PAYING FOR CARE AND REDUCING THE COST

Section 117 aftercare: free care after a mental health detention

Last updated 30 October 2026; sources last checked 30 October 2026.

IN BRIEF

Anyone who has been detained in hospital under section 3 of the Mental Health Act, or under sections 37, 45A, 47 or 48, is entitled to free aftercare when they leave. The integrated care board (ICB) and the council must provide or arrange it, with no means test and no charges, until both agree it is no longer needed. People who were wrongly charged can ask for their money back, with interest.



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Section 117 of the Mental Health Act 1983 gives some people leaving a psychiatric hospital a legal right to free aftercare. It is one of the few kinds of care that can never be charged for, yet families often do not know it applies, especially when the detention happened years ago. This guide covers England; in Wales the same section applies with some differences, and Scotland and Northern Ireland have their own laws.

Who qualifies

Someone qualifies when they leave hospital after being detained for treatment under:

- **section 3** (treatment);
- **section 37** (a hospital order made by a court);
- **section 45A** (a hospital direction);
- **sections 47 or 48** (transfer from prison or detention to hospital).

This includes people on section 17 leave, on a community treatment order (CTO), or conditionally discharged. It applies at any age, to people with a learning disability and autistic people, and to older people with dementia who were detained under section 3.

Why it is free

Section 117 is a joint duty on the ICB and the council. There is no power to charge for aftercare provided under it, whether the NHS or the council provides the service. The Care and Support Statutory Guidance (paragraph 8.14) lists section 117 aftercare among the services councils must arrange free of charge, and there is no financial assessment. Savings, income and the value of a home are irrelevant.

What aftercare can pay for

Aftercare services must have two purposes: meeting a need arising from or related to the person's mental disorder, and reducing the risk of their mental condition getting worse (and so of going back into hospital). Within that, the government's guidance says the definition should be read broadly. It can include:

- health care, such as community mental health support;
- social care, including home care, live-in care or a care home placement;

- supported accommodation;
- help with employment, skills and daily living;
- support for social, cultural and spiritual needs.

Needs that are not linked to the mental disorder fall outside section 117. They may be met through NHS Continuing Healthcare or by the council under its normal means-tested rules.

Who arranges it

- **The council** responsible is the one where the person was ordinarily resident immediately before detention.
- **The ICB** responsible is decided under NHS England's "Who Pays?" rules.
- Uncertainty about which of them pays should not delay or stop the care.

Before discharge, there should be a section 117 discharge planning meeting, and the aftercare plan should be written with the person, setting out which needs it covers. People should be told clearly that their aftercare is free, and reminded at each review. The Mental Health Act 2025 will make it a legal duty to give this notice in writing, but that part was not yet in force on 30 October 2026.

Choice and control



- **Personal health budget:** people entitled to section 117 aftercare have had a legal right to a personal health budget for the NHS part since December 2019.
- **Direct payments:** the council can make direct payments for its part of the aftercare.

- **Choice of accommodation:** if accommodation is part of the aftercare, the person can ask for a particular place. If it costs more than the council would normally pay, the person themselves or a third party can pay the difference as a top-up.

When section 117 can end

The duty lasts until **both** the ICB and the council are satisfied the person no longer needs aftercare. The person, and where appropriate their carer or advocate, should be fully involved. The Code of Practice says aftercare should not be withdrawn solely because:

- the person has been discharged from specialist mental health services;
- a set period has passed since it started;
- they are deprived of their liberty under the Mental Capacity Act;
- they have gone back into hospital informally or under section 2;
- they are no longer on a CTO or section 17 leave.

Someone who is well settled may still need aftercare to prevent a relapse. If services are withdrawn too early and the person's mental health declines, aftercare can be reinstated. Turning down services does not end the entitlement: the person can change their mind later.

Benefits and section 117

At home, Attendance Allowance and the daily living part of PIP carry on as normal. If aftercare includes a care home place funded under the Mental Health Act, these benefits usually stop after 28 days, as for any publicly funded care home place. Report any move to DWP.

How to check whether someone is entitled

1. Look through old hospital discharge letters, tribunal or hospital managers' papers, and letters about leave or a CTO for the section number.
2. Ask the GP surgery or the mental health trust which section was used and when.

3. Write to the council and the ICB asking them to confirm, in writing, whether the person is recorded as entitled to section 117 aftercare. Both should keep a record of people entitled.

If you have been charged

If the person has paid the council for care, or paid towards a care home, while entitled to section 117 aftercare, ask for a refund with interest.

Template letter (to the council's adult social care team, copied to the ICB):

> Re: [full name], date of birth [date], NHS number [if known]
>
> [Name] was detained under section [3] of the Mental Health Act 1983 at [hospital] from [date] to [date], and is entitled to aftercare under section 117. Since [date], the council has charged [name] [£x a week] towards [home care / their care home fees]. Section 117 aftercare cannot be charged for. Please confirm in writing that [name] is entitled to section 117 aftercare, stop all charges, and refund everything paid, with interest. Please also confirm which of [name]'s needs are being met under section 117. I enclose [the discharge letter / proof of my authority to act].

If the reply is unsatisfactory, use the council's complaints procedure, then go to the **Local Government and Social Care Ombudsman**: 0300 061 0614 (Monday, Tuesday, Thursday and Friday 10am to 1pm; Wednesday 1pm to 4pm), normally within 12 months of knowing about the problem. Complaints about the NHS side go through the NHS complaints procedure and then the Public Service Ombudsman (0345 015 4033). See how to complain about care.

Your section 117 checklist

- [ ] Section of the Mental Health Act confirmed, with dates
- [ ] Written confirmation of section 117 entitlement from the council and ICB
- [ ] Copy of the aftercare plan, showing which needs section 117 covers
- [ ] Personal health budget or direct payment discussed
- [ ] All charges stopped, and a refund with interest requested

- [ ] Review dates noted; any proposal to end aftercare challenged in writing if you disagree

What to do next

1. Find out which section of the Mental Health Act was used.
2. Ask the council and ICB to confirm entitlement in writing.
3. Ask the council to stop charging for section 117 aftercare and to refund what has been paid.
4. Ask for the aftercare plan to be reviewed if needs have changed.

How we can help

Day and Nightcare is a CQC-registered home care provider, rated Good, supporting people at home since 2008. We provide care funded privately, by councils (including direct payments) and by NHS Continuing Healthcare. Our fully managed live-in care is available anywhere in England from £1,550 a week, and we offer home care visits and waking nights across Oxfordshire, and 24-hour care with carers working in shifts anywhere in England. For a free initial assessment and a written quote, call 01865 715780.

Common questions

My father was only ever detained under section 2. Does he qualify?
No. Section 2 is detention for assessment for up to 28 days, and it does not give a right to section 117 aftercare. Nor do the short holding powers in sections 4, 5, 135 and 136, or an informal (voluntary) admission. But if someone was detained under section 3, or one of the other qualifying sections, at any point in the past, the entitlement may still be in place today unless it was formally ended. Check the hospital papers to be sure which section was used.

Can section 117 pay for live-in care at home?

It can, if live-in care is how the ICB and the council agree to meet needs arising from or related to the person's mental disorder, and to reduce the risk of their mental health getting worse and of readmission. The care is then free. The person also has a legal right to a personal health budget for the NHS part, and can ask the council for a direct payment for its part, which gives more say over who provides the care.

Mum lived in another county before she was detained. Which council is responsible?

Usually the council for the area where she was ordinarily resident immediately before she was detained. That council stays responsible for her section 117 aftercare even if she moves to another area after leaving hospital. Responsibility only changes if she later becomes ordinarily resident somewhere else and is then detained again under a qualifying section. The responsible NHS body is worked out separately, under NHS England's 'Who Pays?' rules.

Can someone have section 117 aftercare and NHS Continuing Healthcare at the same time?

Yes, but for different needs. The national framework says needs covered by section 117 must be met under section 117, not through Continuing Healthcare. If the person develops separate physical health needs, for example after a stroke, those needs can be assessed for Continuing Healthcare, and the Fast Track should be considered if they are rapidly deteriorating towards the end of life. The ICB should be clear in writing about which needs each route funds.

How far back can a refund go?

Councils have refunded charges going back many years. In a 2024 ombudsman case, Kent County Council refunded £114,721.36 that a woman had been charged for her care home from 2002 to 2021, plus £17,368.50 interest. Act as soon as you find the problem, because the ombudsman normally expects a complaint within 12 months of you knowing about it. For large or very old sums, a solicitor can advise on legal time limits.

Sources and further information

- legislation.gov.uk: Mental Health Act 1983, section 117

- GOV.UK: Care and support statutory guidance (paragraphs 8.14 and 19.62 to 19.67)
- GOV.UK: Discharge from mental health inpatient settings, Annex B on section 117 aftercare (January 2024)
- GOV.UK: Mental Health Act 1983 Code of Practice (chapter 33, after-care)
- GOV.UK: National framework for NHS continuing healthcare (section 117)
- Local Government and Social Care Ombudsman: Kent County Council (23 012 780), 3 July 2024
- legislation.gov.uk: Mental Health Act 2025, section 46 (not yet in force)

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Personal health budgets: how they work with NHS care at home

How personal health budgets work in England: the legal right with NHS Continuing Healthcare and section 117 aftercare, the three ways to hold the money, the care plan, using a budget to choose a live-in care provider, direct payment rules, reviews and what to do if refused.

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NHS Continuing Healthcare: a guide for families

A plain-English guide to NHS Continuing Healthcare in England: who qualifies, the Checklist, the Decision Support Tool and its 12 domains, Fast Track, care at home including live-in care, reviews, appeals with template letters, retrospective claims and how to prepare evidence.

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Council funding for care: assessments, means test and charges

How council funding for care works in England in 2026/27: the free care needs assessment, who is eligible, the financial assessment for care at home (£23,250 and £14,250 limits, minimum income guarantee, disability-related expenditure), what is ignored, top-ups and how to challenge.

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Talk to our care team: 01865 715780
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Day and Nightcare Live In Limited, 9 Hollow Way, Cowley, Oxford OX4 2NA
CQC overall rating: Good (report published 20 April 2018)

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