

REPORT TO: Executive Board

DATE: 19 March 2020

REPORTING OFFICER: Strategic Director, People

PORTFOLIO: Children, Education and Social Care

SUBJECT: Section 117 Mental Health Act policy and procedure

WARD(S) Borough-wide

1.0 **PURPOSE OF THE REPORT**

1.1 This report presents to the Executive Board a new policy and procedure for the delivery of the statutory duties across health and social care services of the aftercare provisions of Section 117 Mental Health Act (henceforward known as “Section 117”). It describes the duties and functions of Section 117, the people to whom it applies, the circumstances under which it should be used, the contents of the policy and procedure and the future steps to be taken. It submits the policy and procedure for approval by Executive Board.

2.0 **RECOMMENDATION: That**

- 1) **Executive Board consider the contents of this Report; and**
- 2) **Approve the Section 117 policy and procedure.**

3.0 **SUPPORTING INFORMATION**

3.1 **Context:**

3.1.1 Section 117 Mental Health Act 1983 places a duty on local authorities and CCGs to work together to deliver aftercare services for a people who have been detained in hospital under certain sections of the Act, specifically those which impose a requirement for treatment (rather than assessment or temporary detentions, for example). The Code of Practice to the Act requires LAs and CCGs to develop a joint policy and procedure to describe how the duty will be discharged.

3.1.2 Although this places a duty on the two organisations to work together, Section 117 is actually a three-way process, involving as it does the local specialist Mental Health Trust in the actual delivery of

aftercare planning. Any policy and procedure therefore has to address the commissioning requirements of both the local authority and the CCG, the way in which the policy is put into operation by the North West Boroughs and the local authority, and the interplay between these two processes, to determine how the duties, funding responsibilities and funding are apportioned. This makes the development and delivery of an effective policy and procedure very complex, and it also means that full agreement has to be reached across all three bodies before it can be implemented.

3.1.3 Although this statutory requirement has been in place for many years, the local operation of Section 117 has largely depended on a goodwill relationship between the CCG and the local authority, in determining the financial responsibilities to be undertaken by both organisations in delivering individual Section 117 aftercare plans. National guidance is vague as to how this should be apportioned, and there had been some hopes that this would be addressed in the upcoming revisions to the Mental Health act. However, following the recent general election, it now seems that any revision to the Mental Health Act will not be in place until at least 2022, and in any case there are no proposals to alter the requirements and duties of Section 117. It seems timely, therefore, that the Borough Council and CCG should develop a jointly-agreed policy and procedure for the operation of this important piece of legislation. This is submitted as a separate document.

3.1.4 The following paragraphs describe in brief the key elements and issues in the policy and procedure; for greater detail, please refer directly to the policy and procedure itself.

3.2 **Who is eligible for Section 117 aftercare?:**

3.2.1 Section 117 Mental Health Act 1983 describes the aftercare arrangements that apply to certain categories of patients who have been detained in hospital under the Mental Health Act. In simple terms, the duties apply to all people who have been detained in hospital for treatment (as opposed to assessment), or those who have been the subjects of various hospital orders imposed by the Courts; it also applies to people who are subject to Community Treatment Orders, who are liable to recall to hospital if they break the terms of the Order. For more detail, please see Sections 2 and 3 of the policy document (pages 8 – 10).

3.3 **What is Section 117 for and what services does it include?:**

3.3.1 There is no specific definition in either the Mental Health Act or its associated guidance to say what is or is not an aftercare service; it is essentially left to local services to determine this. However, the act and guidances are clear that the purposes of section 117 aftercare are (in summary):

- Meeting a need arising from or related to a person's mental health disorder
- Reducing a risk of a deterioration in the person's mental health disorder
- Reducing the risk of readmission for treatment of the mental disorder.

Section 117 is therefore intended to be a duty on local councils and CCGs to establish services and supports for people which meet their needs and aim to both prevent deterioration and prevent the need for further compulsory inpatient treatment.

3.3.2 Again, there is no specific guidance as to what services should be included as part of a section 117 aftercare plan. There is, however, clear guidance that any services should only be in place to meet a mental health need; any physical health condition does not fall within the remit of Section 117. This is all discussed more fully in section 5 of the policy and procedure.

3.4 **How long does Section 117 aftercare last?:**

3.4.1 There is no time limit on the operation and delivery of Section 117, and this is an issue which has caused problems around the country for many years. Essentially, the requirement is that the Section 117 aftercare arrangements should last for as long as the person needs it (or until they die or move away, in which latter case the arrangements should be transferred to another area). However, in practice this has meant that some people have remained subject to the arrangements for an indefinite period.

3.4.2 This has in part been due to a lack of clarity about what should be in an aftercare plan, and in particular what the outcomes should be and how success can be measured. The policy and procedure places great emphasis on the need to develop clear and focused aftercare plans, with outcomes that can be measured at each review. This should allow the multidisciplinary teams working with the individual to be more confident in discharging the arrangements when they can be shown to have achieved their objectives. This may take some time but it provides a more robust framework to use. This is described further in section 6 of the policy document.

3.5 **Who should be responsible for delivering Section 117 aftercare?:**

3.5.1 In the large majority of cases, the individual concerned will be receiving ongoing support in the community from a multidisciplinary team based within the specialist mental health Trust. A care co-ordinator will be identified, who will act as the main point of contact in the case for all agencies, and who will ensure that regular reviews

of the aftercare plan take place.

- 3.5.2 However, in some cases, and after a period of time has passed, it may no longer be necessary for the individual to be receiving care from the specialist mental health Trust, because their condition has improved to the extent that they can now be supported within primary care. The problem with this is that most GPs do not have a specialist mental health multidisciplinary team around them, and frequently do not have specialist mental health knowledge themselves, so there is a real risk that the individual Section 117 patient will not receive the same standard of care and review as before. This has been addressed in the draft policy (section 6.4), with the suggestion that the CCG will need to employ a lead Section 117 officer who takes on the role, in these limited number of cases, of care co-ordinator and organiser of reviews.

3.6 **Funding implications of Section 117 aftercare:**

- 3.6.1 Any service or support provided to an individual under Section 117 cannot be charged financially to that individual, which is one of the reasons why it is so important to be absolutely clear in the aftercare plan as to what is being provided. The cost of the service provision falls directly to the local authority and to the CCG. This does not of course apply to any service which is provided to meet a physical health need, which will always be subject to the local authority's charging policy.
- 3.6.2 This is another area which has, across the country, caused a lot of debate and division, in terms of deciding how the costs should be apportioned between the local authority and the CCG. Various formulae have been tried and have failed, mainly because it can be very difficult in mental health service provision to separate out what is a social care need from what is a need which should be met by the NHS. In Halton, the pragmatic approach is that, if the local authority and CCG are in agreement that Section 117 should apply to an individual, then the costs should be apportioned on a 50:50 basis. This is an approach which has been incorporated into the policy document.
- 3.6.3 As with other social services care packages, the costs of individual aftercare packages under Section 117 are funded through the pooled budget agreed between the Council and the Clinical Commissioning Group. Although the policy and procedure is new, the provision of jointly-funded mental health aftercare in Halton is not, and has indeed been in place for many years. The policy and procedure would not add any unexpected financial burdens to the Council.

3.7 **Other issues covered in the policy document:**

3.7.1 A few other issues are covered in the policy document:

- A glossary of terms has been included because this will be a public document, and a lot of the terminology needs some explanation
- Section 3.4 explains the situation with respect to a person's immigration status, including people excluded from public funding: essentially the duty to provide Section 117 aftercare continues in these situations
- Section 6.2 stresses the need for a person's carer to be involved, where possible or appropriate, in the development and monitoring of the aftercare plan. There can be difficulties with this, if the individual concerned does not wish for carer involvement, but the principle is clear and should always be considered
- As indicated elsewhere in this Report, there is a strong emphasis on considering the needs of children when an adult with mental health problems is discharged back to their home (Section 6.5). This will also include any consideration of whether additional support is needed for the family if there is a potential for compromised parenting
- Sections 7.1 and 7.2 show the steps to be taken to identify the responsible CCG and local authority in each case.

3.8 **Recommendations and next steps:**

3.8.1 This is a new policy and procedure for the Borough Council, and one which has considerable implications for the way mental health aftercare services are delivered to individuals and their families. It is a joint policy with NHS Halton Clinical Commissioning Group, which has been closely involved with its development throughout. Lead officers on Section 117 from the CCG have scrutinised the policy document and have made suggestions for change, all of which have been incorporated into this latest document. It is now being taken for approval through the CCG's governance processes.

3.8.2 This policy and procedure has been closely scrutinised by the Adult Social Care Senior Management Team and the Chief Officer's Management Team, and has been agreed by both. On that basis, it is recommended that the Executive Board also agree the Section 117 policy and procedure.

3.8.3 Essentially, although the policy and procedure is about the commissioning relationship for Section 117 aftercare between the Council and the CCG, there is a third element to the process: putting it into effect. Much of the document therefore focuses on the practicalities of applying Section 117: who should be involved in the planning, how it should take place and what an effective aftercare

plan should look like.

- 3.8.4 This therefore means that a third body, the North West Boroughs Mental Health Trust, will also need to adopt the processes described in the policy document, and training will need to be put in place for the teams that will use the policy. This is expected to be done internally, however, and should not incur any expense (other than staff time). These steps will take place after any approval is given by the Executive Board.

4.0 **POLICY IMPLICATIONS**

- 4.1 This is a new policy and procedure for the Council.

5.0 **FINANCIAL IMPLICATIONS**

- 5.1 The operation of the draft policy and procedure does not, in itself, have any additional financial implications for the council. It does, however, address a key issue: the nature of the funding responsibilities for Section 117 aftercare between the local authority and the CCG. It recommends that in general a 50/ 50 split should be the agreed outcome, except in rare circumstances which are outlined in the document.

6.0 **IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

- 6.1 **Children & Young People in Halton:** a small number of children and young people are detained for treatment each year under the Mental Health act. The provisions of section 117 and the aftercare arrangements apply equally to them. In addition, a section has been included in the policy and procedure which draws practitioners' attention to the need to consider the implications of an adult's mental health on children, when developing any aftercare plan (see Section 6.5 of the policy document).
- 6.2 **Employment, Learning & Skills in Halton:** there are no direct implications for employment, learning and skills in Halton. However, it is possible that an individual aftercare plan could consider and include employment and training issues, as people with mental health problems can experience significant disadvantage in these areas.
- 6.3 **A Healthy Halton:** this policy and procedure is intimately linked with the care of individuals with complex and high risk mental health needs. As such, each aftercare plan links directly to the promotion of positive mental health for an individual. It is also expected that a person's physical health and wellbeing are considered as part of the aftercare planning process.

6.4 **A Safer Halton:** as indicated above, people subject to Section 117 aftercare will usually have complex and sometimes high risk behaviours. Any aftercare planning will specifically include detailed risk assessments and contingency planning, which are reviewed on a regular basis as part of the overall aftercare review process.

6.5 **Halton's Urban Renewal:** there are no implications for Halton's urban renewal.

7.0 RISK ANALYSIS

7.1 It is a statutory requirement that all localities should have a published joint Section 117 policy and procedure across the local authority and CCG areas. The existing arrangements are very out of date and are not fit for purpose, so this draft policy and procedure addresses all the necessary issues. The matter has been registered as a formal risk within the CCG.

8.0 EQUALITY AND DIVERSITY ISSUES

8.1 An Equalities Impact Assessment has been completed for this policy and procedure. A Stage 2 assessment is not required.

9.0 REASON(S) FOR DECISION

9.1 This is a decision which has a potential impact on all residents of the borough, whether they are patients detained under the relevant sections of the Mental Health Act, or their carers or family members. It is a new policy and procedure, which puts into place in a clear way practices which have been established locally for some time.

10.0 ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

10.0 There are no alternative options that needed to be considered in the development of this policy and procedure.

11.0 IMPLEMENTATION DATE

11.1 1st April 2020

12.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Contact Officer
Mental Health Act 1983	Vine Street Mental Health Resource Centre	Lindsay Smith Divisional Manager Mental Health
Mental Health Act Code of Practice	As above	Lindsay Smith Divisional Manager Mental Health

Equalities Impact Assessment	As above	Lindsay Smith Divisional Manager Mental Health
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