Section 117 Mental Health After-Care

Dorset Joint Policy

November 2022

UNRESTRICTED

Contents

Policy details

Policy name	**Section 117 Mental Health After-care. Dorset Joint Policy.**
Scope and application of policy	The policy applies pan-Dorset where NHS Dorset and Dorset Council or BCP Council each has joint and equal s.117 duties responsibilities. The policy does not apply in cases where the Ordinary Residence rules and NHS 'Who Pays?' Guidance do not align, and individual partners are jointly and equally responsible with another commissioner outside of Dorset. The policy does not apply in cases where the person has left England without being discharged from section 117 after-care. In this policy the term 'NHS Dorset' is used to refer to the integrated care system of that name. The term 'council' is used in place of 'local authority' for Plain English.
Underpinning legislation and statutory guidance	Mental Health Act 1983 (legislation.gov.uk)

Policy name	Section 117 Mental Health After-care. Dorset Joint Policy.
	Code of practice: Mental Health Act 1983 - GOV.UK (www.gov.uk)
Equality Impact Assessment	The first draft EIA conversation screening tool was considered by the BCP Council EIA Panel on 11 August on behalf of partners. Further EIA work will take place alongside the future development of this policy and the associated new working arrangements.
Date policy approved	See footer.
Policy approved by	BCP Council SMT Meeting - 27 Sept 2022 Dorset HealthCare SMHALB Meeting - 27 September 2022. Dorset Council DLG Meeting - 20 Oct 2022 NHS Dorset - 2 November 2022.
Date for review	April 2023. Partners have committed to reviewing the policy within 6 months, reflecting that these are new working arrangements and that the first draft EIA has identified gaps in the data needed to provide full assurance.
Status	Approved. UNRESTRICTED. Public-facing. This approved policy is mandatory for all colleagues to whom it applies.
Lead author	Michael Ford, Policy Manager – Dorset Council.
Co-authors	Members of the pan-Dorset s.117 Project Group.

Glossary of terms

Term	Definition
After-care	In this policy, 'after-care' refers to care services provided to a person who has been discharged from hospital following admission under any of the following sections of the Mental Health Act 1983: s.3, s.37, s.41, s.45A, s.47 and s.48. After-care services must have both the purposes of: • meeting a need arising from, or related to, a person's mental health disorder; and, • reducing the risk of a deterioration of the person's mental health; therefore, reducing the risk of a person requiring re-admission for treatment for mental disorder. A person's entitlement to after-care begins when they are detained under one of the above sections. The duty to provide after-care is set out in s.117 of the Mental Health Act and it is 'triggered' at the point of discharge from hospital.
Carer	A carer is a person who provides unpaid care for a friend or family member who due to illness, disability, a mental health need or an addiction needs their support.
Care Programme Approach (CPA) Assessment	The Care Programme Approach (CPA) is a way of coordinating community health services for people with mental health needs. The Community Mental Health Framework began to replace the (CPA) for community mental health services in 2021, so the direction of travel is away from the CPA. However, the CPA currently remains in use in Dorset and is referred to in this policy.
Council	In this document, the term 'Council' (or 'local authority') may refer to Dorset Council and/or BCP Council – or to councils generally.
Medical treatment, habitation, rehabilitation	'Medical treatment' is defined in paragraph 1.17 of the Mental Health Act 1983: reference guide as including nursing, psychological intervention and specialist mental health habilitation, rehabilitation and care, as well as medication and other forms of treatment which might more normally be regarded as being 'medical'.

Term	Definition
	The difference between 'habilitation' and 'rehabilitation' is that habilitation means equipping someone with skills and abilities they have never had, whereas rehabilitation means helping them recover skills and abilities they have lost.
'Qualifying provisions' of the Act **(Sometimes referred to as 'deeming provisions', which can cause confusion with 'deemed ordinary residence').**	A person is entitled to section 117 after-care, if they have been detained under one of the following sections: Section 3 Section 37 Section 45A Section 47 Section 48.
Section 3 of the Mental Health Act 1983	Section 3 is commonly known as a 'treatment order', and it allows for a person to be detained in hospital for treatment if they have a mental disorder which is of such a degree that they need to be detained in hospital, and that there is a risk to their health and safety, or that of others. The treatment must be available.
Section 17 of the Mental Health Act 1983	Section 17 of the Act allows the person's responsible clinician to agree arrangements for the person to have a period of leave away from the hospital. This may be for a short period, for example to allow the person to visit a relative or their own home. Or it may be for a longer period, for example to help a person to be introduced for a few days to their new residential care placement. The person remains subject to their detention order and can be recalled to the hospital if problems arise.
Section 37 of the Mental Health Act 1983	Section 37 is known as a 'hospital order', and it is made by the court. It is made when a person is convicted of a crime punishable by imprisonment, where the convicted person has a serious mental illness and needs treatment.
Section 41 of the Mental Health Act 1983	Section 41 is not a 'qualifying provision', it is a 'restriction order'. It is applied in some cases where a section 37 order is discharged, and it means that the person can live in the community, but with some restrictions or conditions on them. These can include living in a certain place and accepting medical treatment, and keeping appointments with a supervisor, such as a probation officer.
Section 45A of the Mental Health Act 1983	Section 45A is known as a 'hospital direction'. It is applied by the court, in this case <u>after</u> a person is convicted of an

Term	Definition
	offence, the sentence for which is not fixed by law. (It cannot apply to murder, for example, which has a fixed sentence). If a person has a severe mental illness, a 'hospital direction' can require them to receive hospital treatment, but once their mental health has improved, they can be returned to prison to serve out the remainder of their sentence.
Section 47 of the Mental Health Act 1983	Section 47 is an order which allows the Ministry of Justice to approve the movement of a convicted prisoner from prison to hospital, if they have developed a severe mental illness which requires inpatient treatment. If the person's sentence ends whilst they are still in hospital, and they still need treatment, then they can be kept in hospital.
Section 48 of the Mental Health Act 1983	Section 48 is an order that applies to prisoners who are on remand. If they develop a severe mental illness, section 48 can be used to transfer them to hospital for treatment. If their mental health improves, they can then be returned to prison.
Multidisciplinary team	A multidisciplinary team (MDT) is a group of professionals from different disciplines who come together to provide comprehensive assessment and consultation in individual cases.
Ordinary residence	It is critical to the effective operation of the care and support system that councils understand which people they are responsible for; and that people themselves know which council is responsible for their care. Whether the person is 'ordinarily resident' in the council area is a key test in determining where responsibilities lie for the funding and provision of care.
Lead professional	The lead professional is the professional who has the responsibility of coordinating, facilitating, and integrating the person's care. Lead professionals are also sometimes called keyworkers or case managers. The care programme approach (CPA) specified the role of care coordinator, which was also an equivalent role to lead professional.
Approved clinician	The approved clinician is a mental health professional approved by the secretary of state. The approved clinician may be a therapist, psychiatrist, psychologist, or social worker. Some specified decisions under the Mental Health Act can only be taken by people who are approved clinicians. All 'responsible clinicians' must be approved clinicians.

Term	Definition
Responsible clinician	The responsible clinician is the approved clinician who has overall responsibility for the person's case, including a person who is discharged from hospital but who remains liable to be detained.
Section 117 register	The section 117 register records details of those people who are subject to section 117 of the Mental Health Act.
Community treatment order (CTO).	A community treatment order relates to **Section 17A of the Mental Health Act 1983** and it can only be made in respect of a person who is already subject to specific qualifying sections of the Mental Health Act. Supervised community treatment is a legal framework for ensuring that people receive compulsory, supervised care and treatment in the community and follow specified conditions.

1.0 Introduction

1.1 Some people with complex mental health issues may pose a risk to themselves or to others. A period of detention in hospital under one of the sections of the Mental Health Act 1983 may be the only way of ensuring that the person receives the care and treatment that they need at the time. The care and treatment for a person in such circumstances may need to continue beyond the time that they are in hospital. This care – known as 'Section 117 mental health after-care' – may include a combination of treatment for the mental health condition and support with the social, cultural and spiritual effects of having significant mental health needs.

1.2 This point was recognised in law with the introduction of the Mental Health Act 1983. Section 117 of that Act imposed a joint duty on health and social services to work together to provide after-care for people who received compulsory treatment under the Act. It is a stand-alone statutory duty and is not dependent on other legislation, such as the Care Act 2014.

1.3 In 2000, the Department of Health issued a circular to health services and councils with social services responsibilities, which extended the duty. The circular (HSC 2000/003: LAC (2000)3) is compulsory. It says:

- social services and health authorities should establish jointly agreed policies on providing section 117 after-care services.
- the policies should set out clearly the criteria for deciding which services should fall under the remit of section 117 after-care, and how they should be financed.
- the person's section 117 after-care plan should indicate which services are provided as part of the plan.

1.4 This policy has been developed with the above requirements in mind. It aims to describe:

- The responsibilities and duties of partners.
- Who is eligible for section 117 after-care and what it is for.
- What kinds of after-care services may be provided under section 117.
- The funding implications for people receiving section 117 services, and for the partners commissioning or providing those services.

Further details relevant to these important areas can be found in Dorset's section 117 practice guidance; on www.nhs.uk; in guidance from ADASS; and in decisions of the Local Government & Social Care Ombudsman.

1.5 The NHS, BCP Council and Dorset Council will work together to deliver appropriate after-care. The after-care will be delivered through commissioning arrangements and in partnership. For example, with Dorset HealthCare, (including community teams); primary care; tertiary health services; out-of-area services; and voluntary organisations. The way the after-care is organised and delivered will therefore depend both on the arrangement of statutory services and the 'shape' of the provider market. Our policy is to carry out frequent reviews of the way that front line after-care services are delivered and to amend our commissioning activity and delivery arrangements as appropriate.

2.0 What is section 117 after-care?

2.1 The key elements of the Act which 'trigger' the provision of section 117 after-care (known as the 'qualifying provisions') read as follows:

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

(2) It shall be the duty of [NHS Dorset] and of the local social services authority to provide (or arrange for the provision of), in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies until such time as [NHS Dorset] and the local social services authority are satisfied that the person concerned is no longer in need of such services, but they shall not be so satisfied in the case of a community patient while [the person] remains such a patient.

(3) 'After-care services' in relation to a person means services which have both of the following purposes:

(a) meeting a need arising from, or related to, the person's mental disorder and;

(b) reducing the risk of a deterioration in the person's mental conditions (and, accordingly, reducing the risk of the person requiring hospital admission again for treatment of mental disorder). [MHA 1983 section 117(6)]

2.2 The duty to provide section 117 after-care is a stand-alone statutory duty, and it is not dependent on, or 'triggered' by other legislation. However, after-care needs may sometimes be met by services that are already being provided under the Care Act 2014 or the National Health Service Act 2006, where the person in question is eligible to receive services under those pieces of legislation, and is receiving them.

3.0 Who is eligible for section 117 after-care?

3.0 Any person who has been detained under any of the sections of the Mental Health Act described in paragraph 2.1 above is entitled to receive after-care services when they are discharged from the section. This applies even where:

a) the person remains in hospital on a voluntary basis after being discharged from any of the sections.

b) the person is released from prison, having spent some of their sentence in hospital under sections of the Act.

c) the person is going on to a supervised community treatment order.

d) the person is granted section 17 leave under the Mental Health Act.

3.1 Section 117 after-care does not automatically apply to anyone subject to a guardianship order under the Mental Health Act, unless they have been previously detained under one of the qualifying sections above.

3.2 A person continues to be entitled to section 117 after-care even if they are:

1) returned to prison after being detained in hospital.

2) readmitted to hospital, either informally or under another section of the Act, such as section 2.

3.3 Section 117 after-care is a person's entitlement in law, irrespective of their circumstances. After-care services are not subject to any immigration exclusions, so nationality and immigration status are not factors that affect whether a person can receive after-care under section 117. For example, immigration exclusions under Schedule 3 of the Nationality, Immigration and Asylum Act 2002 (which includes people excluded from public funding) do not apply.

4.0 Examples of after-care services.

4.0 Paragraph 33.3 of the Mental Health Act Code of Practice explains that the ultimate aim of after-care services is to maintain the person in the community, with as few restrictions as are necessary and proportionate, wherever possible.

4.1 Prior to the Care Act 2014, there was no statutory definition of the term 'after-care services.' However, examples of services that could amount to after-care were covered in a series of court cases. The primary test applied was derived from R (on the application of Mwanza) v Greenwich LBC (2010). The outcome of that court case was that after-care does not cover 'any' service, simply because that service may prevent the deterioration or relapse of a mental condition. For example,

employment and general accommodation are widespread needs which do not arise from mental health needs - although a mental health need may give rise to a need for assistance in finding employment or accommodation.

4.2 Nevertheless, the Care Act statutory guidance confirms at paragraph 19.62 that "The range of services which can be provided [as after-care] is broad. The services will depend on the person's individual mental health needs". The following list from paragraph 34.19 of Mental Health Act 1983 Code of Practice includes some examples of the types of services that may be considered in care planning:

- continuing mental healthcare, whether in the community or on an outpatient basis
- the psychological needs of the person and, where appropriate, of their carers
- physical healthcare
- daytime activities or employment
- appropriate accommodation
- identified risks and safety issues
- any specific needs arising from, e.g. co-existing physical disability, sensory impairment, learning disability or autistic spectrum disorder
- any specific needs arising from drug, alcohol, or substance misuse (if relevant)
- parenting or caring needs
- social, cultural, or spiritual needs
- counselling and personal support
- assistance in welfare rights and managing finances.

5.0 Provision of accommodation as part of after-care.

5.1 There is no requirement arising from section 117 to provide general accommodation where the need for accommodation does not directly and specifically arise from mental disorder.

5.2 However, accommodation will be provided as part of a section 117 after-care plan, where the need for the accommodation arises directly and specifically from the person's original mental health need - or where it arises because of a mental disorder other than the one for which the patient was originally detained.

5.3 It may be helpful to refer to the case R (Afework) vs London Borough of Camden (2013), which related to a person with a brain injury who was seeking specialist accommodation as a part of their section 117 after-care. The following judgment was made:

- "The need for accommodation was a direct result of the reason the ex-patient was detained in the first place ("the original condition").

- The requirement is for enhanced specialised accommodation to meet the needs directly arising from the original 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 original condition."

6.0 The overall approach to after-care planning.

6.1 After-care planning should begin at the point at which a person is detained in hospital, because the aim of detention should be to ensure that the person is able to be discharged back into their community setting as quickly as possible, with the levels of support needed to sustain them there.

6.2 The primary assessment, risk management and care management process in Dorset is currently the Care Programme Approach (CPA) (although since 2021 the national direction of travel is now towards the Community Mental Health Framework). The CPA framework has several key features:

1) a multidisciplinary approach to the identification and management of need.

2) a clear focus on the person, who must be as fully involved as possible.

3) a detailed assessment of need and risk, followed by a detailed outcome-focused care plan to address the needs and risks.

4) the role of 'care coordinator', (in Dorset this role is called 'lead professional' and it is the person within the multidisciplinary team who is best placed to ensure the delivery of the care plan).

5) a 'review frequency', to help ensure that the outcomes in the care plan are met.

6.3 The after-care plan must be explicit about which services and supports are provided under section 117. These services and supports will arise from the detailed assessment.

6.4 Good after-care planning relies on full, accurate, and timely record keeping on the partners' relevant case management systems.

7.0 Who should be involved in after-care planning?

7.1 The detained person themselves must be as involved as possible in the development and implementation of their after-care plan.

7.2 The Mental Health Act Code of Practice, paragraphs 34.10-34.12, provides a list of those people who may need to be involved in after-care planning. The list includes the relevant professionals who have decision-making roles, as well as people who

may be nominated by the detained person. Further information is provided in practice guidance.

7.3 The right of the person to an Independent Mental Health Advocate (IMHA) was introduced in 2007 under amendments to the Mental Health Act. This gave specific legal rights to IMHAs. These rights include that the IMHA may consult with professionals who are concerned with the person's care and treatment and may see any records relating to the person's detention, treatment, or after-care, for the purpose of providing help to the person, where the person consents.

7.4 The IMHA is not the same as Independent Mental Capacity Advocacy (IMCA). IMCA provision is a separate statutory duty to provide non-instructed advocacy for a person who lacks mental capacity to make certain decisions and who has no one able to support and represent them. It may be appropriate for a person to have both an IMHA and an IMCA. (An IMHA can also work in a non-instructed way with people lacking capacity who are detained under the Mental Health Act).

7.5 It may also be appropriate for the person to have general advocacy support, in order to agree to their assessment and after-care plan. For example, from Dorset Mental Health Forum. The support of an IMHA works in conjunction with this kind of support, but does not replace it.

7.6 It may be important to involve the person's carer in the after-care planning process, particularly in the development of any contingency plan. The person's consent must first be obtained for the involvement of their carer.

8.0 What should be included in an after-care plan?

8.1 After-care planning should start as soon as possible after admission to hospital – following a detailed assessment of the person's needs.

8.2 The care plan should include:

1. a treatment plan, detailing medical, nursing, psychological, and other therapeutic support for the purpose of meeting individual needs, promoting recovery and/ or preventing deterioration.

2. details of any prescribed medication.

3. details of any actions to address physical health needs or reduce the likelihood of health inequalities.

4. details of how the person will be supported to achieve their personal goals.

5. support in relation to social needs, such as (but not limited to) housing, occupation, and finances. The person's Care Act care and support plan will detail any Care Act eligible needs that are being met separately).

6. support for the person's carers.

7. possible indicators that the person has relapsed.

8. actions to take if the person's mental health deteriorates.

9. guidance on actions to take if a crisis arises.

8.3 The assessment, risk management and care planning process must be demonstrably focused on the person. It should include detail about their own wishes and feelings and clearly describe their wishes for their future life. Where possible and appropriate, the care plan should strongly reflect these aspirations.

8.4 The elements of the care plan which fall within the provisions of section 117 after-care should be specifically identified, with clear outcomes, measures of success and (where possible) timescales for delivery. These elements will form a baseline to assess the effectiveness of the interventions and will allow for effective reviews.

9.0 Who should be the lead professional?

9.1 In most circumstances, the lead professional will be drawn from the multidisciplinary team within secondary mental health services. The nominated lead professional should be the team member who is best placed to ensure that the after-care plan is delivered appropriately. It is not their job to deliver the plan themselves (although they may have key elements of the plan which are their responsibility); rather, they should be able to work with all the multidisciplinary team members to ensure the plan's delivery.

9.2 The lead professional will have the authority to recall the multidisciplinary team if the plan needs to be revised, for example in the event of a deterioration in the person's mental health. They are also responsible for ensuring that reviews of the care plan take place, at least on an annual basis, but more frequently if needed.

9.3 Where the person's case is not open to secondary mental health services, the lead professional will not be drawn from the multidisciplinary team within secondary mental health services. This may be the case if the person's mental health has improved so much that they no longer need input from secondary mental health services and can appropriately be discharged from that care.

9.4 Where there is a need for services provided under section 117 to continue after the person has been discharged from secondary mental health services, the

responsibility for managing the person's after-care usually falls to primary care services. Partners have committed to starting work during the first months of the operation of the new 'section 117 Hub' working arrangements to improve care pathways for people who have been discharged from secondary mental health services in Dorset.

10.0 People with caring responsibilities for children or adults.

10.1 Having a severe mental illness does not mean that a person is not a good parent, but there may be times in the person's life when their mental illness results in their needing additional support because their child could be at risk of harm. A severe mental illness in a parent or caregiver to a child should be considered as a risk factor, alongside other risk factors such as drug and alcohol abuse, and domestic abuse.

10.2 There may be considerable impacts on a child if there is an adult in the household with a severe or complex mental illness. The child may also take on caring responsibilities that are inappropriate for their age or stage of development.

10.3 It is important that the person's assessment and after-care plans take explicit account of the needs of any children under the age of 18 for whom they are a caregiver. Colleagues should consider the impact of the parent's mental ill-health on their children, and they have a duty to make a referral to Children's Services if they consider that the parent's mental health could compromise their parenting and have an adverse impact on the child.

10.4 Similarly, having a severe mental illness does not mean that a person cannot competently fulfil caring responsibilities for another adult. However, there may be times when a risk of abuse or neglect of the other adult arises. Where that is the case the adult safeguarding procedures should be followed.

11.0 Children and young people under the age of 18, including children looked-after.

11.1 Distinct consideration should be given to the mental health after-care needs of children and young people under 18. Chapter 19 of the Mental Health Act Code of Practice addresses the particular needs of children and young people under the age of 18 and the roles of professionals and others responsible for their care. It provides guidance on the roles of those with parental responsibility for a child or young person; confidentiality and sharing information; how children and young people should be safeguarded where admission to hospital is not appropriate and on decisions related to admission and treatment.

12.0 Reviews of section 117 after-care.

12.1 Reviews of section 117 after-care are joint reviews and should take place in accordance with the care programme approach currently in use, that is:

- within three months of the start of the care plan; and
- annually thereafter,
- or more frequently as the person's needs dictate.

12.2 It is the responsibility of the lead professional to ensure that the joint reviews take place and that all key people are invited to the meeting. The lead professional should ensure that all meetings are minuted, that reviews are documented, and that any changes to the care plan are circulated to all interested parties. Further details of requirements in relation to reviews are set out in practice guidance.

12.3 Following the approval of this policy, partners will work promptly to develop new commissioning arrangements and care pathways to ensure that where the responsibility for coordinating care has transferred to primary care, the Service Manager - Section 117 Hub is able to obtain assurance that all necessary reviews of after-care take place.

12.4 The team reviewing a person's section 117 aftercare should be alert to the different indicators of abuse and neglect that may be evidence of a safeguarding issue. For example, a person receiving section 117 after-care may be particularly vulnerable to grooming and exploitation.

13.0 Section 17 leave.

13.1 It can be important for a detained person to have periods of leave from the hospital as part of the process of their recovery. Leave can be for the purpose of short visits to the person's home to prepare for discharge; for visits to community resources and activities; or for familiarisation with a new service or support - such as a housing service. This type of leave is granted for detained persons under section 17 of the Mental Health Act, and it is therefore known as 'Section 17 leave'.

13.2 Section 17 leave can only be granted by the doctor or clinician who is responsible for the person's care (also known as the 'responsible clinician'). Conditions may be attached to the leave and the person can be recalled to the hospital if problems arise. Whilst the person is on leave, they remain subject to their detention and their hospital bed remains available for them. The responsibility

for the funding and provision of any care and support that the person needs whilst they are on section 17 leave will depend on the nature of the care and support. For example, if the care and support is clearly part of the person's preparations for discharge, then it will be jointly-funded.

14.0 Discharge from section 117 arrangements.

14.1 Section 117 after-care arrangements are put in place for explicit reasons, as described in paragraph 2.1 of this policy. The arrangements are not intended to be in place indefinitely but should remain in place whilst the person needs them and whilst they are still needed to achieve the aims of the after-care plan. Paragraph 33.6 of the Mental Health Act Code of Practice says: "the duty to provide after-care services continues as long as the patient is in need of such services". Additionally, the Code confirms in paragraph 33.20 that the duty to provide after-care services exists until both the NHS and the relevant Council are satisfied that the person no longer needs them.

14.2 Court cases and ombudsman's judgments have confirmed that:

- the decision about whether to discharge a person from section 117 after-care is the joint responsibility of NHS Dorset and the Council, but with advice from mental health services or learning disability services.
- section 117 after-care does not have to continue indefinitely.
- The decision to discharge a person from section 117 should not be taken arbitrarily but should be made on the merits of the individual case.

14.3 Under this pan-Dorset multi-agency policy, the decision to discharge a person from section 117 after-care should be taken as part of the multidisciplinary review process. It should be led by the lead professional, and it should always take into account the views of decision-making representatives of the Council and the NHS Dorset.

14.4 There are two circumstances when a person can be discharged from section 117 after-care under this pan-Dorset multi-agency policy:

1) when a multidisciplinary review has determined that all aspects of the after-care plan have been delivered and the plan is no longer needed to prevent a deterioration in the person's mental health, or to reduce the risk of readmission. This position must be agreed formally by NHS Dorset and the Council.

2) When the person dies.

14.5 Section 117 after-care cannot be discharged solely on any of the following grounds:

- the person refuses the services.
- the care need is now being successfully met and the person is settled in the community, for example in residential care.
- the person has been discharged from the care of a consultant or specialist mental health services.
- an arbitrary period of time has passed since the person was discharged from hospital.
- the person is deprived of their liberty under the Mental Capacity Act.
- The person has returned to hospital informally or has been detained under section 2 of the Mental Health Act.
- The person is no longer on section 17 leave or subject to a Community Treatment Order.
- The person has been discharged from section 37 or section 41 of the Mental Health Act.

14.6 Guidance produced by the Association of Directors of Adult Social Services (ADASS) for London sets out the factors to be considered in relation to the person's individual circumstances, to establish whether discharge from section 117 may be appropriate.

14.7 Further details are included with the practice guidance. Where there is any doubt as to whether it is appropriate or not to discharge a person from section 117 after-care plan, legal advice should be sought.

15.0 The section 117 register.

15.1 The official partners' register of all people receiving section 117 after-care under this policy will be held and maintained by the Service Manager - Section 117 Hub. The Service Manager will oversee 'case tracking' activities to make sure that the partners' responsibilities to people receiving after-care, that are outlined in this policy, are met.

16.0 Identifying the responsible NHS body.

16.1 The commissioning and funding of the services in a section 117 after-care plan is jointly and equally the responsibility of the person's NHS body and the Council.

When a person has been detained in a hospital in their local area, there will be settled working arrangements between the partners involved. However, many people are detained in settings which are far from their home area (for example, in a secure hospital, or a prison), and it is important that the NHS body responsible for the after-care is identified at the earliest possible stage.

16.2 The NHS body which holds the responsibility for the after-care of any qualifying person is determined in accordance with section 117(3) of the Mental Health Act 1983 and the national "Who Pays?" Guidance published by NHS England in August 2020. In essence, the position is as follows:

- Where the person was detained before 1 April 2013, or after 31 March 2016, the responsible NHS body is the one where the person was registered with a GP before their hospital admission.

- Where the person was detained after 1 April 2013, but before 31 March 2016, and is again detained under a qualifying section, the responsible NHS body is the NHS body for wherever the person has moved to (or has been placed) and where they are registered with their GP.

- If the person is not registered with a GP, and is of no fixed abode, then a 'usual residence' test applies, as described in Appendix 2 of "Who Pays?" Guidance. (This is different from the Care Act 2014 term 'ordinary residence'). Usual residence refers to the person's own perceptions of whether they are resident in the UK, and if so, where they see themselves as living. This perception effectively determines which NHS body is responsible.

17.0 Identifying the responsible Council.

17.1 Apart from in the scenario described in paragraph 17.2, the determination of which council is responsible for meeting the section 117 duties to a person is to be found in sections 39-41 & 75 of the Care Act 2014 (and in chapter 19 of the Care and support statutory guidance and in the London ADASS Ordinary Residence guide. The determination depends on where the person was 'ordinarily resident' at the time that they were detained.

17.2 Ordinary Residence is not specifically defined in the Care Act. However, the statutory guidance which accompanies the legislation refers to the case of Shah v. London Borough of Barnet as the source for the test. In that case, Lord Scarman said "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."

17.3 The statutory guidance advises that "the concept of ordinary residence involves questions of both fact and degree. Factors such as time, intentions and

continuity (each of which may be given different weight according to the context) have to be considered."

17.4 The test considers the place the person has 'adopted voluntarily' and requires the person to have the mental capacity to do that. Where the person does not have the mental capacity to decide where to live, our policy is to look at all the circumstances of the case to decide where they are ordinarily resident, including whether they can be considered to remain ordinarily resident with their parents even after they have left home.

17.5 Where the person's ordinary residence cannot be determined, then it will usually be the place to which they are discharged from hospital and are physically present. In disputes between councils, the place where the person is physically present should take interim responsibility in accordance with Regulation 2 of The Care and Support (Disputes Between Local Authorities) Regulations 2014.

17.6 Ordinary residence can be a complex area and colleagues are encouraged to seek legal advice if appropriate.

18.0 Cases involving where another NHS body or another council is jointly responsible.

18.1 This policy does not apply in cases where the Ordinary Residence rules and NHS 'Who Pays?' Guidance do not align, and individual partners are jointly and equally responsible with another commissioner outside of Dorset.

19.0 Funding of services provided under section 117.

19.1 The pan-Dorset multi-agency approach is that all new section 117 after-care services (from the date of implementation of this policy) will be funded on a generic basis in accordance with the signed Partnership Section 75 Funding Agreement. The funding of existing after-care services will be unaffected by this policy unless the after-care plan changes and effectively becomes a new plan.

19.2 In order for both NHS Dorset and the Council to be able to make decisions about funding care and support packages, sufficient detail must be provided by the multidisciplinary teams working with the person. Without the right level of detail, delays in commissioning an appropriate service may take place, and the requirement to make sure the person's discharge from hospital is not unreasonably delayed may not be met.

20.0 NHS Continuing Healthcare and NHS Funded Nursing Care.

20.1 If all of the required after-care services relate specifically to the person's mental health condition, then it is not necessary to assess the person's eligibility for NHS Continuing Healthcare (CHC) or Funded Nursing Care. However, a person who is receiving section 117 after-care services may also have additional needs which do not fall within the scope of section 117, but relate instead to their physical health. This is explained in the National framework for NHS continuing healthcare and NHS-funded nursing care paragraph 315:

"a person in receipt of after-care services under section 117, may also have needs for continuing care that are not related to their mental health disorder, and that may, therefore, not fall within the scope of section 117… it may be necessary to carry out an assessment for NHS continuing healthcare that looks at whether the individual has a primary health need on the basis of the needs arising from their physical needs."

20.2 A person who has, or develops, physical health needs as well as their mental health needs may need to be assessed under the NHS Continuing Healthcare (CHC) Framework for funding to support their physical health needs. This, and any subsequent reviews of their eligibility, should be done as part of the Care Programme Approach process, and any CHC requirements should be recorded in the care plan. Where a person 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 NHS continuing healthcare fast-track pathway tool.

20.3 A person receiving section 117 aftercare may therefore also be eligible for NHS Funded Nursing Care (FNC) as a universal service. (See paragraph 39 of the NHS-funded Nursing Care Practice Guidance and paragraph 315 of the National framework). In such cases, payment responsibility for the FNC will be determined separately under the rules in paragraphs 11.15-19 and paragraph 14 of the 'Who Pays?' Guidance, as applicable.

21.0 Direct Payments and Personal Health Budgets.

21.1 The Care Act 2014 grants a person with eligible needs for adult social care the right to a personal budget to meet those needs. The personal budget may be provided through a direct payment to a person who qualifies for a direct payment. In the case of a person who is receiving section 117 after-care, the request for a direct payment will be considered in accordance with the conditions in section 12 of the Care and support statutory guidance. One of the conditions to be met is that the direct payment is an appropriate way to meet the needs in question (or, in respect of after-care services, an appropriate way to discharge its duty under section 117 of the 1983 Act). A Council must not use this condition to arbitrarily decline a request for a direct payment.

21.2 In 2018, the right to have a personal health budget was extended to people eligible for section 117 after-care. A person can have a personal health budget in one or any combination of the following three ways:

1. A notional budget: where the commissioner holds the budget and utilises it to secure services based on the outcome of discussions with the person, their representative, or, in the case of children, their families or carers

2. A third-party budget: where an organisation independent of the person and the commissioner manages the budget on the person's behalf and arranges support by purchasing services in line with the agreed care plan

3. A direct payment: where money is transferred to the person, their representative or nominee, or, in the case of children, their families or carers, who contracts for the necessary services.

21.2 Our policy is to ensure all three options are available to enable people to make a choice about the level of control they feel comfortable with. A PHB for section 117 after-care will be considered:

- whenever planning is taking place for section 117 after-care at the stage of an admission to hospital; or,

- at any assessment to review the person's section 117 after-care. This will include Care and Treatment Reviews for adults, and Care, Education and Treatment Reviews for children and young people, who have a learning disability and/ or autistic spectrum condition, and who are eligible for section 117.

21.3 After-care planning for a person detained in hospital for treatment for a mental health condition should be planned within the framework of the Care Programme Approach. However, if the person's care is not managed under that framework, it should not impact on their right to a PHB. This is because the right to a PHB is not based on how the person's services are delivered locally, it is based on their eligibility for section 117 after-care.

22.0 Section 117 data protection.

22.1 The UK General Data Protection Regulation (UKGDPR) and the Data Protection Act 2018 (DPA 2018) place certain obligations upon us as partners, and grant the person certain rights, in respect of data. The section 117 partnership function will use personal data, including 'special category' personal data, and it will also record the relevant judgements that professionals make in order to

fulfil the duties set out in various acts of parliament, including the Mental Health Act 1983, the Mental Capacity Act 2005, and the Care Act 2014.

22.2 The personal data will be used for the following purposes:

- Management reporting and case tracking via the Section 117 Hub.
- Notification of hospital admission
- Assessment of after-care needs
- Planning and delivery of after-care services
- Financial administration
- Escalation of issues and decision-making
- Addressing complaints.

22.2 The personal data will be held principally on the different case management systems of partners. Where necessary, it may also be held on paper records, and electronically in databases, spreadsheets, and word documents, and by other electronic means. The personal data will be processed according to the 7 principles of the UK GDPR and in accordance with The Caldicott Principles.

22.3 The personal data, including special category data, will only be disclosed in accordance with one or more of the lawful bases documented in a legal agreement called the 'Section 117 Information Sharing Agreement'. That Agreement will also assign the roles of:

- Data controller
- Data processors
- Information asset owner.

22.4 The Service Manager - section 117 hub will be responsible for ensuring that:

a) the Section 117 Information Sharing Agreement (described above) is kept complete and up to date
b) a Data Protection Impact Assessment (DPIA) is carried out
c) system permissions are kept up date and are in accordance with assigned roles
d) appropriate privacy notices are used
e) the identified risks that are associated with section 117 data, are actively managed
f) relevant training is undertaken by individuals in the assigned roles
g) Subject Access Requests (SARs) are dealt with appropriately.

23.0 Resolution of disputes involving the person.

23.1 A dispute may arise with the person themselves, or with their representative, in respect of the assessment and care plan for section 117 after-care; the affordability of 'first-person top-ups; decisions about discharge; the adequacy

of the package, or other matters. The principles that we will apply in resolving disputes are:

(i) we will only attend to matters raised by persons who are able to demonstrate their 'standing' in relation to the dispute. For example, the person themselves, or a carer whose involvement the person has authorised;

(ii) we will seek to resolve matters in appropriate ways before the stage at which they reach a formal dispute, where possible;

(iii) we will be fair. We will apply the apply the law fairly and transparently and follow fair processes in doing so;

(iv) we will have regard to the joint guidance issued by the Parliamentary and Health Service Ombudsman (PHSO) and the Local Government and Social Care Ombudsman (LGSCO) regarding the common and repeated mistakes seen in the aftercare of patients

(v) where we make mistakes, we will seek to put them right and learn from them.

24.0 Resolution of disputes between the NHS and a Council.

24.1 Disputes between the NHS and a Council will be resolved in the first instance by reference to this policy; the dispute provisions at section 22 of the 'Partnership Section 75 Funding Agreement' (reproduced at Appendix B); and the underpinning framework of legislation and statutory guidance.

24.2 Partners have also noted the example of the 'NHS Continuing Healthcare Joint Local Dispute Resolution Protocol' and will consider, when some experience of operating the new working arrangements has been gained, whether it would be helpful to develop a similar protocol for resolving disputes about s.117 after-care.

Appendix A

Children and young people under the age of 18, including children looked-after.

The partners commit to further work within the first year of operation of the section 117 Hub, to develop local policy and procedures for children and young people under the age of 18 with mental health after-care needs.

The areas covered will include:

- The way that consent operates differently for children and young people (parental consent; Gillick competency; the application of the Mental Capacity Act 2005 to young people aged over 16 etc.).

- The importance of joined-up working with children's social work, education and (where applicable) safeguarding services.

- The arrangements for the transition from children's to adults' services for young people with section 117 after-care needs.

Appendix B

The dispute resolution provisions set out in the partnership section 75 agreement relating to section 75 aftercare.

22. Dispute Resolution

22.1 The Partners will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Agreement.

22.2 In the event of a dispute between the Partners in connection with this Agreement the Partners shall refer the matter to the representatives nominated by the Partners who shall endeavour to settle the dispute informally between themselves.

22.3 In the event that the representatives cannot resolve the dispute between themselves within reasonable period of time having regard to the nature of the dispute then it shall be referred in the first instance to a formal meeting of NHS Dorset's Deputy Director of Personal Health Commissioning and the Council's Corporate Director Adult Social Care.

22.4 In the event that the NHS Dorset's Deputy Director of Personal Health Commissioning and the Council's Corporate Director Adult Social Care cannot resolve the dispute between themselves within a reasonable period of time having regard to the nature of the dispute it shall be referred to the Chief Officer of NHS Dorset or any subsequent body (or his/her/their nominated deputy) and the Council's Executive Director of People - Adults (or his/her/their nominated deputy) to resolve.

22.5 In the event that the dispute is still unresolved within a reasonable period of time with regard to the nature of the dispute and having followed the procedure in Clauses 22.1 to 22.4 above, the Partners may refer the matter to such body or person to act as mediator as they may choose in order to attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure ("the Model Procedure").

22.6 To initiate the mediation, a Partner must give notice in writing ("ADR notice") to the other Partner requesting mediation.

22.7 The procedure in the Model Procedure will be amended to take account of

22.7.1 Any relevant provisions in the Agreement

22.7.2 Any other agreement which the Partners may enter into in relation to the conduct of the mediation ("Mediation Agreement").

22.8 The costs of the Mediation will be met by the Partners jointly unless otherwise agreed.

22.9 As a final resort either Partner may refer the matter to the courts.