

Title of report: Mental Health Aftercare Arrangements as required under section 117 of the Mental Health Act 1983

Meeting: Cabinet

Meeting date: Thursday 29 July 2021

Report by: Cabinet Member, Health and Wellbeing;

Classification

Open

Decision type

Key

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

All wards

Purpose

To approve the joint policy and standard operating procedure (SOP) for section 117 aftercare, which is required under the Mental Health Act 1983. People who have been detained in hospital for treatment of their mental health needs may require care and support after they leave hospital. This aftercare will be arranged by the council or the NHS and provided in a variety of ways, depending on people's needs.

Herefordshire Council and Herefordshire and Worcestershire Clinical Commissioning Group have a joint responsibility in law to make available appropriate aftercare services for people who have previously been detained in hospital for treatment under the Mental Health Act 1983. In practice, this responsibility applies only to aftercare for people who have been detained in hospital for more than 28 days.

Recommendation(s)

That:

- a) The draft joint policy and draft standard operating procedure for section 117 mental health aftercare are approved; and**

- b) The Acting Director for Adults and Communities, in consultation with the Cabinet Member for health and wellbeing and the Director for Children and Families is authorised to make all operational decisions to ensure implementation of the policy and procedure, agreeing any operational changes to the documents, including those arising from case law, as required for their implementation.**

Alternative options

1. Do nothing and continue to provide aftercare services without an appropriate and agreed policy or procedures in place. This is not recommended as there would be continuing risks that the council would fail to meet statutory obligations under the Mental Health Act 1983. The existing policy which will be superseded by this proposal is no longer current, and has been overtaken by various legislative developments and new case law, as well as changes in practice. It would also be very difficult to monitor compliance and ensure that aftercare services were delivered consistently to all those who are entitled to them. Failure to monitor aftercare services could also result in litigation against the council and/or CCG if we were found to have neglected or avoided our legal responsibilities. Without the proposed Standard Operating Procedure (SOP) and associated quality assurance panel arrangements the council would not have certainty as to the appropriate spending commitments arising from section 117.

Key considerations

2. The arrangements proposed in this paper relate to the care and support people may need to help with their mental health after they have come out of hospital. The law recognises that these aftercare needs may be particularly significant where someone has been detained in hospital for a period of time, more than 28 days. This applies to both adults and children and the care people need can be varied and may last for any length of time.

3. Section 117 of the Mental Health Act 1983, as amended, requires clinical commissioning groups (CCGs) and local authorities, in co-operation with voluntary agencies, to provide or arrange for the provision of after-care services to individuals detained in hospital for treatment under sections 3, 37, 45A, 47 or 48 of the Act who then cease to be detained. Section 3 concerns treatment of mental health needs and provides that someone can be detained for up to six months initially and that the detention can be renewed. The other eligible sections of the Act all form part of the criminal justice provisions and concern detention or transfer whilst detained. Section 37 being the most commonly used.

4. The great majority of people detained under the Mental Health Act 1983 are detained only for up to 28 days, under section 2 for assessment, and so are not eligible under section 117. Of those people who are eligible for aftercare, most have been detained for treatment under section 3. The relevant forms of detention are as follows;

Section 3	Detained in hospital for treatment
Section 37	Admitted to hospital by an order of the Court
Section 45A	Admitted to hospital by a direction of the Court
Section 47	Removal to hospital of a person serving sentence of imprisonment
Section 48	Removal to hospital of other prisoners

5. The Mental Health Act Code of Practice defines section 117 aftercare services as having the purpose of:
- meeting a need arising from or related to a person's mental health disorder at the time of their detention; and
 - reducing the risk of a deterioration of the person's mental health condition and so reducing the risk of a person requiring re-admission for treatment for mental disorder at the time of their original detention.
6. Generally, these duties have been understood and followed appropriately by Herefordshire Council and the CCG, but the existing policy does not outline clearly the responsibilities and expectations of all partners under section 117, as set out in the Mental Health Act 1983 and subsequently amended under the Care Act 2014.
7. Since the autumn of 2020, the council has been working with the CCG, HWHCT and Worcestershire County Council to review and develop a new section 117 policy, and Standard Operating Procedure (SOP). Work has also been undertaken to clarify arrangements for quality assurance purposes and maintaining a joint register of all individuals who are entitled to aftercare. The draft policy and associated SOP clearly set out the legal framework for aftercare, the duties imposed on health and social care, with details of how each agency is required to fulfil its obligations to people.
8. It is important to note that not every person who becomes eligible for section 117 aftercare services will actually need them at the point of being discharged, while others may decline an offer of aftercare support. This does not mean that the council or CCG no longer have a responsibility to provide aftercare services, if the situation changes over time. As a consequence there will always be some disparity between the numbers of people who are recorded as being entitled to aftercare, and the actual number who are receiving aftercare services.
9. As a result of the new arrangements, people will receive the benefit of;
- An agreed aftercare plan
 - Certainty that the agreed care and support will be arranged and funded
 - A review by health and/or social care with the person's involvement
 - Clear and concise information and advice

Individuals receiving aftercare services will be reviewed by NHS and or Social care professionals depending on their needs and their agreed discharge plan. Aftercare plans and services may alter over time, depending on any reduction or increase in need for after care services.

10. Aftercare services can be very wide ranging and may include nursing or residential care, Shared Lives placements or daytime services, as well as support arranged through direct payments. Currently, there are 126 people receiving aftercare services for whom Herefordshire Council is making a financial contribution. There are eight people under the age of 18 eligible for aftercare under section 117, six of whom are 16 years or above.
11. Charges cannot be made by the council for services provided to a person under section 117. Importantly however, any services provided to the person which do not relate to their mental health condition, for example assistance with a physical disability, would be provided under the Care Act 2014, and so a financial contribution may be required.
12. Although the CCG is responsible for the provision of clinical health aftercare services, most of this work is carried out by the local commissioned mental health provider; Herefordshire and Worcestershire Health and Care Trust (HWHCT). However, the CCG will make the final decision for the NHS with regard to services arranged under section 117.
13. The policy reflects the key elements of legislation that apply to people who are eligible under section 117 and so little of its detail is especially bespoke for Herefordshire. However it is required under the Mental Health Act to have a local joint statement of how the law is implemented. Some of the provisions of section 117 are complex in practice, so having a policy in place will ensure compliance with legislation and assist operational and commissioning staff for health and social care in making individual decisions. Some important aspects of the policy are:
 - a. Section 117 applies to people of all ages and so it is important that the policy is clear and enables staff from Children and Families Services to fulfil the council's duties. Where decisions about aftercare for children are being made, appropriate representation is involved throughout the whole process.
 - b. Ordinary Residence (OR) rules govern the responsibility for funding someone's care when they relocate between council areas. OR can be a complex and problematic issue under normal circumstances, but section 117 can complicate such cases further. It is essential that staff understand the implications of section 117 for OR and responsibilities will often continue when a person moves to a different area. However responsibilities can change if a person already subject to section 117 moves to a new area and is then subsequently detained in hospital under one of the relevant sections (see paragraph 4 above).
 - c. A person can be discharged from section 117 because they no longer require aftercare support, but this must be a joint decision between health and social care. The agencies should agree that the person's mental health care needs have

reduced to the point that the aftercare services are no longer required; the patient should be as fully involved as possible in this decision.

- d. Responsibility for funding aftercare services is joint between health and social care, but this section also covers the interface with continuing healthcare, funded nursing care as well as the Care Act 2014
 - e. Funding for aftercare services can be taken as a direct payment through a Personal Budget or, in the case of health funding, as a Personal Health Budget (PHB)
 - f. The s117 Care Plan will set out the after care arrangements and other related care and support needs, so that they are clear to the individuals receiving the care and support, providing a basis from which the individual's needs and care plans will be reviewed as set out in the Standard Operating Procedures.
14. The Standard Operating Procedure goes into greater detail in some areas not included in the policy and provides a framework for good practice in Herefordshire, in line with statutory duties. It aims to ensure that staff in both the NHS and the council, are aware of their responsibilities under Section 117, highlighting expectations around the planning and provision of aftercare services.
- a. Planning for aftercare services following discharge from hospital should commence at the earliest opportunity with a joint planning meeting taking place prior to discharge. The SOP identifies who should be involved and the process for making decisions,
 - b. In assessing needs under section 117, these cannot be seen in isolation and therefore other appropriate assessments such as continuing healthcare and strengths based assessment should be completed prior to determining aftercare needs.
 - c. Under the new arrangements, all those eligible will have an aftercare plan. The care planning procedure identifies the need to share the care plan across all involved agencies who are either commissioning or providing services.
 - d. The SOP provides guidance on how and when reviews of aftercare should take place and how they should be documented and shared.
 - e. Discharge from section 117 aftercare will be appropriate in some cases and must follow guidance and direction provided to ensure the correct procedures are followed by all agencies.
15. The Standard Operating Procedure also encompasses in more detail other parts of the Policy, so giving greater clarity around the legal framework and local procedures. Two additional elements are also covered relating to the funding of aftercare services and monitoring the effectiveness of aftercare services, including a joint register of people who are subject to section 117. These are highlighted in the document, but there will be separate terms of reference for both the monitoring group and the quality assurance panel.

16. A monitoring group is being established, comprising senior officers from the council, CCG and HWHCT. The group's purpose is to ensure the effectiveness and efficiency of section 117 aftercare services across the system, for all ages, and ensure compliance with the joint policy. The group's terms of reference are set out in annex 3 of the policy but some issues which the group will monitor include:
 - a. operational performance of section 117 services
 - b. the section 117 register, identifying trends, and recommending commissioning intentions
 - c. the continued effectiveness of the policy and SOP
 - d. compliance with the local policy and SOP, supported by periodical audit and review where appropriate.
17. A joint quality and assurance panel is established, meeting on a fortnightly basis to consider joint arrangements for aftercare plans and services. The panel will ensure that after care arrangements are appropriate, cost effective and comply with legal duties and responsibilities. Agreed terms of reference set out the purpose of the panel, who should attend and frequency of meetings. Specifically the panel will be responsible for considering all section 117 packages of care.
18. There are no procurement, human resources or specific ICT implications from the proposed new policy and SOP.

Community impact

19. In addition to meeting statutory obligations the approval and implementation of the proposed Policy and SOP will help to ensure that all people who are entitled to aftercare services will be part of the planning process and have the opportunity to express their wishes and preferences about the care and support they receive once they have been discharged from hospital.
20. The county plan outlines three key themes of Sustainability, Connectivity and Wellbeing. The provision of the Section 117 Policy and SOP will better enable people who have been detained under the Mental Health Act 1983 to be connected and involved in decisions that impact on their wellbeing as they continue their recovery after leaving hospital. Access to universal services and supporting and connecting people to their own communities will also contribute to the ambition to protect and improve the lives of vulnerable people
21. The introduction of a joint review and monitoring group will ensure the effectiveness and efficiency of section 117 aftercare services across the system, for all ages, and ensure compliance with the agreed policy. This will include the monitoring and review of operational performance in respect of section 117 services and, commission periodic reviews and audits of compliance with the local policy and SOP.

22. There are no specific implications of this decision for health and safety. The council and NHS partners each take steps to promote appropriate health and safety practice in commissioning and contract arrangements for services for people with mental health needs.
23. There are no specific implications of the proposed policy or SOP for the corporate parenting responsibilities of the council and its partners. However, there will be a small number of cases of young people looked after by the council or leaving care who are eligible for aftercare after a period of detention. The revised procedural arrangements will help ensure that young people receive the right aftercare, with appropriate arrangements for its funding and review

Environmental Impact

24. Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.
25. Approving the joint Policy and Standard Operating Procedures would be expected to have a neutral environmental impact, focused as they are on information and guidance around council activity that is already taking place.

Equality duty

26. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to: –

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
27. An Equality Impact Assessment has been carried out to assess the impact of the Joint Policy and Standard Operating Procedure to consider how people subject to Section 117 aftercare arrangement may be affected by the introduction of these documents.
 28. Taking into consideration the Equality Act 2010 and the 9 protected characteristics of Age; Disability; Gender Reassignment; Marriage & Civil Partnership; Pregnancy & Maternity; Race; Religion & Belief; Sex; Sexual Orientation, The EIA found that there would be either a neutral or positive impact as a consequence of approving these

policy documents. For example, Children and young people under 18 years have very discrete needs and all arrangements need to take account of parental views, whilst ensuring that the child or young person's welfare is paramount. This will be reflected in the policy and SOP. Existing arrangements are focused on adults, so the revisions will ensure people under 18 are fully included in section 117 arrangements and their outcomes monitored.

29. A copy of the Equality Impact Assessment can be found at Appendix 3

Resource implications

30. In Herefordshire, the estimated annual cost to the health and care system overall in providing services to people who are entitled under section 117 is £9,059,000. Of this total, the council spends £4,125,000, providing services to customers. However, this spending will address all of people's needs, and not just those related to services under section 117 (see paragraph 5 above)
31. The council's spending is distributed broadly as follows:
- a. 84% of the costs are spent on some form of residential or nursing home placement or supported accommodation
 - b. 12% is provided to customers or their legal representative as a Direct Payment
 - c. The remaining 4% covers a range of services including transport and day care services
32. The proposed decision has no specific or immediate resources implications for the council, but will enable it in the future to monitor spending on aftercare services more closely. This monitoring will ensure that all spending is appropriate, and balance costs met under section 117 with spending on other support needs under the Care Act 2014 or other NHS funding streams such as Funded Nursing Care (FNC) or Continuing health care.
33. The arrangements will ensure that the balance of spending on section 117 aftercare services between the council and CCG is transparently fair and appropriate. In addition, they will ensure that for services provided under the Care Act and outside section 117, reasonable consideration can be given to any charging which may be appropriate. The arrangements for review under the policy and SOP will also ensure that spending continues only for as long as someone's need for aftercare services remains.

Legal implications

34. SECTION 117 of the Mental Health Act imposes an enforceable duty on Local Authorities and CCG's, on a joint basis, to provide and/or commission After Care Services to those that meet the relevant eligible criteria. By having a Joint Policy, this provides a clear understanding between the relevant parties as to the expectation and role of each party with regards to meeting SECTION 117 aftercare needs and any disagreement that may arise.

Risk management

35. Consideration is given to the risks / opportunities to the council if the recommendations are declined.

Risk / opportunity	Mitigation
<p><u>Risk if Policy and SOP are not approved</u></p> <p>Risk to customers Section 117 of the Mental Health Act 1983 places a joint responsibility of the local authority and Clinical Commissioning Group to provide services to people who have previously been detained in hospital under the Act. The intention of Section 117 is to assist recovery and help to prevent deterioration in mental health and further admissions to hospital. Without the joint policy and SOP, staff may neglect to assess needs appropriately and consequently provide services that do not meet the mental health needs of the person, which could lead to relapse and a return to hospital or, result in a legal challenge to the council.</p>	<p>The policy and Standard Operating Procedure, set out clearly the legal framework and provide guidance for staff, in children's' and adult services about the steps they should follow to ensure compliance with legislation and what actions have to be taken to involve the customer in the assessment process to ensure mental health care needs are met appropriate with a focus on recovery.</p> <p>Additionally the Quality Assurance Panel and the Review and Monitoring Panel, will ensure proper oversight of Section 117 arrangements monitoring quality and cost effectiveness.</p>
<p>Legal and reputational.</p> <p>If the joint Section 117 Policy and Standard Operating Procedure are not approved, there is a clear risk that some of the council's legal obligations could be neglected, misapplied or misunderstood. This could lead to challenge in the courts and litigation, especially if the council was found to have failed to meet its legal responsibilities under the Mental Health Act 1983</p>	<p>The policy and SOP clearly set out the legal responsibilities for the council with links to the overarching legislation such as the Mental Health Act 1983 and the Care Act 2014.</p> <p>The documents have been reviewed by legal departments of both council and CCG to ensure the documents are fully appropriate and compliant with legislation.</p>
<p>System Wide Risks; Section 117 of the Mental Health Act puts a joint responsibility on the local CCG and the local authority to provide aftercare services. In practise this also means working closely with the local mental health services provider. Without agreed policy and procedure, this could lead to differences of opinion between organisations about how regulations and</p>	<p>The joint Policy and SOP have been developed and written with cross agency involvement. Senior operational and commissioning officers from Herefordshire Council, Herefordshire and Worcestershire Clinical Commissioning Group, Herefordshire and Worcestershire Health and Care Trust and, Worcestershire County</p>

duties should be interpreted and implemented. Organisational;	Council have worked together to ensure system wide agreement.
The joint Section 117 Policy and Standard Operating Procedures provide guidance and instruction for council employees. Without these documents staff, especially those who do not regularly work with people who are subject to Section 117 aftercare arrangements, could inadvertently act inappropriately or illegally which may result in legal challenge and reputational damage.	The documents make very clear the expectations on staff to work within the legal framework and comply with locally agreed procedures. All staff who have any responsibilities around the implementation of Section 117 aftercare services will be expected to make full use of these documents so that professional and legal obligations are fully met.
<u>Risk if Policy and SOP are approved</u>	
Changes in the statutory framework through case law Changes to the Mental Health Act and to Section 117 can occur as a result of case law. This could lead to parts of the policy and SOP being out of date or incorrect.	The Section ii7 Monitoring Group will ensure that any changes to aftercare regulations as a result of case law will be identified as and when they occur and any subsequent amendments to the documents take place in a timely way.
Changes in Legislation There is likely to be a review of the Mental Health Act 1983 within the next two years which may have an impact on section 117 provisions.	The section 117 Monitoring Group will keep under scrutiny any Mental Health Act changes and ensure that the policy and SOP are updated to comply with any changes as they are implemented.

Consultees

36. The process of developing the joint Policy and Standard Operating Procedure has taken place over a number of months with cross agency involvement. This has enabled consultation of senior officers of the CCG and HWHCT and those agencies have also engaged with experts by experience who advise them. That consultation with health partners has helped shape the draft policy and SOP overall, rather than changing or influencing any particular section or aspect. .
37. A political group's consultation has been undertaken. There was a response from the Independents for Herefordshire group, recognising the importance of up to date and

clear policy and procedure; 'As we know from recent events courts will scrutinise and challenge any departures from what is written in law.'

38. Comments were received from the True Independents group, which were entirely supportive of the proposals.

Appendices

APPENDIX 1	Section 117: After-Care under the Mental Health Act 1983/2007 Herefordshire and Worcestershire Joint Policy
APPENDIX 2	Section 117: Aftercare under the Mental Health Act 1983/2007 Herefordshire Joint Standard Operating Procedure
APPENDIX 3	Section 117 Equality Impact Assessment

Background papers

None