MENTAL HEALTH ACT 1983

SECTION 117 AFTERCARE

MEMORANDUM OF UNDERSTANDING

BIRMINGHAM and SOLIHULL INTEGRATED CARE BOARD/BIRMINGHAM CITY COUNCIL/SOLIHULL METROPOLITAN BOROUGH COUNCIL/BIRMINGHAM & SOLIHULL MENTAL HEALTH NHS TRUST

MOU NUMBER & CATEGORY		**Mental Health Legislation**
VERSION NO & DATE	**10**	**April 2024**
RATIFYING COMMITTEE	**Joint Strategic Operational Group**	
DATE RATIFIED		
ANTICIPATED REVIEW DATE:		
MOU LEADs	**Birmingham City Council and Birmingham and Solihull ICB, Solihull Metropolitan Borough Council, Birmingham & Solihull Mental Health NHS Trust, Birmingham Children's Trust**	
MOU AUTHOR (if different from above)	**As above**	

Adult Mental Health Memorandum of Understanding: Section 117 aftercare

1 INTRODUCTION

1.1 This Memorandum Of Understanding ('MOU') outlines how Birmingham and Solihull ICB, Birmingham & Solihull Mental Health NHS Foundation Trust (on behalf of the Birmingham & Solihull Mental Health Provider Collaborative),Birmingham City Council, Solihull Metropolitan Borough Council and Birmingham Children's Trust, will deliver their statutory responsibilities with regard to provision of mental health aftercare under section 117 of the MHA 1983. Section 117 of the Mental Health Act (the Act) requires Integrated Care Boards (ICBs) and local authorities, in co-operation with voluntary agencies, to provide or arrange for the provision of after-care to patients detained in hospital for treatment under sections 3, 37, 45A, 47 or 48 of the Act who then cease to be detained. This MOU provides guidance on this duty of after-care, and it should be read in conjunction with chapters 33 (aftercare) and 34 (Care Programme Approach, CPA) of the Mental Health Act Code of Practice.

1.2 This is a MOU between BSOL Integrated Care Board, Birmingham City Council Adults & Communities Directorate ("BCC"), Solihull Metropolitan Borough Council ("SMBC") and Birmingham and Solihull Mental Health NHS Foundation Trust ("BSMHFT") which is exercising the arrangement of providing after-care services.

1.3 From the 1st April 2023 BSOL Integrated Care Board transferred responsibility for the function of Section 117 aftercare and the commissioning of mental health services to Birmingham & Solihull Mental Health NHS Foundation Trust ("BSMHFT") as part of a BSOL Mental Health Provider Collaborative ("BSOL MHPC") contractual arrangement. BSOL MHPC will be referred to as the 'responsible commissioner' within the rest of this document.

1.4 Section 117 of the Mental Health Act (the Act) requires the "responsible commissioner" and local authorities in co-operation with voluntary agencies to provide or arrange aftercare services. This may be provided in conjunction with commissioned services, including voluntary and independent agencies, to provide or arrange for after- care services. After-care services mean services which have the purposes 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. The ultimate aim is to maintain patients in the community, with as few restrictions as are necessary, wherever possible.

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

1.6 This MOU applies to the relevant staff of Birmingham and Solihull Integrated Care Board, Birmingham City Council, Solihull Metropolitan Borough Council, Birmingham and Solihull Mental Health Foundation Trust, Birmingham Community Healthcare Trust, Birmingham Women's and Children's NHS Foundation Trust, Coventry and Warwickshire partnership Trust, local GPs, and a range of third sector and independent mental health service providers. All these parties may at some stage play a part in assessing, planning and delivering mental health aftercare services.

1.7 This MOU replaces the previous MOU entitled Section 117 (after-care) Joint MOU dated January 2019.

1.8 This MOU provides a framework where key staff are identified from the responsible agencies and outlines their responsibilities regarding the assessment, decision making and then, if appropriate, provision of after-care services to meet a patient's relevant needs.

1.9 This MOU also applies regardless of immigration status as Schedule 3 of the Nationality, Immigration and Asylum Act 2002 does not preclude the provision of services provided under Section 117 of the Act.

1.10 Where this MOU refers to 'responsible commissioner' this means either the relevant Local Authority ('LA') and/ or the BSOL MHPC. The liability for the health component of Section 117 aftercare remains with BSOL MHPC which has the delegated responsibility from the ICB.

1.11 The table below sets out how the responsible commissioner is determined.

Patient Local Authority	**Level of Health Funding**	**Commissioner**
Birmingham	100%	BSMHFT as lead commissioner for the MHPC
Birmingham	<100%	BCC
Solihull	>50%	BSMHFT as lead commissioner for the MHPC
Solihull	50% or under	SMBC

1.12 Where this MOU refers to time limits or similar provisions, these are used for guidance only as they are what the parties to this MOU would consider to be best practice. It is acknowledged, however, that there may be times when it is not possible or appropriate to comply with them.

1.13 This MOU should be seen as a tool to assist professionals in the duties outlined by Chapter 33 of the Code of Practice Mental Health Act 1983 and should not be seen as a replacement for it.

1.14 This MOU is applicable to prison healthcare services and applies to patients who are released from prison, having spent part of their sentence detained in hospital under a relevant section of the Act.

1.15 Service Users, and their carers/representatives where appropriate, are seen as equal partners in delivering and reviewing effective s117 aftercare arrangements. Service Users will be eligible for the help and assistance of Independent Mental Health Advocates or Independent Mental Capacity Advocates as appropriate to ensure their rights are upheld.

1.16 The areas covered by this MOU are:

- Guiding Principles
- Statutory Responsibilities
- Assessing need and applying for s117 funding
- The funding approval process

- Arrangements for review of s117 aftercare provision
- Arrangements for discharge of s117 responsibilities
- Governance arrangements

2 GUIDING PRINCIPLES

2.1 *'The Organisations represented within this MOU positively supports individuals with learning disabilities and ensures that no-one is prevented from accessing the full range of mental health services available. Staff will work collaboratively with colleagues from learning disabilities services and other organisations, in order to ensure that service users and carers have a positive episode of care whilst in our services.*
Information is shared appropriately in order to support this.'

2.2 The local mental health system in Birmingham and Solihull will deliver its responsibilities by ensuring appropriate mental health aftercare arrangements are in place which:

- Reduce the risk of a deterioration of the individual's mental health.
- Reduce the risk of readmission to hospital.
- Maintain the individual safely in the community.
- Are as least restrictive as can safely be managed – with the exception where a person is subject to a CTO where 'restrictions' may apply.
- Are as personalized as possible, including the use of personal healthcare budgets (PHBs) and direct payments where appropriate.
- Are recovery focused.
- Are cost effective to the public purse whilst ensuring that services will always be provided primarily on the basis of meeting 'need'.
- Are maintained under periodic review.
- Are continued for as long as the individual is in need of the aftercare package.
- Are discharged and terminated after consultation with the individual concerned and with both the Responsible Commissioner and Local Authority agreement. It could be lawful to terminate a s117 package without consultation where reasonable attempts have been made to consult but this has not been possible.

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

2.4 The duty to provide after-care services continues as long as the patient is in need of such services. In the case of a patient on a Community Treatment Order (CTO), after-care must be provided for the entire period they are on the CTO, but this does not mean that the patient's need for after-care will necessarily cease as soon as they are no longer on a CTO.

2.5 It is good practice for the responsible body to notify the Health and Local Authorities in the area where the patient is to reside (if that area is different to the area of the responsible body) that it is making arrangements to meet that person's after-care needs.

2.6 It is to be noted that the concept of 'ordinary residence' is not as conveyed by the Care Act 2014 but as per the 'Shah 1983' test. The terms 'residence' or 'resident' should be given their ordinary meaning and Section 117(3) should be applied.

3 STATUTORY RESPONSIBILITIES

3.1 Section 117 of the Mental Health Act (the Act) requires the "responsible commissioner" and local authorities through commissioned services, including voluntary and independent agencies, to provide or arrange for after- care services who have been:

- detained in hospital for treatment under section 3,
- transferred from prison to hospital under sections 47 or 48, or
- ordered to go to hospital by a court under sections 37 or 45A.

3.2 BSOL MHPC on behalf of the ICB and Local Authorities are required to maintain a record of people for whom they provide or commission s117 aftercare, and a record of what care is being provided.

3.3 Aftercare lasts as long as there is a need to be met and must remain in place until such a time as both the BSOL MHPC and LA are satisfied that the individual no longer has needs that require aftercare services. An individual's needs should be reviewed in line with policy guidance which states this should initially be within first 3 month period and then at least annually thereafter by the BSOL MHPC and LA, and aftercare can be altered as needs change.

3.4 Section 117 care arrangements cannot be withdrawn without reassessing the individual's mental health needs. The individual must as far as is reasonably practicable, be fully involved in any decision-making process with regards to the ending of aftercare, including, where appropriate, consultation with their carer(s) and advocate. Assessments must be fully recorded and appropriately shared. An individual is entitled to refuse aftercare services and cannot be forced to accept them.

3.5 After-care services are intended to:
(a) meet a need arising from or related to the person's mental disorder.
and
(b) reduce the risk of a deterioration of the person's mental health condition (and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder).

3.6 After-care for all people admitted to hospital for treatment for mental disorder should be **planned within the framework of the Care Programme Approach** (see CPA MOU).

3.7 Mental health after-care services must be jointly provided or commissioned by local authorities and BSOL MHPC. They should maintain a record of people for whom they provide or commission after-care and what after-care services are provided. Services provided under section 117 can include services provided directly by local authorities or which local authorities commission from other providers. BSOL MHPC will commission (rather than provide) these services.

3.8 Where eligible patients have remained in hospital informally after ceasing to be detained under the Act, they are still entitled to after-care under section 117 once they leave hospital. This also applies when patients are released from prison, having spent part of their sentence detained in hospital under a relevant section of the Act.

3.9 Although the duty to provide after-care begins when the patient leaves hospital, the planning of after-care needs to start as soon as the patient is admitted to hospital.

3.10 In addition to discharge planning, prior to making a decision to grant more than very short- term leave of absence to a patient or to place a patient onto a CTO, the responsible clinician (RC) should also ensure that the patient's needs for after-care have been fully assessed, discussed

with the patient (and their carers, where appropriate) and with any Partner organisation involved in their care plan.

3.11 If the patient is being given leave for only a short period, a less comprehensive review may be sufficient, but the arrangements for the patient's care should still be properly recorded.

3.12 The RC should ensure that the Local Authority is notified of the intention to consider a patient for discharge at the earliest opportunity so as to allow sufficient time for appropriate assessments to be completed. Prior to discharge, the allocated Local Authority worker shall ensure that:

- An assessment of the patient's needs is completed.

- A recommendation is made to identify which of their needs (if they have any) are eligible for service provided under s117.
- In cases where there are identified needs which are not being met as part of the s117 aftercare provisions, the process for assessment of these additional needs will be undertaken as part of the NHS CHC and/or Care Act 2014 procedures/ Children Act 1989.

3.13 The Section 117 after-care plan should record the above information using the s117 aftercare form on electronic care record.

3.14 An unwillingness to receive after-care services should not be equated with an absence of a need for such services as a person is not legally obliged to accept after-care services. A patient's continued refusal to receive after-care services should be confirmed by professional enquiry at appropriate intervals as discharge from mental health services does not end his entitlement to after-care services and it therefore does not preclude the person from receiving after-care services in the event they have changed their mind. Consideration of capacity under the Mental Capacity Act should be evidenced where patients decline.

3.15 When considering relevant patients' cases, the Tribunal and hospital managers will expect to be provided with information from the professionals concerned on what after-care arrangements might be made if they were to be discharged. Some discussion of after-care arrangements involving local authorities, other relevant agencies and families or carers (where appropriate) should take place in advance of the Tribunal hearing.

3.16 Where a Tribunal or Lay Managers' hearing has been arranged for a patient who might be entitled to after-care under section 117 of the Act, the hospital managers should ensure that BSOL MHPC and local authority have been informed. The BSOL MHPC and local authority should consider putting practical preparations in hand for after-care in every case but should in particular consider doing so where there is a strong possibility that the patient will be discharged if appropriate after-care can be arranged. Where the Tribunal has provisionally decided to give a restricted patient a conditional discharge, the BSOL MHPC and local authority should do their best to put after-care in place which would allow that discharge to take place.

3.17 Patients Subject to Immigration Control

3.18 If a patient detained under any of the relevant provisions in 1.1 above is subject to immigration control, and as part of the discharge process it is considered that he may require services on discharge (in addition to those that may be provided as after-care services) a referral will then be made to the appropriate Local Authority's No Recourse to Public Funds (NRPF) team for assessment who will follow their own procedure for assessment and decision- making.

3.19 It is to be noted that a Local Authority NRPF team has no remit to provide services to a person who is assessed as ineligible. Health and social care professionals must therefore ensure that all services eligible for provision under Section 117 have been identified before referral to the appropriate Local Authority s NRPF team for assessment.

3.20 There can be no question of people being ineligible for community-based NHS provision as part of a Section 117 after-care plan by reason of their immigration status / residence. The NHS (Charges to Overseas Visitors) Regulations 2011 established a scheme of charging for some NHS care and the 2011 Regulations only impose charges for treatment provided at, or under the direction of staff employed to work at, a hospital. Any treatment not so provided (i.e., community-based treatment) will be free of charge even where it is provided to overseas visitors. Therefore, there could be no question of such NHS care being withheld from such individuals.

4 ASSESSING NEED AND APPLYING FOR S117 FUNDING

4.1 No individual detained under the Mental Health Act (MHA) 1983 should leave hospital without a robust evidence-based discharge plan and aftercare plan which is recovery focused.

4.2 Aftercare needs must meet key outcomes for the individual. Discharge planning in hospital is therefore based on an assessment of health and social care needs which:

- Includes a detailed assessment of risk.
- includes wellness and recovery outcomes.
- is strengths based
- emphasises how the plan will reduce the need for long term funded services.

4.3 Aftercare plans should include full consideration of how identified mental health needs can be safely met by universal mental health services (for example, Primary Care and Community Teams and Crisis Teams. Professionals involved in discharge care planning must also consider existing local resources/mainstream services/Neighbourhood Networks as the primary means of achieving the agreed outcomes.

4.4 At the point of admission under Section 3 of the Act, the Approved Mental Health Practitioner (AMHP) must record in the notes whether there are any identifiable social care needs at this point. This may change during the patients journey in hospital, but the early recording will contribute to a timely discharge as resources will be concentrated towards those with identifiable social care needs.

4.5 Where aftercare needs *cannot* safely and effectively be met by the **mainstream offer** from contracted commissioned services. . This package should normally be based on the outcome of a multi-agency s117 discharge planning meeting (or meetings). Discharge planning must include a full assessment of both health *and* social care needs, since s117 aftercare is a joint responsibility between the BSOL MHPC and the relevant local authority.

4.6 When a suitable aftercare package has been identified the care co-ordinator (or other relevant clinician) and the relevant social worker/social care worker should then apply to the joint BSOL MHPC /LA funding panel for approval of the proposed aftercare package. The funding application process is as per the flowchart attached as an appendix A to this MOU.

4.7 Key responsibilities are as follows:

- The discharging clinicians are responsible for assessing and presenting the picture of health care needs.
- The allocated social worker/social care worker is responsible for assessing and presenting the picture of social care needs (using forms that are compliant with S117 guidance i.e. different requirement to Care Act compliant plan/Children Act compliant plan)
- Both parties are responsible for jointly completing the s117 Indicative Funding Tool (e.g. Imosphere) which will give an indicative funding split and indicative package costs.
- The community care provider is responsible for providing a care plan which meets the picture of identified needs and a cost breakdown for that plan.

4.8 The proposed package should, except in circumstances where there is no viable alternative, always be with providers sitting on the relevant local authority commissioning framework.

4.9 The proposed package in first instance should be sourced from providers contracted by the commissioner. If no contracted provider can meet needs, then the commissioner will need to seek alternative provision that meets the agreed quality standards of the commissioning organisations.

4.10 Full costings and proposed S117 after care plan are a required part of each funding application. The application must clearly illustrate how the assessed needs are being met by the proposed package.

4.11 The aim of every s117 funded aftercare package should be to promote recovery, and independence, rather than creating dependency. This approach needs to be an integral part of each funding application and demonstrated in associated care plans.

4.12 Personalisation is at the heart of discharge planning. BSOL MHPC is committed to increasing the use of Personal Health Budgets wherever possible and Birmingham City Council and Solihull Metropolitan Borough Council are committed to increasing the use of Direct Payments. Any proposed s117 aftercare packages should therefore always give full consideration as to whether aftercare needs can be met by a joint Personal Health Budget and direct payment.

4.13 No Recourse to Public Funds: s117 Aftercare services must be provided free of charge and are not subject to any immigration exclusions, so nationality and immigration status are not factors that affect whether a person can receive aftercare under section 117. Referrals for clients who appear have no recourse to public funds should be made to the appropriate Local Authority No Recourse to Public Funds team.

5 THE FUNDING APPROVAL PROCESS

5.1 Agreement to fund a proposed aftercare package will be made jointly by BSOL MHPC and the relevant local authority. Both parties are committed to carrying out this process quickly and flexibly via a 'virtual group' comprising health and social care representatives who have delegated responsibility to agree the funding split and to ensure delays to discharge are kept to an absolute minimum, subject to all relevant information pertinent to the decision being provided in the funding request, as noted above.

5.2 It is the responsibility of the clinicians and practitioners submitting a funding application to ensure that the application presents a full picture of need, risks and risk mitigation. The application must clearly evidence how the proposed package will meet identified outcomes. The BSOL MHPC and the local authority cannot safely fund or authorise a proposed care package unless this is the case. Failure to do so will result in undue delays in process.

5.3 There are three options for funding a person's aftercare needs:

- 100% BSOL MHPC Funded Provision
- 100% Local Social Services Authority ("LSSA") funded care
- Joint funding between the BSOL MHPC and the LSSA.

Where a person meets the eligibility criteria for fully funded Health Services, the BSOL MHPC will resource 100% care provision. When the person's needs are exclusively social care needs then the LSSA will fund the full cost of the eligible service. All other packages will be jointly funded by an agreed split.

5.4 Eligible services provided by Adult or Childrens Social Care which are **not** deemed to arise from the person's mental disorder, do not fall under the remit of s117 funding and are not provided free of charge. Assessed eligible social care needs that are **not** arising from or relating to the person's mental disorder should be met by Adult or Childrens Social Care in accordance with the Care Act 2014 or Childrens Act 1989 including a financial assessment to decide what level of contribution the person is required to make towards the costs of their care and support.

5.5 If the person is not eligible for joint s117 MHA 1983 Aftercare in cases where there are presenting health needs directly relating to the mental disorder, a joint funding arrangement may still be considered under the National Framework for NHS CHC – FNC 2018 (page 72 – para 263 -269) and CHC applications should be made accordingly.

5.6 Written confirmation of the funding decision, including the agreed cost, the funding split, the arrangements for post package review, and the process for requesting a package variation will be communicated in writing to all relevant parties once the decision has been made. This includes details of any eligible social care needs which are not subject to s117 and are subject to a financial assessment i.e not related to mental health aftercare needs. In such cases the recipient will be informed in writing of the contribution they are required to make. In cases where a residential or residential with nursing care placement or supported living placement is the assessed eligible s117 after care need, the commissioner will offer a placement based on its commissioning arrangements and the recipient will be entitled to the same level of funding as the care can be sourced to meet their level of needs at the time the placement is made.

5.7 When it is agreed that health and social care funding split is required, and subsequently the patient needs change, either increasing or reducing the level of care required and associated costs, the funding split will remain the same level until another assessment is undertaken and any new split is agreed and confirmed with health and social care.

5.8 Once a section 117 aftercare package is approved, individuals will still be entitled to the universal services that they would have received were they are not subject to Section 117 e.g. CMHT services, LSSA assessment, non s117 community care services, care management services, carer support services etc. Section 117 funding is not intended to meet physical health care needs unless these are directly linked to the mental health condition and individuals are therefore entitled to access the same universal community healthcare services as any other citizen. This may include accessing continuing healthcare funding where appropriate.

5.9 Note that preceding sections relate only to service users where BSOL MHPC and either Birmingham or Solihull LA are jointly responsible for s117 aftercare. There will be some occasions where s117 responsibility is split between different ICBs/Provider Collaboratives

and LAs. In such cases funding will have to be directed to the relevant authorities and agreed on a case by case basis.

5.10 When determining whether BSOL MHPC has a responsibility to fund a section 117 aftercare package for an individual the ICB will at all times act in line with the 'Who Pays?' national guidance published in June 2022 and the amended s117 guidance applicable from April 2016. This guidance sets out the framework for establishing responsibility for commissioning an individual's care within the NHS and determining who pays for that individual's care (Please see Appendix B)

5.11 Disputes regarding funding responsibility with authorities who are not party to this MOU must not be a reason for delaying care planning or discharge planning. BSOL MHPC Birmingham LA and Solihull MBC may therefore on some occasions agree to fund an aftercare package, without prejudice, whilst a definitive decision on funding responsibility is sought.

5.12 In circumstances where there is no current designated health care co-ordinator involved in a s117 package, the BSOL MHPC will take steps to ensure health needs are appropriately assessed and reviewed on a case by case basis.

5.13 In the case of disputes between local authorities as to s117 responsibility, the statutory mechanism for resolving such disputes is via a referral to the Secretary of State. The regulations around Ordinary Residence include provisions as to which local authority has 'interim' responsibility to avoid delays in funding and should be followed in case of dispute.

5.14 A local authority may make direct payments to pay for after-care services under section 117 of the Act. An adult who is eligible for after-care can request the local authority to make direct payments to them, if they have capacity to do this. If the adult lacks capacity to do so, the local authority can make direct payments to an authorised person or suitable person if certain conditions are met. A key condition is that the local authority must consider that making the direct payments to the 'authorised person' is an appropriate way to discharge their section 117 duty, and that they must be satisfied the 'authorised person' will act in the adult's best interests in arranging for the aftercare.

5.15 The BSOL MHPC may also make direct payments in respect of after-care to the patient or, where the patient is a child or a person who lacks capacity, to a representative who consents to the making of direct payments in respect of the patient. A payment can only be made if valid consent has been given. In determining whether a direct payment should be made, the BSOL MHPC is required to have regard to whether it is appropriate for a person with that person's condition, the impact of that condition on the person's life and whether a direct payment represents value for money. A payment can also, in certain circumstances, be made to a nominee in cases of dispute between BSOL MHPC as to s117 responsibility, the mechanism BSOL MHPC are expected follow is set out in "who Pays" guidance, with escalation open to Area Teams of NHS England.

6 REVIEW OF s117 PROVISION

6.1 Section 117 funded care packages are not open ended, and all such packages will incorporate a review date. On discharge from hospital, the initial s117 review must take place within 3 months; thereafter the S117 review must take place at least annually.

6.2 The BSOL MHPC and Local Authority remain the statutory bodies responsible for arranging the s117 review and recording the outcome.

6.3 A section 117 review of a joint funded package should not be undertaken without named representatives (or delegates) from both the BSOL MHPC and LA being present.

6.4 The s117 review should be undertaken in partnership with the Provider / GP / Individual / Carer / community team as appropriate.

6.5 Where an individual is subject to CPA, the most pragmatic option may be to undertake the s117 review alongside the CPA review.

6.6 The s117 review will focus on the key recovery principles as detailed in the aftercare plan.

6.7 The purpose of the s117 review is to determine the impact of the agreed aftercare plan with a view to (a) continuing the package, (b) amending the package, or (c) discharging the package if agreed outcomes have been met.

6.8 The decision to continue with the agreed aftercare plan, or to re-shape or end the aftercare arrangements, lies with the BSOL MHPC and the LA who fund the package. Their funding decision will however be fully informed by input from relevant partner agencies and the expectation is that partners will fully engage in the s117 review process in a meaningful way.

6.9 The outcome of the s117 review will be recorded on the review form included in the appendix to this MOU and recorded on local systems.

6.10 Outside of the annual review process, where there are indications that an individual's mental health is deteriorating, and a short-term increase in support or variation of the care package may mitigate or reduce the risk of admission, a notification of change form will need to be completed within 3 working days and sent to the responsible commissioning teams. See Appendix C

6.11 The Section 117 after-care plan should be reviewed at such intervals as is agreed to be appropriate which would usually be every six months but at periods of not more than 12 months. This may be co-concurrent? with the CPA review.

6.12 It is the responsibility of the care co-ordinator / lead clinician / named nurse to inform the MHL Office so they can ensure the central s117 spreadsheet is updated. The Care co-ordinator / lead clinician / named nurse shall ensure a copy of the form is provided for BCC or SMBC to be placed on the social care file and electronic case record.

6.13 If the plan is to be amended, each agency is responsible for ensuring that the amendments for which they are responsible are properly recorded either on the face of the existing plan or by preparing a new plan if circumstances require it. Any amendments should also be recorded on the electronic care record and the patient's social care file (including electronic file), including a note to say that there are no changes to the plan if none are to take place.

7 DISCHARGE of S117 RESPONSIBILITIES

7.1 The duty to provide s117 aftercare services exists until both the BSOL MHPC and Local Authority Social Care are satisfied that the person no longer requires those services. The circumstances in which it is appropriate to end a funded s117 aftercare package will vary from person to person and according to the nature of the services being provided.

7.2 The most clear-cut circumstance in which s117 aftercare would end is where the person's mental health improves to a point where they no longer require services to meet needs arising from or related to their mental disorder.

7.3 No cessation of a s117 support package and discharge of s117 responsibilities can occur without BSOL MHPC and local authority approval. In so far as practicable, involving the patient and their carer/advocate is an essential part of this decision, as is consultation with the relevant professionals involved. The decision to formally discharge s117 responsibilities will be recorded on the s117 review form, since this decision will in most circumstances be an outcome of the annual review process.

7.4 Where an individual has been absolutely discharged from a qualifying section, leaves hospital and returns to the community without a funded support package or supported by the mainstream universal offer, the BSOL MHPC and LA will consider that individual's aftercare needs to have been safely met and s117 responsibilities to have been discharged unless informed otherwise by relevant clinicians, stakeholders or the individual themselves. If the person or another professional informs that s117 duties should not be considered discharged, then a request for a funded s117 aftercare package should be submitted in the manner described earlier in in this MOU. The funding request should clearly illustrate why a funded s117 package is now required to reduce risk of re-admission or avoid a significant deterioration in mental health, and why the mainstream offer is now not considered sufficient to meet need.

7.5 The duty to provide after-care services exists until both the BSOL MHPC and the local authority are satisfied that the patient no longer requires them.

7.6 After-care services under section 117 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 patient is deprived of their liberty under the MCA.
- the patient has returned to hospital informally or under section 2, or
- the patient is no longer on a CTO or section 17 leave.

7.7 After-care services may be reinstated if it becomes obvious that they have been withdrawn prematurely, e.g., where a patient's mental condition begins to deteriorate immediately after services are withdrawn.

7.8 Even when the provision of after-care has been successful in that the patient is now well-settled in the community, the patient may still continue to need after-care services, e.g., to prevent a relapse or further deterioration in their condition.

7.9 A decision that a person is no longer in need of after-care services should only be made after a proper reassessment of his needs complying with the requirements of the Mental Health Code of Practice.

7.10 It is for the authority responsible for providing particular services to take the lead in deciding whether those services are no longer required.

7.11 When it has been decided that a person is no longer in need of after-care services, the electronic care record, s117 aftercare form is to be completed by the Care co-ordinator / lead clinician / named nurse and a copy provided to the appropriate Local Authority.

7.12 The Care co-ordinator / lead clinician / named nurse shall ensure the MHL Office is informed of the discharge so that the central spreadsheet can be updated.

7.13 It is to be noted that an ending of after-care services does not necessarily mean that the person's other community care services or, if eligible, his CHC services also end. It is acceptable for patients to receive both a Section 117 aftercare package and Continuing Health Care funding together as per CHC Framework.

7.14 It is also to be noted that a person can only be considered as being no longer eligible for Section 117 after-care when all services that have been provided under that regime have ceased. For example, if a person is in receipt of services from both the BSOL MHPC and the LA and, on review, one agency ceases providing services under Section 117 but the other continues, then the person is still eligible for Section 117 services from both or either agency.

7.15 Patients are under no obligation to accept the after-care services they are offered, but any decisions they may make to decline them should be fully informed. An unwillingness to accept services does not mean that patients have no need to receive services, nor should it preclude them from receiving them under section 117 should they change their minds.

8 GOVERNANCE ARRANGEMENTS

8.1 BSOL MHPC , Birmingham LA and Solihull MBC separately maintain their own internal governance and audit pathways to ensure compliance with statutory responsibilities and effective financial management.

8.2 A review of the effectiveness of the s117 indicative funding tool (e.g. Imosphere) will be undertaken on an annual basis. The algorithm behind the tool can, if required, be amended to ensure the most accurate possible funding split and indicative price is reached. The funding authorities may, if required, moderate the funding split on individual packages up to 15% variance. There may be cases that require a higher % negotiation based on presenting evidence.

8.3 A multi-agency forum for the purpose of reviewing and reporting on the overall effectiveness of joint s117 arrangements will meet quarterly to be chaired by a nominated representative of the BSOL MHPC or LSSA.

8.4 The s117 register is held and maintained by the BSOL MHPC on behalf of the ICB and LSSA jointly. This includes details of all s117 cases held by the respective LSSA and BSOL MHPC and will be maintained and monitored in line with the details contained within this Joint Operational MOU for S117 Aftercare.

9 DISPUTE ESCALATION PROCESS

9.1 Where there is a dispute or concern about any aspect of the delivery of BCC's, SMBC's and BSOL MHPC responsibilities around its section 117 duties – BCC , SMBC and BSOL MHPC encourages informal discussion as the initial option. If the dispute cannot be resolved informally then the matter should be escalated to senior managers within the LSSA at Head of Service level or if the issues cannot be resolved at this level the Assistant Director with overall responsibility. Senior Managers within the BSOL Mental Health Provider Collaborative will be the next step. Where the dispute cannot be resolved at that level it will be escalated to Director level within the LSSA and BSOL MHPC for resolution. At any time, any party is at liberty to use the LSSA and BSOL MHPC formal complaint process should they wish to do so.

9.2 The ICB's and LSSA have an overall dispute resolution process relating to CHC and section 117 MHA known as "CHC Handover Document". In addition, a formal joint process "NHS Continuing Healthcare Joint Dispute Resolution Procedure between: Integrated Care Boards (Incorporating Council)" should be referenced. Both parties will work to the guidelines stipulated in these documents.

Appendices:

A) S117 FLOWCHART

BSOL s117 MH process flowchart Apr

B) WHO PAYS FRAMEWORK

B1578_i_who-pays-framework-final.pdf

C) CHANGE NOTIFICATION FORM

s117 Package Change Notification F