

Devon County Council (24 005 923)

Category : [Health](#) > [Mental health services](#)

Decision : **Not upheld**

Decision date : **23 Jan 2025**

▼ The complaint
▼ The Ombudsmen's role and powers
▼ How I considered this complaint
▼ What I found
▼ Final decision

The Ombudsman's final decision:

Summary: We found no fault on the part of a Council, Trust and Integrated Care Board in terms of their handling of Miss X's section 117 aftercare.

The complaint

1. The complainant, Miss X, is complaining about the care and support provided to her by Devon County Council (the Council), Devon Partnership NHS Trust (the Trust) and Devon Integrated Care Board (the ICB).
2. Miss X is in receipt of aftercare services under section 117 of the Mental Health Act 1983.
3. Miss X complains that the Trust and Council discharged her from the aftercare services to which she was entitled. She says the Council then failed to assess

her social care needs under the Care Act 2014. Miss X says this has left her without any mental health or social care support.

4. Miss X would like to ensure that she is provided with the necessary care and support in future.

[^ Back to top](#)

The Ombudsmen's role and powers

5. We investigate complaints about 'maladministration' and 'service failure'. We use the word 'fault' to refer to these. If there has been fault, we consider whether it has caused injustice or hardship (Health Service Commissioners Act 1993, section 3(1) and Local Government Act 1974, sections 26(1) and 26A(1), as amended).
6. If it has, they may suggest a remedy. Our recommendations might include asking the organisation to apologise or to pay a financial remedy, for example, for inconvenience or worry caused. We might also recommend the organisation takes action to stop the same mistakes happening again.
7. If we are satisfied with the actions or proposed actions of the bodies that are the subject of the complaint, we can complete our investigation and issue a decision statement. (Health Service Commissioners Act 1993, section 18ZA and Local Government Act 1974, section 30(1B) and 34H(i), as amended)

[^ Back to top](#)

How I considered this complaint

8. In making my final decision, I considered information provided by Miss X and discussed the complaint with her. I also considered relevant information from the Council, Trust and ICB, including copies of the care and clinical records. I took account of relevant guidance and legislation. I shared a copy of my draft decision statement with all parties for comment and considered the responses I received.

What I found

Relevant legislation and guidance

Mental Health Act 1983

9. Under the Mental Health Act 1983 (MHA), when someone has a mental disorder and is putting their safety or someone else's at risk they can be detained in hospital against their wishes. This is sometimes known as 'being sectioned'.
10. Section 3 of the Mental Health Act allows for a person to be detained for the purpose of providing treatment. Detention under section 3 empowers doctors to detain a patient for a maximum of six months. The detention under section 3 can be renewed for another six months.
11. Under section 117 of the MHA, a person who has been detained under section 3 is entitled to free aftercare services on discharge. This is known as section 117 aftercare. These are services intended to meet the health and social care needs arising from, or related to, the person's mental disorder and to reduce the chance of the person being readmitted to hospital.
12. In Miss X's case, the duty to provide or arrange section 117 aftercare services rests with the Council and ICB. The ICB commissions the Trust to provide mental health services on its behalf.
13. The Code of Practice that accompanies the MHA explains that the duty to provide section 117 aftercare services remains in place until both the local authority and ICB are satisfied the person no longer requires them. The Code of Practice also says that the person and, if appropriate, their relative or carer should be involved in this decision-making process.

Care Act 2014

14. Sections 9 and 10 of the Care Act 2014 require councils to carry out an assessment of any adult who appears to need care and support. They must assess anyone, regardless of their finances or whether the council thinks they have eligible needs. The assessment must be of the adult's needs and how they impact on their wellbeing and the outcomes they want to achieve. It must

involve the individual and where appropriate their carer or any other person they might want to be involved.

15. An assessment should be carried out over an appropriate and reasonable timescale taking into account the urgency of needs and a consideration of any fluctuation in those needs. Councils should let the individual know of the proposed timescale for when their assessment will be conducted and keep the person informed throughout the assessment process.

Background

16. Miss X has complex mental and physical health needs. Her diagnoses include emotionally unstable personality disorder (EUPD), Post Traumatic Stress Disorder (PTSD) and chronic fatigue syndrome (CFS).
17. Miss X became eligible for section 117 aftercare services in 2016 because of a detention under section 3 of the MHA.
18. In 2022, Miss X was living at home with a package of care consisting of six hours of support per week, with additional funding for respite care. In addition, Miss X was under the care of one of the Trust's Community Mental Health Teams (CMHTs). She also had an allocated care coordinator.
19. In September 2022, Miss X moved to another area. Although Miss X remained under the care of the Trust, responsibility for her support passed to a different CMHT.
20. The new CMHT assessed Miss X in January 2023 and decided she did not meet the eligibility criteria for secondary mental health services. The CMHT discharged Miss X.
21. On 18 March 2023, the Council completed a review of Miss X's section 117 aftercare needs. This review concluded that Miss X's care package would remain unchanged but that her entitlement to respite care would end.
22. Miss X continued to contact the Trust for support. However, the mental health service decided she would not be suitable for further secondary mental health services.

My analysis and findings

Discharge from mental health services

23. Miss X complains that the Trust discharged her from its secondary mental health services, leaving her without any support to meet her complex needs.

24. The Trust explained that, as part of Miss X's move to another area, she had been reviewed by the new CMHT. The Trust said this was a multidisciplinary team review that included input from a psychiatrist and psychologists. The Trust said the team concluded that Miss X no longer needed a care coordinator and would not benefit from further psychological therapies. The Trust said Miss X's ongoing care needs could be met by the Council through its social care provision.
25. Miss X became entitled to section 117 aftercare as a result of her detention under the MHA in 2016. Her aftercare plan at that time detailed that she required "[Mental Health] Support and Therapy. In addition, Miss X was receiving medication. This was arranged by her GP under direction of a CMHT psychiatrist. Finally, Miss X was supported by a care coordinator.
26. By 2022, Miss X had been in receipt of mental health services for several years. This included access to various therapy services.
27. In August that year, the Council identified new accommodation for Miss X in a different part of the city. Miss X moved to the new property in September. This meant she was no longer living in the area covered by her previous CMHT.
28. A review by a multidisciplinary team within the new CMHT found Miss X was no longer eligible for secondary mental health services and did not require a care coordinator. This was because the team concluded Miss X's section 117 aftercare needs could be met through social care services. Miss X's previous care coordinator continued to support her through this transition period.
29. In May 2023, Miss X attended an appointment with a Trust psychologist to explore the possibility of further therapy services. However, the psychologist concluded Miss X would not benefit from further therapy interventions.
30. The decision to discharge Miss X from mental health services was ultimately a matter of professional judgement for the clinicians involved. However, I am satisfied the Trust properly considered Miss X's care needs before making the decision. I found no fault by the Trust on this point, albeit Miss X clearly found this a very difficult situation.

Social care assessment

31. Miss X complains that the Council failed to properly assess her social care needs and so left her without adequate social care support.
32. In its complaint response, the Trust explained that a social worker had visited Miss X at home in March 2023, accompanied by her care coordinator. The purpose of this visit was to complete a review of her social care needs.

33. The review found Miss X still needed support to help her access activities in the community due to her health needs. The review concluded that Miss X should retain her six hours of support per week to enable her to engage with her local community. However, the review found that, under the Care Act 2014, respite care is intended to provide a break for carers from their caring responsibilities. This does not apply to Miss X as she is not a carer. The review concluded that respite care was not an identified section 117 care need and that the provision would end.
34. Again, the decision to end Miss X's respite provision was a matter of professional judgement for the social worker. However, the evidence shows the Council did assess Miss X's social care needs in accordance with the requirements of the Care Act 2014 and Mental Health Act 1983. I found no fault on this point.

[^ Back to top](#)

Final decision

35. I found no fault by the Council, Trust and ICB regarding their handling of Miss X's section 117 aftercare.
36. I have now completed my investigation on this basis.

[^ Back to top](#)

Investigator's decision on behalf of the Ombudsman

[Print this page](#)

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