



Parliamentary  
and Health Service  
Ombudsman

Local Government &  
Social Care  
**OMBUDSMAN**

# Section 117 Aftercare



*Guidance for  
practitioners*

April 2022

# Section 117 Aftercare - background

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## Introduction

The Local Government and Social Care Ombudsman (LGSCO) and the Parliamentary and Health Service Ombudsman (PHSO) have a specialist team which looks at complaints in which social care and health services are intertwined. Known as the Joint Working team, it operates under the delegated authority of both Ombudsmen.

An investigation by the Joint Working team brings together the disparate threads of a complaint about multiple organisations to identify where fault may lie. When things have gone wrong, we ensure the impact is not only put right for the complainant, but the organisations involved also take steps to prevent similar issues happening again.

Councils and Clinical Commissioning Groups have a joint responsibility to provide aftercare services for some former Mental Health Act in-patients. This guidance aims to help those organisations learn from the common errors we see about Section 117 aftercare. It will especially help Mental Health Practitioners.

From July 2022 changes will be made to create better joined up health and care services. Clinical Commissioning Groups (CCG) will be abolished in favour of Integrated Care Boards (ICB). This guidance will continue to apply to newly established ICBs and the mental health in-patient aftercare they provide.

The insights in this guidance are based on case studies from our investigations. The guidance includes realistic, proportionate and practical recommendations for councils and Clinical Commissioning Groups to make improvements and avoid the mistakes of others.

## What is Section 117 aftercare?

Under [Section 117](#) of the [Mental Health Act 1983](#), council social services departments and NHS Clinical Commissioning Groups (CCGs) must provide or arrange free aftercare for adults, young people and children who have been detained under certain sections of the Mental Health Act (sections 3, 37, 45A, 47 or 48) until they are satisfied the person no longer needs it. These duties and responsibilities are set out in the [Mental Health Act Code of Practice](#) (the Code of Practice).

Section 117 aftercare services must meet a need arising from, or related to, the person's mental condition (referred to in the guidance as a mental health disorder). They must aim to reduce the risk of the person's mental health condition worsening and therefore reduce the risk of them needing a further hospital admission. Aftercare can include a wide range of services from different providers, and can include:

- Administering medication for a mental health condition
- Social work
- Domiciliary services
- Day centres
- Psychiatric treatment
- Residential care
- Supported living or extra care housing (but not ordinary accommodation)

In law, CCGs and council social services departments are jointly responsible for providing or arranging aftercare services. CCGs usually commission NHS Trusts to provide the health element of aftercare services. Sometimes, councils commission NHS Trusts to provide the social care element too. Either councils or CCGs may commission aftercare services from other providers. Regardless of who provides the aftercare, councils and CCGs retain responsibility for overseeing it and ensuring it effectively meets its aims.



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The Health Service Circular HSC 2000/003 and Local Authority Circular LAC 2000(3) says:

*“Social services and health authorities should establish jointly agreed local policies on providing Section 117 Mental Health Act after-care. Policies should set out clearly the criteria for deciding which services fall under Section 117 Mental Health Act and which authorities should finance them”.*

## **How we consider complaints about Section 117 aftercare**

As councils and CCGs are jointly responsible in law for Section 117 aftercare services, the Joint Working Team will investigate both the council and the CCG. Where applicable, we will also consider the involvement of any organisation commissioned to deliver the relevant aftercare service, such as NHS Trusts.

Our investigations often find areas in which Section 117 aftercare has not worked well.

We commonly find failures with:

- assessment of needs
- care planning and support
- delays arranging Section 117 aftercare
- ending Section 117 without following the proper process
- local joint working arrangements between organisations

Getting Section 117 aftercare right is vital to support people recovering from a mental health crisis. It is there to ensure they receive the care they need to continue their recovery and prevent future decline in their mental health condition.



# Section 117 Aftercare – main themes

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## Care planning

The Code of Practice is clear that aftercare planning should begin as soon as the person is admitted to hospital. This is to ensure appropriate aftercare services are identified and put in place in good time for their discharge.

Before deciding to discharge a person from hospital, the clinician in charge of their treatment (known as the responsible clinician) should ensure their aftercare needs have been addressed.

This involves a comprehensive assessment of the person's needs using the Care Programme Approach (CPA). The CPA is an overarching system for coordinating the care of people with mental health conditions. Chapter 34.5 of the Code of Practice requires a named care co-ordinator to be allocated as part of the CPA process.

Section 117 aftercare does not replace existing arrangements under the CPA. Where appropriate, these arrangements should run in tandem with each other.

Central to the CPA process is the care plan. This is a record of any physical, psychological, emotional and social needs associated with the person's mental health condition. The care plan should be prepared in close partnership with the person from the outset and reflect their needs and wishes. The care coordinator will be responsible for preparing, implementing and evaluating the CPA care plan.

To ensure the care plan reflects the person's needs, thought should be given to who needs to be involved in preparing it. Chapter 34.12 of the Code of Practice explains that, depending on the needs of the person, this could include:

- the responsible clinician
- the GP and/or any other primary care professionals;
- the carer and/or nearest relative;
- representatives of the local housing authority;
- the CCG's appointed clinical representative;
- the independent mental health advocate or independent mental capacity advocate; and
- anyone with authority under the Mental Capacity Act 2005 to act on the person's behalf.

Chapter 34.3 of the Code of Practice says the care plan should include:

- a treatment plan detailing medical, nursing, psychological and other therapeutic support for the purpose of meeting the patient's identified needs and preventing a deterioration in their condition;
- details of any prescribed medications;
- details of any actions to address physical health problems;
- details of how the person will be supported to achieve their personal goals;
- support provided to meet social care needs (such as housing, finances and employment);
- support provided to carers;
- actions to be taken in the event of a deterioration in the person's presentation; and
- guidance on actions to be taken in the event of a crisis.



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The care plan should clearly record whether the person is entitled to Section 117 aftercare and, if so, explain which care services will be funded under this section. The local authority and CCG providing the Section 117 funding should also maintain a record of what aftercare services they are providing to whom.

Eligibility for Section 117 should be reviewed within six weeks of discharge from in patient services, then annually thereafter, or sooner if circumstances change. The care coordinator is responsible for arranging these reviews and involving the person and other relevant parties. Often, CPA reviews do take place but Section 117 aftercare is not monitored (and documented) as it should be.

**Sarah's story: case reference [19 016 759](#)**

Sarah has complex mental health needs and problems with substance misuse. She was admitted to hospital having suffered a psychotic episode and was detained under Section 3 of the Mental Health Act.

Following a period of treatment, Sarah was discharged back into the community. As she had been detained under a qualifying section of the Mental Health Act, she was entitled to free Section 117 aftercare services. However, the NHS Trust (acting on behalf of the CCG and council) failed to properly assess Sarah's aftercare needs before discharging her and did not put a care plan in place. This led to ongoing confusion around Sarah's diagnosis and entitlement to Section 117 aftercare services.

Our investigation found the lack of a care plan meant there was no proper record of Sarah's mental health needs or how these would be met. The situation was made worse as the Trust did not allocate a care coordinator to support her. This meant Sarah was sometimes unable to access specialist care, such as in-patient drug rehabilitation. Sarah was left without proper support in the community, resulting in several hospital readmissions in the following months. Sarah found this lack of support extremely distressing and her mental health deteriorated significantly.

The absence of structured care planning also meant Sarah's needs were not subject to regular review. As a result, the professionals caring for Sarah missed opportunities to put appropriate care in place.

The Trust agreed to our recommendation to pay Sarah £1,000 to recognise the distress it caused her. The council and CCG each agreed to pay Sarah a further £500. The Trust, council and CCG also agreed to review their Section 117 policies and procedures to ensure they meet the requirements of the Code of Practice.



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# Funding

## Responsibility

Councils and CCGs have a joint duty to provide or arrange free aftercare for eligible service users.

This does not necessarily mean the cost of these services will be shared equally between a council and CCG. The allocation of costs will depend on the specific aftercare services the person needs. To ensure an eligible person receives the free aftercare services they need, it is important to establish which council and CCG hold the statutory duty for that person.

## Councils

The responsible local council is the one in which the person was ordinarily resident immediately before they were detained under the Mental Health Act.

There is no fixed definition of ordinary residence. The Care and Support Statutory Guidance accompanying the Care Act 2014 applies the principle that a person's ordinary residence is the place that person has voluntarily adopted for a settled purpose, whether for a long or short duration.

## CCGs

NHS England produces the Who Pays? guidance. This sets out a framework for establishing which NHS commissioner is responsible for commissioning and paying for a person's NHS care, including Section 117 aftercare.

The Who Pays? guidance explains that, from 1 September 2020, the responsible NHS commissioner for a patient receiving Section 117 aftercare is the CCG in whose area the patient was ordinarily resident, immediately prior to detention under the Mental Health Act.

The responsible CCG does not provide aftercare services directly. Rather, the responsible council and CCG will commission an appropriate provider to provide these services. This will often be a Mental Health Trust but could be a private or voluntary sector provider.

For arrangements that applied before 1 September 2020, CCGs should refer to previous versions of the Who Pays? guidance. There are links to these documents at the end of this guidance.

The original council and CCG retain responsibility even if the person is discharged to, or becomes ordinarily resident in, another area. This remains the case even if the person is later detained again under a qualifying section of the Mental Health Act in another area. The duty remains in place until the original council and CCG decide the person is no longer in need of aftercare services.

## Personal Health Budgets

Since December 2019, people eligible for Section 117 aftercare have a legal right to request a personal health budget (PHB). This is a sum of money the person can use to meet their identified Section 117 aftercare needs.

CCGs have a duty to publicise the availability of PHBs. They must also provide guidance, advice and support to eligible people to assist them in deciding whether to request a PHB.

CCGs must give due consideration to a request made by, or on behalf of, an eligible person for a PHB.

A PHB is planned and agreed between the person and the responsible CCG. A PHB may be considered as part of the discharge planning process, when assessing the person's Section 117 aftercare needs during their hospital admission. It may also be considered during any subsequent review of the person's aftercare in the community.



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### **Marlon's story: case reference [18 012 800](#)**

When Marlon became eligible for Section 117 aftercare, the NHS Trust supported him with community mental health services. Over the next few months, Marlon's mental health deteriorated, so Marlon's mother, Anne, paid for private support.

The Trust agreed to request funding for Marlon's private support from the CCG. The CCG eventually agreed to jointly fund Marlon's private support with the council, however the Trust had taken 12 months to apply for this.

This meant the Trust delayed providing Marlon with funding for private support by 48 weeks. This was avoidable.

Our investigation found the Trust's community mental health service was not meeting Marlon's aftercare needs. Whereas his private support was clearly helping him. Anne would not have had to pay for all that private support if the Trust had applied to the CCG sooner.

During the period of delay, Marlon only received the amount of support his mother could afford to pay, which was a third of everything he was entitled to. We also said regular reviews of Marlon's Section 117 aftercare needs would have prevented some of the delay.

The Trust agreed to our recommendations to apologise to Marlon and Anne, reimburse Anne the cost of private support (£1,288), and pay £1,100 and £250 to Marlon and Anne respectively to recognise the impact on them. The Trust also agreed to carry out regular CPA reviews of Section 117 patients in future.



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## Accommodation as a Section 117 need

When someone needs residential care or specialist accommodation, this is only eligible for Section 117 aftercare if it meets a need related to their mental health condition.

The person's CPA care plan should set out what type of accommodation would meet a need related to their mental health condition.

Where the person lives in specialist accommodation as part of their Section 117 aftercare arrangements, the council and/or CCG should pay for this. The person should not be expected to claim housing benefit.

People can exercise choice about their preferred accommodation. However, they may need to pay a top-up payment if their preferred accommodation costs more than the council and/or CCG would otherwise have needed to pay.

### Ruth's story: case reference [18 011 391](#)

When Ruth was discharged from Section 3 of the Mental Health Act, she was initially admitted to an acute hospital for treatment for a physical condition. Once she was ready to be discharged from the acute hospital, her family arranged for her to go into a care home. Ruth's family paid for this from Ruth's funds, and she remained in the care home until she passed away seven months later.

Ruth's son Francis later found out about Section 117 aftercare and raised concerns that this should have covered the care home fees. The CCG and council accepted Ruth and her family were not given clear information about Section 117 when she was discharged from hospital. However, they said although Ruth was entitled to Section 117 aftercare, this did not apply to her care home fees. They said this was because the placement was required for her social care needs, which were not related to her mental health needs. The council and CCG offered to reimburse Francis with 50% of the costs. Francis believed the full costs should have been covered by Section 117, and he complained to us.

When we wrote to the council and CCG to say we were investigating Francis' complaint, the organisations reviewed their records. They found the team caring for Ruth before her discharge from hospital had recommended accommodation that would meet her ongoing mental health needs.

The council and CCG apologised to Francis and offered to reimburse Ruth's care home fees in full, a total of almost £30,000. They also said they would work with the neighbouring acute and mental health trusts to review processes, including communication, for people moving from Section 3 of the Mental Health Act to Section 117.





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## Ending Section 117 aftercare

Councils and CCGs should continue to provide Section 117 aftercare services until both organisations are satisfied the person no longer needs them.

These joint decisions should be made in line with the patient's circumstances, but the clearest reason for ending aftercare is likely to be when the person's mental health has improved to the point where aftercare is no longer needed.

Even when a person is well-settled in the community they may continue to need aftercare services, for example, to prevent their condition deteriorating. If accommodation was included as part of a patient's aftercare, arrangements for new accommodation would need to be made.

Aftercare should not be withdrawn solely because:

- The person has been discharged by a psychiatrist or specialist mental health service
- An arbitrary period has passed since aftercare was started
- The person is deprived of their liberty under the Mental Capacity Act 2005
- The person has returned to hospital informally or under Section 2 of the Mental Health Act (when the person is detained for a short time for assessment)
- The person is no longer on a Community Treatment Order (CTO) or on Section 17 leave from hospital.

Councils and CCGs should involve the person, and their carer/advocate if they have one, in any decisions they make around ending Section 117 aftercare.

If someone lives in specialist accommodation that previously met their aftercare needs, the council and CCG must arrange to move that person to more appropriate accommodation before ending their Section 117 aftercare.

Councils and CCGs may reinstate aftercare if the patient deteriorates soon after services are withdrawn, but the patient is not obliged to accept services offered.

Councils and CCGs should keep a record of when a patient has been formally discharged from Section 117.

### Priya's story: case reference [18 010 781](#)

Priya complained to us that she unfairly paid toward her mother's sheltered accommodation since 2016. She said it should have been free under Section 117.

Our investigation found the sheltered accommodation (including service and utilities charges) was meeting Priya's mother's needs under Section 117, and this was in her care plan. Therefore, the council and CCG should have funded the service until it no longer met any needs resulting from her mental health condition. The council and CCG should not have asked Priya's mother to fund the service through housing benefit. If the housing benefit stopped, then Priya would have to pay for that service herself. After Priya's mother was discharged from Section 3 in 2016, no one had reviewed her Section 117 aftercare.

The council and CCG agreed to our recommendations to refund any rent and service charges Priya's mother paid since 2016, minus housing benefit. We said they should continue paying those costs until they had robustly reviewed and decided that accommodation did not meet Priya's mother's needs arising from her mental health condition. The council, CCG and Trust also agreed to ensure their policies clearly stated they had a duty to pay for specialist accommodation under Section 117, and people should not be asked to claim housing benefit instead.



# Summary of learning points

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## Key messages from our investigations

- Councils and CCGs must ensure everyone who is entitled to Section 117 aftercare receives a robust assessment of their mental health needs. Those needs should specifically relate to the individual's mental health condition, which led them to meet the criteria to be detained under the Mental Health Act.
- Everyone entitled to Section 117 should have their care needs assessed in line with the CPA framework. Care should be planned in line with the outcome of that assessment, which in most cases will mean care should be provided under CPA.
- Care and support plans should clearly state what services will meet needs arising from the person's mental health condition under Section 117. The support should ensure it reduces the chance of them being detained under the Mental Health Act.
- The care plan should be recorded in writing and a copy shared with the person and any other relevant parties.
- Councils and CCGs must not delay arranging Section 117 aftercare. Planning for Section 117 aftercare should start as soon as the person is admitted to hospital.
- Care and support plans should be regularly reviewed. Reviews should include the person and other relevant parties.
- People should not be paying for services which meet their mental health needs under Section 117, including specialist accommodation.
- The decision to discharge someone from Section 117 should be a joint one (by the council and the CCG).
- The council and CCG should fully involve the person when they decide to end that person's Section 117 aftercare.
- Organisations should have clear joint working arrangements around Section 117. This should include clearly defined roles about who will commission and/or provide Section 117.



# Appendix: Relevant legislation and guidance

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## Section 117 aftercare

- Chapter 33 of the Code of Practice
- The Health Service Circular HSC 2000/003 and Local Authority Circular LAC 2000(3)

## Care planning

- Paragraphs 33.10 - 33.16 of the Code of Practice
- Paragraphs 34.1 - 34.23 of the Code of Practice
- Paragraph 45 of Annex A of the Care and Support Statutory Guidance

## Accommodation as a Section 117 need

- Paragraph 33.20 of the Code of Practice
- Paragraphs 39 and 44 - 50 of Annex A of the Care and Support Statutory Guidance

## Funding

- Paragraphs 33.17 - 33.19 of the Code of Practice
- Paragraphs 19.1 - 19.42 of the Care and Support Statutory Guidance
- The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013
- The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 3) Regulations 2014
- NHS England and NHS Improvement's Personalised Care: Guidance on the legal rights to have personal health budgets and personal wheelchair budgets
- NHS England's Who Pays? Determining which NHS commissioner is responsible for making payment to a provider (August 2013 and August 2020)
- NHS England's 'Who Pays' amendment to the section on 'persons detained under the Mental Health Act 1983' (2016)
- Court of Appeal decision (R (On the Application of Worcestershire County Council v Secretary of State for Health and Social Care)

## Ending Section 117 aftercare

- Paragraphs 33.20 – 33.24 of the Code of Practice
- The Health Service Circular HSC 2000/003 and Local Authority Circular LAC 2000(3)

