



advocacy services
in staffordshire

The Mental Health Act and You



making advocacy a right not a privilege

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The Mental Health Act and You

If you are detained under the Mental Health Act you are **legally entitled** to have an advocate.

Independent Mental Health Advocates (IMHAs) have specialist knowledge about the Mental Health Act and being in hospital. The IMHA Service does not replace anyone else: you can still have a legal advocate (a solicitor).

Your advocate is independent from anyone who is caring for you or giving you treatment.

This booklet contains information about the most common Sections of the Mental Health Act. Your advocate can guide you about the most useful information for you and your situation.

Not every Section of the Act is covered in this booklet but your advocate can find out more information, if you need them to.

You have a **right** to an advocate.
It is your **choice**.

What advocacy can do

Your advocate can:

- **inform you** about your rights, your treatment and anything else about your care
- **help you to come to decisions** about what you want to do
- help you to **speak up** about what you think about your care and treatment
- help you to **take part in meetings** about your care and treatment - this includes meetings where you are appealing against your Section
- **talk to other people at the hospital** about your treatment and care
- **access your records** and tell you what they say about you (there are conditions, talk to your advocate).

How advocacy works

✓ An advocate will:

- ✓ meet with you in private
- ✓ be loyal to you and only you
- ✓ be independent from the people who care for you
- ✓ help you find information and make sense of it
- ✓ support you to make your own choices
- ✓ tell other people what you want to do
- ✓ keep what you say confidential

✗ An advocate will not:

- ✗ judge you
- ✗ advise you or tell you what you should do
- ✗ talk with other people behind your back
- ✗ speak up for your family, your friends, or staff instead of you
- ✗ act as your health or social care professional, or your solicitor

The Mental Health Act

The Act is largely concerned with the circumstances in which a person with a mental disorder can be detained for assessment or treatment, without their consent.

The Act sets out the legal processes that must be followed and the safeguards for people to make sure they are not wrongly detained or treated without their consent.

People detained in hospital are sometimes called 'Sectioned patients'. The Act is made up of different types of 'Sections'.

Some are called 'civil Sections' and some are called 'forensic Sections'. Forensic Sections are when a person has committed an offence but needs treatment instead of going to prison.

There are rules that everyone has to follow. If you disagree with your doctors you have the right to say what you want to happen to you and to appeal against decisions made about your care.

What you have a right to expect

The Mental Health Act contains **Guiding Principles** that the staff who are caring for you must abide by.

These Principles are set out in a 'Code of Practice':

- Staff must maximise your safety and wellbeing and promote your recovery.
- Staff must minimise the restrictions they impose on you.
- Staff must recognise and respect your needs and values and follow them wherever possible. This includes your race, gender, culture, religion, age, sexual orientation and any disability.
- You must be given the chance to express your views about, and be involved in the planning and reviewing of your care and treatment.
- Professionals who make decisions about your care must seek to effectively use any available resources to get you and other people well.

About the Sections

Section 2

You are detained on a Section 2 because your Responsible Clinician (usually a psychiatrist) thinks you need to be in hospital so they can **assess** your mental health and provide any necessary **treatment**.

The law says:

- you have to stay in hospital
- the choices over the way you live your life are limited whilst you are in hospital
- you may have to take medication you don't want to
- if things are going well you may be able to get 'leave' and time off the ward (see pages 35-36)
- you can apply for your detention to be reviewed

Being placed on Section 2

Only certain people have the power to apply to put you on Section 2:

- your Nearest Relative under the Act
- an Approved Mental Health Professional (AMHP)

In addition, for you to be detained under Section 2 two doctors must also agree that:

- you are suffering from a mental disorder that warrants your detention in a hospital for assessment and possible treatment; and
- you need to be kept in hospital for your own safety, or for the safety of others

One of those doctors must be approved under Section 12 of the Mental Health Act.

How long does a Section 2 last?

Section 2 lasts a maximum of 28 days and ordinarily cannot be renewed.

During the 28 days:

- your Section can be ended, you can be discharged and you can leave; or
- your Section can be ended and you can remain in hospital as an 'informal' (voluntary) patient; or
- you can be transferred to another Section if your Responsible Clinician thinks that you need to be detained for a longer period in order to receive appropriate treatment

After 28 days if none of these things happen, your Section will run out and you can leave the hospital.

Ending your Section 2

Your Section 2 can be ended if any of these people agree:

- your Nearest Relative (they must give 72 hours notice but your Responsible Clinician has to agree to your discharge)
- your Responsible Clinician
- the Hospital Managers (see page 26)
- the Mental Health Tribunal (see pages 27-31)

Section 3

You are detained on a Section 3 because your Responsible Clinician (usually a Psychiatrist) thinks you need to be in Hospital so that you can receive care and **treatment**.

Section 3 is commonly used for patients who have been treated before for an existing mental disorder.

The law says:

- You have to stay in hospital for your treatment
- the choices over the way you live your life are limited whilst you are in hospital
- you may have to take medication you don't want to
- you can apply for your detention to be reviewed
- if things are going well you may be able to get 'leave' and time off the ward (see pages 35-36)

Being placed on Section 3

Only certain people have the power to apply to put you on Section 3:

- your Nearest Relative
- an Approved Mental Health Professional (AMHP)

In addition, for you to be detained under Section 3 two doctors must also agree that:

- you need medical treatment because of your mental disorder; and
- treatment will stop things getting worse; and
- you need to be kept in hospital for your own safety or for the safety of others.

One of those doctors must be approved under Section 12 of the Mental Health Act.

Your Responsible Clinician must be satisfied that the appropriate medical treatment is available to you.

How long does a Section 3 last?

6 months. It can be shorter depending on what your Responsible Clinician, a Mental Health Tribunal or the Hospital Managers decide. At the end of the 6 months your Responsible Clinician must assess whether you still need to be detained.

Your Responsible Clinician can then discharge or renew the Section for another 6 months and then a further year at a time, if they think it's necessary.

This can continue until your Responsible Clinician or a Mental Health Tribunal or the Hospital Managers feel you are well enough to leave.

Your Responsible Clinician has to examine you within two months of the end of the current period to see if they think your Section should be renewed.

Your Responsible Clinician must talk to someone else involved in your care; this person is called a 'second professional'.

If your Responsible Clinician thinks your Section should be renewed they have to submit a report to the Hospital Managers. You can contest the renewal if you wish.

Ending your Section 3

Your Section can be ended if any one of these people agree:

- your Nearest Relative (they must give 72 hours notice but your Responsible Clinician has to agree to your discharge)
- your Responsible Clinician
- the Hospital Managers (see page 26)
- the Mental Health Tribunal (see pages 27-31)

Section 37

You are detained under Section 37 because a Court thinks you need to be in hospital to receive care and **treatment**, instead of going to prison.

The law says:

- you have to stay in hospital for your treatment
- the choices over the way you live your life are limited whilst you are in hospital

The law says:

- you may have to take medication you don't want to
- you can apply for your detention to be reviewed
- if things go well you may be able to get 'leave' and time off the ward (see pages 35-36)

Section 37 with added restrictions

The Court can also give you a 'Restriction Order' under **Section 41** of the Act. This is known as a **Section 37/41**.

This means that you cannot be discharged from hospital without the agreement of the Secretary of State for Justice.

If you disagree with decisions made by the Court or your doctor you have the right to say what you want to happen to you and to apply to the Hospital Managers and the Mental Health Tribunal against decisions made about your care.

Being placed on Section 37 or 37/41

In order for you to be detained under Section 37 or 37/41, the Court and two doctors must agree that:

- you need medical treatment because of your mental disorder; and
- treatment will stop things getting worse; and
- you need to be kept in hospital for your own safety or for the safety of others.

Both the Court and your Responsible Clinician must be satisfied that the appropriate medical treatment is available to you.

One of those doctors must be approved under Section 12 of the Mental Health Act.

How long does the Section last?

6 months. It can be shorter than 6 months depending on what your Responsible Clinician, a Mental Health Tribunal or the Hospital Managers decide.

At the end of the 6 months your Responsible Clinician must assess whether you still need to be detained.

Your Responsible Clinician can then discharge or renew the Section for another 6 months and then a further year at a time, if they think it's necessary.

This can continue until your Responsible Clinician or a Mental Health Tribunal or the Hospital Managers feel you are well enough to leave.

Ending your Section 37 or 37/41

Your Section will be in place until:

- your Responsible Clinician feels you are well enough to be discharged
- you are discharged by the Hospital Managers
- you are discharged by a Mental Health Tribunal

If you are on **Section 37/41** your Responsible Clinician must also obtain agreement from the Secretary of State for Justice before your Section can be ended and you can be discharged and leave hospital.

Section 17a

Community Treatment Orders

A Section 17a Supervised Community Treatment Order (CTO) is a way of you being able to receive treatment in the community without being detained in a hospital.

You can only be placed on a CTO if you have been subject to Sections: 3 or 37, 45a, 47, 48, 51 without Restrictions.

You can be placed on a CTO if your Responsible Clinician thinks you are well enough to leave hospital, but also thinks you still need to continue to receive supervised treatment.

You will be asked to keep to certain arrangements for your treatment, to help you live safely in the community and to stay well. These are called 'conditions'.

Being placed on a CTO

In order to be placed on a CTO your Responsible Clinician and an Approved Mental Health Professional (AMHP) must agree that it is the least restrictive form of treatment for you.

Your Responsible Clinician will talk to you about the arrangements for the care and treatment you need for your mental disorder following your discharge from hospital.

You must have the mental capacity to be involved in discussions about conditions of the CTO for it to be lawful.

Reasonable efforts should be made to consult your Nearest Relative, but they cannot object to the making of the Order.

Conditions of a CTO

Your CTO will contain a number of conditions that you must agree with in order for the Order to be put in place.

Your Responsible Clinician and an AMHP must agree that any conditions that form part of your CTO are appropriate, and will arrange any help you need to keep to them.

All CTO's include mandatory conditions requiring you to make yourself available for examination, so that:

- your Responsible Clinician can decide whether to extend or discharge the CTO
- a Second Opinion Appointed Doctor (SOAD) can decide whether to give a certificate authorising certain kinds of treatment for you.

The CTO may include ‘discretionary’ conditions that the Responsible Clinician (with the AMHP’s agreement) think are necessary or appropriate for one or more of the following reasons:

- to ensure that you receive medical treatment for your mental disorder
- to prevent risk of harm to your health and safety
- to protect other people

Typically, you may have to agree to live at a certain address; allow access by certain professionals at certain times, and attend appointments that are agreed to be important. There may be other ‘discretionary’ conditions.

Recall and ‘revoking’ a CTO

Your Responsible Clinician may **recall** you to hospital to receive medical treatment and if there would be a risk of harm to your health or safety or to other people if you were not recalled. You can also be recalled for breaking the conditions of your CTO. **Recall is for 72 hours.**

After 72 hours your CTO can be **revoked** if your Responsible Clinician believes that you need to be admitted to hospital for medical treatment under the Act, and an AMHP agrees with that assessment. Your previous Section; usually Section 3 or Section 37 will then be reinstated.

Your recall can be stopped and you can:

- stay in hospital voluntarily
- continue with your existing CTO conditions
- agree to additional CTO conditions

How long does a CTO last?

6 months. It can be shorter depending on what your Responsible Clinician, a Mental Health Tribunal or the Hospital Managers decide.

Your Responsible Clinician has to examine you within two months of the end of the current period to see if they think your CTO should be renewed.

Your Responsible Clinician can then discharge or renew the CTO for another 6 months and then a further year at a time, if they think it's necessary.

This can continue until your Responsible Clinician or a Mental Health Tribunal or the Hospital Managers feel you no longer require supervised treatment.

Before renewing your Section, your Responsible Clinician must also talk to someone else involved in your care (a 'second professional').

If your Responsible Clinician thinks your Section should be renewed they must submit a report to the Hospital Managers. Your solicitor can support you to contest the renewal, if you wish.

Ending your CTO

Your CTO can be ended if any one of these people agree:

- your Nearest Relative - unless your Responsible Clinician objects
- your Responsible Clinician
- the Hospital Managers (see page 26)
- the Mental Health Tribunal (see pages 27-31)

If your CTO ends you are still entitled to receive aftercare services under Section 117 of the Act (see pages 37-38).

Guardianship

Guardianship

is when your doctors think you can be cared for in the community but a legal framework is needed to protect you.

Generally, Guardianship is applied for under Section 7 of the Mental Health Act.

Your Guardian will be appointed to help you stay well and will normally be a Local Social Services Authority (LSSA) although it can be a relative.

You will be asked to keep to certain arrangements for your care.

Your Guardian can ask you to:

- live at a certain place
- attend certain places in order to receive treatment
- allow doctors and other care professionals to visit you

Being placed on Guardianship

Only certain people have the power to apply to place you on Guardianship:

- your Nearest Relative
- an Approved Mental Health Professional (AMHP)
- they must consult with your Nearest Relative before applying, as long as this is reasonably practical.
- If your Nearest Relative objects, your Guardianship cannot go ahead without the AMHP going to Court to change your Nearest Relative. Your nearest relative cannot object to you being placed on Guardianship under Section 37 of the Mental Health Act.

Additionally, two doctors must agree that:

- you need help because of your mental health problems and
- it is in the interests of your welfare or for the protection of other people

One of those doctors must be approved under Section 12 of the Mental Health Act.

How long does Guardianship last?

In the first instance it can last up to 6 months. However, It can be shorter than 6 months depending on what your Responsible Clinician or a Mental Health Tribunal or the Hospital Managers decide.

At the end of the 6 months your Responsible Clinician must assess whether you need to stay on Guardianship.

They can then renew the Guardianship for another 6 months and then a further year.

Renewing your Guardianship

Your Responsible Clinician can decide to renew your Guardianship if they feel it is in your best interests.

They have to examine you within two months of the end of any period of your Guardianship to see if they think it should be renewed.

They must also talk to other people involved in your care to get their agreement (a 'second professional').

If they feel your Guardianship should be renewed they have to submit a report to the Local Social Services Authority.

Ending your Guardianship

Your Guardianship can be ended if any one of these people agree:

- your Nearest Relative (unless the Guardianship is made under Section 37 of the Mental Health Act)
- your Responsible Clinician
- the responsible Local Social Services Authority
- the Mental Health Tribunal (see pages 27-31)

Managers' Hearings

The Hospital Managers are non-executive directors of the hospital where you are detained.

The Hospital Managers have the power to discharge you from Section (except if you are a restricted, forensic patient).

They are not independent of your Responsible Clinician or the Hospital.

They should meet with you in person and enable you to explain why you do not want to be detained.

Additionally, if there is anything concerning you that is relevant to your detention, or if your care plan or treatment are not satisfactory, you can contact the Hospital Managers to talk about what is concerning you. Your IMHA advocate can support you to do this.

Managers' Hearings are usually less formal than Mental Health Tribunals. Ward staff and other professionals will attend the meeting. You can have a solicitor or advocate to help you at the meeting.

Mental Health Review Tribunal

The Tribunal is a completely independent body. You have a right to appeal to the Tribunal if you want to be discharged from your Section.

What the Tribunal can do

The powers of the Tribunal are determined by what Section you are on - if in doubt, talk to your solicitor or your IMHA advocate.

If you are on Section 2 or 3 the Tribunal can:

- discharge you from the hospital; either immediately or set a future date for your discharge
- decide not to discharge you. The panel can still make recommendations regarding your care and treatment

If you are on a Guardianship or Community Treatment Order (CTO) the Tribunal can discharge you.

If you are a forensic patient the rules vary between the different Sections. For Section 37 patients the Tribunal can discharge you from hospital.

Restricted patients (Section 37/41, for example) also require the agreement of the Secretary of State for Justice.

The majority of restricted patients are 'conditionally discharged' first before 'absolute discharge' at a later date.

Your solicitor

Because you are on a Section you have the right to have a solicitor to help you to make an appeal to the Tribunal. **Your solicitor will be free.**

Your solicitor can explain everything you need to know about making an appeal.

You do not have to have a solicitor, but the Tribunal can appoint one if they feel it is in your best interests.

If you do not have a solicitor, the staff will have a list of local solicitors and will assist you in contacting the one you choose. Your IMHA advocate can help you in this matter too.

When can I appeal?

You can, in most circumstances, appeal to the Tribunal once in every period of detention.

- **Section 2** -you must appeal within 14 days from the start of the Section. The panel will then meet before the 28th day of your Section 2
- **Section 3** - you can appeal once in every period of detention
- **Forensic Sections** (37, 37/41 etc) - you cannot appeal in the first 6 months; after 6 months you can appeal once in every period of detention

Applying to the Tribunal

You can apply for a Tribunal yourself or your solicitor can apply for a Tribunal on your behalf. Staff or your IMHA advocate can help you complete an application if you do not want to use a solicitor.

How long will it take?

Section 2 - the Tribunal must take place within 7 days of the application.

Section 3 (and other non-restricted patients) - your appeal will normally take place within 6 to 8 weeks from the date of your application.

Restricted patient - your appeal will normally take place within 16 weeks from the date of your application.

Who is on the Tribunal panel?

All the people on the Tribunal panel are independent of the Hospital involved in your detention.

The Tribunal panel will be three people:

- the Tribunal Judge; this person will be a lawyer and will chair the meeting
- an Independent Doctor (a psychiatrist)
- a “lay” person; usually someone who has worked in mental health, such as a nurse or social worker

Before the Tribunal sits

Your Responsible Clinician, your social worker and ward or community staff will produce reports for the Tribunal. You will get copies of these reports.

You can ask your solicitor to get another doctor, psychologist or social worker to produce an independent report about you.

The Independent Doctor will visit you before the Tribunal to talk to you about your mental health. Their report will be seen by the other members of the panel.

At the Tribunal

Although the Tribunal is a judicial proceeding, the Judge will ensure that it is as informal as possible.

The Tribunal Judge will make sure everyone can say what they want; this includes you.

Your solicitor can ask questions of all the other people who are attending.

The panels decision will normally be given to you in person at the end of the Tribunal; otherwise it will be posted a few days later.

If you are discharged

You do not have to leave the Hospital straight away; you can remain as a voluntary patient if your Responsible Clinician agrees.

If you do not want to leave, you will need to talk to your doctor about your treatment during your continued stay at the hospital.

Before you leave you should have a meeting with staff to plan aftercare.

If you were on Sections 3, 36, 37, 38, 47 or 48 you will be entitled to free aftercare for your mental disorder under Section 117 of the Mental Health Act (see pages 37-38).

Access to Records

You have a right to look at the records that are written about you.

Some parts of your records may be restricted because your Responsible Clinician or other staff believe that seeing these records would cause you or other people to be at risk.

You may not be allowed to see these parts of your records but may still see other parts of your records.

There are rules about how you go about accessing your records. You may have to write a letter asking to see your records but the first step is just to ask a member of staff.

Your IMHA advocate can access your records on your behalf but only if you give them permission.

Medication and compulsion

As a patient on Section you can agree or refuse to take medication for your physical health needs.

These may include treatment for diabetes, high blood pressure and other physical health conditions.

Treatment for your mental disorder is different.

For the first three months your Responsible Clinician can make you take medication for your mental disorder even if it means you have to have it as an injection.

At no time can your Responsible Clinician make you take tablets against your will.

After 3 months if you do not want to take your medication your Responsible Clinician will have to seek the agreement of a Second Opinion Appointed Doctor (SOAD) before they can continue your medication.

This doctor will be independent from the Hospital.

In an emergency your Responsible Clinician can override the rules on permission and obtaining a second opinion.

ECT

If you are detained, and have capacity, you have the right to refuse to have ECT.

ECT involves sending an electric current through the brain to trigger an epileptic fit, with the aim, in most cases, of relieving severe depression. It is occasionally used to treat mania or 'catatonia' (sometimes experienced in psychosis, mania and depression).

The treatment is given under a general anaesthetic and uses muscle relaxants, so that the muscles only twitch slightly, and the body does not convulse during the fit.

Your Responsible Clinician can only overrule your wishes if they can show that you require the ECT in an emergency.

If it has been determined that you do not have capacity, your Responsible Clinician will decide if it is in your best interest to have the treatment.

You may make an Advance Decision whilst you have capacity, not to have ECT.

Your IMHA advocate can help you to prepare an Advance Decision, or an Advance Statement about your general preferences about your care and treatment in hospital.

Your Responsible Clinician can overrule an Advanced Decision if the proposed treatment is an emergency.

An emergency is defined as when treatment is needed immediately:

- in order to save your life
- to prevent a serious deterioration of your condition
- to alleviate serious suffering
- to prevent you from behaving violently or being a danger to yourself or others

Section 17 leave

Section 17 leave refers to occasions when you leave the ward; leave the hospital to visit the local area, to spend time alone or time with friends and/or family.

Leave can either be escorted; when you are accompanied by staff, or unescorted; when you can go out alone.

Section 17 leave has to be agreed by your Responsible Clinician. You can ask your Responsible Clinician for leave at any time although they may not agree to your request.

Sometimes, your Responsible Clinician will allow the ward staff to monitor and make decisions over the frequency and length of the leave.

If you are on a restricted Section, like Section 37/41 your doctor will have to obtain permission from the Secretary of State for Justice to approve your leave arrangements.

Changing professionals

It is your right to ask to change your Responsible Clinician or another professional.

When you are on a Section you will have a Responsible Clinician (usually a Psychiatrist) who will be part of a team of professional staff (the clinical team). This team will meet with you regularly to monitor your treatment and progress.

To change your Responsible Clinician or another professional you can make a request to the ward staff or your Care Coordinator. You may be asked to put your request in writing.

It is useful if you can give your reasons for requesting a change. Your IMHA advocate can help you to do this.

There will be an assessment of your needs before a decision is made about any change. This will include your current team being asked what they think about your request.

Your request may not be approved. However, your IMHA advocate can help you to find out how the decision was made and what else you can do.

Coordinating your care

Planning Care

All people who are detained in Hospital will have their care needs assessed, planned and coordinated using something called the Care Programme Approach. This is often called 'the CPA'.

Meetings take place using this name and you should have a 'CPA Care Plan' that describes your needs and how these will be met in Hospital and later, at home or in the community.

The Care Plan will also describe any risk as a result of your mental disorder and how these risks will be managed.

Your IMHA advocate can support you in understanding more about your assessment and can be with you in CPA meetings if you want them to. You should be asked to sign your CPA Care Plan to prove your agreement to it.

Aftercare and Section 117

All people who are currently or have previously been detained under a Section 3; Section 37 or 37/41 or another forensic Section have a statutory entitlement to receive aftercare services under Section 117 of the Act.

Section 117 is not a 'detaining' Section; it is a 'rights' Section. This means that there is a commitment from health and social services to ensure that aftercare is provided to you. This is only for treatment of your mental disorder 'for as long as it is needed' and 'without charge or means-tested assessment'.

Services could include residential or specialist accommodation and day services, as well as medical treatment for your mental disorder.

Your aftercare plan will be agreed together with you as part of the CPA. Your IMHA advocate can help find out about your Care Plan and ensure that you have a copy.

Making a complaint

If you are unhappy about your care or treatment under the Mental Health Act there are a number of ways in which you can make a complaint:

- talk to the staff and see if things can be sorted out informally
- contact Patient Advice and Liaison Services (PALS) - this is a service available in NHS Hospitals and is not independent
- use the hospitals complaints process - this normally starts out very informally but can progress to a formal investigation
- contact the Independent Complaints Advocacy Service (ICAS) - this service is only available for patients of NHS services
- contact the Care Quality Commission (CQC) - Telephone number: 0115 9437100

You can use any of these routes depending on how you feel. Staff should be able to give you details of how to use any of these methods.

Your IMHA advocate can support you with all of these options.

Contact

Our IMHA advocacy service is free.



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