JOINT POLICY FOR THE MANAGEMENT OF SECTION 117 AFTERCARE, REVIEWS AND DISCHARGE

POLICY	Local Joint Policy for the Management of Section 117 Aftercare, Reviews and Discharge
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This Policy will be reviewed annually from the agreement date and will be managed through the multi-agency oversight group operated through the Lancashire and South Cumbria Integrated Care System.

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1. Policy Statement

This document is intended to ensure compliance by each of the organisations involved in the development and approval of this policy with the legal requirements and joint duties for the management of **Section 117 Aftercare**. Each organisation will produce its own implementation guide to assist practitioners in meeting their legal obligations.

Paragraph 7.23 of the Care and Support Statutory Guidance issued under the Care Act 2014 states that, under Section117 ("S117") of the Mental Health Act 1983 (MHA), local authorities together with Integrated Care Boards (ICBs) have a joint duty to arrange the provision of mental health Aftercare services for people who have been detained in hospital for treatment under certain sections of the 1983 Act.

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

> 'Social services and health authorities should establish jointly agreed local policies on providing S117 MHA Aftercare. Policies should set out clearly the criteria for deciding which services fall under S117 MHA and which authorities should finance them. The S117 MHA Aftercare plan should indicate which service is provided as part of the plan.
>
> 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 MHA should end, taking account of the patient's needs at the time. It is for the authority responsible for providing services to take the lead in deciding when those services are no longer required. The patient, their carer(s), and other agencies should always be consulted'.

2. Scope

People with mental health needs are entitled to request an assessment under the Care Act to establish any unmet social care needs and what services they might require. However, Section 117 of the MHA 1983 (Section 117 Aftercare) goes much further than this and imposes a **duty** on health and social services to provide Aftercare services to people who have been detained under specified sections of the Mental Health Act

Any person who has been treated under Sections 3, 17, 37, 45A, 47 or 48 of the Mental Health Act is entitled to receive Aftercare services from the point at which they are discharged from hospital/prison. It applies to people of all ages including children and young people.

This applies even if:

- The person remains in hospital for a period on a voluntary basis having been discharged from these sections.
- The person is released from prison having spent some of their sentence in hospital under these sections of the Act.
- The person is going onto a Supervised Community Treatment (also known as Community Treatment Orders (CTO)). It would be advisable for local areas to have

agreed standard funding protocols in place where an individual is discharged under a CTO to prevent delayed discharge.
- The person is granted S17 leave under the Mental Health Act.

3. Definition

What is Section 117 Aftercare?

Chapter 33 of the Mental Health Act Code of Practice ("the Code") sets out guidance in relation to aftercare and should be read with Chapter 34 (Care Programme Approach).

Paragraph 33.3 says *"Aftercare services mean services which have the purposes of 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 hospital again for treatment for mental disorder. Their ultimate aim is to maintain patients in the community, with as few restrictions as are necessary, wherever possible."*

It is an enforceable, free standing joint duty on the local authority and ICB in collaboration with voluntary agencies to provide **free** Aftercare services for patients under Section 3, 37, 45A, 47 and 48.

The Mental Health Act Code of Practice says that ICBs and the local authority should interpret the definition of Aftercare services broadly. For example, Aftercare can include healthcare, social care, employment services, supported accommodation and services to meet the person's wider social, cultural, and spiritual needs if these needs arise directly from or are related to the person's mental disorder and help to reduce the risk of deterioration in the person's mental condition.

4. Purpose

What is Section 117's purpose?

The primary purposes of S117 of the MHA 1983 (and as amended in 2007), as defined in s117 (6), are:

- To meet the need arising from the individual's mental disorder.
- Reduce the risk of deterioration of the person's mental condition.
- To minimise the need for repeated admissions for treatments
- "Aftercare is a vital component in patients' overall treatment and care. As well as meeting their immediate needs for health and social care, Aftercare should aim to support them in regaining or enhancing their skills or learning new skills, to cope with life outside hospital" (Code, paragraph 33.5).

The provision of accommodation in and of itself is not considered to be an S117 Aftercare need unless:

- Need for accommodation is a direct result of the reason that the patient was detained under the MHA; and
- The accommodation is enhanced specialised accommodation to meet needs directly arising from the mental condition; and
- The ex-patient is being placed in the accommodation on an involuntary (in the sense of being incapacitated) basis arising because of the mental condition.

Case law on the scope of Aftercare is summarised in (R (Afework) v London Borough of Camden 2013 and the Local Government Ombudsman (LGO) together with the Parliamentary and Health Service Ombudsman (PHSO) have published joint guidance to help prevent common and repeated mistakes in the provision of care.

What does it NOT cover?

Section 47 of the Care Act should be consulted regarding the requirements to protect moveable property and belongings such as:

- Storage of property
- Housing pets
- Household bills
- Food
- Holidays

5. Section 117 and Ordinary Residence

'Ordinarily resident' refers to a man's abode in a particular place of country which he has adopted voluntarily and for settled purpose as part of the regular order of his life for the time being, whether of short or of long duration

R v London Borough of Barnet ex parte Shah (1983)

According to Sections 18 and 20 of Care Act, local authorities have a duty to meet the eligible needs of people if they are present in its area but of no settled residence. In this regard, people who have no settled residence, but are physically present in the local authority's area, should be treated in the same way as those who are ordinarily resident.

Section 75 of the Care Act amends Section 117 of the Mental Health Act 1983 to provide that the local authority responsible for providing or commissioning Aftercare services is the local authority in which the person was ordinarily resident immediately before the person was detained.

Section 39(4) of the Care Act provides that an adult who is being provided with accommodation under Section 117 is to be treated for the purposes of Part 1 of the Care Act 2014 as ordinarily resident in the area of the local authority in England or the local authority in Wales on which the duty to provide the Section 117 Aftercare services lies.

This position is currently being considered by the Supreme Court following the decision in R (Worcestershire County Council) v Secretary of State for Health and Social Care (2021).

The current position, subject to the Supreme Court's ruling, is that, unless otherwise validly discharged, the duty of S117 provision lies with the place of ordinary residence prior to the detention of the adult.

If there are disputes regarding ordinary residency, local authorities should try to resolve these disputes locally if possible, following locally agreed procedures. Legal advice must be sought, and efforts made to resolve disagreements. If the issues cannot be resolved, they become a formal dispute and can be referred to the Secretary of State. Any disputes regarding where a person was ordinarily resident must be resolved through application of Section 40 of the Care Act 2014.

The subject of S117 must not suffer lack of, or delay in provision of, services because of an ordinary residence dispute. Provision of services may be on a "Without Prejudice" basis and the costs of provision may be recouped by the successful body.

Current government guidance on this issue is available here.

No Recourse to Public Funds

Aftercare services must be provided free of charge and are not subject to any immigration exclusions. Therefore, nationality and immigration status are not factors that affect whether a person can be provided with Aftercare under Section 117.

6. Planning Section 117 Aftercare

Section 117 Aftercare status will be recorded on the relevant local authority electronic record and the Health record. **It is the responsibility of each local authority to maintain an accurate record** and each authority should share information to ensure this is kept up to date. Each party to this policy is committed to sharing information with neighbouring authorities and/or organisations in respect of whether someone holds S117 eligibility.

Section 117 Aftercare should be planned with the person, their family and carers, as well as professionals, including representatives from both health and social care, and should look at both health and social care needs. The type of Section 117 Aftercare required will depend on the circumstances of the individual and their mental health needs. Social services are entitled to take their resources into account when planning how to meet assessed need.

Section 117 Aftercare starts once the service user has been discharged from hospital, prison, or secure hospital when they were detained under a qualifying section of the MHA.

However: Good practice would be to commence Aftercare planning from the point of admission to a place where they are detained, and fully advise the service user and family members of the options available. Challenges have been brought under Article 5 and Article 8 of the Human Rights Act 1998 for failure to implement discharge planning arrangements within *'a reasonable time'*. Health and social care 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 ICB and the local authority. Where a Tribunal or Hospital Manager Hearing has been arranged the local authority and ICB should try to arrange services that would allow the discharge to take place**.**

The multi-disciplinary team and Lead Professional (this is the Responsible clinician whilst the person is an inpatient) should ensure that the following key actions under Section 117 Aftercare planning are taken:

- Screening for Continuing Health Care (CHC) is carried out ***only*** in relation to any physical health needs which are unrelated to mental health needs to be addressed under Section 117, and a decision regarding entitlement is recorded. If the person is in a terminal phase of illness consideration should be given to Fast Track Pathway.
- A Section 117 meeting is held to agree the Section 117 Aftercare plan, which will include the multi-disciplinary team, representation from health and social care, the person, their family and/or carers, and an advocate where appropriate.
- Joint funding arrangements for the Section 117 Aftercare plan are agreed by the appropriate budget holder(s) before the Section 117 Aftercare plan is implemented.
- Details of ***all*** services (including those provided to meet eligible needs unrelated to the person's mental health) that will be provided to the person upon discharge are clearly stated in the plan – the plan should clearly state **Section 117 Aftercare,** and detail which services are provided under S117, and which are provided under any other provision.
- Details of informal care provided by non-statutory bodies are clearly stated in the plan.
- If social care services are provided for reasons other than mental health, these services can continue to be provided under the Care Act. This may result in the person being required to make an assessed contribution towards the cost of their social care.
- The person is informed, in writing, about the financial implications of any services provided which are not related to their mental health after care needs

There is no obligation to take up Section 117 Aftercare services and the person has a right to decline. It is essential to record this decision and that the person remains eligible for Section 117 Aftercare.

A refusal of services or to engage *does not* mean the person should be discharged from Section 117 Aftercare.

It is important to continue to work with the person to try to support them to accept the services to meet their mental health care needs under Section 117 Aftercare. Details of the Lead Professional who will organise and chair the next review at six weeks must be clearly documented.

7. Funding Section 117 Aftercare

S117 Aftercare responsibility comes into effect at the point of discharge. It is therefore essential as part of the discharge planning process to identify the relevant funding bodies prior to discharge.

Attention should be paid to any local pathways agreed between the local authority and the ICB relating to decision-making processes for the funding of S117 Aftercare and

Continuing Health Care. There are currently different working practises between different local authorities, in Lancashire and South Cumbria

The responsibility of ICBs has been changed regarding residency and is set out in regulations. The responsibility of local authorities was changed by the Care Act and came into effect from April 2015. As the regulations are not retrospective, the following provisions apply:

- Patient's residency prior to 1st April 2013 should be determined according to their residence prior to detention.
- Patient's residency on or after 1st April 2013 should be determined according to the new regulations.
- Patient's residency on or after 1st April 2015 should be determined in accordance with the amendments made to S117 by the Care Act.

Funding Responsibility and Residency: Discharge before 1st April 2013

The responsible ICB and local authority are identified by the area the patient was resident at the time they were detained under the relevant section of the MHA. If the person did not have a place of residence, the area they are being sent to on discharge would assume responsibility.

Residency in the context of S117 should be interpreted as a ***"settled presence in a particular place other than under compulsion"*** *(R. (on the application of M) v Hammersmith and Fulham London BC, 2010)***.** This applies regardless of the duration of the residence. In cases of dispute, the matter of residency should be determined on a case- by-case basis (which includes the person's views of where they reside), seeking legal advice if required.

Decisions regarding ordinary residence may often be complex and for this reason advice should be sought via Senior Managers, who may escalate issues to legal services as appropriate. **LANCASHIRE COUNTY COUNCIL STAFF** can get help, support and advice from the Ordinary Residence Steering Group via dedicated e-mailbox. See Appendix 4 for more details on the process that county council staff **must follow** in dealing with cases involving ordinary residence.

Where the responsible authorities have been identified, the patient's case should be allocated to a Care Coordinator as soon as possible after implementation of the detaining section. This allows for assessments and discharge planning commencing at the earliest opportunity.

Funding Responsibility and Residency: Discharge prior to 1st April 2013 and on or after 1st April 2016

The regulations determine that the ICBs responsibility in these circumstances is:

- The ICB responsible for the area where the patient is registered with a GP, or where there is no GP registration.
- The ICB responsible for the geographic area where the patient is "usually resident"

For ICBs **'usually resident'** is not the same as **ordinarily resident** and the main criterion for determining is through the individual's perception as to where they are resident in the UK (currently or most recently). In cases of dispute, the matter of residency should be determined on a case-by-case basis (which includes the person's views of where they reside), seeking legal advice if required.

Decisions regarding residence, ICB responsibility and local authority responsibility may often be complex and for this reason advice should be sought via Senior Managers, who may escalate issues to legal services as appropriate.

Funding Responsibility and Residency: Discharge on or after 1st April 2013 to 31st March 2016

The ICB responsibility for S117 is determined by the ICB whose area the individual was discharged to following admission.

Under these circumstances (i.e., a terminal phase) the ICB would take the necessary arrangements for the provision of fully-funded NHS Continuing Health Care, which may be provided in any appropriate environment, including the person's home.

S117 and the National Framework for NHS Continuing Health Care and NHS Funded Nursing Care

The National Framework for NHS Continuing Health Care makes the following point at paragraph 339:

> […] a person in receipt of Aftercare services under section 117 may also have ongoing needs that do not arise from, or are not related to, their mental disorder and that may, therefore, not fall within the scope of section 117. Also, a person may be receiving services under section 117 and then develop separate physical health needs (e.g., through a stroke) which may then trigger the need to consider NHS Continuing Healthcare, but only in relation to these separate needs, bearing in mind that NHS Continuing Healthcare must not be used to meet section 117 needs. Where an individual in receipt of section 117 services develops physical care needs resulting in a rapidly deteriorating condition which may be entering a terminal phase, consideration should be given to the use of the Fast Track Pathway Tool.

Under these circumstances (i.e., a terminal phase) the ICB would make the necessary arrangements for the provision of fully-funded NHS Continuing Health Care, which may be provided in any appropriate environment, including the person's home.

Top Up payments

From April 2015, following the introduction of S117 A by the Care Act individuals who are subject to S117 and for whom the ICB are providing or arranging accommodation under S117 are entitled to choose their preferred accommodation provided that the conditions set out in the Regulations are met.

It must be noted, however, that the placing body must offer at least one alternative placement which would meet needs without a top up which, for the person to be personally liable for a top up payment.

A person subject to S117 is entitled to purchase additional services over and above those identified to meet their assessed care needs. Any additional services must be separately invoiced directly to the individual. Any 'top up' payment arrangement for S117 must be agreed by the relevant manager and Forum because of the risks involved.

Top Up Payments and Risks

Top up payments for accommodation are subject to the Regulations. The Regulations provide that to apply Top up payments:

- *The local authority is satisfied that a person ("the payer") is willing and able to pay the additional cost of the preferred accommodation for the period during which the local authority expects to meet needs by providing or arranging for the provision of that accommodation; and*
- *The payer enters into a written agreement with the authority in which the payer agrees to pay the additional cost.*

There is no need to undertake a financial assessment, but the risk mitigations detailed above must be clearly explained and recorded. If the person is discharged from S117 and meets the eligibility criteria for social care services, then the usual financial arrangements will apply.

S117 and Prescription Charges

S117 does not automatically entitle individuals to free prescriptions. The Regulations (National Health Service (Charges for Drugs and Appliances) Regulations 2000(b)) state the criteria required, so that individuals may be able to claim free prescriptions if, at the time the prescription is dispensed, they were in receipt of a qualifying benefit or exempted condition.

Direct Payments

Local authorities have a duty to offer Direct Payments to people who are subject to mental health legislation with the principal exception of people who are on *conditional discharge* from hospital under Part III of the MHA where there is now a power (but not a duty) to offer Direct Payments. Local authorities also have a power (but not a duty) to offer Direct Payment arrangements for conditions attached to a Guardianship Order.

Section 117 and Personal Health Budgets

From December 2019, people eligible for Section 117 Aftercare have a legal right to a Personal Health Budget. A Personal Health Budget is an amount of money to support a person's identified health and wellbeing needs, which is planned and agreed between the person, their representative, or in the case of children, their families or carers and the local NHS.

8. Reviewing Section 117 Aftercare

A review date is set so that the Section 117 Aftercare is not left to run indefinitely without thought of discharge. All people discharged from hospital with Section 117 Aftercare arrangements in place should have their care reviewed within six weeks from the date of discharge and, following that, at least annually – and more often if there are changes in need or circumstances. Each review must consider whether Section 117 Aftercare can be discharged. Where care and support are delivered by the local authority, S117 will be considered alongside the review of all other care and support needs and planned for in the support plan.

If there is to be any change to the care and support plan because of a Section117 review, it must be documented clearly whether or not the Section 117 arrangements continue, in which case funding needs to be agreed by the budget holder(s).

Care Programme Approach (CPA) is changing in line with the NHS Long Term Plan and Community Mental Health Transformation. Whilst the LGO and PHSO guidance referenced in Section 4 of this document made reference to CPA, the new model represents an opportunity to improve and to align with the Care Act. Where there is still a need for mental health professional involvement, there will be named workers ("keyworkers") involved in delivering care and support. Care and support plans will still be developed with the individual who requires support at the centre of those plans.

Where the case is open to Health and or social care only the allocated worker will contact the key workers involved in the persons care and support and invite them to the review.

For people managed in this way, the responsibility for ensuring Section 117 Aftercare reviews is undertaken lies with the named worker. This will involve:

- GP, Consultation with the Responsible Clinician and other health professionals (LSCFT and PCT, district nurses, learning disability nurses etc), including a representative of social care services, the person, their carer(s), relatives, significant persons, and an advocate where appropriate.

- Assessing if there are any changes in circumstances which might lead to consideration of alterations to any part of the Section 117 Aftercare plan.

- Where there is any query over the care plan or Section 117 Aftercare status a face-to-face review must be requested from a professional from the partner organisation, including an assessment if there may be reason to consider discharge from Section 117 Aftercare.

- The relevant worker will record reviews and outcomes on the appropriate electronic system and ensure information is appropriately shared so all organisational reporting systems can be updated, clearly stating who was involved, any changes to the Section 117 Aftercare plan, and the status of Section 117 Aftercare following review.

People with a mental disorder may continue to meet the requirement for Section 117 Aftercare for some time. They may not, however, need regular input from a mental health professional. For example:

- Mental health needs are well met by the Section 117 Aftercare plan, the situation is very stable, and arrangements are in place for raising any concerns.

- The person has moved into residential care, their mental health needs, as well as their physical and social care needs, are well met in accordance with the Section 117 Aftercare plan and the situation is stable.

Section 117 reviews will continue to take place on an annual basis as part of the care and support review until it is felt that there are no longer any aftercare needs. At such a point consideration will be given to discharge.

9. The Decision to Discharge from Section 117 Aftercare

Aftercare under S117 is to be provided until such time as the Local Social Services Authority and ICB are **jointly satisfied** that the person concerned is no longer in need of statutory Aftercare. The person and relevant carers and advocate (where appropriate) must be consulted prior to any decision to change Section 117 Aftercare status. This would need to be a negotiated discussion and any substantive objections to discharge by the person, relevant carer or the person's advocate need to be recorded. Discharge of aftercare can only be recommended if the person's progress has been monitored in the community since discharge from hospital.

The duty to provide services continues until both organisations have come to a decision that the person no longer has needs arising from a mental disorder. Therefore, if any part of the Section 117 Aftercare plan is continuing – such as regular outpatient appointments or the provision of medication – it may not be possible to say that the person no longer has Section 117 Aftercare needs. However, only those needs that are identified as part of the Section 117 Aftercare plan will be provided free of charge. A person should not be discharged from Section 117 Aftercare solely because they have been discharged from the care of a consultant psychiatrist, or where an arbitrary period of time has elapsed, even if the person is well settled in the community.

Section 117 Aftercare cannot be ended retrospectively and can only be ended at the time the decision to end it is taken.

The lead professional and the multi-disciplinary team should consider the appropriateness of continuing or discharging a Section 117 Aftercare arrangement at every review meeting. The joint decision to discharge Section 117 Aftercare should be on the basis that the person no longer needs any Section 117 Aftercare service. A person's entitlement to Section 117 Aftercare cannot cease while they continue to be subject to a Community Treatment Order.

Consideration should be given to discharging the Section 117 Aftercare if the person:

- has been stable, and

- no longer requires any Section 117 Aftercare service to manage or treat an assessed mental health need, and
- would not be at risk of relapse, nor of being re-admitted to hospital if the Section 117 Aftercare plan was no longer in place
- is not a risk to themself or others

The decision to discharge from Section 117 Aftercare should not be based on a level of stability and mental well-being which is *dependent* on the services provided through the Section 117 Aftercare plan. See Appendix 2 ("S117 discharge: factors to be considered") below.

A local agreement is in place between parties signed up to this policy to complete a form (found at Appendix 3, below) when a person is to be discharged from S117. where a person is to be discharged from S117 a local agreement exists within those signed up to this policy to complete form at Appendix 3.

10. Equality Impact Assessment: For Lancashire County Council staff only

In applying this policy colleagues should be mindful of the requirements of the Equality Act 2010 and the general aims of the Public Sector Equality Duty to:

- Eliminate discrimination, harassment or victimisation because of protected characteristics;
- To advance equality of opportunity for those who share protected characteristics with those who do not share them including increasing participation in public life where such groups are under-represented;
- And fostering good relations between those with protected characteristics and those who do not share them/community cohesion.

The protected characteristics defined in the Equality Act 2010 are: age, disability, gender reassignment, pregnancy and maternity race, religion or belief, sex/gender, sexual orientation and marriage or civil partnership status. It is likely that most people who receive Section 117 Aftercare will meet the Equality Act's definition of disability but will also have other protected characteristics.

In using this Policy, particular consideration should be given to whether there is a need for "reasonable adjustments" to meet the needs of a person – for example the Section 117 recipient or their family members – in terms of communication requirements, access requirements or other needs.

If any further information is required around equalities elements relating to this Policy please contact AskEquality@lancashire.gov.uk"

Annex 1

S117 discharge: factors to be considered

The following factors should be considered at each review:

1. What are the persons current assessed mental health needs?

2. Has the persons needs changed since their discharge from hospital under S117?

3. What are the risks of return to hospital/relapse?

4. Has the provision of Aftercare services to date served to minimise the risk of the service user being re-admitted to hospital for treatment for mental disorder / experiencing relapse of their mental illness?

5. Are those services still serving the purpose of reducing the prospect of the person re-admission to hospital for treatment for mental disorder/experiencing relapse or has that purpose now been fulfilled?

6. What services are now required in response to the person's current mental health needs?

7. Does the person still require medication for mental disorder?

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

The above list is not exhaustive but indicators that S117 could be discharged may include any of the following:

- Stabilised mental health which no longer requires the level of care that has been provided under S117 to be maintained
- Services no longer needed for the purpose of reducing the risk of return to hospital or relapse
- No ongoing need for involvement of a consultant psychiatrist or specialist mental health services or for medication.

Annex 2

MH14

TRANSFER OF/DISCHARGE FROM SECTION 117 AFTERCARE

This form must be completed when the person is discharged from entitlement to Section 117 aftercare.

Name: ..... D.O.B: .....

Address: .....
.....

Review meeting held on: .....

The decision was taken to transfer/discharge the above-named person from Section 117 aftercare for the following reason:

1. New Health/Social care authority now responsible (give details of transfer of Section 117 entitlement):

   .....

2. Person no longer in need of Section 117 aftercare services (give reasons): .....

.....

Signed on behalf of
Lancashire & South Cumbria NHS Foundation Trust: .....

Print Name: ..... Date:.....
(Patient's Responsible clinician or senior consultant of LCFT)

Signed on behalf of the Local Authority: .....

Print Name: ..... Date:.....
(MH Service Manager or Head of Service for LA)

Must be sent to the Local Authority

Annex 3

Good Practice Guide to undertaking Section 117 Reviews
Bevan Brittan Solicitors

The following guidance is a template document setting out a series of recommendations that will need to be adapted depending upon the circumstances of each individual patient. For some patients, this will be the bare minimum that is required. For other patients, the review will not need to be as comprehensive and only parts of this template may assist.

This guidance is not intended to be prescriptive or mandatory, but more a guide as to the essential legal and practical issues that could be considered. It is based upon our experience of difficulties that staff encounter when having to justify the decisions that they have made with regards to aftercare.

Preparation for Review Meeting

In advance of the meeting, the professionals should consider and record their preliminary views on the following issues:

1. What "needs" does the patient have? These include health, social care, and "common" needs.
2. Which of the identified "needs" arise because of (i.e., are caused by) the patient's mental disorder?
3. Conversely, which of the identified "needs" do not arise from the patient's mental disorder? Importantly, consider the reasons why they are not.
4. What services could be offered to the patient to meet their identified "needs"; arising both from the patient's mental disorder and other general needs.
5. Which of the identified services relating solely to needs arising from the patient's mental disorder, are important to prevent deterioration in their mental disorder leading to readmission to hospital?
6. Equally, which of the identified services are not required to prevent a relapse in the patient's mental disorder leading to an admission to hospital? Consider the reasons why they are not so required.

It is useful for the professionals to have given some thought to this prior to meeting and before discussing with the patient and/or Nearest Relative.

The approach which the team should take when reviewing and discussing their views on the above issues are clarified in more detail below.

REVIEW MEETING

Timing of Review and Participants

A S117 review meeting should be convened prior to discharge with sufficient time for any services to be put in place before the discharge takes place. It is an essential part of the Care Programme Approach. A review should then take place approximately once every

six months post discharge, unless and until the duty under S117 is jointly discharged by both the ICB and local authority.

The key professionals that should attend the meeting are:

- Consultant Psychiatrist;
- All other appropriate members of the MDT, including, for example: Clinical Psychologist, Occupational Therapist; Speech and Language Therapist, Physiotherapist, Named Nurse, Ward Manager/Deputy
- Representative from the ICP
- Representative from the Local Authority

Other people that should be invited to the meeting include:

- Patient
- Nearest Relative
- Legal Representative of Patient and/or Nearest Relative
- Employment / Education / Probation (where appropriate)

We would recommend that a formal minute taker is also present.

<u>Process for the Review</u>

We recommend that any review meeting follows the format set out below (almost as an agenda) – and that the conclusions from each step are recorded.

Step One – Identify Needs

What "needs" does the patient have? These should include health (physical and mental health), social care and "common" needs (please see below).

NB – a need that is being met is still a need even if the manifestations are not active because of the need currently being met: consider what would happen if the service meeting the need ceased.

We would recommend that all the needs are listed.

The clinical team may wish to consider the following needs which are commonly considered (please note that this list of needs is by no means exhaustive and is for illustrative purposes):

- Activities of daily living
- Provision of medication
- Ordering, collecting, and delivering medication
- Monitoring medication compliance
- Support with regards accessing the community whilst ensuring social inclusion
- Outpatient reviews 36

- Psychology
- Accommodation and physical environment
- Exercise

- Transport
- Meaningful activity/occupation/interests
- Contact with family/friends
- Confirming, cancelling, rearranging, and thereafter assisting the patient in attending for medical appointments
- Payment of utility bills
- Monitoring of general health, personal hygiene, food and fluid intake

Step Two – Determine which are Aftercare Needs

Which of the identified "needs" arise (i.e., are caused by) because of the patient's mental disorder (i.e., learning disability and/or personality disorder)? Needs "caused by" may include symptoms and manifestations of the mental disorder as well as the mental disorder itself.

We would recommend setting out the header "Aftercare needs" and listing any Aftercare needs along with the reasons why they are such needs.

Conversely, which of the identified "needs" do not arise from the patient's mental disorder (and importantly, the reasons why they do not)? A need, which if addressed would improve the patient's state or prevent a deterioration is not necessarily an Aftercare need. The test is not whether any particular service, if not provided, will lead to an exacerbation of someone's mental disorder. The test is whether the need arises directly from the mental disorder and if not provided for, is likely to lead to readmission to hospital for that disorder.

Similarly, set out the reasons as to why each is not an Aftercare need.

Step Three – Identify Services

What services could be offered to the patient to meet their identified "needs" (both those arising from their mental disorder and other general needs)?

Which of the identified services relating solely to needs arising from the patient's mental disorder, are important to prevent deterioration in the patient's mental disorder which could lead to a readmission to hospital?

Conversely, which of the identified services are not required to prevent a relapse in the patient's mental disorder leading to an admission to hospital (again, with reasons)?

When considering what the appropriate services would meet the patient's assessed needs, the clinical team should consider both primary and secondary health services, third sector services (such as citizens advice bureau, job centre and charities) and local authority services. The source of the service to meet the assessed need does not impact upon/determine whether an assessed need is an aftercare need or a general need. An assessed S117 Aftercare need could have a service provided by a primary healthcare organisation. Equally, a general/common need could be addressed by a secondary mental health service.

The Courts have been very clear that the nature and extent of services required to meet assessed Aftercare needs must, to a degree, fall within the discretion of the authorities.

This means that as long as the ICB and local authority are reasonable in their approach to the services that are identified to meet any assessed S117 aftercare needs, the Courts will be reluctant to interfere with the exercise of professional discretion.

Overall, does the patient have any S117 Aftercare needs (i.e., those which meet both limbs of the test – (1) a need arising from the patient's mental disorder and (2) requiring a service to prevent readmission to hospital), as opposed to general health, social care, or common needs?

Step 4 – Trust Services

Once the Aftercare services have been identified, the clinical team needs to set out which of the Aftercare services could be met by the Trust (and how) and which Aftercare services require bespoke commissioning.

Consultation

The professionals should take the lead in any S117 Aftercare reviews. That being said, it is imperative that the clinical team consult with and take account of the patient's, Nearest Relative's, and any other family's views. To this end, it is not for the clinical team to dictate to patient, but in the same vein it is not for the patient to dictate to the clinical team.

The minutes of the S117 review meeting must demonstrate this consultation; to do this effectively, we would suggest that at each stage of the review meeting the clinical team (1) sets out its professional views on the aspects covered in that stage, (2) invites the views of the patient etc (and records them) and (3) acknowledges any views of the patient etc which are appropriate and also providing reasons where the views differ.

Record

To ensure clarity, we would recommend that the clinical team set out their views in a stepwise fashion. The simplest way to do this might be to make a record of the conclusions of each step as set out above. It is imperative that full reasons are set out for every conclusion that is drawn.

We cannot emphasise strongly enough the pressing need for full and robust documentation of the S117 Aftercare review meeting. Any minutes produced are likely to be dissected by the patient's legal advisors. The minutes should accurately record all the discussions around identifying the "needs" which the patient has, differentiating between S117 Aftercare needs and general health/social care/common needs and identifying appropriate services to meet assessed needs.

Annex 4

FOR LANCASHIRE COUNTY COUNCIL STAFF ONLY: Flow Chart of process for Determining Ordinary Residence

Ordinary residence is an important issue to Lancashire County Council. There does not need to be an issue or concern about a person's ordinary residence status: county council staff should always seek immediately to establish where a person is ordinarily resident and make a binary decision about a person's status:

"Is the person ordinarily resident in Lancashire or not?"

Particular attention should be paid to first-time referrals, as these cases will require an immediate determination of the person's ordinary residence status.

If you identify a case that may relate to ordinary residence or are contacted about a determination of ordinary residence concerning a specific case(s) or person(s), or otherwise encounter any issue relating to ordinary residence, you should follow the procedures below.

As detailed below, legal advice is always available from the county council's Legal Services Team.

1. Inform your Team or Service Manager

Inform your Team/Service Manager that you are dealing with a possible query, decision or dispute related to ordinary residence and keep LAS updated.

Advice and guidance are available at any time from the Legal Services Team

2. Establish the facts

- Determine as far as possible the precise chronology of the case. **IMPORTANT:** This should include determining **WHEN** the person first become known to social care services and other points of contact or interventions up to and including the present day.
- Review all case management records where relevant, available, and appropriate.
- Establish which local authority – the county council or another local authority – placed the person into a care setting and under what law.
- Establish where and in what type of accommodation the person was placed.
- Identify the team or service area involved in assessing the person's needs, and developing, signing-off or reviewing the person's care and support plan.
- Obtain a copy of the person's care and support plan, where relevant, available, and appropriate.

3. Save correspondence and ensure accurate record keeping

Staff should save **all** correspondence regarding ordinary residence queries, decisions and ongoing disputes and accurately record all information on LAS and Documentum so that it remains accessible to other system users, including:

- Logging a person's ordinary residence status under Basic Demographics on LAS
- A named contact at the county council
- Named contact at another local authority (if relevant)
- Which council, if any, is the "lead" authority
- Date detained under the Mental Health Act and in which local authority (if relevant)
- Additional questions in the assessment form
- The use of Legal Status in LAS for all disputes that have been raised or received.

4. Inform your manager of your ordinary residence determination

You should now be able to determine the person's ordinary residence status and should inform your Team or Service Manager of that initial determination:

- The person **is not** ordinarily resident in Lancashire.
- The person **is** ordinarily resident in Lancashire.
- It has not been possible to determine the person's ordinary residence status.
- The person's status is in dispute.

Managers will be responsible for taking further action if any is required.

5. MANAGERS ONLY Consider seeking legal advice

Team or Service Managers are responsible for confirming a person's ordinary residence status after their staff have made an initial determination. Managers must therefore consider seeking the advice of the county council's Legal Services team.

To obtain legal advice on a person's ordinary residence status contact the Legal Services team via email: adlegaladvice@lancashire.gov.uk.

6. MANAGERS ONLY Confirming ordinary residence status

Managers should confirm the person's ordinary residence status and take appropriate action:

- If the person is not ordinarily resident in Lancashire and is not currently living in Lancashire and the case is not in dispute**:** Managers must make a note of this on the person's case record. **No further action will be required if the person is clearly and indisputably not an ordinary resident of the county council area.**

Other cases must be escalated to the Ordinary Residence Steering Group, where:

- The person is ordinarily resident in Lancashire and is currently living in Lancashire. This includes cases where the person is of no settled residence but is physically present in Lancashire.
- The person is ordinarily resident in Lancashire but is not currently living or planning to live in Lancashire (e.g., the person has been placed outside of Lancashire).
- The person is not ordinarily resident in Lancashire but is currently living or planning to live in Lancashire (e.g., they have been placed here by another council).
- It has not been possible to determine where the person is ordinarily resident because of a lack of information.
- The person's ordinary residence status is in dispute.

7. MANAGERS ONLY Escalate the case to the Ordinary Residence Steering Group

Cases where the person is either determined to be ordinarily resident in Lancashire, is living or planning to live in Lancashire, or where there is uncertainty about the person's ordinary residence status **must be sent** to the county council's Ordinary Residence Steering Group. Managers should provide the Steering Group with all relevant information about each case.

The Ordinary Residence Steering Group consists of Adult Services senior managers and representatives from Finance and Legal Services and is solely authorised to determine how the county council approaches cases of these types.

The Ordinary Residence Steering Group can be contacted via a dedicated email inbox

The Steering Group will evaluate and decide how each case will proceed, including managing all communications with other local authorities and, if necessary, the Secretary of State.

The Ordinary Residence Steering Group will ensure that Heads of Service and Service Managers are routinely informed of each case related to their service.