

# Section 117 after-care

## Free services for people who have been sectioned

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This factsheet explains if you can get free after-care under section 117 (pronounced 'one-one-seven') of the Mental Health Act 1983. It explains what services you might get and when your care will end.



KEY POINTS

- 'After-care' means the help you get when you leave hospital.
- You are entitled to section 117 after-care if you have been in hospital under section 3, 37, 45A, 47 or 48 of the Mental Health Act 1983.
- Section 117 means that you will get free after-care when you leave hospital.
- The NHS and social services will give you after-care.
- Your illness might affect you in different ways. The NHS and social services call these things your 'needs'.
- Your after-care will help you with your 'needs'. You may get specialist housing, help to meet other people, help with work or education and free prescriptions for mental health medication.
- Your after-care should only stop when you do not need any more help from the NHS or social services.
- If you have any problems or questions, talk to your care coordinator or your other contacts in the NHS or social services. An advocate might be able to help you do this. If this does not work, you could think about making a complaint or getting help from a solicitor.

## This factsheet covers:

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## 1. What is section 117 after-care?

Some people who have been in hospital under the Mental Health Act 1983 ('sectioned') can get free after-care when they leave hospital. This is called section 117 ('one-one-seven') after-care. After-care means the help you get after you leave hospital.

Section 117 begins when you leave hospital, but the staff at the hospital should start planning your after-care as soon as you go in to hospital.<sup>1</sup>

You can get more information about the '**Mental Health Act**' at [www.rethink.org](http://www.rethink.org). Or call 0121 522 7007 and ask for the information to be sent to you.

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## 2. Will I get section 117 after-care?

You will get free after-care if you have been in hospital under certain sections of the Mental Health Act 1983. You can get it if you have been:<sup>2</sup>

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

You will only start getting services when you leave hospital.

You will not get free after-care if you have only been in hospital under sections 2, 4, 5 or 38 of the Mental Health Act 1983.

### What if I go on leave from hospital?

You may be allowed to leave the hospital for a short time. This is sometimes called 'going on leave' or 'section 17 leave'. If you have been in hospital under section 3, 37, 45A, 47 or 48 and you go on leave then you will be able to get free after-care when you are on leave.

### **What if I stay in hospital?**

You might want to stay in hospital after you have been discharged from the Mental Health Act 1983 sections 3, 37, 45A, 47 or 48. This is called being a 'voluntary' or 'informal' patient. If you don't leave hospital straight away, you will still get free after-care when you do leave.

### **What if I go back to hospital?**

If you go back into hospital, your section 117 will not end. Some people worry that if they are sectioned under section 2 in the future, section 117 after-care will end. This will not happen.

### **Community Treatment Orders (CTOs)**

You may be discharged from hospital under Supervised Community Treatment (SCT). This is called being on a 'Community Treatment Order' (CTO). If you are under a CTO then you will get free after-care.

You can find more information about '**Community Treatment Orders**' at [www.rethink.org](http://www.rethink.org). Or contact 0121 522 7007 and ask for a copy to be sent to you.

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## **3. Who should arrange my after-care?**

Your after-care will be arranged by the following organisations.<sup>3</sup>

- Your local NHS 'clinical commissioning group' (CCG). The CCG is a group of GPs who decide what services should be available in your area.
- Your local social services authority (LSSA), which is a part of your local authority.

### **Who will pay for my after-care?**

#### Social services

The local social services authority (LSSA) in the area where you usually lived before you went into hospital will have to pay for your care.<sup>4</sup>

If two local authorities cannot agree who should pay for your care, someone at the Department of Health will decide which local authority should pay.<sup>5</sup>

#### NHS

The NHS in the area where you are registered with a GP will pay for your care, unless you move to a new area when you leave hospital. If you are not registered with a GP, then the NHS in the area where you usually live will have to pay.<sup>6</sup>

## Direct Payments

Direct payments are when you are given the money to arrange and pay for your own support. This means you can choose how you get the support you need. You can ask for direct payments as long as you have mental capacity.<sup>7</sup> Mental capacity is being able to make decisions for yourself.

You can find out more information on 'Direct Payments' [www.rethink.org](http://www.rethink.org)  
Or call 0121 522 7007 and ask us to send you a copy.

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## 4. What services should I get, and how will these be planned?

There are no limits about what services you can get. However, the services have to:

- meet needs that you have because of your mental illness, and
- reduce the chances of you having to go back into hospital.<sup>8</sup>

You may get certain types of housing, free prescriptions, services in your home or in a day centre, and help to get supported employment.

The NHS and social services should ask you what kind of things you would like help with. Your carer could be involved in this if you want them to. Other people that could be involved could be your:

- psychiatrist,
- community psychiatric nurse (CPN),
- GP,
- psychologist,
- social worker,
- occupational therapist,
- advocate,
- local authority housing officer,
- attorney if you have appointed someone under a 'lasting power of attorney' (LPA), and
- deputy if one has been appointed by the Court of Protection.<sup>9</sup>

Your illness might affect you in different ways. The people who organise your care will call these things your 'needs'. You may find it hard to do things for yourself. The NHS and social services should offer you services that will help you to deal with these problems. NHS and social care professionals call this 'meeting your needs'.

When everyone agrees how your illness affects you and what services you need they will write this down. This may be called an 'after-care plan' or a 'care plan'. Your care plan might include:<sup>10</sup>

- where you will live,
- what treatment you will get,
- things you can do during the day,
- what services will help you to stay well,

- what help you will get to go to work or study,
- what help you will get with physical health problems,
- what help with drug or alcohol use you will get if you need it,
- things that might help you to keep in contact with your family or to raise children,
- what you should do in a crisis, and
- what help you will get with benefits and managing your money.

### **Rachel's Story**

Rachel has a diagnosis of borderline personality disorder and a history of using drugs. She was in prison for a drugs offence and was transferred to hospital under section 47. Rachel has now returned to prison. Rachel has a care coordinator who is writing a plan about what help she will get when she leaves prison. The plan says that Rachel will have help at home on a weekly basis, help with finding employment, help with drugs use and details of what she should do in a crisis.

### **What if my needs change?**

You might have a care coordinator who you can talk to about your situation. A care coordinator helps to organise the help and support you get. If you don't have a care coordinator, you should have contacts in social services and the NHS who you can speak to.

If your care coordinator agrees your needs have changed they will look at your situation again. They may call this a 'review' or a 'reassessment'. Your care coordinator should review your plan regularly even if your needs have not changed. Your care coordinator may review your plan once a year.

When your care coordinator reviews your needs, they will hold a meeting. They may call this a 'review meeting' or a 'needs assessment'. Other people may be able to go to the meeting too such as your GP, psychiatrist and your carer if you have one.

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## **5. Can I get free housing?**

The rules about what housing you can get for free under section 117 are complicated. Normal housing that everyone should have will not be free but some specialist housing will be.<sup>11</sup>

The law is not clear about who will be able to get free housing under section 117.<sup>12</sup> If your local authority says you are not entitled, make sure you challenge them as soon as possible.

## **Ordinary housing**

Ordinary housing will not usually be free under section 117. 'Ordinary housing' means a house, flat or room that you rent from a private or social landlord.

## **Supported housing**

Supported housing is housing where you get care, support or supervision. Your care and housing will normally be run by different companies. This housing is not the same as a 'care home'.

You may be charged separately for your rent and care. A lot of local authorities will charge you for rent even if you are under section 117. But they should still pay your care costs under section 117 if they are not paid for by another scheme. The law is not clear about if these local authorities are acting properly by charging you rent.<sup>13</sup> You can challenge your local authority by making a complaint or taking legal action.

## **Care homes (residential care)**

Residential care, including care homes, may be included as part of section 117 after-care.<sup>14</sup> If you lived in residential care before you went into hospital, you could get it for free when you leave hospital. In some legal cases, the courts have said that you have to be unable to make decisions for yourself in order to get free after-care.<sup>15</sup> This could cause problems, but we do not yet know how local councils will enforce this.

## **Can I choose where I want to live?**

New rules from April 2015 say you can choose the care home or supported housing you want to live in. Your local authority will have to let you to live there if:<sup>16</sup>

- you are over 18,
- the local authority were going to offer you the same type of housing,
- it will meet your needs,
- the housing is available,
- the housing provider agrees to the local authority's standard terms, and
- you, or someone you know, will pay the difference if your preferred housing is more expensive. Whoever agrees to pay will have to agree in writing.<sup>17</sup>

## Roy's Story

Roy has schizophrenia and is in hospital under section 3 of the Mental Health Act 1983. Roy's doctors think that he is well enough to leave hospital. They decide that he will need ongoing support in a care home to make sure that he doesn't become unwell again.

Roy's care coordinator asks him what type of things he might find helpful, and they agree a list of services he needs. Roy's care coordinator has found three care homes that would meet his needs. Roy chooses the one that is closest to his family.

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## 6. When will my free after-care end?

The NHS and social services have to give you after-care as long as you need it. Even if you are doing well outside of hospital, you may still need after-care services to make sure you stay well.

Ending section 117 is called being 'discharged' from section 117. Your local clinical commissioning group (CCG) and local social services authority (LSSA) must decide that you no longer need any after-care services. They should not discharge you from section 117 when you are still getting services you need.

If staff want to discharge you from your section 117 they need to hold a meeting. They may call this a 'section 117 discharge meeting' or a 'discharge meeting'. They have to invite you to this. You can bring an advocate, carer or family member if you want.

They should not discharge you from section 117 just because:

- you have been discharged from specialist mental health services, such as a community mental health team (CMHT),
- a certain length of time has passed since you left hospital,
- you go back to hospital voluntarily or under section 2,
- your community treatment order (CTO) ends, or
- you refuse after-care services.<sup>18</sup>

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## 7. How can I deal with problems with section 117?

If you have a problem with section 117, you should talk to your care coordinator. If you do not have a care coordinator, talk to your main contacts in the NHS and social services.

## Advocacy

You can get help from an advocate. Advocates can help you to get your point across. If you are on a Community Treatment Order (CTO) then you can get an Independent Mental Health Advocate (IMHA). If you cannot get an IMHA, your local authority should see if you could get an independent advocate.<sup>19</sup>

If you cannot get either of these advocates, you could get a 'community' advocate.

## Complaints

If you cannot solve the problem by talking it through, you could make a formal complaint. If you are not happy with the outcome of your complaint it may be possible to complain to an Ombudsman service. The Ombudsman can investigate complaints.

## Legal action

You could get advice from a solicitor, who could help you to get the services you are entitled to. You need to do this quickly because the time limit for taking the NHS and the local authority to court is usually three months.

You can find more information about:

- Advocacy
- Complaints
- Legal Advice

on [www.rethink.org](http://www.rethink.org), or call 0121 522 7007 and ask for a copy to be sent to you.

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<sup>1</sup> Department of Health, 'Mental Health Act 1983: Code of Practice' (2015), at para 33.10

<sup>2</sup> s117(1) Mental Health Act 1983

<sup>3</sup> As note 2 s117(2)

<sup>4</sup> As note 2 s117(3) See also Department of Health. *Care and Support Statutory Guidance Issued under the Care Act 2014*. Para 19.44-19.45.

<sup>5</sup> As note 2 s117(4)

<sup>6</sup> NHS England. *Who Pays? Determining responsibility for payments to providers* (August 2013). <http://www.england.nhs.uk/wp-content/uploads/2014/05/who-pays.pdf> (accessed 30 April 15), at para 33-34.

<sup>7</sup> As note 1 at para 33.17

<sup>8</sup> As note 2 s117(6)

<sup>9</sup> As note 1, at para 34.12

<sup>10</sup> As note 1, at para 34.19

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<sup>11</sup> It is not impossible for the local authority to offer ordinary housing under s117, but unlikely in the majority of circumstances - *Mwanza, R (on the application of) v London Borough of Greenwich & Anor* [2010] EWHC 1462 (Admin), at para 67.

<sup>12</sup> A lot of uncertainty was created by *R (on the application of Afework) v London Borough of Camden* [2013] EWHC 1637 (Admin), which states that accommodation will only be free if it has been imposed on someone using mental capacity laws. Commentators believe that the judgment is flawed. This position has not been confirmed in further cases.

<sup>13</sup> See 'Report by the Health Service Ombudsman for England and the Local Government Ombudsman on a joint investigation into a complaint made by Mr D' 2014. <http://www.ombudsman.org.uk/about-us/news-centre/press-releases/2014/vulnerable-man-left-without-bathing-facilities-for-six-months-due-to-series-of-care-failings> (Accessed 27 March 15)

<sup>14</sup> *R. V Manchester City Council Ex p. Stennett* [2002] UKHL 34

<sup>15</sup> *R (on the application of Afework) v London Borough of Camden* [2013] EWHC 1637 (Admin)

<sup>16</sup> Reg 4 *The Care and Support and After-care (Choice of Accommodation) Regulations* SI 2670. London; 2014.

<sup>17</sup> As note 15, at Reg 4(3)(b)

<sup>18</sup> As note 1, at para 33.21,33.24

<sup>19</sup> Department of Health. *Care and Support Statutory Guidance Issued under the Care Act 2014*. Para 7.24.

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## Rethink Mental Illness Advice Service

**Phone 0300 5000 927**  
**Monday to Friday, 9:30am to 4pm**  
**(excluding bank holidays)**

**Email [advice@rethink.org](mailto:advice@rethink.org)**

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