

Open Report on behalf of Glen Garrod, Executive Director of Adult Care and Community Wellbeing

Report to:	Councillor Mrs P A Bradwell OBE, Executive Councillor for Adult Care, Health and Children's Services
Date:	22 July – 2 August 2019
Subject:	Section 117 Joint Policy
Decision Reference:	I018147
Key decision?	Yes

Summary:

The purpose of this report is to seek Executive Councillor approval with regards to the creation of a **s.117 Joint Policy** (the Policy) for Lincolnshire County Council, Lincolnshire Clinical Commissioning Groups and Lincolnshire Partnership Foundation Trust. This is a new multi-agency policy replacing the existing arrangements in the three individual organisations.

This report sets out assurances that a robust co-production and engagement process has been followed to ensure that comments have been requested from a broad range of stakeholders and where appropriate acted upon in the creation of this joint policy.

Recommendation(s):

That the Executive Councillor approves the s.117 Joint Policy in the form attached at Appendix A.

Alternatives Considered:

1. Do nothing. This would not ensure that an appropriate policy was in place in Lincolnshire to deal with how it discharges its current functions under s.117 of the Mental Health Act 1983.
2. Develop a single agency LCC policy in relation to how it discharges its functions. This would not address how the relevant bodies, particularly the CCGs and the Council work together to discharge their joint responsibility under s.117 MHA 1983.

Reasons for Recommendation:

Putting in place a multi-agency policy will provide appropriate governance around how s.117 duties are discharged by the Council and the CCGs in Lincolnshire in accordance with its joint statutory obligations under the Act. How those

obligations are to be discharged between the two responsible bodies are not defined in the Act but should be the subject of clearly agreed local arrangements.

This multi-agency policy also includes the involvement and engagement of LPFT, both in its role as the Hospital Trust providing Mental Health services, and also as a provider of Social Care services to individuals in Lincolnshire whose primary needs are Mental Health needs delivered in accordance with an agreement under s.75 of National Health Service Act 2006 with the Council. A joint policy will help to provide clarity about how those joint arrangements are to operate locally in Lincolnshire to ensure that the needs of those individuals requiring after-care services are properly addressed.

1. Background

1.1 Section 117 (s.117) of the Mental Health Act 1983 "the MHA" (as amended by MHA 2007) imposes an enforceable duty on Local Authorities and Clinical Commissioning Groups to provide/commission After-Care Services, in cooperation with relevant voluntary agencies, for those patients of all ages who come within its scope. The duty applies to certain categories of mentally disordered patients who cease to be detained and then leave Hospital. Those categories are those patients that have been detained under s.3 (admission for treatment), s.37 (Hospital orders) and s.45A, 47 or 48 (transfer directions) of the MHA.

1.2 The Mental Health Act 1983; Code of Practice details after-care as follows;

"After-Care Services means services which have the purpose of meeting a need arising from or related to the person's mental disorder and reducing the risk of a deterioration of the patient's mental condition (and, accordingly reducing the risk of the patient requiring admission to hospital again for treatment for mental disorder)." Their ultimate aim is to maintain patients in the community, with as few restrictions as are necessary, wherever possible. CCGs and Local Authorities should interpret the definition of After-Care Services broadly. After-Care can encompass Healthcare, Social Care and Employment Services, Supported Accommodation and other services to meet the person's wider social, cultural and spiritual needs if these services meet a need that arises directly from or is related to the particular patient's mental disorder, and help to reduce the risk of a deterioration in the patient's mental condition.

1.3 The duty to provide those After-Care Services applies until such time as the Clinical Commissioning Groups and the Local Authority are satisfied that the person is no longer in need of such services. The services provided under s.117 are freestanding services i.e. the services are provided under this section alone and for which the Local Authority can levy no charge. Whilst the duty is a joint duty, it does not follow that the costs incurred in providing services under this section should be shared between the Authorities equally, irrespective of the nature of the service being provided. There is an expectation that both the

CCGs and the Local Authority will collaborate and plan together when providing or arranging to provide services under this section of the MHA.

1.4 Lincolnshire County Council (LCC) in partnership with the Lincolnshire CCGs (the CCGs) have been reviewing their approach to the provision of and funding of s.117 cases following negotiations in relation to the s75 Agreement for Learning Disability Services. Accordingly LCC, the Lincolnshire CCGs and Lincolnshire Partnership NHS Foundation Trust have come together to review how s.117 operates in Lincolnshire, the funding of these services and to create a joint multi-agency policy.

1.5 In September 2018 an Independent Specialist Project Manager was recruited hosted by Lincolnshire County Council to oversee the project which had 2 requirements:

- To create a Joint s.117 Policy
- To review the current funding arrangements of s.117 packages of care

1.6 A s.117 Project Board provides the internal governance and oversight to this work. The members of the Project Board represent senior managers and decision makers from each of the three partnership organisations. In addition to the Project Board, a policy group which contains operational staff from the three organisations have been key in the policy's creation and development.

1.7 The Project Board approved a draft text of the policy in January 2019 so that it could undergo a level of co-production and wider consultation via the Mental Health Partnership Board. This Board supports Mental Health service users and those organisations that provide Mental Health services across Lincolnshire to engage with each other and is hosted by Voiceability which is an Advocacy service for Lincolnshire.

1.8 Co-Production

1.8.1 A Co-Production event was held with service users in February 2019. This was to ensure that the format of the policy was appropriate and that service users felt sufficiently supported by the policy.

1.8.2 As a result of this event section 4.1 of the policy was created setting out the need for clinical staff to ensure that service users who are eligible for s.117 are reminded of their rights under s.117 routinely in hospital and in the community.

1.8.3 The group also identified that a s.117 factsheet (Rethink) would make the policy more understandable so this has been embedded in the policy.

1.8.4 The group also advised and approved the content of a short video explaining s.117 for the purposes of the wider consultation.

1.9 Mental Health Partnership Board (MHPB)

- 1.9.1 The policy was presented at the MHPB, which is hosted by Voiceability, in March 2019 where a brief explanatory video was used to assist attendees with regards to understanding s.117 of the Mental Health Act.
- 1.9.2 The MHPB was attended by service users as well as members from:
 - Voiceability
 - Lincolnshire Rural Community Network and Neighbourhood Teams
 - Lincolnshire Partnership Foundation Trust
 - Lincolnshire County Council
 - Lincolnshire Commissioning Groups
- 1.9.3 The policy was also circulated electronically to the members of the MHPB in March and May as part of the consultation which ran until 31 May 2019.

1.10 Lincolnshire Partnership Foundation Trust

- 1.10.1 Whilst staff from LPFT have been involved in the development and creation of the policy, in order for the policy to be ratified by LPFT it had to go through their 'Multi-Agency Policy' governance process.
- 1.10.2 This meant that it went through a 2 week consultation period to all LPFT staff via a staff bulletin as well as sitting on the staff intranet for a period of 2 weeks. This was undertaken in April 2019 in preparation for the policy to go before LPFT's Quality Committee on 2 May 2019.
- 1.10.3 Lincolnshire Partnership Foundation Trust approved the policy at the Quality Committee on 2 May 2019 and will adopt the policy when all the partners to the policy have approved it.

1.11 Children's Services

- 1.11.1 Children's Services have also been directly involved in the consultation and development of the policy. As a result of this the policy incorporates specific considerations outlined in the MHA Code of Practice in relation to Children and Young People.

2. Legal Issues:

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- * Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- * Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

- * Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- * Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- * Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- * Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

- An Equality Impact Assessment (EIA) was also undertaken and was included in the engagement. A copy of the EIA is included in the Appendices to this report (Appendix B).
- In summary the policy sets out the requirement in line with the MHA Code of Practice that all assessments undertaken should be person centred and take into account all of an individual's protected characteristics when determining what s.117 after-care services should be provided.
- The policy also promotes and ensures that individuals who suffer from a mental disorder are supported through the s.117 assessment by providing them with relevant information at key events to allow them to make informed decisions about their s.117 After-Care.

Joint Strategic Needs Analysis (JSNA and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

The JSNA and JHWS have been considered in relation to this report and whilst there is a specific chapter on Mental Health in the JSNA there is no specific reference to Section 117 of the Mental Health Act.

Crime and Disorder

Under Section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

- The s.117 policy covers patients who have been convicted of a criminal offence (MHA s.45A, 47 or 48 patients) and determines aftercare when being released from prison is done to reassure the likelihood of re-offending is reduced.
- The policy ensures that all eligible patients' s.117 needs are assessed, identified and that services are provided to meet those needs. This includes needs to prevent the misuse of drugs, alcohol or other substance as well as any anti-social behaviour and to reduce them from occurring.

3. Conclusion

3.1 Section 117 (s.117) of the Mental Health Act 1983 (as amended 2007) imposes a free standing duty on Clinical Commissioning Groups (CCGs) and Local Authorities (LA's) to provide After-Care services free of charge.

3.2 The project group has come together to review the operation of s.117 duties in Lincolnshire. It has co-worked, co-produced and consulted with its partners and stakeholders in order to produce a multi-agency policy. The s.117 Joint Policy locally agreed arrangements between the relevant partnership organisations reflect the overarching legal requirements as set out in the Mental Health Act 1983 (amended 2007) and its associated Code of Practice.

3.3 The purpose of the policy is to:

- set out the joint agreement between the partner organisations and their obligations under s.117;
- ensure the consistency and quality of the delivery of s.117 services in Lincolnshire;
- set out the arrangements for commencing, reviewing, ending and reinstating s.117 After-Care;
- enable further detailed guidance and training, associated with this policy, to be developed jointly by the partnership organisations.

3.4 Whilst the policy sets out the overarching principles for the requirements on staff and the organisations delivering s.117 services this is done to benefit the individuals who are eligible to receive these services.

3.5 The individuals who will receive these services are a vulnerable group of the population of Lincolnshire where the severity of their Mental Health condition has meant that they have had to be compulsorily detained in Hospital in order to receive treatment.

3.6 Regularly reviewing and updating the After-Care needs of these individuals, as well as having a co-ordinated practice across the partnership organisations (as covered in the policy), will assist them in maintaining their independence and reduce the likelihood of them being re-admitted compulsorily to Hospital because of their Mental Health in the future.

3.7 A detailed set of Procedures and Guidance for Children's and Adults Services, will sit outside of the policy, developed separately and will be available for staff when the policy has been launched.

4. Legal Comments:

S.117 places an obligation on the Council together with the CCGs to provide/commission After-Care services to those who come within its scope.

The creation of a multi-agency policy will assist those individuals in understanding their rights to receive services under s.117 and will aid their understanding about how the respective bodies within the policy will discharge their functions to them. The creation of this policy will fulfil a need to have locally agreed arrangements in place to underpin the statutory duty in s.117.

A decision to adopt this policy is consistent with s.117 and is within the remit of the Executive Councillor.

5. Resource Comments:

Section 117 (s.117) of the Mental Health Act 1983 provides a responsibility on Local Authorities and Clinical Commissioning Groups to provide/commission After-Care Services. Lincolnshire County Council, in partnership with the Lincolnshire CCGs, have been reviewing their approach to the funding of s.117 cases following negotiations in relation to the s.75 Agreement for Learning Disability Services.

There are potential financial implications for services provided via s.117 where there are existing arrangements in place to share the cost of s.117 placements between Lincolnshire County Council and Lincolnshire NHS Partners. Funding arrangements for Learning Disability s.117 payments are administered via the existing s.75 arrangements and are currently shared equally. However there is a clause within the existing agreement where both parties have agreed to adhere to the result of the review of existing arrangements whereby any financial

adjustments that are required as a result of review will be back dated to 1 April 2018.

There are no such agreements in place for s.117 cases related to Older Adults and Working Age Adults with a Mental Health condition. The review of s.117 cases may result in a change to the proportion of costs paid by Lincolnshire County Council, however until the review is underway there are no means to establish what the potential financial impact to the Council will be, as such regular on-going updates to the Executive Councillor should be provided.

6. Consultation

Please see 1.8-1.11 of the main body of the report to see details of the engagement that has been undertaken and the bodies who have been consulted in relation to the s.117 Policy.

a) Has Local Member Been Consulted?

N/A

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The Adults and Community Wellbeing Scrutiny Committee considered the report at its meeting on 3 July 2019 and the Children and Young People Scrutiny Committee is due to consider the report on 19 July 2019. Any comments from the Scrutiny Committees will be presented to the Executive Councillor.

d) Have Risks and Impact Analysis been carried out?

Yes

e) Risks and Impact Analysis

An Equality Impact Assessment was undertaken as part of the consultation of the policy. This is included in Appendix B to this report.

7. Appendices

These are listed below and attached to the back of the report	
Appendix A	s.117 Joint Policy Version 1.4.2 (Final)
Appendix B	Equality Impact Assessment

8. Background Papers

Document title	Where the document can be viewed
Mental Health Act 1983(amended 2007)	https://legislation.gov.uk/ukpga/2007/12/contents

National Health Service Act 2006	https://legislation.gov.uk/ukpga/2006/41/contents
The Care Act 2014	https://legislation.gov.uk/ukpga/2014/23/contents
Mental Capacity Act 2005	https://legislation.gov.uk/ukpga/2005/9/contents
Code of Practice: Mental Health Act 1983 (Published 2015)	https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983
Mental Health Act 1983: Reference Guide (Published 2105)	https://www.gov.uk/government/publications/mental-health-act-1983-reference-guide
The Care and Support and After-care (Choice of Accommodation) Regulations 2014 (SI 2014/2670)	https://legislation.gov.uk/uksi/2014/2670/contents/made
Equality For All: Mental Health Act: Code of Practice 2015: Equality Analysis	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/396171/mha-ea.pdf

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