

Section 117 After-Care Local Protocol

Introduction

The National Framework for NHS Continuing Healthcare & NHS-funded Nursing Care (November 2012) states at paragraph 119 that “under section 117 of the Mental Health Act 1983, CCGs and Local Authorities have a duty to provide after-care services to individuals who have been detained under certain provisions of the Mental Health Act 1983, until such time as they are satisfied that the person is no longer in need of such services. Section 117 is a freestanding duty to provide after-care services for needs arising from their mental disorder and CCGs and LAs should have in place local policies detailing their respective responsibilities, including funding arrangements”.

The Practice Guidance (paragraph 64.2) states that “LAs and CCGs should have agreements in place detailing how they will carry out their section 117 responsibilities, and these agreements should clarify which services fall under section 117 and which authority should fund them”.

This protocol sets out how the local authorities and CCGs in Nottinghamshire discharge their respective responsibilities under section 117 where the two of these organisations have been identified as the responsible commissioners. The organisations party to this agreement are:

- Nottingham City Council
- Nottinghamshire County Council
- NHS Mansfield & Ashfield CCG
- NHS Newark & Sherwood CCG
- NHS Nottingham City CCG
- NHS Nottingham North & East CCG
- NHS Nottingham West CCG
- NHS Rushcliffe CCG.

Responsible Commissioner

The relevant guidance for the NHS is “Who Pays? Determining responsibility for payments to providers” (August 2013) as updated March 2016. Local Authority responsibility is determined by relevant guidance, local protocol and case law relating to section 117. As case law can be subject to change Local Authority responsibility should be checked with the appropriate local authority legal department in each instance. Contact with the legal department will be organised via appropriately authorised managers or commissioners.

Due to previous, now replaced, guidance on the CCG responsible commissioner there are some cases where the CCG and the LA are not both within Nottinghamshire. This protocol only applies to cases that are the responsibility of a CCG and local authority within Nottinghamshire (excluding Bassetlaw CCG). However it is understood that the principles of this protocol will be used by both the CCG and local authority when required to work with a CCG/LA in another area.

This protocol replaces all prior s117 policies/protocols.

Process

The flow chart in appendix 1 sets out the process for making referrals, assessments, commissioning and discharge arrangements between all agencies involved. The agencies are:

- Nottinghamshire Healthcare Trust (local mental health/learning disability services provider)
- Local Authorities : Nottingham City Council or Nottinghamshire County Council
- Nottingham Citycare Partnership (service commissioned by the Greater Nottingham CCGs to carry out health assessments, case management and reviews for s117 funded individuals)
- CCGs: NHS Mansfield & Ashfield CCG, NHS Newark & Sherwood CCG, NHS Nottingham City CCG, NHS Nottingham North & East CCG, NHS Nottingham West CCG, NHS Rushcliffe CCG.

1. **Referrals** – referrals for a contribution to section 117 after-care funding may be made to the CCG by the provider organisation (eg the Healthcare Trust) or the local authority. In either case it is essential that a social worker is allocated to the case at the outset. Based on GP registration, referrals are sent to either a Mid-Notts CCG or a Greater Nottingham Citycare e-mail address for allocation to a Nurse Assessor.
2. **Assessment** – the Nurse Assessor will contact the social worker to carry out a joint assessment if required. Where a care package is for 7 hours or less a week the CCG and local authority have agreed that funding will be 70% social care and there is no requirement for a health needs assessment to be completed. Referrals for packages of 7 hours a week or less should still be submitted to the CCG/Citycare in the normal way. Cases are presented to the joint CCG/local authority Panel which meets every 2 weeks. The Panel will agree how to split the funding (see funding section below).
3. **Commissioning** - The agreement between the CCGs and local authorities is that the relevant local authority will be the lead commissioner for all section 117 after-care packages that are jointly funded. Seeking a suitable care package for the individual will run concurrently with the assessment process as local authority approval for the funding will be required. High cost packages require senior manager/director approval. Where the package is commissioned as a personal budget, then the health share shall be deemed to be a personal health budget, and the CCG provided with a copy of the support plan.
4. **Discharge from hospital** – a s117 after-care discharge meeting should be held with the agreed provider. The social worker, as lead commissioner, will lead on this process. The local authority will confirm the discharge date to the CCG and issue a funding agreement (called an ACM33 in Nottinghamshire County Council area and a s256 Agreement in the City) to enable the agreed re-charge to commence.

Funding Agreement

The CCGs and the local authorities have agreed to joint fund all new s117 cases. There are a number of historical cases pre-dating this protocol where the CCG or City Council is funding the whole cost. It has been agreed to continue with these existing funding arrangements and that they will only be considered for change as part of the review process (see review section).

Joint funding for new cases and reviews will be agreed on one of the following three splits:

1. 70% CCG/30% local authority – where the assessment indicates that health needs are significantly higher than social care needs
2. 30% CCG/70% local authority – where the assessment indicates that health needs are significantly lower than social care needs.
3. 50% CCG/50% local authority – where the assessment indicates little difference in the respective health and social care needs.

It is difficult to be prescriptive regarding the above as each case is considered separately and the final decision will be made upon professional judgement of the Panel members from the CCG and local authority based upon a recommendation from the Nurse Assessor and Social Worker who completed the assessment.

Reviews

Each s117 funded case should be reviewed as follows:

- Health 70% funded annually
- Joint Funded 50/50 every 2 years
- Health 30% funded every 3 years

If possible the review should be done as part of the CPA review (if the individual is under CPA). The only exceptions are care packages of 7 hours or less per week when there is no requirement for a review unless there is a subsequent change in needs which requires an increase in the care package to above 7 hours per week.

Reviews should be attended by a Nurse Assessor/Case Manager from the Mid-Notts CCGs or CityCare for Greater Nottingham and a Social Worker from the relevant local authority. The Nurse Assessor will complete a Health Needs Assessment and will make a joint recommendation with the Social Worker if there have been any significant changes that would result in a change in the funding contributions from each agency. If there are no changes then the case does not need to be presented at the joint Panel, even where the Social Worker did not attend the review, and the existing funding will continue until the next review date.

If either the Nurse Assessor or Social Worker feel there has been a significant change in needs then the case should be presented to the next joint Panel with their recommendation so that the Panel can agree on the future funding split. Changes in placement, and costs, would not initiate a change in funding splits unless a new joint assessment has been completed that confirms a significant change in need. Each organisation will have its own processes for carrying out routine care reviews (usually at least annually) and wherever possible these should coincide with planned s117 funding reviews.

Changes to placements and costs should be communicated by the Council in line with the Financial Principles (as lead commissioner) to the CCG by secure e-mail and a new funding agreement signed.

Where an existing s117 package has been historically 100% funded by either the CCG or the local authority, this will continue unless one of the following criteria is met:

- **For 100% health funded cases:** A reduction in health needs and reduction in the commissioned care package costs whereby the CCG will request a social worker to carry out a new joint assessment and present to the local authority to agree a contribution to the new package of care.
- **For 100% social care funded cases:** An increase in health needs that requires an increase to the commissioned care package and costs to meet those health needs whereby the local authority will make a referral to the CCG for a health needs assessment to be completed as outlined in the process section above. For the avoidance of doubt, 100% social care funded cases will not be presented to the CCG for a contribution if the health needs are all being met by universal NHS commissioned services.

Case Management

All 100% health and 70% health funded cases will be allocated to a CCG/CityCare case manager for quarterly review. The case manager will make recommendations for changes in need which may require a re-negotiation of costs with the provider or a change of placement if the existing placement is failing to meet needs. 50% health funded cases may also be allocated to a case manager subject to Panel agreement.

Discharge from Section 117 After-Care

The duty to provide aftercare services lasts so long as such services are required because of the individual's mental condition" R v Richmond LBC et al (1999). The Code of Practice states: 'The duty to provide after-care services exists until both the CCG and the LSSA are satisfied that the patient no longer requires them'

The authority responsible for providing the particular services should consider whether ending section 117 is appropriate, closely consulting with the individual, nearest relative and other agencies and individuals involved. Section 117 obligations end only at the point when both the CCG and LSSA have come to a decision that the individual no longer needs any after-care service for their mental health needs (if both involved in provision as would generally be the case). There needs to be positive evidence that an individual no longer needs section 117 after-care services otherwise their discharge from section 117 is considered unlawful.

Document Control

This protocol will be jointly reviewed annually by the respective leads for the CCGs and local authorities. Any changes will be submitted to the joint health and social care CHC Group for approval.

This is the final version dated 13th May 2019.