may be entering a terminal phase (or a catastrophic health event which clearly requires CHC), consideration should be given to the use of the Fast Track Assessment Tool which can be accessed from the Long Term Care Team.

Where an individual is to be discharged from S117, eligibility for CHC or funded nursing care will need to be considered where the transition assessment and plan indicate that these may be required. Information should be provided to the individual or their representative in regard to the effect that discharge from S117 arrangements may have on their finances and/or welfare benefits.

The process for the assessment and determination of eligibility for CHC is described in detail in of the National Framework for the Implementation of Continuing NHS Healthcare in Wales (2021). MDTs should refer to that document directly.

## **Accommodation Under S117**

A person's aftercare plan may involve the provision of accommodation where this meets the primary purpose of S117 i.e. this usually means provision of supported accommodation. Where accommodation is provided as aftercare it must not be charged for and therefore this must be made clear in the CTP/annual review. Accommodation under S117 must not be indirectly charged for by way of welfare benefits.

Where the cost of the preferred accommodation is more than the expected cost, the person or a third party must agree to pay (top up) the additional cost.

## **Direct Payments**

Direct payments involve the LA making regular financial payments of the personal budget to the person (or their representative) so that they can choose how to use the money to meet the needs that the Local Authority has agreed to meet. Anyone who requests a Direct Payment must be provided with a Direct Payment so long as they have the capacity to request it; and where there is a nominated person agrees to receive the payment and is capable of managing it.

Where a LA is under a duty to provide aftercare services for a person under S117 and the person is eligible to receive such payments under Section 50, 51 and 52 of the SSWBA, then it may make direct payments to discharge its duty.

The LAs duty to offer direct payments to anyone receiving services under S117 is subject to the exception of persons detailed in the schedule to Regulation 14(1) The Care and Support (Direct Payments) (Wales) Regulations 2015, where the LA may provide direct payments subject to certain conditions.

## **Transfer of Persons to and from other Areas**

Responsibility for providing S117 services may be formally transferred if the authorities agree. Formal transfer should be recorded through exchange of correspondence stating that agreement has been reached between the respective authorities for formally transferring responsibility, the date and time the transfer is effective and a statement that the person would be informed by the accepting team. The

contact names from Health Board and LA where patient is coming from must be recorded within the person's records and details forwarded to the Section 117 administrator.

If a person moves out of the area, their entitlement to S117 continues. It is the responsibility of the Care Coordinator to ensure that appropriate transfer arrangements are made and that the receiving authority is aware of the service user's entitlement to care and services under S117. There is an obligation on the Care Coordinator/health LA to review the service provision annually. (Guidance contained in HSC2000/03: LAC (2000)3 reminds authorities that a person who was resident in that area because of detention under the Act).

If a person is placed in a residential resource outside the area which is responsible for providing aftercare, that responsibility continues, although arrangements for some aspects of the CTP to be provided in the new area (for example, psychiatric follow-up) may be negotiated, particularly if the placement is a significant distance from the responsible authority. That person should register with a GP in their new area of residence.

## Discharge from S117 Aftercare

Aftercare provision under S117 does not have to continue indefinitely. It is for the UHB and LA to decide in each case when aftercare provided under S117 should end, taking account of the person's needs at the time following an assessment. It is for the authority responsible for providing particular services to take the lead in deciding when those services are no longer required. The person, their carers, and other agencies should always be consulted. Those persons who are subject to S117 who are well and stable can be discharged from CTP as they are eligible for Part 3 of the MH Measure and can refer themselves back to secondary services for assessment directly. However, those individuals will be reviewed on at least an annual basis under S117 arrangements and should be afforded the opportunity to request an assessment at any time.

Aftercare services under S117 should not be withdrawn solely on the grounds that:

- The person has been discharged from the care of specialist mental health
- An arbitrary period has passed since the care was first provided;
- The person is deprived of their liberty under the Mental Capacity Act 2005;
- The person may return to hospital informally or under Section 2;
- Or the person is no longer on a community treatment order or S17 leave
- The person is now settled in the community or a care home, unless the agencies agree there is no longer a need for continued CTP aftercare services

Individuals are not legally obliged to accept aftercare services offered but any decisions they make to decline services they should be fully informed of any discussions or decisions made relating to the reviews. A person's unwillingness to accept services does not mean they have no need for them; neither does it relieve the statutory agencies of their responsibility to offer aftercare.

In the event that the person disengages with Mental Health services but remains subject to S117, attempts should be made to invite the person to a review meeting. If the person does not attend this, a review meeting between the UHB and LA representatives must be held to facilitate a clinical decision whether the entitlement to aftercare should continue. This review should evidence the efforts that have been taken to ascertain the person's current mental state along with any identified needs, also whether the opinions of their family/carer and GP have been sought where appropriate. In the absence of any

information being available, the decision to close to S117 should be based on clinical decision making and analysis of risk.

When considering discharging a person from S117 both authorities are required to jointly review the aftercare plan, even if the aftercare services are provided by a single authority. In practice, this is likely to be a decision made by the person's MDT. There must be a joint formal statement of the agreement to discontinue aftercare services, made by representatives of the UHB and LA.

The decision to end S117 can only happen with the agreement of both the UHB and the LA. Any such decision must be recorded in writing in line with this policy on the Proforma at [Appendix 1](#).

The decision to end S117 must only be taken at an MDT meeting and must include people able to represent the UHB and the LA and make a recommendation on their behalf, this may be as a minimum:

- RC/Consultant Psychiatrist for health
- Registered Social Worker or Approved Mental Health Practitioner for LA

Wherever possible the person should be fully involved in the decision-making process and their involvement recorded.

The rationale behind the decision to discharge from S117 must be fully justified and preceded by a proper reassessment of the person's needs. The decision must be clearly recorded in the patient's records giving reasons as well as details of who was involved in the decision making and signed by UHB and LA representatives.

The following people must be notified in writing (usually by the Care Coordinator):  
Service user, Carer/s, RC, GP, S117 administrator, nearest relative (with their consent) and IMHA.

If S117 aftercare ends, it cannot be reinstated if the person becomes in need of further mental health services. The person can only receive further S117 services if they are readmitted to hospital under a qualifying Section.

Where both the UHB and LA are satisfied upon re-assessment of the persons current needs that aftercare is no longer necessary, and can be appropriately discharged, there is scope thereafter for the UHB and/or LA to look to other community care provisions which are more relevant. This is provided the authorities are satisfied that such other services are available to the person; that they are appropriate having regard to the Social Services and Well-being (Wales) Act 2014 and Parts 3 and 4 of the Code of Practice.

In the event that a decision cannot be reached by the MDT then the recommendation shall be made by both the LA Lead and an appropriate lead clinician from mental health services. In cases where a decision cannot be reached then S117 should continue.

## Section 117 Register

A central S117 register will be held by the UHB and will be used to ensure that there is no duplication in the recording of S117 eligible individuals, funding or exclusion of people with S117 entitlement. The database will be a live document and CMHT/CTLD's will be able to add new patients to it via the Clinical Portal. The register will be reviewed by relevant staff within the MH & LD Directorate.



## Complaints

Any complaints regarding S117 will be dealt with within the usual complaints procedures.

## Responsibilities

The duty to provide aftercare services under Section 117 is a stand-alone duty which is not reliant on any other piece of legislation. The MHA states that the responsible aftercare bodies are the UHB and the LA “for the area in which the person concerned is resident, or, to which the person is sent on discharge by the hospital in which the person was detained.”

### Chief Executive

The Chief Executive has overarching responsibility for ensuring that the UHB is compliant with the law in relation to the MHA.

### Executive Lead for UHB

The Executive Director of Operations for the UHB has overarching responsibility for ensuring compliance with the contents of this Procedure.

### Community Team Managers/Service Managers Health in collaboration with Care Coordinators are responsible for:

- Ensuring that this procedure is brought to the attention of all their staff, and that they understand and adhere to the guidance contained therein.
- Ensure that all staff involved in the care and treatment of people who meet the criteria for S117 aftercare are competent to carry out these functions.
- Monitoring the S117 aftercare arrangements for service through caseload/ management/S117 Register/CTP.
- They must ensure that all aspects of this Procedure are adhered to including training and appraisal and should report any problems or concerns to the appropriate Mental Health service manager.

## Monitoring of Section 117 Aftercare Arrangements

Monitoring arrangements are carried out by the Mental Health Legislation Assurance Committee. If individuals are placed in England or other parts of Wales and there is no involvement from Health then Social Workers review cases.

## References

Mental Health Act 1983 – [www.legislation.gov.uk/ukpa/1983/20/contents](http://www.legislation.gov.uk/ukpa/1983/20/contents)

Code of Practice to the Mental Health Act 1983, 2016

Mental Health Wales Measure (2010)

Mental Capacity Act, 2005

Social Services and Wellbeing (Wales Act), 2014

Mental Health Review Tribunal for Wales – [www.justice.gov.uk/tribunals/mental-health](http://www.justice.gov.uk/tribunals/mental-health)

Human Rights Act 1998 – [www.legislation.gov.uk/ukpga/1998/42/contents](http://www.legislation.gov.uk/ukpga/1998/42/contents)

Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment)(Wales) Regulations 2008

NHS (Wales) Act 2006

The Partnership Arrangements (Wales) Regulations 2015

After-care under Section 117 Mental Health Act 1983 – IMHL October 2003

The Health Service Circular 2000/003 and LSSA Circular 2000(3)

NAFWC 09/2002 <http://wales.gov.uk/pubs/circulars/2002/english/NAFWC09-02Guidance-e.pdf?lang=en>.

Continuing NHS Healthcare. The National Framework for Implementation in Wales (June 2014)

Welsh Government, Law Wales Helping you understand Welsh Law, Ordinary Residence

<https://law.gov.wales/publicservices/social-care/9692237/Care-and-support-for-adults-and-children/ordinary-residence/?lang=en#/publicservices/social-care/cae-and-support-for-adults-and-children/ordinary-residence/?tab=overciew&lang=enaccessed> 20 May 2019

# Appendix 1 – Discharge Proforma



## Discharge from Section 117 Aftercare

<b>Persons Name</b>		<b>Patient Identifier</b>	
<b>Home Address</b>		<b>Date of Birth</b>	

The following people have been consulted regarding the ongoing need for the above named to receive aftercare under Section 117 of the Mental Health Act 1983.

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Following consultation, it has been determined that with effect from \_\_\_\_\_ (date), this person shall cease to be subject to section 117 aftercare because:

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Signed: \_\_\_\_\_ *Representative of Hywel Dda UHB*

Print name: \_\_\_\_\_ Designation: \_\_\_\_\_ Date: \_\_\_\_\_

Signed: \_\_\_\_\_ *Representative of: Carms LA / Cered LA / Pembs LA*

Print name: \_\_\_\_\_ Designation: \_\_\_\_\_ Date: \_\_\_\_\_

Signed: \_\_\_\_\_ Service User Date: \_\_\_\_\_

### This decision has been reviewed and accepted by the following:

Signed: \_\_\_\_\_ *Team Manager – Hywel Dda UHB Representative*

Print name: \_\_\_\_\_ Designation: \_\_\_\_\_ Date: \_\_\_\_\_

Signed: \_\_\_\_\_ *Team Manager - Representative of: Carms LA / Cered LA / Pembs LA*

Print name: \_\_\_\_\_ Designation: \_\_\_\_\_ Date: \_\_\_\_\_

*On completion, please forward a copy to: Sec 117 Administrator*



**GIG**  
CYMRU  
**NHS**  
WALES

Bwrdd Iechyd Prifysgol  
Hywel Dda  
University Health Board

# Section 117 After-care Procedure Mental Health Act, 1983

Policy Number:		Supersedes:	688	Classification	Clinical
Version No	Date of EqlA:	Approved by:	Date of Approval:	Date made Active:	Review Date:
	06 Jul 22				

Brief Summary of Document:	Section 117 of the Mental Health Act requires Local Health Boards and Local Authorities, in co-operation with other relevant non-statutory agencies, to provide, or arrange for the provision of, aftercare to persons detained in hospital for treatment under certain Sections of the Mental Health Act who cease to be detained and leave hospital.
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Scope:	It applies to people of all ages, including children who have been detained under relevant sections of the Mental Health Act.
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To be read in conjunction with:	625 - Community Treatment Order Policy 731 - Section 17 Leave Policy
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Owning Committee/ Group	Mental Health Legislation Assurance Committee – Mrs Judith Hardisty (Vice Chair)
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Executive Directors:	Mr Andrew Carruthers	Job Title	Executive Director of Operations, Hywel Dda UHB
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## HYWEL DDA UNIVERSITY HEALTH BOARD

Reviews and updates		
Version no:	Summary of Amendments:	Date Approved:
1	New Procedure	

### Glossary of terms

Term	Definition
Care and Treatment planning (CTP)	A statutory plan prepared for the purpose of achieving the outcomes which the provision of mental health services for a relevant mental health patient are designed to achieve.
Care Coordinator	Care Coordinators are the principal source of information for the relevant patient and are responsible for seeking their active involvement and engagement in the care planning process.
Section 117 coordinator	CMHT Manager and manager from LA within CMHT/CTLD, with the exception of CAMHS
Community Mental Health Services	Community mental health services support individuals with mental health problems who are living in the community. Teams include a range of professionals drawn from the local National Health Service (NHS) and Local Social Services Authorities.
Community Treatment Orders (CTOs)	The legal authority for the discharge of a patient from detention in hospital, subject to the possibility of recall to hospital for further medical treatment if necessary.
Community Mental Health Team (CMHT)	A team of mental health professionals who support people with mental health problems living in the community.
Community Team Learning Disabilities (CTLD)	A team of mental health professionals who support people with learning disabilities living in the community.
Continuing Health Care (CHC)	A package of care arranged and funded solely by the NHS where it has been assessed that the individual's primary need is a health need. When an individual has been assessed as having a primary health need, and is therefore eligible for CHC, the NHS has responsibility for funding the full pack of health and social care.
Direct Payments	A direct payment is a monetary amount paid directly to the service user or their representative to pay for their own care or support
Independent Mental Capacity Advocates	Under the Mental Capacity Act (MCA), in certain circumstances NHS bodies or Local Authorities (as appropriate) are required to instruct Independent Mental Capacity Advocates (IMCA's) to represent people who have no family or friends who it would be appropriate to consult.
Independent Mental Health Advocates (IMHA)	An advocate independent of the team involved in patient care available to offer support to patients. The IMHA is not the same as an ordinary advocate or an Independent Mental Capacity Advocate (IMCA).
LAC	Local Authority Circular alerts convey important information for local authorities
Local Authorities Social Services (LASS)	At a local level, the country is divided into a series of local authorities or councils. These authorities are responsible for

## HYWEL DDA UNIVERSITY HEALTH BOARD

	providing local services to the community such as education, adult and children social care, regeneration, support for carers, leisure, housing and environmental services.
Mental Health Act 1983 (MHA)	An Act of Parliament which governs the assessment, treatment and rights of people with a mental health disorder.
Mental Capacity Act (2005)	An Act of Parliament that governs assessments of capacity to make a decision at a particular time and decision-making on behalf of people who lack capacity, both where they lose capacity to make a particular decision at some point in their lives.
Mental Health (Wales) Measure 2010	The Mental Health (Wales) Measure 2010 is a unique piece of legislation designed to provide a legal framework to improve mental health services in Wales
Multidisciplinary team (MDT)	A multidisciplinary team (MDT) is a group of professionals from diverse disciplines who come together to provide comprehensive assessment and consultation in cases.
NHS Funded Nursing Care	The money paid by the NHS for the nursing care component of a person's care package is known as the NHS Funded Nursing Care.
Primary Care	Primary Care is the care provided by people you normally see when you first have a health problem. For example, a doctor or dentist, an optician for an eye test, a pharmacist. NHS Walk-in Centres, and the phone line service NHS Direct, are also part of primary care.
Responsible clinician (RC)	A patient's Responsible Clinician is defined as the Approved Clinician with overall responsibility for the patient's case. All patients subject to detention or Community Treatment Order have a Responsible Clinician.
Social Services & Wellbeing (Wales) Act 2014	Act of Welsh Government providing the statutory framework for health and social care in Wales.
Section 17 Leave of Absence	Formal permission for a patient who is detained in hospital to be absent from the hospital for a period of time.
Section 117 Aftercare Responsibilities	Services provided following discharge from hospital; especially the duty of health and social services to provide after-care under Section 117 of the Act following the discharge of a patient from detention for treatment under the Act. The duty applies to CTO patients and conditionally discharged patients, as well as those who have been absolutely discharged.
Service user /Client/ Patient	A person receiving any health or social care services, from going to the family doctor, the pharmacist, to accessing social services such as home care or direct payments.

Keywords	Section 117, aftercare, Mental Health Act
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# HYWEL DDA UNIVERSITY HEALTH BOARD

## CONTENTS

1. Introduction .....	5
2. Procedure Statement.....	5
3. Scope.....	5
4. Aim.....	6
5. Objectives .....	6
6. Planning of Section 117 aftercare .....	6
7. Section 117 register .....	7
8. Reviewing Section 117 aftercare .....	8
9. Residence .....	8
10. Charging for aftercare services.....	9
11. Continuing NHS Healthcare and its relationship with Section 117 .....	10
12. Accommodation under Section 117 .....	10
13. Direct Payments.....	11
14. Transfer of patients to and from other areas.....	11
15. Discharge from Section 117 aftercare .....	11
16. Section 117 Register .....	13
17. Complaints .....	13
18. Responsibilities .....	14
19. Monitoring of Section 117 after-care arrangements.....	14
20. References .....	14
APPENDIX A - Discharge Proforma .....	16

# HYWEL DDA UNIVERSITY HEALTH BOARD

## 1. INTRODUCTION

- 1.1 Under Section 117 of the Mental Health Act, 1983 (MHA) a person detained for treatment under the MHA is entitled to aftercare, provided or funded jointly by a local authority and relevant NHS commissioning body, in co-operation with other relevant non-statutory agencies, following discharge, until the two bodies are satisfied the person no longer requires it. This includes patients who have been granted Section 17 leave and patients subject to Community Treatment Orders (CTOs). It applies to people of all ages, including children.
- 1.2 The Health Service Circular 2000/003 and Local Authority Circular 2000(3) states that:

*Aftercare provision under S117 MHA does not have to continue indefinitely. It is for the responsible health and social services authorities to decide in each case when aftercare provided under S117 should end, taking account of the patient's needs at the time. It is for the authority responsible for providing particular services to take the lead in deciding when those services are no longer required. The patient, their carers, and other agencies should always be consulted'*

## 2 PROCEDURE STATEMENT

- 2.1. Hywel Dda University Health Board is committed to arranging and providing appropriate aftercare services to eligible people according to need.
- 2.2 The Mental Health Act Code of Practice for Wales stipulates that “*aftercare services*” mean *services which have the purpose of meeting a need arising from, or related to the patient's mental disorder, and which reduce the risk of a deterioration of the patient's mental condition (and accordingly, reduce the risk of the patient requiring admission to hospital again for treatment for mental disorder).*
- 2.3 It is the intention of this procedure to articulate a clear process by which care planning in the context of S117 should be undertaken to deliver these objectives, to ensure that S117 status is reviewed in a timely manner and that all decisions in respect of this are clearly documented.
- 2.4 Patients and their carers/representatives, where appropriate, should be included throughout this process. Patients will be eligible for the help and assistance of Independent Mental Health Advocates (IMHAs) or Independent Mental Capacity Advocates (IMCAs) as appropriate.

## 3 SCOPE

- 3.1 This procedure applies to the agreed working arrangements of Hywel Dda UHB with a duty to assess, plan and deliver aftercare services under S117 of the MHA and to all persons entitled to receive it.
- 3.2 Duties and responsibilities for S117 are shared between health and local authorities. It is a shared joint responsibility for meeting aftercare needs.



## HYWEL DDA UNIVERSITY HEALTH BOARD

3.3 S117 of the MHA only applies to the following patients if they have been:

- Detained in a psychiatric hospital under Section 3 of MHA;
- Admitted to hospital under an order made under Section 37 of the MHA;
- Transferred to a psychiatric hospital from prison or remand centre. This includes those individuals who are on remand, detained in prison under civil law or held under immigration legislation, in pursuance of a transfer direction under Sections 45A, 47 or 48 of the MHA who cease to be detained and leave hospital (whether or not immediately after the detention has ended).

3.4 In addition S117 also applies to individuals who have been subject to section 3, 37, 45A, 47 and 48 of the MHA who are:

- Subject to Guardianship – Section 7 MHA
- Given leave of absence from inpatient wards under Section 17 leave of the MHA in circumstances which give rise to an entitlement to S117 after care.
- Those who are subject to Community Treatment Orders (CTOs).

3.5 Aftercare services could include a combination of health and social care services to ensure that issues relating to an individual's mental health and social care needs are met through the appropriate professionals.

### 4. AIM

4.1 This procedure is applicable to people within Hywel Dda UHB (the UHB) who meet the criteria for S117 aftercare and those that provide services to them. Although the duty to provide aftercare begins when the person leaves hospital, the planning of aftercare should commence whilst the person is in hospital thus aiming to reduce the risk of deterioration of the persons mental health and ultimately reduce the risk of readmission to hospital.

4.2 This document aims to give staff an understanding of their responsibilities with respect to planning, providing, reviewing and ending aftercare services. It also gives guidance on the duties of practitioners involved in the management of those people eligible to receive such aftercare.

### 5. OBJECTIVES

5.1 To describe the following with regard to S117 aftercare:

- The purpose of S117 aftercare
- The process for eligibility for S117 aftercare
- The duties of the practitioners and agencies involved in the management of people eligible to receive S117 aftercare

### 6. PLANNING OF SECTION 117 AFTERCARE

6.1 Although the duty to provide aftercare begins when the patient leaves hospital, the planning of aftercare should start whilst the patient is in hospital. The UHB and the local authority, in consultation with the service user, their family or carer, Care Coordinator and other members of the Multi-Disciplinary Team (MDT), identify appropriate aftercare services for the person in good time for their eventual discharge from hospital, or release from prison.

## HYWEL DDA UNIVERSITY HEALTH BOARD

- 6.2 The S117 aftercare plan should normally be considered at a Multi-Disciplinary Team (MDT) care and treatment planning (CTP) meeting; this meeting will also identify the Care Coordinator (if not already identified). The MHA Code of Practice for Wales contains detailed guidance about the people who should be involved in this process and the considerations to be taken into account.
- 6.3 The CTP is the framework for care coordination and resource allocation within mental health and should be an effective, efficient and transparent process of care coordination and care delivery that encompasses all the relevant responsibilities of the UHB and LA. It must be based on a full assessment of the person's needs, which specifies S117 aftercare arrangements, must be in place before:-
- Discharge from hospital
  - A period of S17 leave - except for short periods of leave, when "a less comprehensive review may suffice, but the arrangements for the persons care should still be properly recorded". Any period of leave which includes an overnight stay necessitates a full aftercare plan.
  - A Mental Health Review Tribunal for Wales or Hospital Managers Hearing. The Hospital Managers must ensure that the UHB and the LA are aware of the hearing so that they are able to consider aftercare arrangements in all cases; however, this is particularly important when discharge is a strong possibility and appropriate aftercare is a key factor in the decision.
- 6.4 Carers play an important role and Part 2 of the MH (Wales) Measure requires Care Coordinators to take all practicable steps to consult with carers during the preparation or review of the persons CTP. Consultation may go ahead even if the person has indicated that they do not wish for the carer to be consulted, provided that due consideration has been given to the person's wishes.
- 6.5 An integral part of the management process should be for the person to accept responsibility for their own actions and associated risks supported by the CTP and the team's interventions based on the principles of positive risk management.
- 6.6 Failure to implement discharge planning arrangements within a reasonable time is in breach of Article 5 of the European Convention on Human Rights, and therefore in breach of the 1998 Human Rights Act. UHB staff responsible for discharge planning need to ensure that the reasons for any delay are well documented and evidenced. Discharging remains a joint responsibility between the UHB and the LA.

### 7.0 S117 REGISTER

- 7.1 The UHB must maintain a record of people entitled to S117 aftercare. The Health Board will retain details of those patients subject to S117 and CMHT's, the Mental Health Act Administration Team and the Commissioning Team will ensure that this information is accurate and kept up to date.

# HYWEL DDA UNIVERSITY HEALTH BOARD

## 8. REVIEWING SECTION 117

- 8.1 The Care Coordinator under Part 2 of the Measure will arrange an initial review of the care plan within an appropriate timescale (to be determined on a case by case basis according to need). CTPs for persons receiving aftercare under S117 should be reviewed as often as required but once every twelve months as a statutory minimum, within the CTP process.
- 8.2 All CTPs should include specific detail of which services are to be provided under S117 and must clearly identify the interventions that are related to S117 entitlement and those that are not. Staff should enable notifications on Care Partner so that the S117 status is recorded under the alert system on the summary page, recording the S117 status and local authority area.
- 8.3 Persons who are subject to S117 and receiving community services should be offered an IMHA to support them at reviews by their Care Coordinator.
- 8.4 Each review must include an explicit decision on whether the person continues to be eligible for S117 and what services are required to support them and this must be recorded within the persons records and within their CTP. Representation from both Health and LA must attend the meetings, those experienced staff should understand what the implications are for making S117 decisions.
- 8.5 It is important to distinguish within CTP and S117 documentation those items of care and support that relate to mental health needs and are provided free of charge, and those items that relate to community care needs unrelated to the relevant mental disorder, which may be subject to a financial assessment by the LA. It is therefore important that the Care Coordinator in the aftercare planning arrangements is fully aware of the legal position and any funding commitments that may result.
- 8.6 Persons who are subject to S117 but not open to CTP would receive a review once every 12 months as a statutory minimum but this could be more often if required. The responsibility for ensuring this review takes place would rest with the CMHT/CTLD manager and CMHT manager for Social services.

## 9. RESIDENCE

- 9.1 The responsible aftercare bodies in Wales are the UHB and LA in which the person concerned was ordinarily resident prior to being detained under a qualifying Section of the MHA, or in any other case, the area in which the person is resident, or sent on discharge by the hospital in which they were detained. The critical first enquiry, therefore, is whether someone has an 'ordinary residence' and, if so, where that ordinary residence is.
- 9.2 Section 117(3) of the MHA sets out a three strand test:  
*In this section "the clinical commissioning group or Local Health Board" means the Local Health Board and "the Local Social Services Authority" means the local social services authority –*

*(a) if, immediately before being detained, the person concerned was ordinarily resident in England, for the area in England in which they were ordinarily resident; or*

*(b) if, immediately before being detained, the person concerned was ordinarily resident in*

# HYWEL DDA UNIVERSITY HEALTH BOARD

*Wales, for the area in Wales in which they were ordinarily resident; or*

*(c) in any other case, for the area in which the person concerned is resident or to which they are sent on discharge by the hospital in which they were detained.*

9.3 Identifying the responsible LA and LHB should be established as soon as the requirement to provide s117 aftercare services is established.

The responsible LA will be the one in which the person was ordinarily resident in England and Wales immediately before being detained or if the person was not ordinarily resident in England or Wales immediately before detention, for the area in which the person is resident or to which he is sent on discharge by the hospital in which they were detained.'

Health determines ordinary residence by persons address. These are historical arrangements that are in place and this system will remain.

9.4 Where two or more LA's are in dispute over a person's ordinary residence in respect of their responsibilities under s117 then s195 SSWBA 2014 and the Care and Support (Disputes about Ordinary Residence etc) (Wales) Regulations 2015 provide that the question (if not resolved beforehand having taken legal advice at the earliest opportunity) is to be determined by the Welsh Ministers. The SSWBA 2014 Part 11 Code of Practice provides that : -

- That it is 'critical that the person does not go without the care they need' during the dispute process;
- That one of the authorities involved in the dispute must provisionally accept responsibility for the person at the centre of the dispute and be providing services.
- Where LA's cannot agree which authority should accept provisional responsibility for the provision of services , the LA in which the person is living or is physically present must accept responsibility until the dispute is resolved.

Disputes over a person's ordinary residence between a LA in Wales and a LA in England will be determined according to arrangements between the Welsh Ministers and the Secretary of State for Health.'

## **10. CHARGING PATIENTS FOR AFTERCARE SERVICES**

10.1 Aftercare services provided under S117 must be provided free of charge. The regular sharing of the register and notification processes should reduce the likelihood of charges being made against S117 aftercare provision.

10.2 S117 concerns needs arising from or relating to the person's mental disorder and hospital admission. It is therefore important to recognise that an individual may have care and/or health needs that fall outside the scope of S117. For example, this may relate to physical disability or illness that has no direct bearing on the person's mental health. It can therefore be the case that an individual may be S117 eligible, as well as having additional care and support needs (that generally fall outside S117) that will be met under the Social Services and Wellbeing (Wales) Act 2014 (SSWA), or NHS continuing health care subject to eligibility criteria being met.

## HYWEL DDA UNIVERSITY HEALTH BOARD

- 10.3 The provision of aftercare services under S117 should not be confused with providing essentials such as food, clothing, heating etc. These remain the responsibility of the individual except in the very special cases where accommodation heating etc are provided as part of a residential placement and are an inseparable part of the aftercare plan.
- 10.4 If the aftercare to be provided includes housing-related support that would normally be funded by Housing Support grants, this will be paid by the LA.

### 11. CONTINUING NHS HEALTHCARE AND ITS RELATIONSHIP WITH SECTION 117

- 11.1 If all the required aftercare services are to be provided under S117 it is not necessary to assess for eligibility for NHS continuing healthcare (CHC) funding. In other words, a primary healthcare need does not need to be established to require the UHB to fund, and in most cases the complexity of a persons need will require both the Health Board and the LA to work collaboratively to achieve the outcome set out in S117. However, if the persons needs arise from needs unrelated to their S117 needs consideration of a primary health need must be considered in the usual way.
- 11.2 The general approach set out in this framework of considering the totality of need in assessing eligibility for CHC still applies. The individual may as a result, have the services required to meet their total care needs provided or funded by the NHS, but this does not necessarily remove the joint duty under S117. The S117 joint duty remains unless a joint assessment and agreement by both the LA and the LHB determines that those arrangements are no longer needed.
- 11.3 Where an individual in receipt of S117 services develops physical care needs resulting in a rapidly deteriorating condition which may be entering a terminal phase (or a catastrophic health event which clearly requires CHC), consideration should be given to the use of the Fast Track Assessment Tool which can be accessed from the Long Term Care Team.
- 11.4 Where an individual is to be discharged from S117, eligibility for CHC or funded nursing care will need to be considered where the transition assessment and plan indicate that these may be required. Information should be provided to the individual or their representative in regard to the effect that discharge from S117 arrangements may have on their finances and/or welfare benefits.
- 11.5 The process for the assessment and determination of eligibility for CHC is described in detail in of the National Framework for the Implementation of Continuing NHS Healthcare in Wales (2014). MDTs should refer to that document directly.

### 12. ACCOMMODATION UNDER S117

- 12.1 A person's aftercare plan may involve the provision of accommodation where this meets the primary purpose of S117 i.e. this usually means provision of supported accommodation. Where accommodation is provided as aftercare it must not be charged for and therefore this must be made clear in the CTP/annual review. Accommodation under S117 must not be indirectly charged for by way of welfare benefits.
- 12.2 Where the cost of the preferred accommodation is more than the expected cost, the

## HYWEL DDA UNIVERSITY HEALTH BOARD

person or a third party must agree to pay (top up) the additional cost.

### 13. DIRECT PAYMENTS

- 13.1 Direct payments involve the LA making regular financial payments of the personal budget to the person (or their representative) so that they can choose how to use the money to meet the needs that the Local Authority has agreed to meet. Anyone who requests a Direct Payment must be provided with a Direct Payment so long as they have the capacity to request it; and where there is a nominated person agrees to receive the payment and is capable of managing it.
- 13.2 Where a LA is under a duty to provide aftercare services for a person under S117 and the person is eligible to receive such payments under Section 50, 51 and 52 of the SSWBA, then it may make direct payments to discharge its duty.
- 13.3 The LAs duty to offer direct payments to anyone receiving services under S117 is subject to the exception of persons detailed in the schedule to Regulation 14(1) The Care and Support (Direct Payments) (Wales) Regulations 2015, where the LA may provide direct payments subject to certain conditions.

### 14. TRANSFER OF PERSONS TO AND FROM OTHER AREAS

- 14.1 Responsibility for providing S117 services may be formally transferred if the authorities agree. Formal transfer should be recorded through exchange of correspondence stating that agreement has been reached between the respective authorities for formally transferring responsibility, the date and time the transfer is effective and a statement that the person would be informed by the accepting team. The contact names from Health Board and LA where patient is coming from must be recorded within the person's records and details forwarded to the Section 117 administrator.
- 14.2 If a person moves out of the area, their entitlement to S117 continues. It is the responsibility of the Care Coordinator to ensure that appropriate transfer arrangements are made and that the receiving authority is aware of the service user's entitlement to care and services under S117. There is an obligation on the Care Coordinator/health LA to review the service provision annually. (Guidance contained in HSC2000/03: LAC (2000)3 reminds authorities that a person who was resident in that area because of detention under the Act).
- 14.3 If a person is placed in a residential resource outside the area which is responsible for providing aftercare, that responsibility continues, although arrangements for some aspects of the CTP to be provided in the new area (for example, psychiatric follow-up) may be negotiated, particularly if the placement is a significant distance from the responsible authority. That person should register with a GP in their new area of residence.

### 15. DISCHARGE FROM S117 AFTERCARE

- 15.1 Aftercare provision under S117 does not have to continue indefinitely. It is for the UHB and LA to decide in each case when aftercare provided under S117 should end, taking account of the persons needs at the time following an assessment. It is for the authority responsible for providing particular services to take the lead in deciding when those services are no longer required. The person, their carers, and other agencies should

## HYWEL DDA UNIVERSITY HEALTH BOARD

always be consulted. Those persons who are subject to S117 who are well and stable can be discharged from CTP as they are eligible for Part 3 of the MH Measure and can refer themselves back to secondary services for assessment directly. However, those individuals will be reviewed on at least an annual basis under S117 arrangements and should be afforded the opportunity to request an assessment at any time.

- 15.2 Aftercare services under S117 should not be withdrawn solely on the grounds that:
- the person has been discharged from the care of specialist mental health
  - an arbitrary period has passed since the care was first provided;
  - the person is deprived of their liberty under the Mental Capacity Act 2005;
  - the person may return to hospital informally or under Section 2;
  - or the person is no longer on a community treatment order or S17 leave
  - The person is now settled in the community or a care home, unless the agencies agree there is no longer a need for continued CTP aftercare services
- 15.3 Individuals are not legally obliged to accept aftercare services offered but any decisions they make to decline services they should be fully informed of any discussions or decisions made relating to the reviews. A person's unwillingness to accept services does not mean they have no need for them; neither does it relieve the statutory agencies of their responsibility to offer aftercare.
- 15.4 In the event that the person disengages with Mental Health services but remains subject to S117, attempts should be made to invite the person to a review meeting. If the person does not attend this, a review meeting between the UHB and LA representatives must be held to facilitate a clinical decision whether the entitlement to aftercare should continue. This review should evidence the efforts that have been taken to ascertain the person's current mental state along with any identified needs, also whether the opinions of their family/carer and GP have been sought where appropriate. In the absence of any information being available, the decision to close to S117 should be based on clinical decision making and analysis of risk.
- 15.5 When considering discharging a person from S117 both authorities are required to jointly review the aftercare plan, even if the aftercare services are provided by a single authority. In practice, this is likely to be a decision made by the person's MDT. There must be a joint formal statement of the agreement to discontinue aftercare services, made by representatives of the UHB and LA.
- 15.6 The decision to end S117 can only happen with the agreement of both the UHB and the LA. Any such decision must be recorded in writing in line with this policy on the Proforma at Appendix A.
- 15.7 The decision to end S117 must only be taken at an MDT meeting and must include people able to represent the UHB and the LA and make a recommendation on their behalf, this may be as a minimum:
- RC/Consultant Psychiatrist for health
  - Registered Social Worker or Approved Mental Health Practitioner for LA
- 15.8 Wherever possible the person should be fully involved in the decision-making process and their involvement recorded.
- 15.9 The rationale behind the decision to discharge from S117 must be fully justified and

## HYWEL DDA UNIVERSITY HEALTH BOARD

preceded by a proper reassessment of the person's needs. The decision must be clearly recorded in the patient's records giving reasons as well as details of who was involved in the decision making and signed by UHB and LA representatives.

The following people must be notified in writing (usually by the Care Coordinator):  
Service user, Carer/s, RC, GP, S117 administrator, nearest relative (with their consent) and IMHA.

- 15.10 If S117 aftercare ends, it cannot be reinstated if the person becomes in need of further mental health services. The person can only receive further S117 services if they are readmitted to hospital under a qualifying Section.
- 15.11 Where both the UHB and LA are satisfied upon re-assessment of the persons current needs that aftercare is no longer necessary, and can be appropriately discharged, there is scope thereafter for the UHB and/or LA to look to other community care provisions which are more relevant. This is provided the authorities are satisfied that such other services are available to the person; that they are appropriate having regard to the Social Services and Well-being (Wales) Act 2014 and Parts 3 and 4 of the Code of Practice.
- 15.12 In the event that a decision cannot be reached by the MDT then the recommendation shall be made by both the LA Lead and an appropriate lead clinician from mental health services. In cases where a decision cannot be reached then S117 should continue.

### 16. Section 117 Register

A central S117 register will be held by the UHB and will be used to ensure that there is no duplication in the recording of S117 eligible individuals, funding or exclusion of people with S117 entitlement. The database will be a live document and CMHT/CTLD's will be able to add new patients to it via the Clinical Portal. The register will be reviewed by relevant staff within the MH & LD Directorate.

### 17. COMPLAINTS

- 17.1 Any complaints regarding S117 will be dealt with within the usual complaints procedures.

### 18. RESPONSIBILITIES

- 18.1 The duty to provide aftercare services under Section 117 is a stand-alone duty which is not reliant on any other piece of legislation. The MHA states that the responsible aftercare bodies are the UHB and the LA "for the area in which the person concerned is resident, or, to which the person is sent on discharge by the hospital in which the person was detained."
- 18.2 **Chief Executive**  
The Chief Executive has overarching responsibility for ensuring that the UHB is compliant with the law in relation to the MHA.
- 18.3 **Executive Lead for UHB**  
The Executive Director of Operations for the UHB has overarching responsibility for ensuring compliance with the contents of this Procedure.
- 18.4 **Community Team Managers/Service Managers Health in collaboration with Care Coordinators are responsible for:**



# HYWEL DDA UNIVERSITY HEALTH BOARD

- Ensuring that this procedure is brought to the attention of all their staff, and that they understand and adhere to the guidance contained therein.
- Ensure that all staff involved in the care and treatment of people who meet the criteria for S117 aftercare are competent to carry out these functions.
- Monitoring the S117 aftercare arrangements for service through caseload/management/S117 Register/CTP.
- They must ensure that all aspects of this Procedure are adhered to including training and appraisal and should report any problems or concerns to the appropriate Mental Health service manager.

## 19. MONITORING OF SECTION 117 AFTERCARE ARRANGEMENTS

- 19.1 Monitoring arrangements are carried out by the Mental Health Legislation Assurance Committee. If individuals are placed in England or other parts of Wales and there is no involvement from Health then Social Workers review cases.

## 20. REFERENCES

- Mental Health Act 1983* – [www.legislation.gov.uk/ukpa/1983/20/contents](http://www.legislation.gov.uk/ukpa/1983/20/contents)  
*Code of Practice to the Mental Health Act 1983, 2016*  
*Mental Health Wales Measure (2010)*  
*Mental Capacity Act, 2005*  
*Social Services and Wellbeing (Wales Act), 2014*  
*Mental Health Review Tribunal for Wales* – [www.justice.gov.uk/tribunals/mental-health](http://www.justice.gov.uk/tribunals/mental-health)  
*Human Rights Act 1998* – [www.legislation.gov.uk/ukpga/1998/42/contents](http://www.legislation.gov.uk/ukpga/1998/42/contents)  
*Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment)(Wales) Regulations 2008*  
*NHS (Wales) Act 2006*  
*The Partnership Arrangements (Wales) Regulations 2015*  
*After-care under Section 117 Mental Health Act 1983* – IMHL October 2003  
The Health Service Circular 2000/003 and LSSA Circular 2000(3)  
NAFWC 09/2002 <http://wales.gov.uk/pubs/circulars/2002/english/NAFWC09-02Guidance-e.pdf?lang=en>.  
*Continuing NHS Healthcare. The National Framework for Implementation in Wales (June 2014)*
- Welsh Government, Law Wales Helping you understand Welsh Law, Ordinary Residence <https://law.gov.wales/publicservices/social-care/9692237/Care-and-support-for-adults-and-children/ordinary-residence/?lang=en#/publicservices/social-care/cae-and-support-for-adults-and-children/ordinary-residence/?tab=overview&lang=en> accessed 20 May 2019

APPENDIX A - Discharge Proforma

# HYWEL DDA UNIVERSITY HEALTH BOARD

**Appendix A**



Bwrdd Iechyd Prifysgol  
Hywel Dda  
University Health Board



## Discharge from Section 117 Aftercare

<b>Persons Name</b>		<b>Patient Identifier</b>	
<b>Home Address</b>		<b>Date of Birth</b>	

The following people have been consulted regarding the ongoing need for the above named to receive aftercare under Section 117 of the Mental Health Act 1983.

Following consultation, it has been determined that with effect from \_\_\_\_\_ (date), this person shall cease to be subject to section 117 aftercare because:

Signed: \_\_\_\_\_ *Representative of Hywel Dda UHB*

Print name: \_\_\_\_\_ Designation: \_\_\_\_\_ Date: \_\_\_\_\_

Signed: \_\_\_\_\_ *Representative of: Carms LA / Cered LA / Pembs LA*

Print name: \_\_\_\_\_ Designation: \_\_\_\_\_ Date: \_\_\_\_\_

Signed: \_\_\_\_\_ Service User Date: \_\_\_\_\_

**This decision has been reviewed and accepted by the following:**

Signed: \_\_\_\_\_ *Team Manager – Hywel Dda UHB Representative*

Print name: \_\_\_\_\_ Designation: \_\_\_\_\_ Date: \_\_\_\_\_

Signed: \_\_\_\_\_ *Team Manager - Representative of: Carms LA / Cered LA / Pembs LA*

Print name: \_\_\_\_\_ Designation: \_\_\_\_\_ Date: \_\_\_\_\_

*On completion, please forward a copy to: Sec 117 Administrator*