

**Mental Health Act Section 117 Aftercare for Adults -
Joint Policy for
NHS Lincolnshire Integrated Care Board
Lincolnshire County Council
Lincolnshire Partnership NHS Foundation Trust**

ICB document reference:	ICB SAFEGUARDING 009
Name of originator/author:	Neil Chadwick
Date of approval:	27 th October 2022
Name of responsible Committee:	SMODG
Responsible Director/ICB Officer:	Martin Fahy / Richard Eccles
Category:	Safeguarding
EIA undertaken:	Yes
Date issued:	3.01.2023
Review date:	October 2023
Target audience:	All staff
Distributed via:	Email, Website, Intranet and Board Portal

Document Control Sheet

Document Title	Mental Health Act Section 117 Aftercare for Adults - Joint Policy for NHS Lincolnshire Integrated Care Board Lincolnshire County Council Lincolnshire Partnership NHS Foundation Trust
Version	v2.0
Status	
Authors	Neil Chadwick
Date	27.10.2022

Document history			
Version	Date	Author	Comments
v2.0	27.10.2022	Neil Chadwick	To be updated once the Care Program Approach (CPA) is replaced. To review any impact once Liberty Protection Safeguarding is operational.

Mental Health Act Section 117 Aftercare for Adults - Joint Policy for

NHS Lincolnshire Integrated Care Board

Lincolnshire County Council

Lincolnshire Partnership NHS Foundation Trust

V2.0

Updated: 21st September 2022

Original: 19th June 2019 V1.1.4

Document Control

Policy Title	Section 117 Joint Policy
Version	2.0
Responsible Officer / Policy Author	Heston Hassett 19 th June 2019 V1.1.4 Neil Chadwick 21st September 2022 V2.0
Responsible Group	Section 117 Project Board
Date Issued	19 th June 2019 2 nd January 2023
Ratification Date	ICB 27 th October 2022 LCC 24 th October 2022 LPFT 13 th October 2022
Review Date	December 2023

Version History

Date	Version Number	Revision Notes	Author
23 rd Oct 18	V0.1	Creation HH	Heston Hassett
7 th & 9 th Nov 18	V0.2	Incorporating comments from Policy group held on 31 st October	HH & Policy Group
15 th -30 th Nov 18	V0.2.1	Amendments by way of consultation with Project board see Stakeholders	Heston Hassett
19 th Jan 19	V1.0	Text approved by the s.117 Project Board	Heston Hassett
1 st Mar 19	V1.1	Amendment made as a result of coproduction	Heston Hassett
9 th Apr 19	V1.2	s.117 Joint Care plan to sit in separate Procedures and guidance document	Heston Hassett
6 th Jun 19	V1.4	Incorporates amendments as part of the consultation	Heston Hassett
19 th Jun 19	v.1.4.2	Incorporates amendments from Legal LCC and Childrens Services	
12. October 2022	V2.0	Review updates. <ul style="list-style-type: none"> Organisational changes, legislation, and national guidance to include the Parliamentary and Health Service Ombudsman section 117 aftercare 	Neil Chadwick

		<p>“guidance for Practitioners April 2022, and “The Community Mental Health Framework for adults and older adults September 2019 and “who pays? Determining which NHS Commissioner is responsible for commissioning healthcare services and making payments to providers 2022.</p> <ul style="list-style-type: none"> • Strengthened information in respect of Learning Disability Section 75 agreement for pooled budget. • Referred to the refocusing of work in relation to CPA. • Updated the review time scales to bring in line with national guidance. • Strengthened the information and process in respect of discharge/ending section 117 aftercare entitlement. • Included information in respect of transforming care. • Removed commissioning scenarios. • Strengthened the NHS responsible Commissioner information to assist decision making and prevent inappropriate commissioning. • Updated the complaints information • Removed the references to children’s services. • Updated finance information. • Included the Procedure and Guidance documents • Included Interagency dispute paper in 	
--	--	---	--

		Procedures and guidance (for agreement).	
--	--	---	--

Consultation

Date	Version Number	Organisations in addition to Partnership Organisations
27 th Feb 19	V1.1	Service user group co-production event
7 th Mar 19 th -31 st May	V1.1&1.2	Mental Health Partnership Board hosted by Voiceability

Contents

1.0	Introduction	5
1.1	Section 117 of the Mental Health Act 1983 (as amended 2007).....	5
1.2	Section 117 Joint Policy.....	6
1.2.1	Organisational Reference.....	6
1.2.2	Policy Purpose	6
2.0	Responsibilities	6
2.1	Lincolnshire County Council, Lincolnshire Integrated Care Board and Lincolnshire Partnership Foundation trust after-care responsibilities.....	6
2.2	Learning Disability Section 75 Partnership Arrangement.....	6
2.3	Deprivation of Liberty in respect of Individuals who lack capacity.	
3.0	Eligibility and Entitlement.....	7
3.1	Eligibility	7
3.2	Entitlement	7
3.3	Section 117 Eligibility List.....	8
4.0	Individual S.117 After-care needs and Services.....	8
4.1	Supporting service user involvement and participation.....	8
4.2	Assessing and Recording s.117 After-care	8
4.3	Reviews	9
4.4	Process for Ending Section 117 Aftercare.....	10
4.5	Reinstating Section 117 Aftercare	11
4.6	Transforming Care	11
5.0	S.117 Clinical Process.....	12

6.0	Commissioning/ Funding /Providing s.117 After-care	12
6.1	Statutory health and standard Social Care	12
7.0	Section 117 Associated guidance.....	13
7.1	S.117 Continuing Health Care Interface.....	13
7.2	Identifying responsible Integrated Care Board and Local Authorities (LA)	14
7.2.2.	Local Authority Responsible Commissioner.....	14
7.2.3.	Integrated Care Board Responsible Commissioner	16
7.2.4.	Ascertaining originating responsible authorities where capacity is impaired.....	18
7.3	Charging for after-care services and Top Up Payments	18
7.4	Personal Budgets and Personal Health Budgets.....	19
7.4.1	Social Care.....	19
7.4.2	Health Care	19
7.5	Advocacy	19
7.5.1	Independent Mental Health Advocacy (IMHA).....	19
7.5.2	Independent Mental Capacity Advocacy (IMCA)	20
7.5.3	Independent Advocacy under the Care Act (2014).....	20
7.6	Interagency Disputes	20
7.7	Dispute resolution process for ICBs within the NHS in England.	21
7.9	Complaints	22
8.0	Training	22

1.0 Introduction

1.1 Section 117 of the Mental Health Act 1983

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

s.117 after-care services are services which have both of the following purposes¹

- meeting a need arising from or related to the patient's mental disorder² and
- reducing the risk of a deterioration of the patient's mental condition (and, accordingly, reducing the risk of the patient requiring admission to a hospital again for treatment for mental disorder.

All processes should be based on aiding recovery and a meaningful personalised lifestyle.

Eligible patients cannot be charged for s.117 after-care service. The aim is to maintain patients in the community, with as few restrictions as are necessary, wherever possible.

1.2 Section 117 Joint Policy

1.2.1 Organisational Reference

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

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

1.2.2 Policy Purpose

The purpose of the policy is to:

- State how the organisations are to discharge its responsibility to individuals who are entitled to receive after-care services under s.117
- Set out the joint agreement between the partner organisations and their obligations under s.117.
- Ensure the consistency and quality of the delivery of s.117 across Lincolnshire.
- Set out the arrangements for commencing (assessing), reviewing, ending and reinstating s.117 after-care
- Enable further detailed guidance and training, associated with this policy, to be developed jointly by the partnership organisations

2.0 Responsibilities

2.1 Lincolnshire County Council, Lincolnshire Integrated Care Board and Lincolnshire Partnership Foundation trust after-care responsibilities

LPFT, LICB and LCC are committed to the ongoing support and recovery of patients through the effective coordination of s.117 after care provision.

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

2.2 Learning Disability Section 75 Partnership agreement

For the Lincolnshire Learning Disability service there is a partnership arrangement under Section 75 of the NHS Act 2006 which gives powers to Local Authorities and Integrated Care Boards (LICB) to exercise certain local authority and NHS functions for each other. For

¹ S117(6) Mental Health Act 1983 (as amended 2007)

² With regards to accommodation it must relate to the mental disorder that triggered section 117 eligibility

Lincolnshire the Partnership agreement shall comprise “the delegation by the LICB to the LCC Authority of the NHS Functions in respect of those Lincolnshire individuals eligible for Mental Health Act section 117 aftercare, so that it may exercise the NHS Functions alongside the Council Functions and act as commissioner of the Services, with a pooled fund for the services.

The assessment and Care and Support process as described in 4.0. below remain the same with the procurement process remaining with Lincolnshire County Council.

2.3 Deprivation of Liberty in respect of Individuals who lack capacity.

Where an individual lacks capacity and is deprived of their liberty, it is essential that Lincolnshire County Council and NHS Lincolnshire Integrated Care Board is aware as early as possible, there may be the need to make an application to the Court of Protection for individuals living within the community, or a Deprivation of Liberty request for Care Homes (and hospitals), in relation to any deprivation of their liberty on discharge. This is to enable a timely application so as not to delay discharge. Where an application to the court of protection is made the relevant agencies may consider joint agency applications.

3.0 Eligibility and Entitlement

3.1 Eligibility

A person will be eligible for section 117 after-care services once they become subject to one of the qualifying sections of the Mental Health Act and thereafter cease to be detained and leave hospital:

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

Further information about these sections of the Mental Health Act can be accessed via the Department of Health website which has published an information leaflet for each [here](#). It is the responsibility of all health and social care professionals to ascertain if a person under their care is eligible for s117 aftercare and who the responsible commissioners are.

3.2 Entitlement

An eligible person will be entitled to s.117 after-care services in the event that they:

- are discharged from the qualifying section which makes them eligible for s.117 aftercare services (regardless of whether or not they remain in hospital as a voluntary patient or leave hospital immediately after their detention ceases)
- go on section 17 leave
- become subject to a Community Treatment Order
- are patients that are released from prison having spent part of their sentence detained in hospital

3.3 Section 117 Eligibility List

A centralised list of s.117 aftercare services eligibility for patients whom LICB and LCC have responsibility to provide Section 117 aftercare³ will be maintained and kept up to date by LPFT Mental Health Administration Team, with input from:

- **LPFT**, who will be responsible for providing information regarding patients who become subject to a qualifying section within LPFT sites
 - **LCC. LICB and LPFT**, will be responsible for providing information regarding any patient who becomes subject to a qualifying section on any other site.
- The process and responsibilities for the management of the s.117 Eligibility are set out in the s.117 Procedures and Guidance Document

4.0 Individual S.117 After-care needs and Services

4.1 Supporting service user involvement and participation

After-care should start to be considered at the point of admission to ensure that the appropriate after-care services are identified in readiness for an individual's planned discharge from hospital or prison.

The 'Rethink S117 Factsheet (in place at the time) should therefore be provided to qualifying patients on admission and prior to discharge so that they are made aware of their entitlement to s.117 after-care on discharge. This should also be provided to patients in the community prior to any s.117 review. A copy of the Factsheet can be obtained here: [Rethink S117 Factsheet](#).

Before commencing s.117 after-care planning consideration will be given as to, who needs to be involved in assessing the s.117 needs of a patient. The patient must be present when the assessing staff are deciding the s.117 after-care plan. Where a patient does not wish to attend then this must be documented in the patient's records, assessors however should discuss the best way for the individual to input post meeting. In addition to the patient themselves, the care coordinator should actively consider the list of potential attendees contained within paragraph 34.12 of the Mental Health Code of Practice 2015. Service users can be supported by an advocate this is detailed in 7.5 of this policy below.

4.2 Assessing and Recording s.117 After-care

4.2.1 Care programme Approach.

Chapters 33 and 34 of the Mental Health Act Code of Practice 2015 set out the requirements of planning after-care for eligible patients.

The Care Programme Approach (CPA) has been the systematic approach for the past 30 years, used in secondary mental health care to, assess, plan, review and coordinate the range of treatment and support needs for people in contact with secondary mental health services who have enduring mental health issues, to ensure that long term care and support is organised around their wishes, and includes those individuals who are eligible for section 117 aftercare. NHS England has stated with the publication of the "community mental health

³ See 7.2 below

framework” that the care programme approach has been superseded. Work in Refocusing the Care Programme approach in Lincolnshire in line with personalised care will take a period of time therefore reference to CPA will remain in this policy until such time as there is a formal change and for those individuals who are currently on CPA for this to continue. Any eventual change would need to be reflected within this policy.

4.2.2 Assessing and Care Planning Attendance.

In addition to the patient themselves being present, the care coordinator should actively consider the list of potential attendees contained within paragraph 34.12 of the Mental Health Code of Practice 2015.

As staff are required to take a holistic approach when assessing after-care needs they must complete the s.117 after-care plan specifying what will be provided to meet an individual's s.117 need. The care plan must clearly identify the interventions that are related to section 117 after-care entitlement and those that are not. These forms and guidance on completing it are contained in the separate section 117 aftercare Procedures and Guidance.

Assessments of after-care needs should be conducted:

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

The after-care assessment and aftercare plan must be completed and recorded prior to the patient's discharge and made available to the patient and any relative/carer (that the patient has consented to, or in their best interest if they have been assessed as lacking capacity). This information should also be made available to the LA and LICB within 1 month of the person leaving hospital or prior to leaving hospital where there are complex or non-statutory/standard Section 117 aftercare needs identified which require funding. LCC and LICB must document this on their individual clinical systems in accordance with each agency's record keeping policies.

4.3 Reviews

4.3.1 The identified Lead Professional is responsible for ensuring section 117 after-care needs are reviewed at the agreed timescale, recording progress towards the patient's independence, and supported with a focus on promoting recovery and wherever possible independent living. The Joint Quality Assurance Group are also able to recommend additional review time frames where it is deemed appropriate.

4.3.2 Aftercare reviews should take place at intervals of 72 hours post discharge, 6 weeks post discharge, 6 months post discharge and annually thereafter, ad hoc reviews can be convened as required, progress with each aftercare need should be recorded, and where applicable adjusted, any funding implications would need ratification by the Joint agency section 117 (respective discipline) Quality assurance group. It is at review meetings that consideration to end section 117 will be discussed.

4.3.3 For individuals identified in the transforming care process an additional review at 3 months will be convened to establish the on-going appropriate Lead agency for Commissioning as outlined in 4.6.3 below.

4.4 Process for Ending Section 117 Aftercare

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

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

4.4.2 Lincolnshire County Council and the Integrated Care Board remain the responsible authorities irrespective of where the individual lives, if, the section 117 entitlement remains in place. Only once the entitlement has been ended does the responsible commissioning authorities revert to the Local Authority under ordinarily residence and origination ICB under the GP registration, should there be a further eligible section detention as outlined in 7.2.1 and 7.2.2 below.

4.4.3 Aftercare under Section 117 may not continue indefinitely, and each person's needs and circumstances should be reviewed regularly. The MHA Guidance makes it clear that even if the person is settled well in the community, they may still need Section 117 services to reduce the likelihood of a relapse, or to stop their condition deteriorating. Section 117 after-care services should therefore end only if someone has been functioning well for a sustained period and no longer needs services that meet the statutory definition for S117.

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

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

4.4.6 Aftercare services under s117 should not be withdrawn solely on the grounds that:

- The patient has been discharged from the care of specialist mental health services.
- An arbitrary period has passed since the care was first provided.
- The individual is deprived of liberty under the MCA.
- The individual has returned to hospital informally or under section 2 or

- The individual is no longer on a CTO or section 17 leave. Even where the provision of after-care has been successful in that the individual is now well settled in the community, the person may still continue to need aftercare services to prevent a relapse or further deterioration in their condition.

4.4.7 The initial consideration to end s117 would be made at a multi-disciplinary s117 review.

A Section 117 multidisciplinary discharge meeting must be convened when discharge from Section 117 is considered, and all decisions must be recorded as evidence of the outcome. The views of the person and their family or carers should form an important part of the discussion. If there is agreement that section 117 can be ended, this will be recommended to the relevant Joint agency section 117 Quality assurance group for ratification.

4.4.8 Only when representatives from the Lincolnshire ICB and Lincolnshire County Council agree, can s117 eligibility be formally ended. There must be a very clear record documenting the decision to end the s.117 aftercare services

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

4.5 Reinstating Section 117 Aftercare

4.5.1 Where it is determined that someone who is eligible for s117 has had their entitlement ended prematurely, and there is a need to reinstate care in respect of; “meeting a need arising from or related to the patient’s mental disorder and reducing the risk of a deterioration of the patient’s mental condition and, accordingly, reducing the risk of the patient requiring admission to a hospital again for treatment for mental disorder”. Reinstatement should only be considered in the short term and should not be continued indefinitely.

4.5.2 The Lead Professional assess the urgency of the need to reinstate eligibility for section 117 and takes action to meet urgent need via interagency communication and agreement or, via the agreed process for securing section 117 aftercare if of a non-urgent nature. The relevant Joint Agency Quality Assurance Group will be furnished with all relevant information and will review the case for learning points, and the Mental Health Act Administrators must be informed of the change in status.

4.6 Transforming Care

4.6.1 Transforming Care relates to people who have a learning disability, autism, or both and especially focuses on people with behaviour that challenges, or a mental health condition. In February 2015, NHS England publicly committed to a programme of closing inappropriate and outmoded inpatient facilities and establishing stronger support in the community. NHS England has rolled out a programme of Care and Treatment Reviews (CTRs) of individual patients’ care to prevent unnecessary admissions and avoid lengthy stays in hospital.

4.6.2 Individuals in hospital on the transforming care, care and treatment review process, and are on one of the eligible mental health act sections, will be entitled to section 117 aftercare upon discharge from the section.

4.6.3 The Lead Commissioner at the point of discharge from the section will be NHS Lincolnshire Integrated Care Board. The section 117 aftercare process of assessment, planning and review as outlined in section 4.2 above will be followed, with an additional three-monthly review, to establish the appropriate lead agency for commissioning. A decision tree process is included within the guidance and procedure documents.

5.0 S.117 Clinical Process

The Process as identified in Section 4 of the policy document is included in the Procedures and Guidance Documentation.

6.0 Commissioning/ Funding /Providing s.117 After-care

6.1 Statutory health and standard Social Care.

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

Services that are not statutory services.

Lincolnshire County Council and NHS Lincolnshire Integrated Care Board for individuals eligible for Mental Health Act Section 117 aftercare, fund non statutory care services for example care homes with or without nursing, private providers of care in the community, and other needs that are not funded through statutory services where a need has been assessed and requires funding to meet that need.

The current funding agreements are included in the Procedure and Guidance documents at 3.1.2 to 3.1.2.2

Access to NHS services is based on clinical need, not an individual's ability to pay

This principle states unequivocally that NHS services should be free at the point of use, except where charges are expressly provided for in legislation (for example, prescription charging and dentistry). Any decision to introduce new charges would need to be sanctioned by Parliament.

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

NHS services are generally provided free of charge. This includes access to local services like your GP, hospital or clinic, or health improvement services provided by your local authority, so you do not have to worry about payment.

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

S117 does not automatically entitle individuals to free prescriptions unless they are in an exemption category or hold a valid medical exemption certificate (MedEx). Mental disorders are not included in the list of medical conditions.

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

Further information can be sought from an appropriate pharmacist. Information in respect of the charging is also embedded in the Procedure and Guidance documents at Appendix D

7.0 Section 117 Associated guidance

7.1 S.117 Continuing Health Care Interface

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

7.1.1 However, a person in receipt of after-care services under section 117 may also have or develop needs that do not arise from, or are not related to, their mental disorder and so do not fall within the scope of s.117 such as physical health needs.

7.1.2 Whilst these are not s.117 needs they should be identified as part of the assessment and review process prior to the individual leaving hospital and where they trigger requirements of CHC the ICB should be notified and the process around CHC engaged. The general principals in determining the responsible commissioner for non section117 related needs is "where an individual is registered on the list of NHS patients of a GP Practice, the ICB with core responsibility for the individual will be the ICB with which that GP practice is associated. This may be a different ICB than the ICB responsible for the Section 117 aftercare.

7.1.3 Paragraph number 14.11 and 18 of the "Who pays? Determining which NHS commissioner is responsible for commissioning healthcare services and making payments to providers (revised 2022) document highlights scenarios identifying the responsible

commissioner, under the changing circumstances relating to section 117 aftercare and “other health care needs. A summary is also noted in paragraph 7.2.1 – 7.2.3 below.

7.2 Identifying responsible NHS Integrated Care Board and Local Authority (LA)

7.2.1 The legislation

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

Section 117(3) of the Mental Health 1983 defines who the responsibility to provide after-care services falls upon.

S.117 (3) currently provides as follows

“(3) In this section the “integrated Care Board or Local Health Board” means the integrated care board or Local Health Board, and “the local social services authority” means the local social services authority—

- (a) if, immediately before being detained, the person concerned was ordinarily in England, for the area in England in which he was ordinarily resident
- (b) if immediately before being detained, the person concerned was ordinarily resident in Wales, for the area in Wales in which he was ordinarily resident ; or
- (c) in any other case for the area in which the person concerned is resident or to which he is sent on discharge by the hospital in which he was detained.”

In the event of a dispute s.40 of the Care Act provides for a mechanism to resolve that dispute.

In order to fully understand the effect of these provisions it is necessary to look at the responsibilities of the local authority and the integrated care board separately.

7.2.2. The Responsible Local Authority

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

Pre Care Act 2014 cases

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

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

Post Care Act cases (Post 1 April 2015)

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

Practical Application

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

The courts have considered the meaning of ordinary residence and the leading case is that of *Shah v London Borough of Barnet* (1983). In this case Lord Scarman stated that: “unless it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning I unhesitatingly subscribe to the view that ordinarily resident refers to a man’s abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration.”

The statutory guidance helpfully provides the following

Local authorities must always have regard to this case when determining the ordinary residence of adults who have capacity to make their own decisions about where they wish to live. Local authorities should in particular apply the principle that ordinary residence is the place the person has voluntarily adopted for a settled purpose, whether for a short or long duration. Ordinary residence can be acquired as soon as the person moves to an area, if their move is voluntary and for settled purposes, irrespective of whether they own, or have an interest in a property in another local authority area. There is no minimum period in which a person has to be living in a particular place for them to be considered ordinarily resident there, because it depends on the nature and quality of the connection with the new place”

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

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

The local authority will therefore consider the position of ordinary residence by using the common law interpretation above without consideration of the deeming provisions when considering whether it has responsibility under s.117.

Accommodation provided under s.117 Mental Health Act 1983

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

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

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

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

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

The Supreme Court has granted Worcestershire County Council's application for leave to appeal. A date has not yet been set as at 2nd November 2022. This aspect of the policy will need to be updated once the Supreme Court has heard this matter.

7.2.3. Integrated Care Board Responsible Commissioner

The legislation

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

- the NHS Act 2006 ("the 2006 Act"), as amended, including by the Health and Care Act 2022 ("the 2022 Act");
- the National Health Service (Integrated Care Boards: Responsibilities) Regulations 2022 (the "ICB Responsibilities Regulations");
- the National Health Service (Integrated Care Boards: Exceptions to Core Responsibility) Regulations 2022 (the "ICB Exceptions Regulations");
- the National Health Service (Integrated Care Boards: Description of NHS Primary Medical Services) Regulations 2022 (the "Primary Medical Services Regulations"); and
- the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (as amended by the Health and

Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022) (the “Standing Rules Regulations”).

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

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

7.2.3.3 In respect of ICB-commissioned detention and aftercare services, the ICB responsible for commissioning and payment will be determined on the basis of the general rules at paragraph 10.2 of the 2022 “Who pays? And above at 7.2.1. Determining which NHS commissioner is responsible for commissioning healthcare services and making payments to providers, applied at the point of the patient’s initial detention in hospital under the Act (whether for assessment or treatment). This ICB will be known as the “originating ICB”.

7.2.3.4 This originating ICB will then retain responsibility for commissioning and payment throughout the initial detention (including any period of informal admission following detention, during which the patient is no longer detained but remains in hospital voluntarily), for the whole period for which any s117 aftercare is provided and for any subsequent repeat detentions or voluntary admissions from aftercare, until such point as the patient is finally discharged from s117 aftercare, regardless of where the patient is treated or placed, where they live or which GP practice they are then registered with.

7.2.3.5 If a patient is detained under s2 for assessment and then, while they are in hospital, this becomes a s3 detention for treatment, the ‘point of initial detention’ will be the date of the s2 detention.

7.2.3.6 Paragraph 10.2 of the 2022 “Who pays? Determining which NHS commissioner is responsible for commissioning healthcare services and making payments to providers) states:

“The general rules for determining responsibility between ICBs Where a patient is registered on the list of NHS patients of a GP practice, the ICB with core responsibility for the individual will be the ICB with which that GP practice is associated”.

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

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

7.2.3.9 Period 1 April 2016 to 31 August 2020

The position on commissioning responsibility for s117 aftercare services changed as of 1 April 2016, when the Standing Rules Regulations were amended. Since then, the position on commissioning responsibility for detention and s117 aftercare has been that: -

- the responsible NHS commissioner for a patient who undergoes a period of detention in hospital under the Act is the commissioner in whose area the provider of the detention service is based; and
- the responsible NHS commissioner for a patient receiving s117 aftercare is the CCG (from 1 July 2022 ICB) in whose area the patient was ordinarily resident, immediately prior to being detained in hospital under the Act

* For patients discharged on or after 1 April 2016, the CCG (now ICB) fixed with the section 117 responsibility will retain it, even if the patient moves from one area to area.

7.2.3.10 Period 01. April 2013 to 31 March 2016

Section 117 entitlement prior to 1st April 2016 are more complex and may require legal advice. In essence between 1 April 2013 and 31 March 2016 the responsible CCG (now ICB) was aligned with GP registration post discharge from hospital, and subsequent GP registrations. Care needs to be taken when identifying the responsible CCG (now ICB) where a patient was discharged from hospital during the period 1 April 2013 and 31 March 2016.

7.2.4. Ascertaining originating responsible authorities where capacity is impaired for ICB

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

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

Where an individual has capacity to decide where to live ordinary residence “refers to a man’s abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration.” This is known as the “Shah” test

7.3 Charging for after-care services and Top Up Payments

An individual will **not** be charged for s.117 service, however if they are an adult with needs which fall outside of the s.117 they may be subject to a financial assessment by Lincolnshire County Council.

Where LCC is responsible for funding any accommodation usually in respect of care homes where the accommodation is a part of the section 117 identified needs then LCC cannot charge the individual. However, if an individual chooses alternative accommodation which is at a higher cost than the usual amount paid by LCC then the individual can enter into a

written agreement⁴ with LCC in order to pay the additional cost, known as a top up payment, to secure the accommodation⁵. A top up will be used where choices made by the service user are for facilities or services that extend beyond the person's assessed care needs.

Legislation now indicates that an adult has the right to choose accommodation, provided that:

1. The preferred accommodation is of the same type that LCC has decided to provide or arrange
2. It is suitable for the person's needs
3. It is available for mental-health after-care purposes
4. Where the accommodation is not provided by LCC, the provider of the accommodation agrees to provide the accommodation to the person on the Council's terms.

7.4 Direct Payments and Personal Health Budgets

Direct Payments and Personal Health budgets can be made to discharge both the Council's and the ICB's obligations under s.117. An individual cannot be charged for services that are provided to a meet a s.117 need (see also 7.3 above) and this must be taken into consideration when calculating Direct Payments and personal health budget payments.

7.4.1 Social Care

Section 117 of the Mental Health Act 1983 allows for after-care services to include services provided to the patient in respect of a Direct Payment a monetary payment in lieu of services.

The Lincolnshire County Council Direct payments policy is included in the procedure and guidance documents at appendix I

7.4.2 NHS Health Care

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

7.5 Advocacy

The statutory right to independent advocacy is an important additional safeguard for people who are subject to the Act. A patient can request an advocate from their nurse, care coordinator or lead professional.

7.5.1 Independent Mental Health Advocacy (IMHA)

People who are treated under the Mental Health Act have the right to independent mental health advocacy (IMHA). IMHA advocates have an enabling role; explaining to the person their rights under the Act and helping them to exercise their rights.

'Qualifying patients' for IMHA are:

⁴ Regulation 5(3) of the Care and Support Aftercare (Choice of Accommodation) Regulations 2014 (SI 2014/2670)

⁵ Regulation 4 (3)(b) - idib



Lincolnshire Integrated Care Board

- people detained under the Act (even if on leave of absence from the hospital), but excluding people who are detained under certain short-term sections (4, 5, 135, and 136)
- conditionally discharged restricted patients
- people subject to Guardianship
- people subject to Supervised Community Treatment Orders (CTOs)

In supporting the person to prepare and fully participate in meetings, ward rounds or care reviews, an IMHA can help them understand the options for aftercare, how it will be provided and reviewed.

Once discharged from detention, a person will not continue to be eligible for an IMHA simply because they are receiving Section 117 aftercare, although some patients will qualify because, for example, they are under Guardianship or on SCT.

7.5.2 Independent Mental Capacity Advocacy (IMCA)

In certain circumstances, local authorities or NHS organisations will be responsible for instructing an Independent Mental Capacity Advocacy (IMCA) under provisions in the Mental Capacity Act (2005).

The role of the IMCA is to represent a person who lacks capacity and has no-one other than a professional to give an opinion about their best interests.

This may apply where a person who meets these criteria is being discharged from detention and a decision is needed about a move into long-term accommodation (for eight weeks or longer) or about a change of accommodation in circumstances where the person lacks capacity to make a decision and there is no one apart from a professional or paid carer for the authority to consult.

The duty to involve an IMCA does not apply if the person will be required to stay in accommodation under the Mental Health Act (1983).

7.5.3 Independent Advocacy under the Care Act (2014)

People who are receiving aftercare and do not retain a right to an IMHA may be eligible for advocacy under the Care Act (2014).

This may apply when the person's care and support needs are being assessed and during care and support planning or the subsequent review of a care and support plan (which may reach a decision that a person is no longer in need of aftercare).

In general terms, a person with assessed social care needs will be eligible for advocacy under the Care Act if they have substantial difficulty in being involved in the assessment or review of their needs and if there is no appropriate person to support their involvement.

7.6 Interagency Disputes

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

7.6.2 Whilst all relevant services should work together to facilitate a timely, safe and supportive discharge from detention, in order to facilitate s.117 after-care disputes may arise. Any disputes that arise with regards to s.117, within the organisations, are to be managed by the local disputes policy in respect of section 117 included at appendix F in the Procedures and Guidance Documentation.

7.6.3 Where there is a dispute regarding funding and/or commissioning authority the jointly agreed NHS and Social Care disputes resolution process will be followed, including the provision of 'without prejudice' funding by the authority with the primary duty of care at the time, pending resolution of the dispute and if neither is currently funding or prepared to fund, this should be on a 50/50 basis between Local Authority (LCC) and the Integrated Care Board (ICB). This will avoid funding disputes detrimentally affecting an individual's care or causing undue delay in discharging someone from hospital.

7.6.4 Neither the ICB nor an LSSA should unilaterally withdraw from an existing funding arrangement without a joint reassessment of the individual, and without first consulting one another and informing the individual about the proposed change of arrangement. Any proposed change should be put in writing to the individual by the organisation that is proposing to make such a change. If agreement cannot be reached on the proposed change, the local disputes procedure should be invoked, and current funding arrangements should remain in place until the dispute has been resolved.

7.6.5 Where a dispute arises, if it is a dispute by the Local Authority, the ICB or a Service Provider, the interagency dispute process will be implemented. All relevant information should be provided to enable informed discussion towards a resolution.

7.7 Dispute resolution process for ICBs within the NHS in England.

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

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

7.8 Disputes between Local Authorities.

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

7.9 Complaints

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

Organisation	e-mail
Lincolnshire County Council	CustomerRelationsTeam@lincolnshire.gov.uk
Lincolnshire Partnership Foundation Trust	PALS@lpft.nhs.uk
NHS Lincolnshire Integrated Care Board (ICB)	Informal information: LHNT.LincsPALS@nhs.net Formal complaints: licb.feedbacklincolnshireicb@nhs.net

8.0 Training

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

Staff Group	Training Method	Frequency
At introduction implementation phase of s.117 Policy		
Clinically registered staff responsible for s.117 delivery	e-learning & f2f demonstration	Within 3 months of policy being introduced
Non-Clinical staff with responsibility for Section 117	e-learning	Within 3 months of policy being introduced
Post introduction implementation phase of policy		
Clinically registered staff responsible for s.117 delivery	Via existing Level 1 MHA e-learning	Within 3 months of start employment with LPFT, LCC or LCC
	Via refresher MHA Training	Every 3 years
Non-Clinical staff with responsibility for s.s.117117	Via e-learning	Within 3 months of start employment with LPFT, LCC or ICB
	Via e-learning	Every 3 years