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AFTER-CARE UNDER THE MENTAL HEALTH ACT 1983

Section 117 After-Care Services

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AFTER-CARE UNDER THE MENTAL HEALTH ACT 1983

Section 117 After-Care Services

Summary

This circular covers three recent judgments affecting the provision of after-care under the Mental Health Act 1983 (MHA). Section 117 of the MHA places a duty on health and social services authorities to provide after-care services for certain patients discharged from detention under the Act. It does not specify services to be provided or confer powers to charge.

(1) The High Court judgment of 28 July 1999 made clear that local authorities may not charge for residential care provided under section 117. This is a free-standing duty and should not be seen as a gateway for services provided under other legislation.

(2) The Court of Appeal on 30 July 1999 clarified which health and social services authorities are responsible for providing section 117 after-care services.

(3) The European Court of Human Rights (ECHR) issued a judgment in 1997 that the UK was in breach of the European Convention on Human Rights in a case where the Mental Health Review Tribunal (MHRT) had given a restricted patient a deferred conditional discharge which was not implemented within a reasonable time.

Action

The Court gave the four authorities involved in the first case leave to appeal. But social services authorities still charging for after-care services provided under section 117 should immediately cease charging since there is no power to do so. In relation to the ECHR judgment, social services and health authorities should ensure that the conditions of deferred conditional discharges are implemented timeously.

Judgment 1

R v London Borough of Richmond ex parte Watson

R v Redcar and Cleveland Borough Council ex parte Armstrong

R v Manchester City Council ex parte Stennett

R v London Borough of Harrow ex parte Cobham

1. The Court considered four cases relating to the provision of after-care services under section 117 and whether it is lawful to make a charge for these services. The judgment confirmed that:
 - where the responsible social services authority assesses the patient as needing to be provided as part of their after-care following detention with residential accommodation of the kind covered by section 117, there is a duty to provide this accommodation under section 117. The authority may not provide it under section 21 of the National Assistance Act 1948 nor charge for it under section 22;
 - patients may not be charged for residential accommodation provided as part of a package of after-care services under section 117;

- patients who are required to live in residential accommodation as a condition of leave under section 17 are entitled to this accommodation as an after-care service under section 117 if they would be entitled to receive after-care services under section 117 when discharged from detention under the Act.

Implications of the Judgment

2. The Court did not address the question of charging for non-residential services provided under section 117 but there is a strong implication that the responsible authorities may not charge for such services. Occasionally, there may be other non-residential community care services provided by the authority which are not part of the 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.

Points for Action

3. Social services and health authorities should establish jointly agreed local policies on providing section 117 after-care. Policies should set out clearly the criteria for deciding which services fall under section 117 and which authorities should finance them. The section 117 after-care plan should indicate which services are provided as part of the plan.
4. After-care provision under section 117 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 deciding when those services are no longer required. The patient, his/her carers, and other agencies should always be consulted.

Judgment 2**R v Mental Health Review Tribunal ex parte Hall [1999] 3 All ER 131**

5. This judgment concerns a restricted patient who was granted a deferred conditional discharge by the MHRT. One of the conditions set by the Tribunal was that the patient should not return to where he lived before admission to hospital. The judgment confirmed that:
 - the health and social services authorities where the patient was resident at the time of admission to hospital have legal responsibility for providing after-care under section 117.
6. If the patient has no current residence when admitted to hospital, the authorities for the area where the patient must reside as part of his/her conditional discharge have responsibility for providing after-care under section 117 (3).

Implications of Judgment

7. A patient who was resident in an area before admission to hospital does not cease to be resident there because of his/her detention under the Act. If a patient with ordinary residence in one area is sent to another area on discharge, it is the responsibility of the health and social services authorities in the area where the patient was resident before admission to make the necessary arrangements under section 117. However, where a patient does not have a current residence, the responsibility for providing after-care under section 117 falls to the health and social services authorities covering the area to which the person is sent on discharge. When a patient is conditionally discharged, the Tribunal may send the patient to an area by imposing a residence condition.

Points for Action

8. Guidance in the revised *Mental Health Code of Practice* makes clear that where section 117 applies and there is to be a hearing of the MHRT, the "responsible authorities" should prepare an after-care plan under section 117 and submit this to the Tribunal to assist it in reaching its decisions. The hospital where the patient is detained will always be expected to assist.
9. Where a patient is discharged to an area different from that where he/she was resident at the time of admission, the "responsible authorities" may need to purchase services in that area. They should inform the health and social services authorities in the receiving area of the the arrangements made for the patient's after-care.
10. LAC(93)7 on "Ordinary Residence" provides guidance to local authorities on ordinary residence. Guidance for health authorities is in a booklet "Establishing District of Residence" (1993).

Judgment 3**Stanley Johnson v The United Kingdom [1997] series A 1991 VII 2391**

11. In the 1997 judgment of the ECHR in this case ((1999) 27 EHRR 296) (<http://www.dhcour.coe.fr/hudoc>), the Court found the UK in breach of article 5 of the European Convention on Human Rights because for a considerable period the patient concerned was not lawfully detained.
12. Successive MHRTs had given the patient a deferred conditional discharge under section 73 of the MHA. Discharge from hospital was delayed for several years because the responsible social services authority had been unable to implement the conditions set by the MHRT by finding suitable supervised hostel accommodation and the Tribunal lacked the power to ensure that the discharge conditions were implemented within a reasonable time.
13. Where social services and health authorities are unable to implement conditions set by a MHRT they should follow guidance in Dr Graham Winyard's and Sir Herbert Laming's June 1997 letter "Implementation of Mental Health Review Tribunals' Decisions".

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