

## **V2.0 Children and Young People**

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## 1.0 Introduction

### 1.1 Section 117 of the Mental Health Act 1983 (as amended 2007)

Section 117 of the Mental Health Act 1983 (as amended 2007) imposes a free-standing duty on Lincolnshire NHS Integrated Care Board (LICB, ICB) and Lincolnshire County Council (LCC), in co-operation with voluntary agencies, to provide or arrange for the provision of after-care to certain eligible patients. This duty arises once the individual ceases to be detained and then leaves hospital whether or not the individual leaves hospital immediately after they have ceased to be detained. The duty to provide this service applies until such time as the LICB and the LCC are satisfied that the person concerned is no longer in need of such services.

### 1.2 Purpose of Section 117 aftercare

Section 117 after-care services are services which have both of the following purposes:

- meeting a need arising from or related to the patient's mental disorder and
- reducing the risk of a deterioration of the patient's mental condition (and, accordingly, reducing the risk of the patient requiring admission to a hospital again for treatment for mental disorder

### 1.3 Commitment to partnership working

As a partnership Lincolnshire Partnership NHS Foundation Trust (LPFT), LICB and LCC are committed to the ongoing support and recovery of CYP through the effective coordination of section 117 aftercare provision.

Through this partnership and commissioning approach LPFT, LICB and LCC are committed to ensuring that individuals receive the services to which they are entitled under section 117 and those individuals who no longer require such services have the entitlement reviewed and where appropriate ended.

## **2.0 Lincolnshire Joint Agency Section 117 aftercare Joint Policy**

### **2.1 Organisational Reference**

The joint agency policy is for the following partnership organisations to follow and refer to:

- Lincolnshire County Council (LCC)
- Lincolnshire Partnership NHS Foundation Trust (LPFT)
- NHS Lincolnshire Integrated Care Board (LICB or ICB)

### **2.2 Policy Purpose**

The purpose of the section 117 aftercare policy is to:

- State how the organisations are to discharge its responsibility to children and young people (CYP) who are entitled to receive aftercare services under section 117 balanced with relevant legislation for this client group.
- Set out the joint agreement between the partner organisations and their obligations under section 117.
- Ensure the consistency and quality of the delivery of section 117 aftercare across Lincolnshire.
- Set out the arrangements for commencement for assessing, care planning, funding reviewing, ending entitlement and ending eligibility, reinstating section 117 aftercare.
- Confirm the process for transition to adult services.
- Enable further detailed guidance and on-going training, associated with this policy, to be developed jointly by the partnership organisations.

### **2.3 Free-standing duty**

Eligible individuals cannot be charged for section 117 aftercare services under the free-standing duty.

## **3.0 Lincolnshire County Council, Lincolnshire Integrated Care Board and Lincolnshire Partnership Foundation Trust after-care responsibilities**

### **3.1 Identifying responsible NHS Integrated Care Board and Local Authority (LA) , “The legislation”**

Section 117 of the Mental Health Act 1983 (MHA) sets out the legal obligation on relevant Local Authorities and CCGs now ICB to provide aftercare to certain detained patients once they cease to be detained.

Section 117(3) of the Mental Health Act 1983 defines who the responsibility to provide aftercare services falls upon.

S.117 (3) currently provides as follows

“(3) In this section the “integrated Care Board or Local Health Board” means the integrated care board or 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 in England, for the area in England in which he was ordinarily resident.
- (b) if immediately before being detained, the person concerned was ordinarily resident in Wales, for the area in Wales in which he was ordinarily resident; or
- (c) in any other case for the area in which the person concerned is resident or to which he is sent on discharge by the hospital in which he was detained.”

In the event of a dispute section 40 of the Care Act provides for a mechanism to resolve that dispute. In order to fully understand the effect of these provisions it is necessary to look at the responsibilities of the local authority and the integrated care board separately.

### **3.2 The Responsible Local Authority**

It is important to recognise that different provisions apply depending on whether you are dealing with pre 2015 or post April 2015 cases.

#### **Pre-Care Act 2014 cases**

Prior to the Care Act coming into effect on 1 April 2015, Section 117(3) provided that the responsible CCG (now ICB) and Local Authority was that in whose area the patient was resident immediately before being detained. If the CYP had no such residence, then the responsibility defaulted to the bodies for the area the patient was sent to on discharge.

The case law applying to these types of cases confirmed that the local authority “deeming provisions” (which were familiar to social care staff under Acts such as the National Assistance Act 1948) had no application and therefore did not apply when determining responsibility under section 117 of Mental Health Act 1983. [A deeming provision is a provision which means that in certain circumstances the person is placed out-of-area but continues to be deemed in law as ordinarily resident in the placing Local Authority's area.]

#### **Post Care Act cases (Post 1 April 2015)**

Section 75 of the Care Act 2014 amended the wording of section 117 to change the wording from “resident” to “ordinarily resident”. In all other respects the section remained the same. This simply served to confuse matters as it was not clear whether by making this change it was necessary to import the deeming provisions. In March 2016 a revision to the Care and support statutory guidance made it clear that the deeming provisions which are used to determine Care Act responsibilities do not apply to section 117. This still remains the position.

#### **Practical Application**

Section 117 responsibilities for local authorities are determined therefore by reference to the common law without the use of deeming provisions. In most cases a person's ordinary residence is straight forward. In more complex cases the individual facts will need to be considered.

The courts have considered the meaning of ordinary residence and the leading case is that of Shah v London Borough of Barnet (1983). In this case Lord Scarman stated that:

“unless it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning I unhesitatingly subscribe to the view that ordinarily resident refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration.”

The statutory guidance helpfully provides the following.

Local authorities must always have regard to this case when determining the ordinary residence of children and young people who have capacity to make their own decisions about where they wish to live. Local authorities should in particular apply the principle that ordinary residence is the place the person has voluntarily adopted for a settled purpose, whether for a short or long duration. Ordinary residence can be acquired as soon as the person moves to an area, if their move is voluntary and for

settled purposes, irrespective of whether they own, or have an interest in a property in another local authority area. There is no minimum period in which a person has to be living in a particular place for them to be considered ordinarily resident there, because it depends on the nature and quality of the connection with the new place”

**Where the individual lacks capacity the statutory guidance provides the following:**

Therefore, with regard to establishing the ordinary residence of children who lack capacity, local authorities should adopt the Shah approach, but place no regard to the fact that the adult, by reason of their lack of capacity cannot be expected to be living there voluntarily. This involves considering all the facts, such as the place of the person’s physical presence, their purpose for living there, the person’s connection with the area, their duration of residence there and the person’s views, wishes and feelings (insofar as these are ascertainable and relevant) to establish whether the purpose of the residence has a sufficient degree of continuity to be described as settled, whether of long or short duration.”

The local authority will therefore consider the position of ordinary residence by using the common law interpretation above without consideration of the deeming provisions when considering whether it is has responsibility under Mental Health Act section 117 for aftercare.

**Accommodation provided under section 117 aftercare of the Mental Health Act 1983**

Where accommodation is provided under section 117 aftercare of the Mental Health Act, (as opposed to under the Care Act), section 39(4) of the Care Act deems the person to be ordinarily resident in the Section 117 authority's area for the purposes of other Local Authority services as well.

**What happens if the individual has a section 117 aftercare entitlement in one local authority but is subsequently re-detained in the area of another authority under section 3.**

This scenario has been the subject of longstanding litigation by the name of R. (on the application of Worcestershire CC) v Secretary of State for Health and Social Care [2021] EWCA Civ 1957. This Court of Appeal case heard in December 2021 has changed for now the way in which these cases are dealt with. It is an important decision which affects local authority funding.

**Conventional legal view**

The conventional legal view was that where a person was ordinarily resident in another local authority area (local authority B) and was re-detained under section 3 in the area of local authority B, that local authority would be responsible for the provision of after-care services and not the local authority under which the first detention had occurred (local authority A).

The Court of Appeal has changed that position. The first local authority (local authority A) will retain section 117 aftercare responsibility unless and until a joint decision (following proper process) has been made by the responsible local authority and integrated care board that the individual is no longer in need of any aftercare services. Re-detention will not automatically terminate the section 117 duty but it is clear that had such a decision been made to bring the aftercare services to an end, the outcome would have been different.

**The current position as of 10 August 2023**

Upon consideration of the Supreme Court decision, following the appeal submitted by Worcestershire, the current position for Local Authorities as from the 10.08.2023 is as follows: The conventional legal view (as outlined above) was that where a person was ordinarily resident in another local authority area (local authority B) and was re-detained under section 3 in the area of local authority B, that local authority would be responsible for the provision of after-care services

and not the local authority under which the first detention had occurred (local authority A) was upheld.

Effectively if an individual is detained on a qualifying section the existing section 117 aftercare is effectively ended due to their being no requirement for section 117 aftercare, due to the detention readmission to hospital on a qualifying section. The process for identifying the responsible Local Authority commences along with the process to identify the section 117 aftercare needs at the point of discharge from section/hospital.

Concluding the case, the Supreme Court said: ““We conclude that the courts below were right to decide that, in circumstances where Parliament has deliberately chosen not to apply a deeming (or equivalent) provision to the determination of ordinary residence under section 117 of the 1983 Act, the words “is ordinarily resident” must be given their usual meaning, where a person was ordinarily resident immediately before the second detention.”

It should be noted that the government has published a draft bill to amend the MHA, which includes provisions that would insert the deeming rules from the Children Act 1989 and Care Act 2014 into section 117 (clause 39). Should this be the case then this policy will need to be updated to reflect this or any change.

### **3.3 The Responsible Integrated Care Board Commissioner. The legislation**

The key legislative provisions relating to the determination of commissioning responsibility are contained in

- the NHS Act 2006 (“the 2006 Act”), as amended, including by the Health and Care Act 2022 (“the 2022 Act”);
- the National Health Service (Integrated Care Boards: Responsibilities) Regulations 2022 (the “ICB Responsibilities Regulations”);
- the National Health Service (Integrated Care Boards: Exceptions to Core Responsibility) Regulations 2022 (the “ICB Exceptions Regulations”);
- the National Health Service (Integrated Care Boards: Description of NHS Primary Medical Services) Regulations 2022 (the “Primary Medical Services Regulations”); and
- the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (as amended by the Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022) (the “Standing Rules Regulations”), Who Pays? Determining which NHS commissioner is responsible for commissioning healthcare services and making payments to providers 01.07.2022.

#### **“Who pays Determining which NHS commissioner is responsible commissioning healthcare services.**

There have been several changes to the NHS responsible commissioner for detained individuals and their section 117 aftercare, over the past few years, these have been captured below to enable NHS Commissioners to make an assessment on the NHS responsible commissioner during the relevant periods of time.

The current position as of 1 July 2022 onward is outlined in paragraph 18 of the 2022 Who Pays? Determining which NHS commissioner is responsible for commissioning healthcare services and making payments to providers.

In respect of ICB-commissioned detention and aftercare services, the ICB responsible for commissioning and payment will be determined on the basis of the general rules at paragraph 10.2 of the 2022 “Who pays? Determining which NHS commissioner is responsible for commissioning healthcare services and making payments to providers, applied at the point of the CYP’s initial

detention in hospital under the Act (whether for assessment or treatment). This ICB will be known as the “originating ICB”. Paragraph 10.2 of the 2022 “Who pays? Determining which NHS commissioner is responsible for commissioning healthcare services and making payments to providers) states: “The general rules for determining responsibility between ICBs Where a patient is registered on the list of NHS patients of a GP practice, the ICB with core responsibility for the individual will be the ICB with which that GP practice is associated”.

Any one GP practice may have some patients who are usually resident in one ICB area and others who are usually resident in another. In that situation, the responsible ICB (originating ICB) for all of the patients registered with that practice will be the ICB of which that practice is a member.

This originating ICB will then retain responsibility for commissioning and payment throughout the initial detention (including any period of informal admission following detention, during which the CYP is no longer detained but remains in hospital voluntarily), for the whole period for which any section 117 aftercare is provided.

The recent supreme court judgement relating to the appeal submitted by Worcestershire, relates to Local Authorities and has not currently impacted on the NHS who pays guidance which remains in place as described above.

If a CYP is detained under mental health act section 2 for assessment and then, while they are in hospital, this becomes a section 3 detention for treatment, the ‘point of initial detention’ will be the date of the section 2 detention.

Where a CYP is not registered with a GP practice, the responsible commissioner will be the ICB in whose geographic area the CYP is “usually resident”.

### **3.4 Ascertaining originating responsible authorities where capacity is impaired**

Where an individual lacks capacity to make decisions about their care, the Cornwall case provides the following assistance:

“Adopt the Shah approach, however, place no regard to the fact that the young person, by reason of their lack of capacity cannot be expected to live there voluntarily. This involves considering all the facts, such as the place of the person’s physical presence, their purpose for living there, the person’s connection with the area, their duration of residence there and the person’s wishes and feelings (insofar as these are ascertainable and relevant) to establish whether the purpose of the residence has a sufficient degree of continuity to be described as settled, whether of long or short duration”  
Where an individual has capacity to decide where to live ordinary residence “refers to a man’s abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration.” This is known as the “Shah” test.

### **4.0 Capacity and Consent.**

Each organisation will work with their local policies in respect of capacity and consent in relation to section 117 aftercare. Additional information covering all age groups up to the individual’s 18<sup>th</sup> birthday, is contained in section 19 of the Mental Health Act Code of Practice.

### **5.0 Section 117 in relation to Children and Young people (MHA CoP 19.111 and 19.118)**

#### **5.1 Duty to notify the responsible local authority following the detention in Hospital of a Child or young person.**

Where a child or young person is detained in hospital and that is likely to be for at least 12 consecutive weeks, the authority or health body who arranged for the detention is required under

section 85 of the Children Act 1989 to notify the responsible Local Authority. This duty ensures that the Local Authority is aware of any child or young person in such detention and can ensure they are being safeguarded and their needs are being met. The responsible Integrated Care Board must also be informed to make them aware of the detention and the possible need for section 117 aftercare.

## **5.2. Additional factors to be considered for Children and Young people**

Whilst guidance set out in the MHA Code of Practice is applicable to individuals of all ages, in relation to children and young people additional factors will need to be considered. This may include ensuring that the aftercare integrates with any existing provision made for “children in care” (also referred to as looked after children which is the legal status), care leavers, and those with Education, Health, and Social Care needs, as well as safeguarding vulnerable children. Whether or not section 117 aftercare of the Act applies, a child or young person who has been admitted to hospital for assessment and/or treatment of their mental disorder may be ‘a child in need’ for the purpose of section 17 of the Children Act 1989.

In agreeing a section 117 aftercare plan, the Local Authority must also ensure that this is informed by, and reflected in, any other statutory and non-statutory assessment or plan for the child, such as Education Care and Health Plan, Early Help Plan, Child in Need Plan, Child Protection Plan, Child in care Plan or Leaving Care Pathway Plan, and where appropriate run concurrently with co-ordinated reviews. Whilst coordinating planning can be complex, for example where a young person is transitioning to adult health and social care services, this should never be a reason to delay discharge.

## **5.3 Section 117 aftercare and Joint commissioning arrangements in respect of children with Education, Health and Social care needs.**

If a child with an education, health, and care plan (EHC plan) is admitted to hospital under the Mental Health Act (section 3) the Local Authority who maintains the plan should be informed, and where appropriate should be involved in the discharge plan so that the EHC plan can ensure that educational support continues to be provided. If necessary, this should be kept under review and amended to ensure targets and provisions remain appropriate. The Local Authority should also be involved in creating the discharge plan, so that the EHC plan is revised as necessary to continue to reflect the child or young people educational, health and social care needs and where relevant links to the section 117 aftercare plan.

Where there is no EHCP this would fall to the school to decide if they can meet needs or if they need them to apply for an EHCP, as well as reflecting the duty under Section 19 of the Education Act to provide education where this isn't reasonably accessible for the CYP to attend their school, which may be the case for CYP eligible for section 117 aftercare who don't have an EHCP.

## **5.4 Child in Care (Looked after children).**

Where a child/young person is a child in care under section 31, Children Act (1989), they will continue to be a child in care while they are detained under the Mental Health Act. They will continue to have a Social Worker and will be subject to all the statutory arrangements that are in place for a child in care. They will continue to have a care plan and will be subject to statutory reviews.

## **5.5 Interface with Children's Act 1989**

Where it is found that a child requires any support provided in order to meet section 117 aftercare needs, staff must ensure it is done in line with the legal requirements of the Children's Act 1989 and should be assessed accordingly.

## **5.6 Meeting the CYP and family needs**

All processes should be based on aiding recovery and a meaningful personalised lifestyle. The aim is to maintain individuals within their family setting.



## **6.0 Eligibility and Entitlement**

### **6.1 Eligibility**

A CYP will be eligible for section 117 aftercare once they become subject to one of the qualifying sections of the Mental Health Act.

- Section 3 – Admission for treatment
- Section 37- Power of courts to order hospital admission or guardianship
- Section 45A – Power of the higher courts to direct hospital admission
- Section 47 – Removal to hospital of persons serving sentences of imprisonment
- Section 48 – Removal to hospital of prisoner

Sections 45A, 47, and 48 do not apply to children and young people

Further information about these sections of the Mental Health Act can be accessed via the Department of Health website which has published an information leaflet for each [here](#)

It is the responsibility of all health and social care professionals to ascertain if a person under their care is eligible for s117 aftercare and who the responsible commissioners are.

**LCC, LICB and LPFT**, will be responsible for providing information regarding any CYP who becomes subject to a qualifying section on any other site.

The process and responsibilities for the management of the section 117 aftercare eligibility are set out in the section 117 aftercare Procedures and Guidance Document.

### **6.2 Entitlement**

Entitlements are the service or services provided to the CYP post discharge and will be the focus of reviews in monitoring progress, these service entitlements can be changed or ended following the appropriate review and section 117 aftercare Out of Area Treatment Panel (OAT's panel) ratification process.

### **6.3 Young children with complex and intense aftercare needs**

The services are identifying an increase in the number of children below the age of 13 with a complexity and intensity of need who in all probability will require high levels of skilled section 117 aftercare support. Strategically, plans to manage, and provide appropriate aftercare support should be in place.

## **7.0 Individual Section 117 Aftercare needs and services. Section 117 in relation to Children and Young People (MHA CoP 19.111 and 19.118)**

### **7.1 Starting point**

Aftercare should start to be considered at the point of admission to ensure that the appropriate aftercare services are identified in readiness for an individual's planned discharge from hospital or following youth custody and must be child and young person focused and informed by an assessment of need. In relation to the child or young person, the Mental Health Act Code of Practice 2015 recognises additional factors will need to be considered. This may include ensuring that the aftercare integrates with any existing provision made for children in care, care leavers, and those with special educational needs or disabilities, as well as safeguarding vulnerable children.

### **8.0 Advocacy**

The statutory right to independent advocacy is an important additional safeguard for people who are subject to the Act. A detained individual can request an advocate from their nurse, care co-ordinator or section 117 aftercare Lead Professional.

LCC, LPFT and ICB utilise VoiceAbility to provide advocacy for children subject to the Mental Health Act. Contact details are in the section 117 aftercare Procedure and guidance document.

The 'Rethink fact sheet' admission to hospital for treatment (in place at the time) should therefore be provided to CYP at the point of admission and where appropriate to the parents or carers. Prior to discharge the leaflet relating to section 117 aftercare should be discussed with the CYP and their parents or carers to inform them of their rights and their eligibility to section 117 aftercare on discharge and their entitlement to care as assessed. Both documents can be located at appendix B in the procedures document.

### **9.0 Section 117 aftercare Lead Professional**

Where children and young people are detained in an out of area hospital placement (a hospital not in the CYPs home county)

there will usually be involvement from a care coordinator within the (children's) Community Mental Health Team who will become the Section 117 aftercare Lead Professional and in conjunction with the receiving hospital (who should also identify a hospital Lead Professional whilst in hospital), and the involved Social Worker, work together in co-ordinating the hospital treatment and the section 117 aftercare plan thus providing a robust and seamless transition back into the local service. Should the CYP case not be open the individual will be allocated to a specific individual in the CAMHS Crisis and Enhanced Treatment Team managed by LPFT from the children's urgent care directorate this person will become the section 117 aftercare Lead Professional. The LPFT section 117 aftercare Lead Professional will ensure that RIO is fully updated with the information in respect of the detention, this will ensure that colleagues can determine that the CYP has been detained and on an appropriate section.

### **10.0 Discharge and aftercare planning**

Discharge and aftercare planning must start as soon as possible after admission to hospital and must be child and young person, and family focused and informed through an assessment of need. Prior to their discharge from hospital all children and young people should have an assessment of their needs, on which a care plan on which their section 117 aftercare needs are based.

### **11.0 Assessment and Care Planning Attendance.**

Before commencing section 117 aftercare assessment and care planning, consideration will be given as to, who needs to be involved in assessing the section 117 needs of a CYP. The child or young person and their parent/carer/ guardian, an appropriate representative from Social Care and from the NHS must be present when assessing and deciding the section 117 aftercare plan. It is essential that the individual, the family, the Social Care representative, and NHS Health representative work together in the best interest of the young person.

Parents and carers should also be afforded a private discussion with relevant professionals to share their concerns without the risk of upsetting or damaging the relationship with their child or young person.

Where the individual does not wish to attend then this must be documented in the individual's record, assessors should discuss the best way for the CYP to input post meeting. In addition to the CYP themselves, the Lead Professional should actively consider the list of potential attendees contained within paragraph 34.12 of the Mental Health Act Code of Practice 2015 and the list contained in the CYP section 117 aftercare Guidance and Procedures.

A CYP can be supported by an advocate this is detailed in paragraph 8.0 of this policy above.

Aftercare planning should take account of the young person's age and cognition and should involve their parent/carer/guardian (as appropriate) to ensure that they will be ready and able to provide the assistance which the young person may need.

### **12.0 Assessing and care planning for Section 117 aftercare needs**

A holistic approach is required when assessing aftercare needs, The Section 117 aftercare Lead Professional and Social Worker then must complete the section 117 aftercare care/progress plan specifying what will be provided to meet an individual's section 117 aftercare needs. The care/progress plan must clearly identify the needs that are related to section 117 aftercare entitlement and those that are not. Lincolnshire County Council will assess using the child and family assessment leading to the progress plan and, the NHS service will use the Joint children and young person section 117 aftercare assessment leading to a section 117 aftercare plan. These forms and guidance on completing it are contained in the CYP section 117 aftercare Guidance and Procedures appendix.

Assessments of aftercare needs (and where possible how these will be met) should be conducted:

- as soon after admission as possible
- prior to discharge
- prior to any Tribunal or Hospital Managers review of detention
- as part of an ongoing process of reviews in the community
- when considering ending someone's section 117 entitlement or eligibility

The aftercare assessment and aftercare plan must be completed and recorded prior to the young person's discharge and made available to the young person, the young person will be consulted on in line with their age appropriate capacity on who the assessment and aftercare should be shared with and anyone with parental responsibility/relative/carer/ guardian, that the individual has consented to, or in their best interest if they have been assessed as lacking capacity.

This information should also be made available to the LA and LICB within 1 month of the person leaving hospital or, prior to leaving hospital where there are complex or non-statutory/standard section 117 aftercare needs identified which require funding agreement through the CYP section 117 aftercare Out of Area Treatments Panel. LCC and LICB must document this on their individual clinical systems in accordance with each agencies record keeping policies.

The aftercare Plan should identify a named individual as the section 117 aftercare Lead Professional who has responsibility for leading on, co-ordinating, the preparation, the implementation, and the evaluation of the aftercare plan post discharge.

The practitioners concerned, in discussion with the young person, should agree an outline of the young person's needs and a timescale for implementing the various aspects of the section 117 aftercare plan. All key people with specific responsibilities should be identified (section 117 aftercare Lead Professional role).

It is important that those who are involved in discussions about aftercare plans are able to make commitments about their own continuing involvement and the services to be provided or commissioned. If the worker will need to seek approval for this, extra time must be set aside for planning so that this causes no delay to the discharge from hospital and implementation of the aftercare plan.

The aftercare plan aims to ensure a transparent, accountable, and co-ordinated approach to meeting wide ranging psychological, emotional, and social needs associated with the young person's mental disorder. It should set out the practicalities of how the young person will receive treatment, care and support day-to-day and should not place undue reliance on the young person's carers.

Included within the aftercare Plan are:

- A treatment/progress plan which details Medical, Nursing, Social Worker, Psychological and other therapeutic support for the purpose of meeting the young person's individual needs promoting recovery and or preventing deterioration
- Details regarding any prescribed medications
- Details of how the young person will be supported to achieve their personal goals.
- Support provided in relation to social needs
- Support provided by carers
- A plan to maintain care where required in the absence of parental care for planned and unplanned absence.
- Details of any areas of need which are critical to preventing behavioural disturbance and should provide guidance on how staff/carers should respond if behavioural disturbance does arise.
- Actions to be taken in the event of a deterioration of the young person's presentation. Guidance on actions to be taken in the event of a crisis.
- Details of any actions to address physical health problems or reduce the likelihood of health inequalities

### **12.1 Care programme Approach.**

The care programme approach has been the care planning framework for the past 30 years, NHS England has stated with the publication of the “community mental health framework” that the care programme approach has been superseded. Work in refocusing the Care Programme approach in Lincolnshire in line with personalised care will take a period of time therefore reference to CPA will remain in this policy until such time as there is a formal change and for those individuals who are currently on CPA for this to continue. Any eventual change would need to be discussed with those individuals in receipt of CPA and reflected within this policy.

## **13.0 Reviews**

### **13.1 Purpose of reviews**

The Lead Professional will give consideration as to, who needs to be involved in reviewing the section 117 needs of a CYP. The child or young person and their parent/carer/ guardian, an appropriate representative from Social Care and from the NHS, and other relevant professionals involved in the ongoing support of the CYP.

The identified section 117 aftercare Lead Professional is responsible for ensuring section 117 aftercare needs are reviewed at the agreed timescale, recording progress towards the individual's independence, and supported with a focus on promoting recovery within the family environment. The responsibility of the identified section 117 aftercare Lead Professional to arrange reviews of the plan until it is agreed between all parties, including the young person, that it is no longer necessary and follow the ending section 117 aftercare process.

The aftercare plan will need to be reviewed if the young person moves to another area. The section 117 aftercare Lead Professional in the original area will be responsible for ensuring the aftercare needs are reviewed in the new area, making transfer arrangements with the new area if commissioning responsibility consequently passes or is delegated to authorities in the new area.

### **13.2 Review timescales**

Aftercare reviews should take place at intervals of 72 hours post discharge, 6 weeks post discharge, 6 months post discharge 12 months and annually thereafter, ad hoc reviews can be convened as required, progress with each aftercare need should be recorded, and where applicable adjusted, any

funding implications would need ratification by the section 117 aftercare Out of Area Treatments Panel for Children and Young People

At each review meeting consideration to end section 117 should be considered.

Unscheduled reviews can be called at any point should one be necessary:

- whenever the person moves to another area
- whenever there is information that indicates that the current plan is not meeting the persons mental health needs
- at the request of the person or their formal representative
- whenever ending section 117 entitlement or eligibility is being considered

#### **14.0 Transition from child to adult services**

ICBs and local authorities should have systems in place to ensure that appropriate referrals are made whenever either organisation is supporting a young person who, on reaching adulthood, may have a need for services from the other agency. ICBs and LAs should ensure that they are actively involved, with their partners, in the strategic development and oversight of their local transition planning processes, and that their representation includes those who understand and can speak in respect of section 117 aftercare.

#### **14.1 Transition planning**

Transition planning for children and young people into adult services in respect of Section 117 aftercare should be identified at age 17, or immediately if aged over 17 where aftercare services are or may be required at the age of 18 years. The identified CYP section 117 aftercare Lead Professional is responsible for the co-ordination of this process.

A section 117 aftercare Lead Professional will be appointed from the adult services and work in conjunction with the CYP section 117 aftercare Lead Professional in preparation to take over the role in adult services.

There are other time scales in respect of planning for adulthood these plans including the section 117 aftercare must dovetail together the statement above relates to the referrals to adult services in respect of section 117 aftercare and does not prevent prior and ongoing planning for adulthood which is good practice:

- For young people with education, health, and care plans this **must** happen from year 9, as set out in the Children and Families Act 2014. For young people leaving care, this **must** happen from age 15-and-a-half.
- For young people with a child in need plan, an education, health and care plan or a care and support plan, local authorities **must** carry out a review, as set out in the Children Act 1989, the Children and Families Act 2014 and the Care Act 2014.

Legislation and the respective responsibilities of the ICB and LA and are different in CYP and adult services.

Referral to the appropriate adult service is an important step in preparing for the transition into adult services and should be made at the latest at age 17 years.

#### **14.2 Transition Principles for young people.**

Children's services should identify those young people for whom it is likely that adult services will be necessary and ensure involvement from adult services in the ICB and the Local Authority who will be responsible for them as adults. Identification should occur for the young person at the age of 17 or immediately if older when detained and admitted to hospital. If admitted on or after their 17<sup>th</sup>

birthday referral to the appropriate Local Authority and ICB for an adult assessment using the jointly agreed assessments and subsequent care planning tools for adult section 117 aftercare which should ensure effective packages of care can be commissioned in time for the individual's 18th birthday. In order to do this employees from adult services will need to be involved in both the assessment and care planning to ensure smooth transition to adult services. If needs are likely to change, it may be appropriate to make a provisional decision, and then to recheck it by repeating the process as adulthood approaches. All parties with current or future responsibilities should be actively represented in the transition planning process.

The ICB and LA should ensure that adult services are appropriately represented at all transition planning meetings to do with individual young people whose needs suggest that there will be eligibility and may be entitlement. The needs of a young person, and any future entitlement to adult section 117 aftercare should be clarified as early as possible in the transition planning process, especially if the young person's needs are likely to remain at a similar level until adulthood.

### **14.3 Adult assessment and care planning tools for individuals transitioning into adult services.**

An awareness of the adult section 117 aftercare policy, and the procedures and guidance and agreed assessment and care planning/review tools should be used when transitioning into adult services to determine what section 117 aftercare care services individuals are currently receiving, and if there is any change to these services as the individual moves towards their 18<sup>th</sup> birthday, ideally if the existing service can transition with the young person, if there is to be a change this will need to be transitioning and in place for the individuals 18<sup>th</sup> birthday, there should be no gap in service for the individual, it may be identified that no ongoing aftercare service is required. The nature of the package may change because the young person's needs or circumstances change. However, it should not change simply because of the move from children's to adult services or because of a change in the organisation with commissioning or funding responsibilities.

There should be no gap in service provision based on age. Where service gaps are identified, these should be noted to the ICB and LA who should consider how to address these as part of their strategic commissioning responsibilities.

No services or funding should be unilaterally withdrawn unless a full joint health and social care assessment has been carried out and the entitlement to services ended or alternative funding arrangements have been put in place.

Any entitlement that is identified by means of these processes before a young person reaches adulthood will come into effect on their 18th birthday, subject to any change in their needs. The first review will follow the agreed time scales of 72 hours post discharge from hospital, 6 weeks, 6 months 12 months and annually thereafter. Where a young person has been assessed as being eligible for section 117 aftercare when they reach 18 years but lacks the mental capacity to decide about their future accommodation and support arrangements, a best interest's decision may need to be made about these issues. This process must be compliant with the 2005 Mental Capacity Act.

If there is a significant difference of opinion between the responsible commissioners and the young person's family as to what arrangements would be in their best interests, this needs to be resolved before their 18th birthday. Normal best practice is that such resolution is achieved through open and collaborative discussion between all parties. If there remains disagreement, timely application should be made to the Court of Protection early enough for care and support arrangements to be in place when the young person reaches 18. This should be determined by applying the principles set out in the relevant legislation.

A dispute or lack of clarity over commissioner responsibilities must not result in a lack of appropriate input into the transition process.

### **15.0 Ending entitlement(s) to section 117 aftercare services**

Consideration to end an entitlement would be considered at a review meeting where one of the topics under review is the section 117 aftercare. If there is agreement for an entitlement, or all entitlements to end this recommendation should be ratified by the section 117 aftercare Out of Area Treatments panel for children and young people.

Eligibility for services under section 117 aftercare remains in place until eligibility is ended.

### **16.0 Ending Section 117 aftercare Eligibility**

Aftercare entitlement under Section 117 may not continue indefinitely, and each person's needs and circumstances should be reviewed regularly. The MHA Guidance makes it clear that even if the person is settled well in the community, they may still need Section 117 services to reduce the likelihood of a relapse, or to prevent their condition deteriorating. Section 117 aftercare services should therefore end only if someone has been functioning well for a sustained period and no longer needs services that meet the statutory definition for section 117 aftercare.

The initial consideration to end section 117 aftercare eligibility would be made at a multi-disciplinary section 117 aftercare review.

A Section 117 multidisciplinary discharge meeting must be convened when discharge from Section 117 aftercare eligibility is considered, and all decisions must be recorded as evidence of the outcome. The views of the young person and their family or carers should form an important part of the discussion. If there is agreement that section 117 can be ended/discharged, this will be recommended to the Out of Area Treatments Panel for Children and Young People who will take a final decision, this decision will be communicated in writing to the individual. A template letter can be found in the procedures and guidance appendix.

Section 117 aftercare eligibility automatically ends should the CYP be readmitted to hospital on a qualifying section of the Mental Health Act for the Local Authority. For the Local Authority the process for section 117 aftercare recommences in preparation for discharge and may include different Local Authority commissioner, should the CYP have moved out of the original area.

The Mental Health Act Administrators must be informed of any section 117 eligibility ending.

For Health services there is no change if a subsequent qualifying detention is made, the who pays guidance sets out that the section 117 aftercare responsibility transfers with the individual along with the funding for the hospital stay if an out of area placement is required.

### **17.0 Disengagement from service**

When a CYP becomes disengaged with services or refuses to accept aftercare services, the entitlement does not automatically lapse and the care team should ensure that needs and risks are reviewed and, where possible, communicated to the person.

Aftercare services under section 117 should not be withdrawn solely on the grounds that:

- The patient has been discharged from the care of specialist mental health services
- An arbitrary period has passed since the care was first provided

- The individual is deprived of liberty under the MCA
- The individual has returned to hospital informally or under a Mental Health Act section 2
- The individual is no longer on a CTO or Mental Health Act section 17 leave

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

Lincolnshire County Council and the Lincolnshire NHS Integrated Care Board remain the responsible authorities irrespective of where the individual lives if the section 117 aftercare entitlement remains in place. Only once the entitlement has been ended/discharged the responsible commissioning authorities may revert to the Local Authority under ordinarily residence and origination ICB under the GP registration, should there be a further eligible section detention as outlined in 3.0 above for Local Authorities and for NHS Integrated Care Boards.

Eligible individuals are under no obligation to accept the aftercare services they are offered following assessment, but any decisions they may make to decline them should be fully informed. An unwillingness to accept services does not mean that the individual does not need to receive services, nor should it preclude them from receiving services later under section 117 aftercare should they change their mind.

The duty to provide after-care services under section 117 exists until both LCC and the LICB are satisfied that the individual no longer requires them.

The Mental Health Act Code of Practice also states (paragraph 27.3) that the 'duty to provide after-care services continues as long as the individual is in need of such services' and confirms (in paragraph 27.19) that 'the duty to provide aftercare services exists until both the NHS Lincolnshire Integrated Care Board and Lincolnshire County Council (for Lincolnshire) are satisfied that the individual no longer needs them. Circumstances in which it is appropriate to end such services vary by individual and the nature of the services provided.

### **18.0 Reinstating Section 117 Aftercare**

Where it is determined that a CYP who is eligible for section 117 aftercare has had their entitlement ended prematurely, and there is a need to reinstate care in respect of; "meeting a need arising from or related to the patient's mental disorder and reducing the risk of a deterioration of the CYP's mental condition and, accordingly, reducing the risk of the patient requiring admission to a hospital again for treatment for mental disorder".

The section 117 aftercare Lead Professional should make a professional assessment the urgency of the need to reinstate eligibility for section 117 aftercare taking into account the element of risk of safety to the individual or others and takes action to meet urgent need via interagency communication and agreement, if agreement is not achieved this will be referred immediately to the next line manager to resolve, or, via the agreed process for securing section 117 aftercare if of a non-urgent nature. The section 117 aftercare Out of Area Treatments Panel for Children and Young People will be furnished with all relevant information and will review the case for learning points, and the Mental Health Act Administrators must be informed of the change in status.



## **19.0 People with Learning Disability and autistic people programme (LDA programme) (previously Transforming Care)**

The LDA programme relates to people who have a learning disability, autistic people, or both and especially focuses on people with behaviour of concern, or a mental health condition.

In February 2015, NHS England publicly committed to a programme of closing inappropriate and outmoded inpatient facilities and establishing stronger support in the community.

NHS England has rolled out a programme of Care and Treatment Reviews (CTRs) of individual's to prevent unnecessary admissions and avoid lengthy stays in hospital.

CYP in hospital on the LDA programme, Care and Treatment review programme, and are on one of the eligible mental health act sections, will be eligible to section 117 aftercare upon discharge from the section.

## **20.0 Funding**

Currently where funding a service is required this is based on an individual case by case basis, agreed by the CYP section 117 aftercare Out of Area Treatments Panel. Details of the Out of Area Treatments panel is located in the procedure and Guidance documents at appendix K.

## **20.1 Statutory health and standard Social Care**

The term Statutory services relates to those services that are provided by the NHS and Local Authority free of charge, for eligible Lincolnshire individuals, these services in respect of the Mental Health Act section 117 aftercare following assessment, could include access to (this is not an exhaustive list) members of the CAMHS team Consultant Psychiatrist, Clinical Psychologist, Occupational Therapist, Speech and Language therapist and other services provided and funded within the remit of Lincolnshire Partnership Foundation Trust, and some community services for example the Crisis Team, Social Workers from Social Care in Lincolnshire, and Registered Nurses and healthcare workers from NHS Lincolnshire Integrated Care Board for care co-ordination. (These services are already funded by the Integrated Care Board or the Local Authority). The Statutory duty for Lincolnshire County Council is to undertake a child and family assessment and provide services to meet unmet eligible needs.

## **20.2 Services that are not statutory services (requiring funding)**

Lincolnshire County Council and NHS Lincolnshire Integrated Care Board for CYP's eligible for Mental Health Act Section 117 aftercare, fund non statutory care for example accommodation and therapeutic placements (outside of the above statutory services) which forms part of the section 117 aftercare need, private providers of care in the community, and other needs that are not funded through statutory services where a need has been assessed and requires funding to meet the section 117 aftercare need.

## **20.3 Funded services.**

Section 117 aftercare services are free of charge.

All funded services and any change to the service will need to be discussed by the CYP section 117 aftercare Out of Area Treatments panel.

## **20.4 Funding changes**

Neither the Integrated Care Board or the Local Authority should unilaterally withdraw from an existing funding arrangement without a joint reassessment of the individual, and without first consulting one another and informing the individual about the proposed change of arrangement. Any proposed change should be put in writing to the individual by the organisation that is proposing to make such a change. If agreement cannot be reached on the proposed change, the local disputes

procedure should be invoked, and current funding arrangements should remain in place until the dispute has been resolved

### **21.0 Direct Payments and Personal Health Budgets**

Direct Payments and Personal Health budgets can be made to discharge both the Council's and the ICB's obligations under section 117 aftercare. An individual cannot be charged for services that are provided to meet a section 117 aftercare need and this must be taken into consideration when calculating direct payments and personal health budget payments.

An individual will not be charged for section 117 aftercare services, however if they are a young person transitioning into adult services with needs which fall outside of the section 117 aftercare these needs may be subject to a financial assessment by Lincolnshire County Council.

#### **21.1 Social Care Direct Payments**

Section 117 of the Mental Health Act 1983 allows for aftercare services to include services provided to the individual in respect of a Direct Payment a monetary payment in lieu of services.

The Lincolnshire County Council Direct payments policy is included in the procedure and guidance document appendix.

#### **21.2 Health Care Personal Health Budgets**

Personal Health Budgets for health care are monetary payments in lieu of services, made by ICBs to individuals (or to a representative or nominee on their behalf) to allow them to purchase the care and support they need to meet their health and wellbeing outcomes. NHS Lincolnshire Integrated Care Board Personal Health Budget Direct Payment Guidance is included in the procedure and guidance document appendix.

### **22.0 Section 117 aftercare Associated guidance**

#### **22.1 Continuing Health Care Interface**

NHS Continuing Healthcare process and funding must not be used to meet section 117 aftercare needs. Where a CYP is eligible for services under section 117 aftercare these must be provided for/funded under section 117 aftercare and not under NHS Continuing Healthcare. It is important for ICBs to be clear in each case whether the individual's needs (or in some cases which elements of the individual's needs) are being funded under section 117 aftercare, NHS Continuing Healthcare, or any other powers.

#### **22.2 Non section 117 aftercare needs**

A person in receipt of services under section 117 aftercare may also have or develop needs that do not arise from, or are not related to, their mental disorder and so do not fall within the scope of section 117 aftercare such as physical health needs. These needs not related to the section 117 aftercare, cannot be funded as section 117 aftercare and must be funded and classified outside of the section 117 aftercare needs.

Whilst these are not section 117 aftercare needs they should be identified as part of the assessment and review process prior to the individual leaving hospital and where they trigger requirements of Continuing Healthcare (CHC) the ICB should be notified and the process around CHC engaged. The general principals in determining the responsible commissioner for non-section 117 aftercare related needs is "where an individual is registered on the list of NHS patients of a GP Practice, the ICB with core responsibility for the individual will be the ICB with which that GP practice is associated. This may be a different ICB than the ICB responsible for the Section 117 aftercare. Paragraph number 14.11 and 18 of the "Who pays? Determining which NHS commissioner is responsible for commissioning healthcare services and making payments to providers (revised 2022)

document highlights scenarios identifying the responsible commissioner, under the changing circumstances relating to section 117 aftercare and “other health care needs

### **23.0 Changes to charging for prescribed medications for individuals at age 16-18 years.**

Individuals have the right to receive NHS services free of charge, apart from certain limited exceptions sanctioned by Parliament.

NHS services are generally provided free of charge. This includes access to local services for example GP, hospital or clinic, or health improvement services provided by the local authority.

Dental, Ophthalmic and prescription services are chargeable the legislation in the 2006 NHS Act enables the making and recovery of charges for these services.

Section 117 aftercare does not automatically entitle individuals to free prescriptions unless they are in an exemption category or hold a valid medical exemption certificate (MedEx). Mental disorders are not included in the list of medical conditions. For individuals below the age of 16 prescriptions are free between the age of 16 -18 and in full time education, the individual is entitled to free prescriptions. Individuals aged 16 if not in full time education and individuals attaining the age of 18 years and are not in one of the exemption groups, the service is chargeable.

The National Health Service (Charges for Drugs and Appliances) Amendment Regulations 2008 amended the 2000 Regulations so that individuals who are subject to a Community Treatment Order will not be charged for medication if it is supplied to them by a CCG now ICB, Trust or a Patient Group Directive. Individuals who are not subject to a CTO but who are receiving medication from a trust will not be charged for the prescription.

Further information can be sought from an appropriate pharmacist.

### **24.0 Resolution Process's**

#### **24.1 Joint Professional Resolution and Escalation Protocol in relation to Section 117 Aftercare**

Providers, commissioners, and other relevant organisations should work together to ensure that the quality of commissioning and provision of mental healthcare services are of high quality and are given equal priority to physical health and social care services.

Whilst all relevant services should work together to facilitate a timely, safe, and supportive discharge from detention, in order to facilitate section 117 aftercare professional or commissioning differences may arise. Any differences that arise with regards to section 117 aftercare, within the local organisations, are to be managed in the interim through line management steps, as described in the “Professional resolution and escalation LSCP policy”. This is located at appendix O in the section 117 aftercare Guidance and procedures documentation.

#### **24.2 Local Funding disputes**

Where there is a local dispute regarding funding, there should be no impact on the young person the provision of ‘without prejudice’ funding by the authority with the primary duty of care at the time, pending resolution of the dispute, if neither is currently funding or prepared to fund, this should be on an interim 50/50 basis between Local Authority (LCC) and the Integrated Care Board (ICB). This will avoid funding disputes detrimentally affecting an individual’s care or causing undue delay in discharging someone from hospital.

#### **24.3 Other Commissioning Authority disputes**

Where there is a dispute regarding section 117 aftercare funding and/or commissioning authority the jointly agreed NHS and Social Care disputes resolution process will be followed, including the provision of ‘without prejudice’ funding by the authority with the primary duty of care at the time, pending resolution of the dispute and if neither is currently funding or prepared to fund, this should be on a 50/50 basis between Local Authority (LCC) and the Integrated Care Board (ICB). This will

avoid funding disputes detrimentally affecting the CYP’s care or causing undue delay in discharge from hospital.

**24.4 Dispute resolution process for ICBs within NHS in England.**

Appendix 1 of the “who pays? Determining which NHS commissioner is responsible for commissioning healthcare services and making payments to providers (version 1.1 (draft) 14 June 2022) sets out principles which apply where there is disagreement about a responsible commissioner issue between ICBs, or between ICBs and an NHS England commissioning team, and describes the formal dispute resolution process to be followed where a disagreement cannot be resolved locally. Appendix 3 of the “who pays “ document outlines the National arbitration process.

This process applies only within the NHS in England. It does not apply to disputes involving an NHS commissioner and a Local Authority, nor does it apply to cross-border disputes within the UK. There is, however, a separate process for dispute resolution between NHS bodies in England and Wales set out in England / Wales Cross Border Healthcare Services: Statement of values and principles.

**24.5 Disputes between Local Authorities.**

The dispute resolution for Local Authorities is laid out in the Care Act 2014 “statutory instruments 2014 No. 2829 The Care and Support (disputes between Local Authorities) regulations 2014.

**25.0 Complaints**

Where individuals express dissatisfaction with any aspect of their section 117 aftercare then organisations should engage with them to resolve this. If an individual wishes to make a formal complaint this should be done in line with each partnership organisations complaints procedure.

| Organisation                                 | e-mail  |
|--|---|
| Lincolnshire County Council                  | <a href="mailto:CustomerRelationsTeam@lincolnshire.gov.uk">CustomerRelationsTeam@lincolnshire.gov.uk</a>  |
| Lincolnshire Partnership Foundation Trust    | <a href="mailto:PALS@lpft.nhs.uk">PALS@lpft.nhs.uk</a>  |
| NHS Lincolnshire Integrated Care Board (ICB) | Informal information:<br><a href="mailto:LHNT.LincsPALS@nhs.net">LHNT.LincsPALS@nhs.net</a><br>Formal complaints:<br><a href="mailto:licb.feedbacklincolnshireicb@nhs.net">licb.feedbacklincolnshireicb@nhs.net</a> |

**26.0 Training**

Each partnership organisation will provide appropriate and sufficient training for each of their employee groups.