JOINT POLICY ON SECTION 117 OF THE MENTAL HEALTH ACT 1983

Policy Statement

Cardiff & Vale University Health Board, Cardiff County Council, and the Vale of Glamorgan Council as partner agencies are committed to providing appropriate aftercare services to eligible patients according to need as set out in section 117 of the Mental Health Act 1983.

Policy Commitment

To set out the requirements for provision of after-care services under section 117 of the Mental Health Act 1983 (as amended by the Mental Health Act 2007) to the residents and patients of the partner agencies.

Supporting Procedures and Written Control Documents

- Mental Health Act 1983
- Mental Health Act 1983 Code of Practice for Wales
- Mental Health Act Manual 14\textsuperscript{th} edition, Prof. Richard Jones
- Mental Health (Wales) Measure 2010
- Mental Capacity Act 2005
- Equality Act 2010
- Human Rights Act 2000
- Sch. 3 to the Nationality, Immigration and Asylum Act 2002
- Data Protection Act 1998
- The Local Government Ombudsmen, 2003 Special Report: Advice and guidance on the funding of aftercare under section 117 of the Mental Health Act 1983

Scope

UHB wide, Cardiff Council, Vale of Glamorgan Council

Equality Impact Assessment

An Equality Impact Assessment has been undertaken on this policy and the way it operates.
Health Impact Assessment

A Health Impact Assessment (HIA) has been and found there to be no impact

Policy Approved by

Mental Health Act Policy Group
Mental Health Clinical Board Quality & Safety Committee
Integrated Community Mental Health Teams (including service user)
Mental Health Clinical Board Quality and Safety meeting
Mental Health and Capacity Legislation Committee
Service Users

Accountable Executive or Clinical Board Director

Executive Director, Public Health
Director of Health and Social Care for City of Cardiff Council
Head of Adult Services for Vale of Glamorgan Council
Mental Health Clinical Board

Author:

Mental Health Act Manager - UHB
Operational Manager - MH, LSSA

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## Summary of reviews/amendments

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1. Introduction

The Health Service Circular 2000/003 and Local Authority Circular 2000(3) states that:

‘Social services and health authorities should establish jointly agreed local policies on providing Section 117 Mental Health Act after-care. Policies should set out clearly the criteria for deciding which services fall under Section 117 Mental Health Act and which authorities should finance them. The Section 117 Mental Health Act Aftercare plan should indicate which service is provided as part of the plan.’

The responsibility for implementation of this policy lies with the Cardiff and Vale University Health Board, Cardiff Council and Vale of Glamorgan Council; this will be locally managed through the management structure of the relevant mental health services departments.

Throughout the policy the term “patient” is used in accordance with the Mental Health Act 1983 and the Mental Health Act 1983 Code of Practice for Wales.

2. Policy Statement

Cardiff & Vale University Health Board, Cardiff County Council, and the Vale of Glamorgan Council as partner agencies are committed to providing appropriate aftercare services to eligible patients according to need as set out in section 117 of the Mental Health Act 1983.

3. Objectives

To set out the requirements for provision of after-care services under section 117 of the Mental Health Act 1983 (as amended by the Mental Health Act 2007) to the residents and patients of the partner agencies.
4. Equality Statement

Cardiff and Vale University Health Board, Cardiff County Council, and the Vale of Glamorgan Council as partner agencies are committed to ensuring that, as far as is reasonably practicable, the way it provides services to the public and treats its staff, patients and others reflects their individual needs and does not discriminate, harass or victimize individuals or groups. These principles run throughout our work and are reflected in our core values, our staff employment policies and our service standards.

An Equality Impact Assessment has been undertaken on this policy and the way it operates. If in future there are any changes to the policy that impact on any groups in respect of gender (including maternity and pregnancy, as well as marriage or civil partnership issues), race, disability, sexual orientation, Welsh language, religion or belief, transgender, age or other protected characteristics, every effort would be taken to make plans for the necessary actions required to minimize any stated impact to ensure that we meet our responsibilities under Mental Health legislation as well as that of Equalities and Human Rights legislation.

Copies of the document in alternative formats, including Welsh can be provided, if required.

5. Provision of s117 after-care

The Code of Practice for Wales to the Mental Health Act 1983 states that “[section 117] aftercare services are provided to meet an assessed need arising from the patient’s mental disorder and are aimed at reducing the likelihood of the patient being readmitted to hospital for treatment for that disorder.

The duty to provide aftercare services continues as long as the patient is in need of such services’ and confirms that ‘the duty to provide aftercare services exists until both the local health board and the local social services authority are satisfied that the patient no longer needs them.’
6. Responsible bodies for provision

Section 117 of the Act places a statutory duty upon Local Health Boards in Wales, (NHS Trusts in England) and Local Authorities to provide aftercare to certain categories of detained patients upon their discharge.

The responsible aftercare bodies are determined by the patient’s place of residence.

7. Qualifying patients

Section 117 provides a legal right to after-care services for anyone who has ever been:

- compulsorily detained in hospital for treatment under section 3;
- sentenced to detention in a psychiatric hospital by a criminal court under section 37 or 45A;
- transferred to psychiatric hospital from prison under section 47 or 48;
- detained under an unrestricted treatment or hospital order and subsequently discharged to Supervised Community Treatment;
- detained under a restricted treatment or hospital order and subsequently conditionally discharged;
- subject to guardianship where they were previously detained under any of the above sections.

It also applies to:

- eligible patients who have remained in hospital informally after ceasing to be detained under the Act;
- prisoners who have spent part of their sentence detained in hospital under a relevant section of the Act when they are eventually released from prison.

**N.B.**

This section does not appear in the list of provisions set out in Sch. 3 to the Nationality, Immigration and Asylum Act 2002 which has the effect of preventing local authorities from providing support under the provisions listed in the Schedule to certain categories of refugees and asylum seekers.
The duty to assess (in full consultation with other professionals involved) and provide for after care shall apply when:

- Patients cease to be detained and leave hospital;
- Patients are granted leave of absence under section 17 if they would otherwise qualify when leaving hospital permanently;
- Throughout the time that patients are subject to Supervised Community Treatment.

The duty applies whether the patient leaves hospital immediately after their detention ceases, or remains in hospital as an informal patient beyond this point for a period of time.

There is no statutory duty on the patient to accept section 117 aftercare services, and as such they can decline. However an unwillingness to accept services should not be equated with an absence of need to receive services.

8. Section 17 leave, Mental Health Review Tribunal/ Hospital Managers’ Hearings

Relevant patients subject to leave granted under section 17 of the Mental Health Act 1983 are entitled to receive s117 after-care, and therefore a section 17 leave planning meeting should be held and documented before a patient can be granted any substantial period of leave.

Some discussion should also take place between relevant professionals before a patient appears in front of the Mental Health Review Tribunal for Wales or hospital managers to ensure that suitable aftercare arrangements can be implemented if the patient is discharged.

9. Residence

The responsible after-care bodies in Wales are the Local Health Board and local social services authority for the area “…in which the person concerned is resident.”

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1 Section 117(3) Mental Health Act 1983
Guidance on section 117 of the MHA was given in the case of *R v Mental Health Review Tribunal Ex p. Hall (1999) 4 All ER 883*. This case made clear that responsibility for the provision of after-care services falls to the local authority and Local Health Board (Wales), (Primary Care Trust in England) for the area in which the person was resident when they were detained in hospital, even if the person does not return to that area on discharge. Only if no such residence can be established does the duty fall on the authority where the person is to go on discharge from hospital.

Decisions about residence may in some cases be difficult to determine and as such legal advice should be sought from the appropriate authority legal advisors.

10. **Duration**

The duty on the relevant bodies will continue until they are satisfied that the patient no longer needs aftercare services for their mental health needs. Where a patient has moved to another area, and is subsequently detained under an eligible section of the Mental Health Act, this admission would trigger a fresh duty under s117. The new duty would therefore be on the health and social services authorities for the area where the patient resided at the time of admission (not the original authorities). This is true irrespective of whether they have been placed there by another area

11. **Services that constitute ‘after-care’**

The Mental Health Act 1983 does not define ‘aftercare services’ but in *Clunis v Camden and Islington Health Authority* one of the judges noted that they would “…normally include social work, support in helping the ex-patient with problems of employment, accommodation or family relationships, the provision of domiciliary services and the use of day centre and residential facilities.”.

This was approved by the House of Lords and ‘psychiatric treatment’ was identified by Lord Steyn as an after-care service, stating ‘Administration of medication for mental disorder, and its subsequent monitoring, will often be a key component of a patient’s after-care plan.’

Every effort should be made to ensure that communication mechanisms are in place for patients whose first language is not English or who may have special needs.

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2 *R (on the application of M) v London Borough of Hammersmith and Fulham, Sutton and others.*
3 *(1998) 1 CCLR 215, 225*
4 *R v Manchester City Council ex p Stennett [2002] UKHL 34; [2002] 4 All ER 124*
Services provided under s117 can include those directly provided by primary and secondary health and social care services as well as those provided under contract by private and voluntary service providers. The services may include:

- Provision of domiciliary services
- Accommodation
- Social work support
- Day services e.g. support with employment, social inclusion and relationships
- Medical supervision and psychological support

12. Charging for ‘after-care’ services

There is no power to charge for services provided under s117 aftercare; such services must be provided free of charge.

If the after-care to be provided includes housing-related support that would normally be funded by Supporting People grants, this will be paid by the local social services authority, unless the housing related support is identified as not being part of section 117 after-care services.

The Local Authority Circular LAC (2000, paragraph 2) states “occasionally there may be other non-residential community care services provided by the Authority which are not part of Section 117 after-care plan. These may relate to physical disabilities or illnesses, which have no direct bearing on the person’s mental health. Such services will generally fall outside Section 117 after-care.” These may therefore incur a charge to the person receiving them.

Where section 117 after-care is meeting a social care need and the local social services authority commits itself to providing a level of funding that will adequately meet the assessed need of the patient, there is nothing to prevent top up payments being made by the patient to fund additional or higher level of services.

Section 117 imposes a joint duty on the local authorities and the Local Health Board to provide a seamless after-care service. If all the required after-care services are to be provided under section 117 it is not necessary to assess for eligibility for NHS continuing healthcare (CHC) funding. In other words, a primary healthcare need does not need to be established to require the Health Board to fund, and in most cases the complexity of a patient’s need will require both the Health Board and the local authority to work together to achieve the outcomes set out in section 117.
In the absence of an agreement between the local authority and the Local Health Board, an assessment is required to determine whether the service is to be paid for out of an NHS or local authority budget or as a joint arrangement. This funding decision is then referred to a section 117 board consisting of all partner agencies and should be made on the basis of a comprehensive assessment.

A person in receipt of section 117 after-care services may also have needs for continuing health care not related to their mental health. In such a case a CHC assessment may be necessary to establish how these needs will be addressed.

The provision of after-care services under section 117 should not be confused with providing essentials for life such as food, clothes, accommodation, heating etc. These remain the responsibility of the individual except in the very special cases where accommodation, heating etc are provided as part of a residential and are an inseparable part of the after care plan.

13. **Direct Payments**

Direct Payments can be made to people who receive after-care services under section 117.

14. **Section 117 Register**

There will be one section 117 register covering Cardiff and the Vale of Glamorgan local authority areas. The register will be retained on the Cardiff and Vale UHB Mental Health Act Module in PARIS and will be administered by the Mental Health Act Administrator.

The Mental Health Act Administrator will update the electronic register on admission of a qualifying patient when an alert will be raised; and again on that person's discharge. With this in place, information will be accessible to each Community Mental Health Team. This process will be closely monitored by the Mental Health Clinical Board Head of Operations and Delivery.

15. **Planning and review of after-care services**

The assessment of the patient’s needs under section 117 after-care and resultant planning for delivery will commence when the patient is admitted to hospital.

Delivery of services to meet assessed needs, and the subsequent monitoring of provision, will be undertaken under the Care and Treatment Planning framework and Unified Assessment.
The care plan for the patient will identify:

- The patient as being subject to s117 after-care
- A record of when they became subject to after-care
- Specific services identified to meet s117 after-care needs.
- Specific services identified that are outside of s117 after-care arrangements.
- Reviews of the continuing need for after-care
- Plans to cease formal after-care
- Those responsible for delivering the care plan.

16. Record keeping and monitoring

All patients subject to s117 after-care will have an individual care plan or a Care & Treatment Plan and a named Care Coordinator if the after-care constitutes secondary mental health care. A copy of the care plan must be provided to the patient. With the patient’s agreement copies should also be given to the patient’s carer or relative, and to agencies involved in the provision of the care plan.

All Partner Agencies will maintain and monitor a record of all of their patients subject to s117 after-care. The record keeping needs to comply with each agency’s Freedom of Information Act 2005 policy. The storage and sharing of any information must be undertaken in accordance with the Data Protection Act 1998.
17. Ending section 117 after-care (to be read in conjunction with the Cardiff and Vale UHB/ Cardiff and Vale of Glamorgan Local Social Services Authorities’ Guidance for Closure of Section 117 - appendix 1 below)

After-care provision under section 117 Mental Health Act does not have to continue indefinitely. It is for the responsible health and social services authorities to decide in each case when after-care provided under section 117 should end, taking account of the patient's needs at the time. It is for the authority responsible for providing particular services to take the lead in determining when those services are no longer required. The patient, his/her carers, and other agencies should always be consulted.

When considering discharging a patient from section 117 after-care both authorities are required to jointly review the after-care plan, even if the after-care services are provided by a single authority. In practice, this is likely to be a decision made by the patient’s integrated multi-disciplinary team. There must be a joint formal statement of the agreement to discontinue after-care services, made by representatives of the local authority and the local health board.

Decisions to discharge after care responsibilities should not be made solely on the basis that:

- The patient has been discharged from the care of secondary mental health services.
- An arbitrary period of time has passed since the care was provided.
- The patient is deprived of their liberty under the provisions of the Mental Capacity Act
- The patient has moved away.
- The patient has been readmitted to hospital either informally or under an assessment section of the Mental Health Act 1983.
- The patient is no longer subject to arrangements under section 17 or 17a of the Mental Health Act 1983.

After-care services must be provided until both the Health Board and social services authorities are satisfied that the patient is no longer in need of such after care services.

The ending of section 117 after-care does not necessarily mean discharge from health services, as services can continue to be provided under different legislation.
The decision to end section 117 after-care services must only be taken at a multi-disciplinary team meeting. The patient should be fully involved in the decision making process and their involvement recorded on the relevant form.

If section 117 after-care ends, it cannot be reinstated if the patient becomes in need of further mental health services. The patient can only receive further section 117 services if they are readmitted to hospital under a qualifying section. However, nothing in this policy should restrict a patient who is not subject to section 117 to be assessed for and receive the appropriate mental health services.

18. Training

All staff who work within Partner Agencies are responsible for ensuring that they maintain an up to date knowledge of the Mental Health Act 1983 and associated legislation as it applies within their practice.
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## Documents to read alongside this Policy, Procedure etc (delete as necessary)

- Mental Health Act 1983 Code of Practice for Wales
- Mental Capacity Act 2005 Code of Practice
- Human Rights Act 1998
- Mental Health Act Manual - Fifteenth Edition
- Nationality, Immigration and Asylum Act 2002

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## Author/Reviewee:

Mental Health Act Manager

## Executive Lead:

Executive Director, Public Health

## Group Consulted Via/Committee:

Mental Health and Capacity Legislation Committee

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Mental Health QSE Committee

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Context

Services provided under section 117, Mental Health Act 1983 are “community care” services for the purposes of the National Health Service and Community Care Act 1990.

A person who falls within the scope of section 117 may be in need of community care services so assessment will be undertaken by the local authority. It is the local authority’s duty to provide services identified as meeting the need. It is then up to the individual authorities involved to determine the nature and extent of services to be provided.

To be eligible for section 117 after-care, a person’s assessed need must arise from their mental disorder. This may include almost anything which is aimed at reducing the likelihood of the patient being readmitted to hospital for treatment for their mental disorder [1]. It could include social work support to help the patient with any difficulties concerning employment, accommodation, family relationships, provision of domiciliary services and the use of day centre and residential facilities. Administering and monitoring medication for mental disorder will often be a key part of an after-care plan.

These guidelines will contribute to the Board’s Assurance Framework and also Standard 8: Care Planning and Provision of the Standards for Health Services in Wales.

As the law changes, all reasonable efforts will be made to provide accurate and timely updates to these guidelines.

Equality Statement

Cardiff and Vale University Health Board (UHB) in conjunction with the Local Social Services Authority is committed to ensuring that as far as reasonably practicable, the way it provides services to the public and treats its staff, patients and others reflects their individual needs and does not discriminate, harass or victimise individuals or groups. These principles run throughout our work and are reflected in our core values, staff employment policies and service standards.
If in future there are any changes to these guidelines that impact on any groups in respect of gender (including maternity and pregnancy, as well as marriage or civil partnership issues), race, disability, sexual orientation, Welsh language, religion or belief, transgender, age or other protected characteristics, every effort would be taken to make plans for the necessary actions required to minimise any stated impact to ensure that we meet our responsibilities under Mental Health legislation as well as that of Equalities and Human Rights legislation.

Copies of this document in alternative formats, including Welsh can be provided, if required.


Responsibilities

Local Health Boards in Wales (Clinical Commissioning Groups (CCGs) in England) and Local Social Services Authorities in collaboration with 3rd sector agencies are responsible for providing or arranging to provide section 117 after-care services for certain categories of mentally disordered patients. This is irrespective of their country of origin, with the exception of certain categories of refugees and asylum seekers [2].

Those to whom section 117 applies

The section provides a legal right to after-care services for anyone who has ever been:

- compulsorily detained in hospital for treatment under section 3;
- sentenced to detention in a psychiatric hospital by a criminal court under section 37 or 45A;
- transferred to psychiatric hospital from prison under section 47 or 48;
- detained under an unrestricted treatment or hospital order and subsequently discharged to Supervised Community Treatment;
- detained under a restricted treatment or hospital order and subsequently conditionally discharged;
- subject to guardianship where they were previously detained under any of the above sections.

It also applies to:

- eligible patients who have remained in hospital informally after ceasing to be detained under the Act;
- prisoners who have spent part of their sentence detained in hospital under a relevant section of the Act when they are eventually released from prison.
Unwillingness to accept Section 117 After-care Services

Patients are not legally obliged to accept after-care services offered but any decisions they make to decline services should be fully informed. A patient’s unwillingness to accept services does not mean they have no need for them, neither does it relieve the statutory agencies of their responsibility to offer after-care.

Duration

Once triggered, the right to after-care is ongoing and remains in place irrespective of a person’s circumstances. The duty to provide after-care services continues until both authorities have reached a decision that the patient no longer needs any after-care service.


Relationship between section 117 and the Mental Health (Wales) Measure 2010 (the Measure)

- Care and treatment Plans and Reviews

“After-care is a vital component in patients’ care plans and aims to develop and enhance their skills in order to adjust to life outside hospital and to live their lives successfully in the community. The planning of after-care therefore needs to start when the patient is admitted to hospital”.

The Measure recommends combining the regular review of care plans in accordance with statutory duties under section 117 in order to reduce the need for multiple meetings and thus avoid duplication.

Part 2 of the Mental Health (Wales) Measure 2010 (the Measure) mandates the use of a care and treatment plan for relevant patients who cease to be detained and leave hospital. It sets out the means to record after-care arrangements linked to services provided or actions taken in order to achieve the desired outcomes.

The after-care plan should be regularly reviewed. The care co-ordinator is responsible for arranging reviews of the care plan until it is jointly agreed that the patient no longer needs after-care services. Integrated Team Managers must ensure that all aspects of the procedure are followed. Over-arching responsibility rests with the Mental Health Clinical Board Head of Operations and Delivery.
Transfer of patients from other areas

Responsibility for providing section 117 after-care services may be formally transferred if the authorities agree. Formal transfer should be recorded through exchange of correspondence stating that agreement has been reached between the respective authorities to formally transfer responsibility, the date and time the transfer is effected and a statement that the patient would be informed by the accepting team. The Mental Health Act office must be informed of any such transfer.

The only other circumstance when responsibility would change is if an eligible person moves to a new area, becomes a resident in that area and is subsequently detained under a relevant section; this would trigger the duty under s.117.

Record keeping

A central register of all those who are subject to section 117 must be managed on PARIS. Every attempt will be made to include the names of

relevant individuals from Cardiff and the Vale who have been admitted to hospitals or out of area placements.

Any changes in a patient’s section 117 status e.g. transfer or discharge will be immediately recorded on the register by Mental Health Act office staff.

Ending Section 117 After-care Services

Section 117 after-care can only end when Health and Local Social Services Authorities are satisfied and jointly agree that the person no longer requires after-care.

The authority responsible for providing particular services will take the lead in deciding that services are no longer required. As part of the decision making process, the views of the patient, carer and other involved agencies should always be sought. The full involvement of the patient in the decision-making process will play an important part in the successful ending of aftercare.

A decision that a patient no longer qualifies for section 117 after-care services can only be made if the person’s progress in the community has been closely monitored since their discharge from hospital.
The circumstances will vary from person to person and according to the type of services being provided. The most clear cut circumstance in which after-care will end is when a person’s mental health has improved to such an extent that they no longer need services. Section 117 after-care services should not be withdrawn on the grounds that:

- the patient has been discharged from the care of a responsible clinician or specialist mental health services
- an arbitrary period has passed since the care was first provided
- the patient is no longer on supervised community treatment or section 17 leave.
- the patient returns to hospital as an informal patient or under section 2
- the patient is deprived of their liberty under the Mental Capacity Act 2005
- the patient is now settled in the community or a care home, unless the agencies agree there is no longer a need for continued after-care services.

Responsibility could also end if the patient’s needs change over time due to age and mental frailty rather than their mental disorder [4].

**Discharging Section 117 After-care**

- Possible discharge from section 117 after-care must be the subject of a CPA/ Care and Treatment Plan / Section 117 review meeting to be held at the time of discharge from Secondary Mental Health Services.


- If discharge from section 117 is to be considered, a review will take into account the views of the patient, family and/or carers. The outcome should be communicated to the relevant parties if they are unwilling or unable to attend.

- If the outcome is that the person remains entitled to section 117 after-care, discharge from Secondary Mental Health Care should not proceed.

- In the event that a patient disengages with Mental Health Services but remains subject to section 117 after-care, attempts should be made to invite the patient to a review meeting. If the patient does not attend this, a review meeting between Health and Local Authority representatives must be held to facilitate a clinical decision whether the entitlement to aftercare should continue. This review should evidence where able that efforts have been taken to ascertain the person’s current mental state along with any identified needs, also whether the opinions of their family and GP have been sought where appropriate. In the absence of any information being
available, the decision to close to section 117 aftercare should then be based on clinical decision making and risk analysis.

- The rationale behind the decision to discharge from section 117 must be clearly recorded in the patient’s record giving reasons as well as details of who was involved in the decision making.

- Discharge from section 117 must be recorded in casenotes on PARIS, in the Mental Health Act module, and the register on PARIS will be updated.

- The “Discharge from Section 117 After-care” form bearing the Health Board and Local Authority logos must be signed by the relevant representatives; a copy must be sent to the Mental Health Act Office for retention in the patient’s Mental Health Act file.

Appendix 2

**Discharge from Section 117 After-Care**

<table>
<thead>
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<th>Patient’s full name</th>
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Patient’s date of birth

The following people have been consulted regarding the ongoing need for the above named to receive after-care under Section 117 of the Mental Health Act 1983.

Patient:

Following consultation, it has been determined that with effect from _______________ (date), this patient shall cease to be subject to section 117 after-care because:

Signed:____________________________________________
Representative of Cardiff and Vale UHB

Signed:____________________________________________
Representative of Cardiff and Vale LSSA

Date: ________________

This decision has been reviewed and accepted by the following:

Signed: ______________________________________
Team Manager - Representative of Cardiff and Vale UHB

Signed: ______________________________________
Representative of Cardiff and Vale LSSA

To be forwarded to the Mental Health Act office immediately on completion.

Appendix 3
Equality Impact Assessment - Standard Assessment

Section A: Assessment

Cardiff and Vale University Health Board (the UHB) / Cardiff County Council and the Vale of Glamorgan Council Joint Policy on Section 117 (the partnership agencies), Mental Health Act 1983.

Wendy Gilbert, Mental Health Act Manager - Mental Health Clinical Board

Date: 10 November 2014

1. Revised Section 117 Policy

This policy is a statement of intent that Cardiff and Vale UHB in partnership with the Cardiff and Vale of Glamorgan Local Authorities is committed to ensuring compliance with section 117, Mental Health Act (MHA) 1983 and the supporting guidance within the (MHA 1983) Code of Practice for Wales. Appended to the policy are UHB guidelines for the closure of section 117, including the cleansing of records.

Compliance with the policy will ensure that the UHB and partnership agencies observe the legal obligations associated with section 117 and will be able to indicate as such when required by the Mental Health and Capacity Legislation Committee and any investigating bodies such as Healthcare Inspectorate Wales.

2. Data Collection

The Mental Health Act (2007) is an Act to amend the Mental Health Act 1983, the Domestic Violence, Crime and Victims Act 2004 and the Mental Capacity Act 2005; the legislation has been fully Equality Impact Assessed at a national level.

The Mental Health at 1983 Code of Practice for Wales came into force in 2008 to shape the way that the legislation is put into practice; Welsh Ministers are currently reviewing the current Code. The Code specifically requires respect for diverse needs, values and circumstances of individuals. It requires consideration of the person’s beliefs and values including cultural.

The Code of Practice for Wales highlights that practitioners:

“must pay due regard to all the legislation relating to equality and non-discrimination and give due and positive regard to the needs of each patient
including their age; race; colour; national; social or ethnic origins; culture; language; gender; sexual orientation; disability (if any) religious beliefs and practices (if any)…….Assessment, care and treatment must be delivered in a way which avoids unlawful discrimination and complies with all applicable statutory requirements”.

An Impact assessment has been undertaken for all elements of this policy for the UHB Mental Health Clinical Board. In compiling the document, the 9 protected characteristics of Age – Disability – Gender re-assignment – Marriage and Civil partnership- Pregnancy and maternity-Race-Religion or belief – Sex – Sexual orientation and Welsh language have been considered and the impacts assessed against each element.

While the after-care of detained patients should be included in the general arrangements for delivering the Care Programme Approach (CPA), because of the specific statutory obligation it is important that all patients who are entitled to section 117 are identified and records kept.

Part 2 of the Mental Health (Wales) Measure 2010 makes sure that all patients in secondary services have a Care and Treatment plan.

No relevant person is legally obliged to accept the after-care services that are offered.

Patients may refuse after-care services, but unwillingness to accept services does not mean that the patient does not need them. It also does not relieve the statutory agencies of their responsibility to offer after-care services.

Other areas of consultation have been with:-

Cardiff and the Vale of Glamorgan Local Authorities
Integrated Community Mental Health Teams, including service user
Mental Health Clinical Board Quality and Safety meeting
Mental Health and Capacity Legislation Committee
A range of internal performance and activity measures, available upon request.

What qualitative data do you have about the policy relating to equalities groups (e.g. monitoring data on proportions of service users compared to proportions in the population)? This includes any consultation or engagement activity undertaken so far.

Against a population of 445000 across Cardiff and the Vale of Glamorgan a recent audit identified 1,715 patients who are subject to s,117; this figure equates to 0.385% of the population. Unidentifiable information included in this data collection can be made available in the public domain.
3. Impact

Please answer the following:

Consider the information gathered in section 2 above, comparing monitoring information with census data as appropriate (see www.ons.gov.uk Office National Statistics website) and considering any other earlier research or consultation. You should also look at the guidance in Appendix 1 with regard to the protected characteristics stating the impact and giving the key reasons for your decision.

Now that you have considered the available data and compared information the following questions should be asked and answered.

1. Does the policy impacts on people because of their age? (This includes children and young people up to 18 and older people).

   There are special requirements and safeguards under the Mental Health Act relating to under 18s.

   Little or no negative impact.

2. Does the policy impacts on people because of their disability?

   Some patients with long-term mental health problems may fall under the protection of disability equality law.

   Little or no negative impact.

3. Does the policy impact on people because of their gender? (This includes, gender reassignment, transgender and transvestites).

   Little or no negative impact.

4. Does the policy impact on people because of their being married or in a civil partnership?

   Little or no negative impact.
5. **Does the policy impact on people because of their being pregnant or just having had a baby?**

   Little or no negative impact.

6. **Does the policy impact on people because of their race? (This includes colour, nationality and citizenship or ethnic or national origin such as Gypsy and Traveller Communities).**

   Possible negative impact for some.

   The duty to provide or to arrange to provide after-care services applies to patients irrespective of their country of origin.

   There would be little or no impact in respect of race but there is a negative bearing on some who have an immigration or asylum. This section does not appear in the list of provisions set out in Sch. 3 to the Nationality, Immigration and Asylum Act 2002 which has the effect of preventing local authorities from providing support under the provisions listed in the Schedule to certain categories of refugees and asylum seekers.

   It may be difficult to deliver a care and treatment plan to gypsies and travellers who move around from area to area; however, they do have the option to decline s.117 services, as do all other relevant patients.

7. **Do you think that the policy impacts on people because of their religion, belief or non-belief? (Religious groups cover a wide range of groupings the most of which are Buddhist, Christians, Hindus, Jews, Muslims, and Sikhs. Consider these categories individually and collectively when considering impacts).**

   Through the UHB, legislation and Code of Practice for Wales consultation processes there would be no impact because of their religious beliefs.

8. **Do you think that the policy impacts on people because of their sexual orientation?**

   Through the UHB, legislation and Code of Practice for Wales consultation processes consultation processes there would be no impact because of sexual orientation.
9. Do you think that the policy impacts on people because of their preferred use of Welsh Language?

Through the UHB, legislation and secondary consultation processes there would be no impact because of the use of the Welsh language. Interpretation services are available if and when required.

Information will be provided bilingually as appropriate. There may be an opportunity to reallocate more effectively our bilingual staff to assist with the promotion of Welsh language across services.

4. Summary.

Which equality groups have positive or negative impacts been identified for (i.e. differential impact).

There is a possible negative bearing on race for some because of their immigration or asylum status.

There is a possible negative impact because of potential difficulty in delivering a care and treatment plan to gypsies and travellers who move around from area to area.

Is the policy directly or indirectly discriminatory under the equalities legislation?

NO, there does not appear to be any discrimination based on the evidence that has been found. If there was we could take action to resolve or mitigate against the discrimination as appropriate

If the policy is indirectly discriminatory can it be justified under the relevant legislation?

Not applicable at this time

If the policy is likely to be discriminatory and it cannot be justified, then the policy will require a rethink as to how this can be addressed.
Cardiff and Vale University Health Board
Action Plan

Section B: Action

5. Please complete your action plan below. Issues you are likely to need to address include:

- What engagement needs to take place with equality groups (bearing in mind any relevant consultation already done and any planned corporate consultation activities) in order to address any potential negative impacts that have been identified.

The MHA is concerned with the assessment care and treatment that an individual who is experiencing a mental disorder. Assessment, care and treatment must be delivered in a way which avoids unlawful discrimination and complies with all applicable statutory requirements.

A set of guiding principles has been included in the Mental Health Act 1983 Code of Practice for Wales which should be considered when making decisions about a course of action under the Act. These are:

- The empowerment principles
- The equity principles
- The effectiveness and efficiency principles.
The equity principles require practitioners to respect the diverse needs, values and circumstances of each patient including their:

- age;
- race;
- colour;
- national ethnic or social origins;
- culture;
- language;
- gender;
- sexual orientation;
- disability (if any);
- religious beliefs and practices (if any).

Particular consideration should be given to the likely impact of clinical decisions on patients’ carers and other relevant people.

Practitioners should make sure that effective communication takes place between themselves, patients and others.

All those involved in the assessment, treatment and care of patients should ensure that everything possible is done to overcome any barriers to communication that may exist.

Welsh speakers should, where reasonably practicable or appropriate in the circumstances, be given the option of assessment, treatment and provision of information through the medium of Welsh. If a patient’s language is other than English or welsh, assessment should be delivered using a trained interpreter who will address issues of both language and cultural interpretation which includes the use of British Sign Language.

**What monitoring/evaluation will be required to further assess the impact of any changes on equality target groups?** (A system will need to be developed to ensure continuous scrutiny, follow up and evaluation of all policies and must be sensitive to issues associated with human rights and privacy.) This on-going monitoring provides information and data for the next cycle of review.

The Mental Health Clinical Board will continue to maintain an up to date register of patients subject to section 117. Each case will be reviewed by the Integrated Community Teams. Any impact on equality target groups will be identified via this mechanism.

<table>
<thead>
<tr>
<th>Issue to be addressed</th>
<th>Responsible Officer</th>
<th>Action Required</th>
<th>Timescale for completion</th>
<th>Action Taken</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establish and maintain the Cardiff</td>
<td>Head of Operations and delivery</td>
<td>Ensure that all Cardiff and Vale UHB patients</td>
<td>Ongoing</td>
<td>Ref – internal mental health</td>
<td></td>
</tr>
</tbody>
</table>
and Vale UHB section 117 register of all those who are eligible for section 117 after-care services.

across Wales and England who are eligible for section 117 after-care services are identified, registered on PARIS in a timely manner and reviewed in accordance with the stipulations of the Mental Health Clinical Board and the Cardiff and Vale of Glamorgan Local Authorities whist being mindful of the Guiding Principles set out in the Mental Health Act 1983 Code of Practice for Wales.

clinical board action plan supported by internal audit

6. Report, publication and Review

Please record details of the report or file note which records the outcome of the EQIA together with any actions / recommendations being pursued (date, type of report etc) Type in please see Appendix 4 below.
Please record details of where and when EQIA results will be published

Our internal Intranet

Please record when the EQIA will be subject to review.

2 years

Name of person completing:  Wendy Gilbert

Signed :

Date:  February 2015

Name of Senior Manager Authorising Assessment and Action Plan for publication

Ian Wile: Head of Operations and Delivery

Signed:  

Date:  February 2015