Contact Peter Edwards Law

You can contact the team at Peter Edwards Law. We specialise in protecting the rights of vulnerable people. Whether you are suffering from a mental health issue or have a family member who is incapacitated you are entitled to be treated fairly, with dignity and respect.

Talk to us by calling **0151 632 6699** or email **law@peteredwardslaw.com**

Useful links

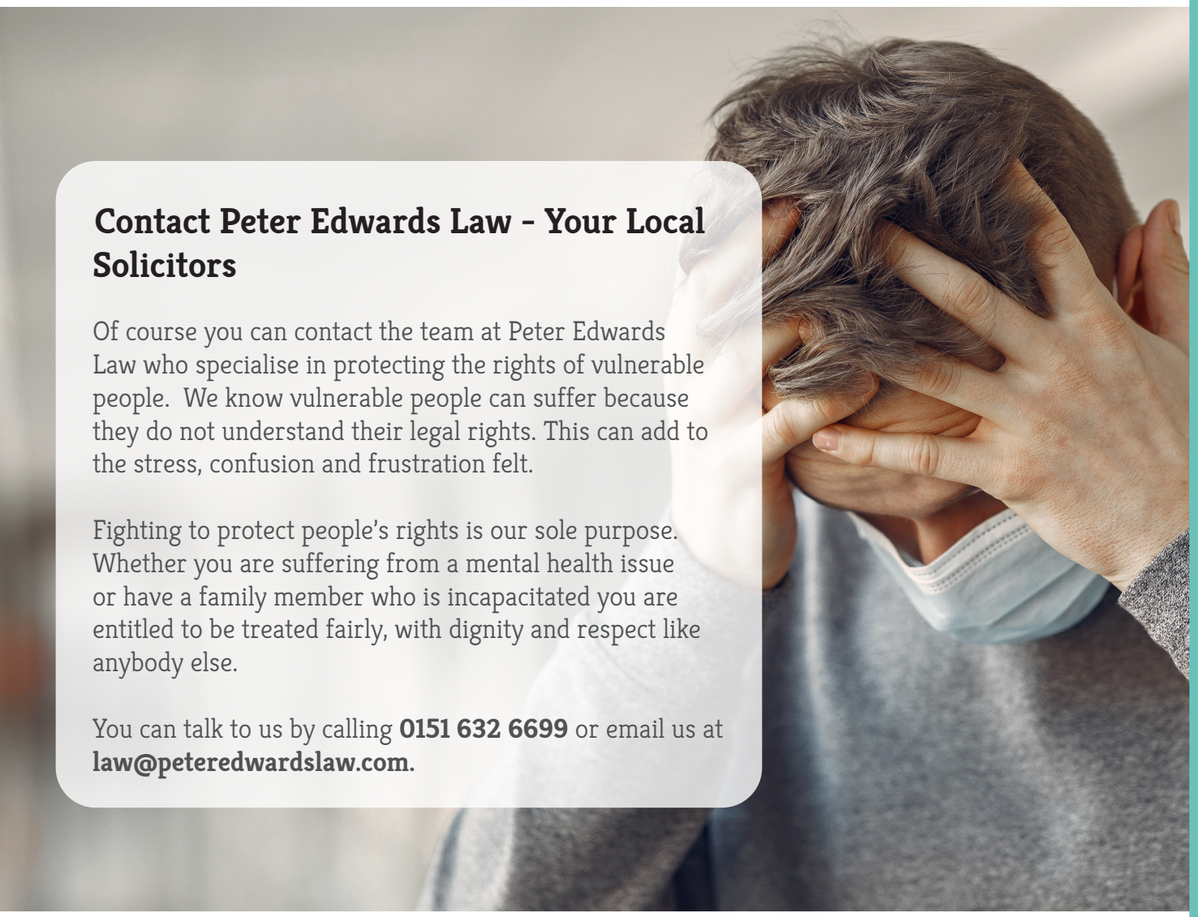
S117 MHA – http://www.legislation.gov.uk/ukpga/1983/20/section/117

MHA Code of Practice –http://www.legislation.gov.uk/ukpga/2005/9/pdfs/ukpgacop_20050009_en.pdf

MHA Reference Guide – https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417412/Reference_Guide.pdf

CA – http://www.legislation.gov.uk/ukpga/2014/23/contents

CA Statutory Guidance – https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/506202/23902777_Care_Act_Book.pdf



Contact Peter Edwards Law - Your Local Solicitors

Of course you can contact the team at Peter Edwards Law who specialise in protecting the rights of vulnerable people. We know vulnerable people can suffer because they do not understand their legal rights. This can add to the stress, confusion and frustration felt.

Fighting to protect people's rights is our sole purpose. Whether you are suffering from a mental health issue or have a family member who is incapacitated you are entitled to be treated fairly, with dignity and respect like anybody else.

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Peter Edwards Law

MENTAL HEALTH • INCAPACITY • HUMAN RIGHTS

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s.117

Section 117 Aftercare

Who qualifies for S117?

'P' becomes eligible for S117 aftercare if they have been detained under either Section 3, 37, 45A, 47 or 48 of the Mental Health Act (MHA).

What does S117 mean?

S117 places an enforceable duty on both Health (Clinical Commissioning Group (CCG)) and Social (Local Authority/Council (LA)) Services to provide aftercare services to a person ('P') upon discharge from hospital. Neither the CCG nor the LA can charge for the services engaged to meet those needs – s117 aftercare is free.

The duty on the CCG or LA is to meet the need. They do have discretion as to how this need is to be met, and can take into account resource and funding implications. The Care Act 2014 (CA), however, now provides that 'P' could pay a top up to the S117 aftercare if they so wish (S75 CA), for example the aftercare need was residential care and 'P' wanted to pay extra to stay in a more expensive residential home.

Who are the CCG and LA?

The responsible CCG and LA are identified at the time of 'P's' admission to hospital and are determined by where 'P' was ordinarily resident at the time they were detained under the MHA (as above).

Ordinary Resident

The concept of Ordinary Resident has been developed by case law and is generally the place in which 'P' was living (residing or present) when detention began.

There can, however, be a number of circumstance in which it is unclear where a person was Ordinary Resident prior to detention, for example because they were accommodated out of area by one local authority and subsequently detained. This type of scenario has now been clarified within the Care Act 2014, and the ordinary residence would be the place in which they were residing or present prior to being accommodated by the LA (S39). The CA also provides (S40 CA) the process in which determination of Ordinary Residence is made in the event of a dispute, and essentially provides that this is a decision for the Secretary of State to make.

It is important to note that 'P', once receiving S117 aftercare, may choose to move to another location, and in these circumstance the CCG and LA can commission services in that area and negotiate with the CCG and LA from that area to transfer responsibility. If 'P' moves and is subsequently detained again in the new area then the S117 would then be the CCG and LA for the area in which 'P' was ordinarily resident.

Any disputes around responsibility and ordinary resident are determined by the Secretary of State for Health. The Care Act 2014 provides provisions for disputes and will determine which authority should assume responsibility.

What is aftercare?

An aftercare service is a service provided or arranged to meet a need which has been identified arising from or related to 'P's' mental disorder (for which he was detained), this can be a need to treat that mental disorder and/or to prevent a deterioration in that mental disorder (and therefore reducing the risk of 'P' being returned to hospital).

An aftercare service can be provided for a broad range of needs, as long as the need is arising from the mental disorder, and the service helps reduce the likelihood of deterioration of that disorder. It does not just include immediate health and social care, but can also include, for example, employment support, a service to meet cultural or spiritual needs, or as service to assist 'P' in learning, regaining or enhancing skills to assist with living in the community (and remaining out of hospital).

Special provisions in respect of accommodation

In respect of accommodation there is a general need for accommodation and this is not automatically covered by S117, however, if a person requires a specialist accommodate arising out of a need identified in accordance with their mental disorder, for example supported or residential accommodation, then that would be a need that required aftercare under S117.

How does it begin?

The duty to provide s117 aftercare services is triggered by 'P's' discharge from hospital, however, as soon as 'P' is detained under MHA planning for discharge should begin. Steps should be taken to identify the appropriate aftercares services necessary to meet 'P's' needs before they are discharged.

If the Responsible Clinician (RC) is considering discharge they should consider whether 'P's' aftercare needs have been identified and addressed. This would also apply in cases where the RC is granting 'P' extended S17 leave.

If 'P' is having either a Hospital Managers Hearing or a First-Tier Tribunal (Mental Health) then the CCG and LA should be notified as they will be expected to provide information as to what aftercare arrangements could be made available. There ought to be a care plan 'at least in embryo' for them to consider. The Tribunal have issued Practice Directions as to exactly what information they require https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Practice+Directions/Tribunals/statements-in-mental-health-cases-hesc-28102013.pdf

How long does aftercare last?

Aftercare last as long as there is a need to be met, and must remain in place until such a time that both the CCG and LA are satisfied that 'P' no longer has needs that require aftercare services

'P's' needs can be reviewed periodically by the CCG and LA, and aftercare can be altered as needs change.

S117 cannot be withdrawn without reassessing 'P's' needs. 'P' must also be fully involved in any decision-making process with regards to the ending of aftercare, including, if appropriate consultation with 'P's' carer/s and advocate.

Aftercare cannot be withdrawn simply because someone has been discharged from specialist MH services, or an arbitrary period has passed, or they have been returned to hospital and/or further detained under MHA and/or MCA.

If aftercare is withdrawn they can be reinstated in the event it becomes immediately obvious that withdrawing the services was premature.

'P' is entitled to refuses aftercare services and cannot be forced to accept them. It is important to note that just because 'P' may refuse services this does not automatically mean that there is not a need, and therefore does not automatically mean that aftercare services can be withdrawn.

It may well be that whilst receiving S117 aftercare for a mental disorder they require services for a separate physical or mental disorder, care for these would need to be addressed by the CA.

Code of Practice

There is a Code of Practice that gives advice to the staff in the hospital about the Mental Health Act and treating people for mental disorder. The staff have to consider what the Code says when they take decisions about your care. You can ask to see a copy of the Code, if you want.

How do I complain?

If you want to complain about anything to do with your care and treatment in hospital, please speak to a member of staff. They may be able to sort the matter out. They can also give you information about the hospital's complaints procedure, which you can use to try to sort out your complaint locally. They can also tell you about any other people who can help you make a complaint.

If you do not feel that the hospital complaints procedure can help you, you can complain to an independent Commission. This is called the Care Quality Commission and it monitors how the Mental Health Act is used, to make sure it is used correctly and that patients are cared for properly while they are in hospital. The hospital staff can give you a leaflet explaining how to contact the Commission.