

**Pan Essex Protocol for Section 117
After-care under the Mental Health Act 1983 (as amended by
the Mental Health Act 2007)
SCCG QP01**

Version:	V1
Ratified By:	CCG Board
Date Ratified:	25/07/2013
Policy Author:	Head of Mental Health Commissioning
Policy Sponsor:	Alliance Director
Name of Responsible Committee:	Southend Governing Body
Date Issued:	March 2004
Review Date:	March 2022
Target Audience:	CCG Staff and Members

**The Mental Health Act 2007 amended the Mental Health Act 1983. The
Mental Health Act 1983 remains in force and all references to the Mental
Health Act within this protocol also reflect the amendments made by the
Mental Health Act 2007**

Contents

1. Introduction
2. When does S117 apply?
3. What are After-care Services?
4. Health and Social Care Needs Assessment
5. NHS Continuing Healthcare
6. S117 register
7. Ordinary Residence
8. Discharge from S117 Procedure
9. Local S117 funding arrangements
10. Charges for After-care services
11. Top up payments
12. Transfer to another Local Authority
13. References
14. Appendices
15. Acronyms

Section 117: After-Care under the Mental Health Act 1983

1.0 Introduction

- 1.1 The Mental Health Act 1983, Section 117 (S117) provides:
(2) It shall be a duty of the Primary Care Trust or Local Health Board and of the local social services authority to provide, in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies until such time as the Primary Care Trust or Local Health Board and the local social services authority are satisfied that the person concerned is no longer in need of such services
- 1.2 S117 imposes an enforceable duty to provide after-care services for people who have been detained under treatment sections of the Mental Health Act 1983 (MHA) until such a time that the authorities are satisfied that the persons concerned are no longer in need of such services (see below).
- 1.3 S117 is a free-standing duty which places upon Primary Care Trusts (PCTs) (and from April 2013 Clinical Commissioning Groups (CCGs) or the National Commissioning Board (NCB) depending on the nature of the services) and Local Authorities (LAs) a statutory joint duty to work together, in co-operation with relevant voluntary agencies, to provide after-care services for all service users with S117 rights.
- 1.4 It is not a “gateway” section to services provided under other legislation such as the National Assistance Act 1948 or the National Service Act 2006 and as a consequence of this the normal rules about commissioning responsibilities in the NHS or Ordinary Residence for Social Services do not apply to S117 services.
- 1.5 Social Services and Health Bodies should establish jointly agreed policies on providing services under this section setting out clearly the criteria for deciding which services fall under S117 and which authorities should finance them. After-care provision under S117 doesn’t have to continue indefinitely. (HSC 2000/003: LAC (2000)3, para. 3).
- 1.6 This updated Protocol replaces previous versions and has been developed in collaboration between Essex County Council (ECC), Southend-on-Sea Borough Council (SBC), Thurrock Borough Council (TBC), North Essex Partnership Foundation Trust (NEPFT), South Essex Partnership University Foundation Trust (SEPT), Hertfordshire Partnership Foundation Trust (Learning Disabilities), North Essex PCTs cluster and South Essex PCTs cluster. It has been developed to provide clarity of practice arrangements in applying the requirements of

S117 in Essex and the Unitary Authorities of Thurrock and Southend-on-Sea.

2.0 When does S117 apply?

2.1 The purpose of S117 is explained in the Mental Health Act Code of Practice 2008 chapter 27. Its aim is to support patients to regain or to enhance skills in order to cope with life outside of hospital minimising the risk of re-admission to hospital.

2.2 S117 after-care services **only** applies to patients/service users who:

2.2.1 Have been detained in hospital for treatment under Section 3 MHA

2.2.2 Were admitted to hospital by an order of the Court made under Section 37 MHA (with or without a Section 41 Restriction Order)

2.2.3 Were admitted to hospital by a direction of the Court under Section 45A MHA

2.2.4 Have been transferred from prison or remand centre to hospital in pursuance of a transfer direction under Section 47 or Section 48 MHA

2.2.5 Were detained for treatment and then made subject to a Community Treatment Order under Section 17A MHA.

2.2.6 Were detained for treatment and then granted Leave of Absence under Section 17 MHA.

2.2.7 Were detained for treatment but remained as voluntary service users before leaving hospital.

2.2.8 Were detained for treatment and then placed on Guardianship under Section 7 MHA.

2.3 S117 does not apply to patients who have been detained in hospital under any other section (for example Section 2, 4, 5(2), 5(4), 135 or 136).

3.0 What are After-care Services?

3.1 The Act does not specify definitively what constitutes after-care services from either the Health Service or the Local Authority. However the MHA Code of Practice provides:

27.5 After-care is a vital component in patients' overall treatment and care. As well as meeting their immediate needs for health and social care, after-care should aim to support them in regaining or enhancing their skills, or learning new skills, in order to cope with life outside hospital.

- 3.2** S117 services are not concerned with support in general but are those which are required to meet an assessed need that arises from a person's mental disorder and are aimed at minimising the need for future re-admissions to hospital for treatment for that disorder.
- 3.3** The services may include:
- Provision of domiciliary services
 - Accommodation
 - Social work support
 - Day services e.g. support with employment, social inclusion and relationships
 - Medical supervision and psychological support

4.0 Health and Social Care Needs Assessment

- 4.1** Service users entitled to statutory after-care under S117 should have their needs assessed and clarified as part of the Care Programme Approach (CPA), Single Assessment Process (SAP), Assessment and Care Management (A&CM) or Person Centred Planning (PCP) processes as appropriate.
- 4.2** After-care planning should start as soon as possible after admission and should be service user focused (Appendix 1).
- 4.3** The service user's needs should be considered at Care Planning meetings as would be the care needs of any other service user. The differences should be that: -
- 4.3.1 Contributors to the care planning process should be aware of the service user's S117 status and the additional statutory duty to provide after-care services that this entails.
 - 4.3.2 All the service user's needs should be considered carefully, identifying which needs should be met under S117, and those which should be met as part of any previous or additional care package.
 - 4.3.3 The care plan should indicate very clearly which services are being provided under S117 and which are not.
 - 4.3.4 Any care package for a service user, including residential and non-residential services, should be drawn up in awareness of S117 rights and responsibilities.
 - 4.3.5 The needs of the whole individual should be considered and not only mental health and social care needs (eg physical health needs) and a risk assessment and management process should

be incorporated and monitored as part of the after-care planning.

4.3.6 Service users should be provided with the Service User Leaflet which explains their rights under S117, discharge process and how to complain should they need to (Appendix 2).

- 4.4 The needs assessment and any discussion and/or agreements should be well documented in the service user's notes.
- 4.5 The Care Coordinator is to ensure that the service user's GP receives a letter from the Responsible Clinician advising of a service user's S117 after-care support plan.
- 4.6 No person is legally obliged to accept the after-care services that are offered. An unwillingness to receive after-care services should not be equated with an absence of a need for such services. A patient's continued refusal to receive after-care services should be confirmed by professional inquiry at appropriate intervals e.g. CPA Review meetings.

5.0 NHS Continuing Healthcare

- 5.1 If all the required after-care services are to be provided under S117 MHA it may not be necessary to assess eligibility for NHS continuing healthcare (CHC) funding.
- 5.2 In the absence of agreement between funding bodies, an assessment would be required to determine whether the service is to be paid for out of an NHS or Local Authority budget. It is important for the NHS to be clear in each case whether the individual is being funded under S117, NHS CHC or any other powers if a common budget is in place to fund both S117 and CHC.
- 5.3 A person in receipt of S117 after-care services may also have needs for continuing care not related to their mental health and this will not therefore fall within the scope of S117. An example would be a person already receiving care in relation to physical health problems before being detained under a treatment section of the MHA and whose physical health problems remain on discharge. In such a case a CHC assessment may be necessary to establish how these needs will be addressed.

6.0 S117 Register

- 6.1** There will be one S117 Register covering Essex and the Unitary Authorities of Southend-on-Sea and Thurrock and this will be hosted by the Essex County Council Caldicott Guardian who will be the Register Custodian.
- 6.2** Mental Health Act Administrators in HPFT (LD), SEPT and NEPFT Information Management Teams will update the Register on a monthly basis via secure electronic data transfers as detailed in the Information Sharing Agreements.
- 6.3** Each Trust will use existing channels with respective Local Authority finance departments to ensure the data updated on the Register is cross referenced with finance records.
- 6.4** The seven Essex CCGs or the Essex Commissioning Support Unit (CSU) as data processor on their behalf may commission placements for patients not known to the above-mentioned Foundation Trusts. For example, a person with brain injury may be detained in an independent hospital or a person is transferred from prison to a secure hospital. Where it is established that the responsible CCG is in Essex, it will be necessary for the relevant CCG to ensure patient details are updated on the Register accordingly when “Ordinary Residence” status has been established. (Refer to section 7 below) The CCG or the CSU acting on their behalf will also be required to access the register.

7.0 Ordinary Residence

- 7.1** The term “resident” in the MHA is not the same as “ordinarily resident” in the National Assistance Act 1948 and therefore the deeming provisions about ordinary residence are not transferable.
- 7.2** Guidance on S117 of the MHA was given in the case of *R v Mental Health Review Tribunal Ex p. Hall (1999) 4 All ER 883*. This case made clear that responsibility for the provision of after-care services falls to the local authority and PCT for the area in which the person was resident when they were detained in hospital, even if the person does not return to that area on discharge. Only if no such residence can be established does the duty fall on the authority where the person is to go on discharge from hospital.
- 7.3** If a service user moves to or is placed in another area and is subsequently detained under a treatment section in the new area the responsibility for S117 after-care services would then change to the authorities of the new area.

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131705.pdf pp 64 – 66)

- 7.4** With reference to the relevant case law, responsibility for provision of S117 after-care is determined solely by the area of residence of the service user and not the location of the GP they may be registered with.
- 7.5** Decisions about “Residence” may in some cases be difficult to determine and as such Legal Guidance should be sought from the appropriate authority Legal Advisors.

8.0 Discharge from S117 Procedure

- 8.1** After-care under S117 MHA does not have to continue indefinitely. It is the joint responsibility of the health and social care authorities, in consultation with the service user, to decide whether after-care services should end.
- 8.2** The authority responsible for providing the particular services should take the lead in deciding whether the services are no longer required (LAC 2000(3), para. 4).
- 8.3** A patient should not be discharged from care solely on the grounds that:
- 8.3.1 They have been discharged from the care of a Responsible Clinician or Specialist Mental Health Services
 - 8.3.2 An arbitrary period of time has elapsed since care was first provided.
 - 8.3.3 The provision of care is successful in that the service user is well settled in the community or residential care.
 - 8.3.4 They are no longer subject to Supervised Community Treatment or S17 leave.
 - 8.3.5 They have returned to hospital as informal patients or under Section 2 of the Mental Health Act.
 - 8.3.6 They have a Deprivation of Liberty Safeguards Authorisation.
- 8.4** S117 services must be provided until both the health and social services authorities are satisfied that the service user is no longer in need of such after-care services by virtue of their mental disorder.

- 8.5** The ending of S117 after-care does not necessarily mean discharge from health services. For instance, a service can continue to be provided under a different legislative framework, e.g. under the Chronically Sick and Disabled Persons Act 1970.
- 8.6** The decision to end S117 after-care services must only be taken at the arranged Multi-Disciplinary Team S117 Discharge meeting (Appendix 3). The patient should be fully involved in the decision making process.
- 8.7** If S117 after-care ends, it cannot be re-started if the service user becomes mentally ill once again. They can only receive S117 services if they are re-admitted to hospital under a treatment section of the MHA as in 2.2 above.
- 8.8** S117 services cannot be terminated for service users subject to after-care under supervision (S37 with a S41 MHA Restriction Order) until the respective orders have been discharged.
- 8.9** S117 services may not be terminated for a patient still subject to Section 17A Community Treatment Order.

9.0 Local S117 funding arrangements

- 9.1** The MHA is clear that services provided under S117 are a joint duty and, even though there are no set criteria on apportionment of funding for each authority, there is a requirement that the authorities should establish a jointly agreed policy for deciding funding arrangements (LAC 2000 (3)/HSC 2000/003).
- 9.2** S117 funding arrangements will be determined in accordance with the jointly agreed policy as above at the respective health or social care funding panels where commissioners will advise of local agreements in place and how the funding responsibilities will be met.

10.0 Charges for After-care Services

- 10.1** It is unlawful for any authority to charge for services provided under S117. Care Coordinators should ensure that the respective LA finance departments are aware of the Service Users S117 rights and clearly indicate which services fall under S117 and should not be charged for.
- 10.2** The provision of after-care services under S117 should not be confused with providing for the essentials of life, such as food, clothes, accommodation, heating etc. These remain the responsibility of the individual except in the very special cases where accommodation,

heating etc., are provided as part of a residential placement (or supported living arrangements) and are an inseparable part of the placement.

11.0 Top up payments

- 11.1** As long as the Local Authority commits itself to providing a level of funding that will adequately meet the assessed needs of the service user for accommodation, there is nothing to prevent top-up payments being made by the patient or another person to fund accommodation that provides for a higher level of either service or accommodation.
- 11.2** The service user or their representative would at this point be entering into an independent arrangement with the service provider.
- 11.3** It will be the provider's responsibility to make substantial checks to ensure the third party is capable of funding the placement for the expected duration.

12.0 Direct Payments (Personal Budgets)

- 12.1** Direct payments can be made to people who are assessed as requiring services under S117.
- 12.2** Local Authorities have a power (not a duty) to make direct payments to those requiring services under S117. .The provision of a discretionary power is intended to give LAs greater flexibility in cases where they are concerned that there may be risks in making direct payments in respect of services which the person concerned may prefer not to receive.
- 12.3** LAs do not have the power to seek contributions for services provided under S117 MHA. Accordingly, where LAs make direct payments instead of providing services under S117 MHA they may not seek payment, whether by way of reimbursement or a contribution.

13.0 Transfer or placement to another Local Authority area

- 13.1** The duty to provide after-care services remains with the placing local authority even if the service user becomes resident in another area. The Care Coordinator should ensure that the necessary arrangements are in place to continue provision of services as indicated in the Care Plan.

- 13.2** Authorities can agree to a transfer of responsibility for providing S117 services. In this scenario the Care Coordinator should ensure that transfer of all after-care documents are completed and, in consultation with the Responsible Clinician, ensure appropriate transfer of care between the authorities
- 13.3** If a service user subject to S117 becomes resident in a new area and is then detained under one of the provisions in 2.2 the relevant bodies for S117 responsibilities would be those for the new area, i.e. the area in which the service user resided at the time of admission.

REFERENCES

Department of Health, (2000). *Aftercare under the Mental Health Act 1983: Section 117 Aftercare Services*. HSC 2000/003: LAC (2000)3. London: Department of Health.

Department of Health, (2008). *Mental Health Act 1983 Code of Practice*. London: Department of Health.

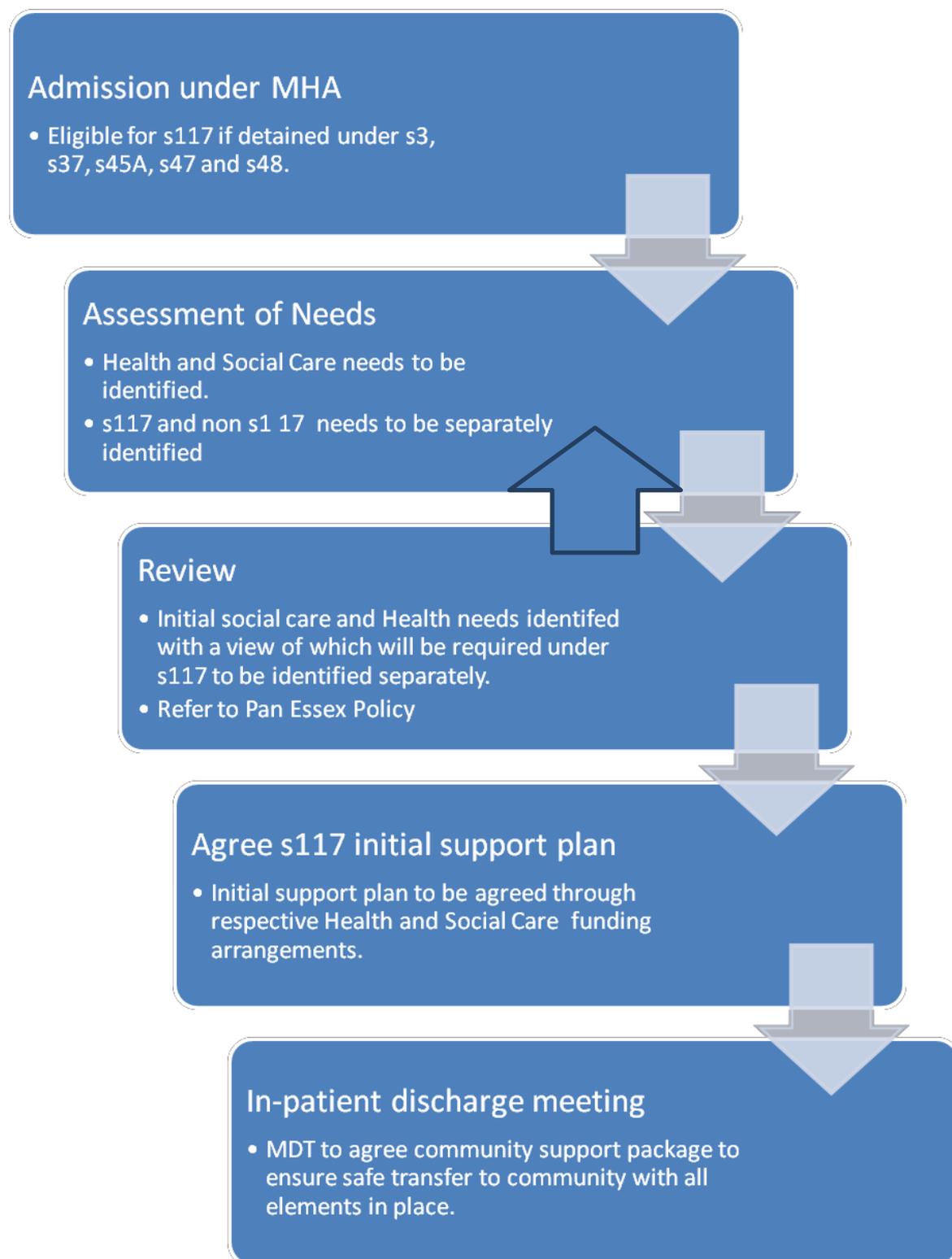
Department of Health, (2008). *Reference Guide to the Mental Health Act 1983*. London: Department of Health.

Department of Health, (2009). *The national framework for NHS continuing healthcare and NHS-funded nursing care - (revised)*. London: Department of Health.

Department of Health, (2011). *Ordinary Residence: Guidance on the identification of the ordinary residence of people in need of community care services, England*. London: Department of Health.

Jones, R., (2009). Section 117 After-Care: Mental Health Act 1983 (Revised 2007).
In: *Mental Health Act Manual 12th ed. pp 446 – 460*. London: Sweet and Maxwell.

Section 117 Pathway



SERVICE USER LEAFLET

S117 Aftercare - Your rights under the Mental Health Act

What is section 117 Aftercare?

Section 117 of the Mental Health Act 1983 (MHA) says that Local Social Service Authorities and Primary Care Trusts must provide certain after-care services free of charge, to people who have been detained under certain sections of the Mental Health Act 1983. These after-care services must be for specific health and social needs, assessed as necessary by your care coordinator and care team in consultation with you.

The purpose of this after-care is to prevent someone needing to go back into hospital. This means that services should meet someone's immediate needs and also support them to gain skills and help them to cope with life outside of hospital.

This may involve a direct service, for example a carer to support you, or it may be through self directed support (SDS), which allocates a sum of money which you can use more flexibly for your assessed needs. (For further information on SDS please ask your care coordinator)

These services are re-assessed at every review and when the care team have assessed someone's needs as having been met, a formal care review meeting will be set up to discuss discharging them from s117.

When does section 117 start?

Section 117 begins when you leave hospital, although planning for after-care should begin as soon as you are admitted to hospital.

Who is entitled to section 117 Aftercare?

- People who have been detained under the 'treatment' sections of the Mental Health Act. These are sections 3, 37, 45A, 47 or 48.
- People who are discharged from the above sections, but who remain in hospital voluntarily after their discharge
- People who are released from prison, who have also spent some of their sentence in hospital, detained under sections 37, 45A, 47 or 48.
- People granted leave from hospital under section 17 are entitled to services during their period of leave
- People going onto Supervised Community Treatment (SCT) or Guardianship.

Who is responsible for providing the Aftercare?

It is the Health Authority/NHS and the Local Social Services Authority (LSSA) in the area where the person normally lives at the time they were admitted to hospital. There are some exceptions to this but this responsibility will be dealt with by the care co-ordinator and care team.

Who is involved, and what services count as S117 Aftercare?

You will be directly involved in planning your after-care. Any carers should also be involved as long as you consent. Other people involved could include a psychiatrist, community psychiatric nurse, social worker, occupational therapist, psychologist, advocate, housing officer and people who represent you with your consent like an attorney or deputy.

Factors considered in the assessment will vary from person to person. After-care services could include:

- Provision of domiciliary services
- Accommodation
- Social work support
- Day services e.g. support with employment, social inclusion and relationships
- Medical supervision and psychological support

Your after-care support plan, also called a Care Programme Approach (CPA) care plan must be in writing and include timescales. This will specify your s117 health and social care needs as well as any other needs not identified as s117 needs.

This plan will be reviewed regularly. It is the care co-ordinator's responsibility to arrange reviews, at least 6 monthly.

Discharge of section 117 Aftercare

The duty to provide after-care lasts as long as the care team assess that you continue to have s117 health and/or social care needs. We recognise that even if someone is doing well outside hospital, they may still need after-care services to prevent them becoming unwell again, especially if they have a long history of mental health difficulties.

Section 117 services only end when the section is formally discharged. This must involve a meeting, which includes you and the people you would like to be there, such as a carer or advocate.

If you were not involved in a discharge meeting, then you are still on a section 117. However, please be aware, that if you are invited to the meeting, non-attendance will not prevent discharge from s117 if the care team believes it is appropriate.

The decision to discharge from s117 lies with your care team and must include your care co ordinator and consultant psychiatrist. If you disagree with a decision to discharge from s117, you are entitled to appeal against this decision (see below).

Stopping of services and/or funding under s117.

You should be given two week's notice before any service provided under s117 ceases.

After-care should not be stopped on the following grounds alone:

- You are discharged from specialist mental health services, such as a community mental health team
- A certain length of time has passed since you left hospital
- You return to hospital voluntarily or under section 2
- You are deprived of your liberty under the Mental Capacity Act 2005
- You are no longer on supervised community treatment or section 17 leave

Appealing against the Decision

If a decision is made to discharge you from s117 and you do not agree with the decision, you have a right to make a formal complaint. Your care co-ordinator can help with this. If you need further information about how to complain against this decision, please contact:

Customer Liaison Service
Adults Health and Community Wellbeing
Essex County Council
County Hall
Chelmsford
Essex
CM1 1LX
Tel: 01245 434109 or Textphone: 08457 585 592
Email: complaintsofficer.socialcare@essex.gov.uk

Frequently Asked Questions.

1. What can I do if I haven't received services under section 117 that I think I'm entitled to?

- You could contact either your care co-ordinator, psychiatrist or local team manager who would be happy to discuss any issues with you.
- If you are not satisfied with the response you can make a complaint in writing. Your care co-ordinator can assist you with this.
- If still unsatisfied, you can complain to the Local Government Ombudsman who has the power to investigate complaints against councils, including social services departments.
- You could ask a solicitor.

2. What can I do if I've been charged for services whilst on section 117?

You may be able to claim this money back. You should do this as soon as possible by writing to the Trust or Local Authority.

The process of reimbursing will raise complicated issues about benefits. You may have received benefits that you wouldn't have been entitled to if you had received free after-care under section 117. You should seek specialist advice if you think you may be in this situation.

3. What happens if I do not want to receive a service or I change my mind?

You do not have to accept services if you are offered them. If you change your mind later, you would still be entitled to receive these services if they are still assessed as required to meet your needs.

Also FOI Number

S117 DISCHARGE PROCEDURE

Discharge procedure to be followed prior to discharge from S117 Register**Patient Progress:**

- Care Coordinator monitors patient progress as per the Aftercare Support/CPA Care Plan
- If progress indicators show that the patient's needs have been met and there is gradual phasing out of services, the Care Coordinator should consider the need for continuation of services under S117.
- The Care Coordinator should then liaise with the RC and convene an s117 discharge meeting.

The following staff members are required to attend this meeting:

- Consultant Psychiatrist
- Care Coordinator (CC)
- The patient and/or subject to patient's consent family member, carer or advocate
- Social Worker and/or CPN (Social Care delegated authority)
- Representative of any agency that may contribute aftercare services e.g. Voluntary Sector services

The meeting must include the following agenda:

- Discussion of S117 needs identified on the CPA care plan and whether the needs have been met/continue to exist.
- Discussion as to whether any other s117 needs have been identified.
- Ensure all present have the opportunity to discuss care needs.
- Any additional care needs not subject to s117 should be recorded and addressed in the CPA care/support plan.

Outcome of the Meeting:

- The discussion and outcome of the meeting should be clearly recorded on CPA documentation and all in attendance should sign the record of the meeting.
- Where all professionals in attendance agree that the patient's s117 needs have been satisfactorily met, this needs to be clearly evidenced and documented on the CPA documentation, along with the decision to discharge the patient from s117.
- A service user may continue to require ongoing care services for assessed needs that are not subject to S117 from either the Trust or Local Authority. The care coordinator should ensure that the support plan is updated accordingly so that the service user has access to services required.
- Where a patient and/or their representative don't agree with the decision to discharge from s117, they should be advised of their right to appeal the decision and their views and supporting information on this recorded. If they choose to appeal, the care co-ordinator should support them with the process.

Paperwork and sign off

- In NEPFT Care Co-ordinator to update clinical information system and in SEPT the Care Coordinator will send a copy of the CPA discharge documentation to The Mental Health Act Administrators for updating the Essex Register if no appeal has been lodged.
- The Care Co-ordinator should immediately send the complaint/appeal to:

Customer Liaison Service
Adults Health and Community Wellbeing
Essex County Council
County Hall
Chelmsford
Essex
CM1 1LX
Tel: 01245 434109 or Textphone: 08457 585 592
Email: complaintsofficer.socialcare@essex.gov.uk

- The appeal will be handled accordingly and the Service User will be updated on progress and final decision in relation to the Discharge. This decision should also be communicated to the MDT via the care coordinator and the service user records updated and Register updated accordingly.

Acronyms

ACM	Assessment and Care Management
CC	Care Coordinator
CCG	Clinical Commissioning Group
CHC	Continuing Health Care (Health Funding)
CPA	Care Programme Approach
CPN	Community Psychiatric Nurse
CTO	Community Treatment Order
ECC	Essex County Council
FOI	Freedom of Information
GP	General Practitioner
HPFT	Hertfordshire Partnership Foundation Trust
HSC	Health service Circular
LA	Local Authority
LAC	Local Authority Circular
LD	Learning Disability
MDT	Multi-Disciplinary Team
MHA	Mental Health Act
NCB	National Commissioning Board
NEPFT	North Essex Partnership Foundation Trust
NHS	National Health Service
PCP	Person Centred Planning
PCT	Primary Care Trust
RC	Responsible Clinician
S117	Section 117 of the Mental Health Act (2003)
SAP	Single Assessment Process
SBC	Southend-on-Sea Borough Council
SCT	Supervised Community Treatment
SDS	Self Directed Support
SEPT	South Essex Partnership Foundation Trust
TBC	Thurrock Borough Council