

# HARROW ADULTS S117 FUNDING PANEL

## PROCEDURES AND TERMS OF REFERENCE

### 1. INTRODUCTION

#### The Mental Health Act 1983 section 117 provides:

- Section 117 imposes an enforceable duty to provide after care service for people who have been detained under treatment section of the Mental Health Act.
- Section 117 is free standing duty which places upon CCG (depending on the nature of the service), and LA, a statutory joint duty to work together, in cooperation with relevant voluntary agencies, to provide after care services for all service users with S117 rights.
- The Harrow Adults S117 Funding Panel is responsible for considering all individual applications for funding of health and social care funded treatment and care for people subject to S117 aftercare arrangements.
- This is a group through which Harrow CCG, Harrow LA and CNWL on behalf of the local authority exercise their statutory duties to fund the assessed health and care needs of Harrow service users, in accordance with the Mental Health Act 1983; S117 aftercare arrangements.
- Group members are responsible for the decision in each case as to whether funding should be agreed, and for the financial probity and quality of the care package decision. The panel members will regularly evaluate and review health funded spot purchased placements via review and monitoring systems to ensure that care packages continue to meet assessed needs and to provide best value.
- This document sets out Panel processes, responsibilities and Terms of Reference.

### 2. PURPOSE

#### Section 117

- Under section 117 of the Mental Health Act 1983 ('section 117'), CCGs and LAs have a duty to provide after-care services to individuals who have been detained under certain provisions of the Mental Health Act 1983, until such time as they are satisfied that the person is no longer in need of such services. Section 117 is a freestanding duty to provide after-care services for needs arising from an individual's mental health condition.
- Responsibility for the provision of section 117 services lies jointly with LAs and the NHS. Where a patient is eligible for services under section 117 these should be provided under section 117 and not under NHS continuing healthcare.
- It is important for the NWL CCG's to be clear in each case whether the individual's needs (or in some cases which elements of the individual's needs) are being funded under section 117, irrespective of which budget is used to fund those services. It is not

necessary to assess eligibility for NHS continuing healthcare if all the services in question are being provided as after-care services under section 117.

- However, a person in receipt of after-care services under section 117 may also have ongoing care/support needs that are not related to their mental health condition and that may, therefore, not fall within the scope of section 117. A person may be receiving services under section 117 and then develop separate physical health needs (e.g. through a stroke, long term conditions or cancer) which may then trigger the need to consider NHS continuing healthcare only in relation to these separate needs. In these cases the needs covered within the section 117 after rights care plan must be established prior to assessment for NHS Continuing Healthcare ([National Framework \(2018\)](#)). Please see appendix 2 for CHC process.
- Where an individual in receipt of section 117 services develops physical care needs resulting in a rapidly deteriorating condition which may be entering a terminal phase, consideration should be given to the use of the Fast Track Pathway Tool (CHC).
- The Panel is responsible for make funding decisions for the provision of S117 after care services.

### 3. ELIGIBILITY

The [Mental Health Act Code of practice](#) states that CCG's and the local Authorities should interpret the definition of after-care services broadly. For example, after-care can include healthcare, social care, employment services, supported accommodation and services to meet the person's wider social, cultural and spiritual needs if these needs arise directly from or are related to the person's mental disorder and help to reduce the risk of deterioration in the person's mental condition.

After-care is a vital component in patients' overall treatment and care. As well as meeting their immediate needs for health and social care, after-care should aim to support them in regaining or enhancing their skills, or learning new skills, in order to cope with life outside hospital.

Mental health after-care services must be jointly provided or commissioned by local authorities and CCGs. They should maintain a record of people for whom they provide or commission after-care and what after-care services are provided. Services provided under Section 117 can include services provided directly by local authorities or which local authorities commission from other providers. CCGs will commission (rather than provide) these services.

The Care Act 2014 defines after-care services for the first time:

After-care services must have both the purposes of meeting a need arising from or related to a person's mental health disorder and reducing the risk of a deterioration of the person's mental health condition and so reducing the risk of a person requiring re-admission for treatment for mental disorder.

Any person that has been treated under Sections 3, 17, 37, 45A, 47 or 48 of the Mental Health Act is entitled to receive aftercare services from the point at which they are discharged from hospital. This applies even if:

- The person remains in hospital for a period on a voluntary basis having been discharged from these sections
- The person is released from prison having spent some of their sentence in hospital under these sections of the Act
- The person is going onto a Supervised Community Treatment (also known as Community Treatment Orders (CTO).) It would be advisable for local areas to have agreed standard funding protocols in place where an individual is discharged under a CTO in order to prevent delayed discharge.
- The person is granted s17 leave under the Mental Health Act

#### 4. SCOPE

- Applications to the panel must come from professionals within Harrow Local Authority and Central and North West London Mental Health NHS Foundation trust and the patient should be registered with Harrow GP to determine Responsible Commissioning responsibility for the CCG (CNWL).
- The service user must be aged 18 or over, and all community alternatives and current block contracted services; Harrow CCG, NHS nationally commissioned or London Borough of Harrow, must have been explored as part of the decision making process.
- The Panel will also consider young people from 17 years old who are known to children's services and who are transitioning to adult service, in order to support a seamless transition to adult services.
- Referrals will be considered for funding of spot purchased placements and services which require :
  - A jointly funded health and social care placement as a S.117 case
  - A jointly funded health and social care personal budget as a S.117 case
  - Health funded assessment, treatment; rehabilitation or care for individuals detains under MHA and will be eligible for S117 after care.
  - None S117 referrals for social care placement are not considered as a referral for panel decision
- Applications will be considered for accommodation based services: specialist nursing, nursing, residential, supported placements and specialist community based services which require individual funding.
- If the person meets the criteria for fully funded NHS Continuing Care the application should be directed to the Continuing Care Panel (please see appendix).
- If the person is eligible for Funded Nursing Care (FNC) the overall care package will be agreed through the Adult S117 funding panel but the application for the FNC element will need to be referred to the Continuing Care Panel.
- The Adult S117 funding panel will be responsible for funding decisions for all new S117 referrals and for reviewing existing placements.

## 5. AIMS

- To provide a clear, transparent and robust process for decision making regarding adult S117 funding requests.
- To make decisions on assessed need and based on best available evidence including NICE Guidance where appropriate and the national guidance and principles for after care service users.
- To establish and promote good practice across learning disability, mental health and older people care and treatment processes and decision-making. Ensuring adherence to the Winterbourne View recommendations, and demonstrating:
  - Person centred decisions
  - Equitability
  - Cultural sensitivity
  - Needs led decisions
- To ensure a due diligence framework is applied to budgets without compromising quality of care.
- To make recommendations for alternative provision of treatment demonstrating least restrictive care and treatment option.
- To ensure timely and appropriate step-down and smooth transition of clients between hospital and community support services.
- To provide opportunities for future local service development in collaboration with London Borough of Harrow (LBH) and Harrow CCG commissioners, and work to reduce the need for out of borough placements.

## 6. OBJECTIVES

- To make decisions for all specialist health, and jointly funded spot purchased placements for adults over 18 who are subject to S117 after care arrangement and who are registered with a Harrow GP or agreed as the responsibility of Harrow Clinical Commissioning Group (CCG),
- To make consistent and equitable decisions based on agreed criteria as set out in sections 7 and 8 of this document.
- To provide regular evaluation of spot purchased placements via review and monitoring systems
- To facilitate discharge and repatriation to local service provision
- To negotiate agreed costs with providers locally
- To ensure that all panel applications are recovery focussed and include goals and outcomes.
- To ensure all discussions and decisions made at panel meetings are accurately recorded and that the information is relayed quickly to relevant individuals.

- To maintain records of decision making and panel minutes, placements costs and review dates.

## 7. EXPECTED OUTCOMES

- The expected outcomes of the Adult S117 funding panel are:
  - Reduced length of stay on S117 aftercare arrangements
  - More effective use of budgets
  - Identification of opportunities for future local service development
  - Achievement of identified patient outcomes
  - Improved contact with carers, families and friends
  - To determine and agreed cost split to both the CCG and LA for after care services.

## 8. REFERRALS TO THE ADULT S117 FUNDING PANEL

- Cases will be referred by the Care Co-ordinator or Lead Professional and this person will also be responsible for monitoring and reviewing the placement. (*See Appendix 2 Pathway Map*)
- All referrals will be signed by the referring team/ward Manager.
- The referring Manager will need to scrutinise the documents to ensure information is complete and of good quality.
- Matrices will be forwarded to the Panel Administrator at least 10 days before the panel meeting.
- The Panel Administrator will check the matrices and supporting documents to ensure that the forms are present, fully completed and signed by the appropriate manager, and all relevant documents are attached.
- Applications will be disseminated to the Group members at least 5 working days prior to the Group meeting.
- Applications which are incomplete, or of poor quality, will not be accepted for inclusion at that panel.

## 9. MATRIX FUNDING TOOL

- The Matrix funding tool is a health and social care tool for assessing joint package decisions.
- Decisions on S117 packages will be made on the basis of the Matrix Funding Tool which provides the information used to determine levels of joint funding. The completion of the matrix should be carried out jointly by both the CCG and LA professionals with the knowledge and competency to complete the tool. The cost split should be presented at the panel or thereafter to agree and record the cost proportionality for the placement to both CCG and LA.

- Before completion of the Matrix Funding Tool, a review should have been completed to accurately reflect the health and social care needs of the individual patient. The assessment and review process should draw on those who have direct knowledge of the individual and their needs to be able to determine the appropriateness of the care and how it has improved their wellbeing.
- A health professional and a Social Worker will use the information contained in their health and social care assessment (including other assessments if appropriate e.g., GP, District Nurse, consultant etc.) to complete each domain of the funding tool.

## 10. CRITERIA FOR AGREEING FUNDING

Funding decisions will be based upon the following:

- The person is the responsibility of Harrow CCG in line with the “Who Pays” Guidance and The London Borough of Harrow. Responsibility for establishing the responsible funding authorities lies with the Care Co-ordinator or Lead Professional and should be established at the earliest opportunity.
- They are subject to section 117 Aftercare
- The person has health needs over and above the care provided by the commissioned mainstream health and primary care services.
- The client has identified specialist needs that are most suitably met by the placement or care package proposed.
- An assessment of need is presented in a standard format agreed locally, and is fully completed.
- Up-to –date supporting documents are attached, which will include:
  - A comprehensive multi-disciplinary assessment or CPA
  - OT report identifying ADL capabilities (where appropriate)
  - An up-to-date risk management plan.
  - CNWL Funding application or review document.
- Mental capacity has been considered, and if capacity has been assessed documentary evidence is provided, and an advocate used (if required).
- Carer and service user views have been taken into account and are recorded as part of the assessment process.
- Details of three providers with costs, and with a recommendation as to the preferred provider.
- Responsibility for negotiating costs with Providers will be agreed with the Group and recorded on the Decision Sheet. In most cases this responsibility will rest with the Care Co-ordinator and Care Manager but Harrow Commissioning and Brokerage teams can undertake this negotiation in complex or difficult cases, to ensure consistency and value for money.

## 11. PROCESS DETERMINING ELIGIBILITY

- Eligibility will be determined on the basis of assessed need, unless there is a prior agreement as to funding arrangements.
- The panel will seek clarification when assessment information does not provide sufficient detail to inform a decision.
- All decisions made by panel members will be supported by clear written reasons.
- Decisions will be based on:
  - Nature, extent and significance of the health gain
  - Possible adverse effects of treatment/care
  - Availability and clinical effectiveness of alternative approaches to care which are comparable and more cost effective
  - National Guidance such as (NICE), the Guidance and principles for after care service users s117.
  - Evidence of cost effectiveness
  - Clinical evidence and resource appropriate
  - CQC Reports
  - DOH Continuing Healthcare Assessment
  - Cost of intervention (including long-term costs)
- Decisions about health and social care funding splits will be based on assessed needs, unless there is a prior agreement as to funding arrangements.

## 12. DIRECT PAYMENTS/PERSONAL BUDGETS

A Personal Budget is the funding allocated to an individual for health and or social care services by a CCG and or Local Authority

Personal health budgets are a way of offering individuals with disabilities and long term conditions greater choice and control in how the NHS supports them in improving their health and managing their care.

Personal health budgets are closely aligned to one of the central strands of service transformation in mental health: recovery. Adopting a recovery focused approach to mental health services means moving beyond symptom and risk management to support people to re-establish a meaningful life for themselves with their mental health condition.

It can either be a 'notional' Personal Budget managed by a third person such as the Local Authority on the person's behalf or given as a Direct Payment to the person or an authorised person.

Local authorities have a duty to make a Direct Payment to an adult with the capacity to request one under S31 of the Care Act 2014 (subject to any other parts of the Act or regulations that apply). Direct Payments can be made to people who are assessed as requiring services under Section 117.

A Personal Health Budget is an amount of money to support the identified healthcare and wellbeing needs of an individual, planned and agreed between the individual and their

representative and the local clinical commissioning group. Adults eligible for NHS Continuing Healthcare and children in receipt of continuing care have had a right to request a Personal Health Budget since October 2014. Clinical Commissioning Groups can offer Personal Health Budgets to other groups of patients. A personal health budget can be given as:

- A notional budget managed by the NHS on the patient's behalf
- A direct payment (CCGs can make direct payments for aftercare services under the National Health Service Direct Payment Regulations 2013, when the prescribed criteria are met)
- As a third party budget where an organisation independent of the NHS manages the PHB on behalf of the person

A Personal Health Budget can be used for the health funding element of s117 aftercare. It can be combined with a Personal Budget through a shared care arrangement with the local authority.

### 13. DISCHARGE PLANNING

- Discharge will be planned from commencement of placement in order to support transition back to local mental health teams
- Funding agreements will initially be for a maximum of 12 months with an inbuilt review at CPA point, and at periods where there is a material change in the persons circumstance or at a time frame agreed by the panel
- Planning for a person's discharge, including their aftercare services should begin at the point at which they are detained and should be undertaken using the Care Planning Approach (CPA). This planning process should be person-centred and recovery focussed. The CPA process requires the clear identification of a named individual who has responsibility for co-ordinating the preparation, implementation and evaluation of the CPA care plan (section 34.5 of the MHA Code of Practice). It is also incumbent upon the local authority to undertake an assessment of need in line with section 9 of the Care Act 2014.
- Local authorities must carry out an assessment of anyone who appears to require care and support regardless of their likely eligibility for state-funded care. In the case of those being discharged under section 117, this assessment must address the individual's social care related needs in their own right while also considering any social care services required to contribute to section 117 after care. 'After-care services' means services which have both of the following purposes.
- Prior to discharge a holistic assessment should be carried out to determine what aftercare services will be required when the person leaves hospital. The Code of Practice suggests that that assessment should consider:
  - continuing mental healthcare, whether in the community or on an out-patient basis;
  - the psychological needs of the person and, where appropriate, of their family and carers;
  - physical healthcare;
  - daytime activities or employment;



- appropriate accommodation;
- identified risks and safety issues;
- any specific needs arising from, for example, co-existing physical disability, sensory impairment, learning disability or autistic spectrum disorder;
- any specific needs arising from drug, alcohol or substance misuse (if relevant);
- any parenting or caring needs;
- social, cultural or spiritual needs;
- counselling and personal support;
- assistance in welfare rights and managing finances;
- the involvement of authorities and agencies in a different area, if the patient is not going to live locally;
- the involvement of other agencies, for example the probation service or voluntary organisations;
- for a restricted patient, the conditions which the Secretary of State for Justice or the Tribunal has imposed or is likely to impose on their conditional discharge; and
- contingency plans (should the person's mental health deteriorate) and crisis contact details.

#### **14. RESPONSIBILITIES OF THE ADULT S117 FUNDING PANEL**

- The panel must keep accurate and timely records of panel presentations and subsequent outcomes to facilitate audit.
- The panel must ensure that clear information is available to users, carers or named representatives about how decisions are made, their right of appeal and the processes for appealing a decision if dissatisfied with the outcome.

#### **15. ADMINISTRATION OF ADULT S117 FUNDING PANEL MEETINGS**

- The panel will convene monthly or more regularly if required for a specific reason with agreed dates circulated for one year in advance.
- Cases for presentation to the panel should be forwarded to the Panel Administrator within the agreed timeframe i.e. at least 10 working days prior to the Panel date. Last minute applications will not be discussed unless the case is urgent.
- Where a case requires an urgent response between panels a Chair's Action can be taken which should then be presented to the next panel for ratification. Chair's Action will be by the Harrow CCG Commissioner in agreement with the LBH Head of Service for Older People and Learning Disability cases or CNWL Borough Director for Mental Health cases in conjunction with relevant specialist clinical guidance as appropriate.
- The Panel Administrator will ensure that all the paperwork is present and signed off by the appropriate team manager. If the paperwork is not in order the Care Co-ordinator/Lead Professional will be informed and the case will be heard at a subsequent panel.
- Applications will be scrutinised by the Harrow CNWL or Social Care Team manager and will only be forwarded for inclusion in that Panel when they are satisfied that the application is complete and of good quality.

- Paperwork for cases to be discussed will be forwarded to panel members 5 days prior to the meeting. This will include the Panel Application Form, the Panel Summary document and, where appropriate, a Panel Review Form. One full set of documentation will be provided at the meeting for reference.
- At times when there is a high volume of cases, the service lead will agree order of priority.
- The Panel Administrator must ensure minutes include:
  - Confirmation of client's GP registration and residence.
  - Whether the person is the responsibility of NHS Harrow
  - Whether the person is the responsibility of LBH Harrow
  - Date and time of meeting
  - Panel members – names and profession they represent
  - Details of new cases
  - Details of cases for review
  - Decisions agreed, not agreed or referred, with details of rationale
  - Action points with named individuals
- Decisions will be recorded on the Decision Sheet and signed by panel members
- The Panel Administrator will communicate the panel outcome and rationale to the Care Co-ordinator/Lead Professional by email within 3 days.
- Minutes will be circulated to Panel members within 5 working days of the Panel.
- A copy of the Decision Sheet for all S117 funded placements and packages will be forwarded to the Brent/Harrow Commissioning and Contracts Manager.
- The Panel Administrator will up-date the Panel spread sheet.
- A copy of the relevant sections of the Panel spread sheet will be forwarded at the end of each calendar month to Harrow CCG Finance Department

## 16. MEMBERSHIP

- Group members should give attendance a high priority. If a member is unable to attend they should arrange for a suitable deputy to attend in their place.
  - NHS Harrow LD and MH commissioner (Chair)
  - Mental Health Commissioner, CNWL
  - LBH Adult Social Care Representative
  - CNWL Clinical leads
  - Panel Administrator/ Minute Taker
- LD and MH Commissioner (Chair)
  - Ensures service user confidentiality is protected
  - Ensures due process is followed
  - Liaises with panel administrator
  - Leads on decision making

- Ensures effectiveness, efficiency and equity (evidence base, best value and accessible)
- LBH Adult Social Care Representative
  - Provides advice on resources and service level agreements
  - Leads on decision making for local authority social care funding
  - Communicates with colleagues re joint funding/transitional cases
- CNWL MH Commissioner
  - Provides advice on resources and service level agreements
  - Leads on decision making for local authority social care funding
  - Communicates with colleagues re joint funding/transitional cases
- CNWL Clinical Leads
  - Provides advice on clinical issues
  - Screens referrals and writes summaries
  - Liaises with Operational Manager for Complex Care
  - Contributes to decision making and risk management
  - Manages review process
- Administrator
  - Prepares Agenda
  - Collates and circulates documentation
  - Types correspondence
  - Sends out and monitors Placement Contracts
  - Files documentation securely

## **17. CONFIDENTIALITY**

- The panel will protect service user confidentiality. Service user identifiable information will only be shared with the appropriate Panel members for the purpose of decision making
- All documentation concerning the individual service user must be password protected, stored on a secure database or in a secure area
- Summaries and agendas can be requested from the Chair or administrator through the appropriate Freedom and Information procedures

## **18. QUALITY ASSURANCE AND SAFEGUARDING**

- The applicant will be responsible for ensuring that the recommended provider is registered with the CQC, meets the relevant standards for treatment and care and that there are no outstanding CQC concerns.
- Harrow CCG Safeguarding Lead also receives notification about any safeguarding concerns and forwards these to the CCG LD and MH Commissioner who will ensure that this information is available to the Group when making decisions.

## 19. CONFLICT OF INTEREST

- Group members, including clinical expert advisers should declare any potential conflict of interest with applicants and potential providers. They should abstain from decision making if necessary.

## 20. QUORUM

- The required quorum for reaching a decision is
  - NHS Harrow LD and MH commissioner
  - Mental Health Commissioner, CNWL
  - LBH Adult Social Care Representative
  - CNWL Clinical leads
  - Administrator/ Minute Taker

## 21. REPORTING

- The Harrow Adults S117 funding panel will report to the Harrow Clinical Commissioning Board via the quarterly finance report.

## 22. RIGHT TO APPEAL AND LEGAL DISPUTES

- All decisions of the panel will be subject to review. If the applicant, the service user or their representative is dissatisfied with a decision the Chair should be contacted by email. The Chair will look into the matter and provide a response within 14 days of receipt of the complaint.
- If the matter is not resolved by the Chair, the CCG complaints procedure should be used and a letter forwarded to the Chief Executive.
- Any legal challenges will need to be addressed by the local authority, CNWL and the CCG jointly. If there are internal disputes then each party should seek independent legal advice where needed to resolve issues.

## APPENDIX 1

### Establishing the Responsible Commissioning Authority

#### 1. The NHS Commissioner

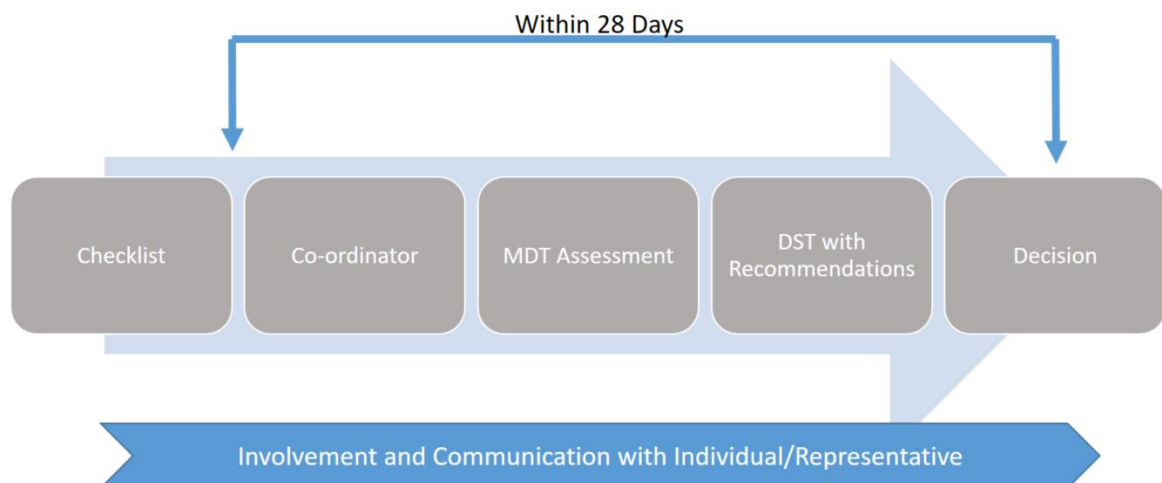
- The responsible commissioner will in most cases be Harrow CCG if the person is registered with a Harrow GP.
- An exception is if the person entitled to aftercare under section 117 of the MHA. In this case the responsible commissioning authority for health funding will be the borough in which the person had their most recent psychiatric in-patient admission.

In cases where the person does not have a GP, has a GP outside Harrow, has moved from area to area or had numerous admissions in different areas, please contact the Commissioners for advice at the earliest opportunity in the treatment episode.

## APPENDIX 2

### Continuing Health Care Process

The first step in the process for people will be a screening process using the NHS Continuing Healthcare Screening Checklist. The purpose of the Checklist is to encourage proportionate assessments so that resources are directed towards those people who are most likely to be eligible for NHS Continuing Healthcare. Before applying the Checklist, it is necessary to ensure that the individual and their representative, where appropriate, understand that the Checklist does not indicate the likelihood that the individual will be found to be eligible for NHS Continuing Healthcare – only that they are entitled to consideration for eligibility. At this stage, the threshold is set deliberately low to ensure that all those who require a full consideration of their needs do get this opportunity. It should be noted that the 28-day timeline for completion of a full CHC assessment, should it be indicated, is timed from the date of completion of this checklist.



- The Checklist should be completed by NHS or Local Authority staff who have been trained in its use using the revised NHSE competency framework, and would be on the register of trained and competent assessors. NB staff must have been trained and signed off against the training competency before they can undertake an assessment.

**NHS Continuing Healthcare Validation Process – either in-office validation for cases clearly meeting eligibility criteria (circa 80%), and ratified at a weekly CHC panel, or where eligibility not clear through CHC Panel.**