



## MENTAL HEALTH RIGHTS, DETENTION & AFTERCARE

# Your Rights When Detained

Understanding information, advocacy, treatment, leave, review and ways to challenge detention.

### The key idea

Being detained under the Mental Health Act does not remove your rights. You should be told why you are detained, understand the safeguards available to you, and be able to access advocacy, review and appropriate legal support.

# Detention does not remove your rights

If you are detained under the Mental Health Act, the law allows particular restrictions for a defined purpose, but it also creates safeguards. Your exact rights depend partly on the section being used and your circumstances.

## Know your legal status

You should be told which section you are detained under, why it applies, what it means, how long it may last and which rights are available to you.

## Information should be understandable

Hospital managers have duties to take practicable steps to ensure detained patients understand the effect of the Mental Health Act provisions applying to them and their rights, including relevant rights to apply to the Tribunal.

## Ask for it again

If information was given when you were distressed, sedated, overwhelmed or unable to take it in, you can ask for it to be explained again. Accessible formats, communication support and an advocate may help.

## Your section matters

A person detained under Section 2 may have different time limits and review rights from somebody detained under Section 3 or a court-related section. Ask staff, the Mental Health Act administrator, an advocate or your solicitor if you are unsure.

## Current law

This guide reflects the position in England checked on **24 September 2026**. The Mental Health Act 2025 is being implemented in stages, so this PDF does not present uncommenced reforms as current rights.

# Independent Mental Health Advocacy

Many people subject to compulsory powers under the Mental Health Act qualify for support from an **Independent Mental Health Advocate (IMHA)**. This support is free and independent of the clinical team.

## What an IMHA can help with

An IMHA can help you understand your rights, your detention or CTO, treatment and care, and ways of raising concerns. They can also support you to express your views and prepare for meetings.

## How do I contact one?

You can ask ward staff, your care coordinator or the hospital's Mental Health Act office how to contact the local IMHA service. Services should support qualifying patients to access advocacy.

## Advocacy is not legal representation

An IMHA can support you with rights and participation, but they are not a replacement for a specialist mental health solicitor where legal representation is needed.

## Can an advocate speak for me?

An advocate can help communicate your views, but good advocacy should not erase your own voice. Where possible, you should remain involved in decisions and discussions in the way that works best for you.

## Next dedicated resource

The next PDF in this collection will look specifically at **Independent Mental Health Advocates**, including eligibility, access and what an IMHA can and cannot do.

# Challenging detention: the Mental Health Tribunal

The **First-tier Tribunal (Mental Health)** is independent of the hospital and government. Depending on your legal status, you can apply to ask the Tribunal to consider whether you should remain detained or subject to another Mental Health Act measure.

## Section 2

If you are detained for assessment under **Section 2**, the current application period is within the first **14 days** of detention.

## Section 3

If you are detained for treatment under **Section 3**, you can currently apply at any time during the first six months. Further application and automatic referral arrangements apply if detention continues.

## What happens at a hearing?

The Tribunal usually considers reports and hears from relevant professionals. You can attend if you wish, and you can have a legal representative. An IMHA may also attend where appropriate. The Tribunal can order discharge where the legal requirements for continued detention are not met.

## Legal aid

People applying to the Mental Health Tribunal may be eligible for legal aid for specialist legal help. The hospital's Mental Health Act administrator can usually provide information about specialist representatives.

## Automatic referrals

The law also provides for Tribunal referrals in specified circumstances even where the patient has not made their own application. The timing depends on the person's section, age and legal status.

# Hospital managers and other discharge routes

The Tribunal is not the only route through which detention can end. Different people and bodies have statutory roles depending on the section and circumstances.

## Responsible clinician

A responsible clinician can discharge a patient from detention where the statutory framework allows and continued detention is no longer appropriate.

## Hospital managers

Hospital managers have powers to review detention and discharge patients. A managers' hearing is separate from a Mental Health Tribunal hearing.

## Nearest Relative

Under the current law, the statutory **Nearest Relative** has particular powers in some circumstances, including a discharge power subject to legal rules and possible barring by the responsible clinician.

## Nearest Relative is not the same as next of kin

The Nearest Relative is a specific Mental Health Act role determined by legal rules. It is not simply whichever person is listed as emergency contact or described informally as next of kin.

## Future reform

The Mental Health Act 2025 creates a future **Nominated Person** system intended to replace the Nearest Relative model. As at September 2026, that replacement is not yet operational.

# Treatment, consent and second opinions

Being detained can permit treatment for mental disorder without consent in some circumstances, but it does **not** create an unlimited power to treat. The Mental Health Act contains specific safeguards.

## Ask what legal authority is being used

You can ask what treatment is proposed, why it is recommended, what alternatives exist, what side effects or risks are relevant, whether you are being asked to consent and what legal authority applies if you do not consent.

## Medication

Under the current framework, additional statutory safeguards apply to medication for mental disorder after the relevant treatment period. In some circumstances an independent **Second Opinion Appointed Doctor (SOAD)** must review proposed treatment.

## ECT has additional safeguards

Electroconvulsive therapy is subject to particular consent and second-opinion rules. The circumstances in which ECT can be given without consent are more restricted than ordinary medication and depend on the person's situation and urgency.

## Treatment for physical health

Mental Health Act treatment powers are principally concerned with treatment for mental disorder. Physical-health treatment usually requires its own lawful basis, such as valid consent or the Mental Capacity Act where the person lacks capacity for that decision.

## You can still ask questions

Even where treatment can lawfully be given without your consent, your views should not become irrelevant. You can ask for explanations, raise concerns and seek advocacy or legal advice.

# Communication, privacy and family involvement

Detention does not mean that all information about you can automatically be shared with family or friends. Confidentiality remains important, although there are circumstances where information can lawfully be shared without consent.

## **Your preferences matter**

You can tell the team who you would like involved, what information you are comfortable being shared and how you would prefer people to communicate with you.

## Contact and correspondence

Patients should generally be supported to maintain appropriate contact with people outside hospital. The Mental Health Act contains specific rules concerning correspondence and some categories of detained patients, while ward safety arrangements may also affect practical access to phones or visits.

## **Restrictions should have a basis**

If your phone, visits, correspondence or contact are being restricted, you can ask what rule or legal basis is being relied on, how long the restriction will last and how it can be reviewed.

## Accessible communication

Communication needs may relate to language, disability, autism, learning disability, sensory processing, literacy or other factors. Information about rights should be provided in a way that gives the person a meaningful opportunity to understand it.

## **Interpreting and adjustments**

Ask about interpreters, Easy Read information, communication aids, quieter meetings, extra processing time or other reasonable adjustments that may help you participate.

# Leave from hospital

A detained patient may be allowed to leave hospital under **Section 17** if authorised by their responsible clinician. Leave can form an important part of care, recovery and preparation for discharge.

## Conditions should be clear

Section 17 leave may include conditions, such as where you can go, when you must return or whether somebody must accompany you. You should be given clear information about the leave arrangements.

## Can leave be refused?

Leave is not automatic. The responsible clinician considers the person's circumstances and can decide whether leave is appropriate. You can ask for the reasons for a decision and discuss what would need to change for leave to be reconsidered.

## Leave can be revoked

The responsible clinician can revoke authorised leave and require the person to return to hospital. If you do not return when required, the Act contains powers relating to return to hospital.

## Escorted and unescorted leave

Leave arrangements can vary. Some leave may require staff or another person to accompany you; other leave may be unescorted. The details should be documented and explained.

## Leave is not discharge

While on Section 17 leave, you remain detained under the underlying section. Discharge from detention is a separate legal step.

# Care, involvement and raising concerns

Being detained does not mean care should simply happen around you without explanation or involvement. The Mental Health Act Code of Practice emphasises participation, respect, dignity and the use of the least restrictive option consistent with safe and effective care.

## Ask to be involved

You can ask about your care plan, ward reviews, medication reviews, discharge planning and what needs to happen next. You can ask for support to prepare questions or communicate your views.

## If you are unhappy with your care

Depending on the concern, you may be able to raise it with ward staff, the responsible clinician, service managers, the Patient Advice and Liaison Service where available, an IMHA, the provider's complaints process or the Care Quality Commission.

## Complaint and legal challenge are different

A complaint can address the quality or handling of care, but it does not replace the Tribunal or other legal routes for challenging detention itself.

## Safeguarding

If you experience or witness abuse, neglect, exploitation or unsafe treatment, you can raise a safeguarding concern. Immediate danger may require emergency action rather than waiting for an ordinary complaints process.

## Keep a record if helpful

Where safe and manageable, noting dates, decisions, names, questions and responses can help you discuss concerns with an advocate, solicitor or complaints team.

# Practical rights checklist

- Ask which section you are detained under and request written information about it.
- Ask how long the section can last and what happens before it ends.
- Ask how to contact an Independent Mental Health Advocate.
- Ask whether and when you can apply to the Mental Health Tribunal.
- Ask for information about specialist legal representation and legal aid.
- Ask what treatment is proposed and what legal basis applies to consent or treatment without consent.
- Ask about Section 17 leave and any conditions or reasons for refusal.
- Tell staff about communication needs and reasonable adjustments.
- Ask who can receive information about you and record your preferences.
- Ask how to raise a complaint or safeguarding concern.

## A useful starting question

If something is happening because you are detained, ask: **What legal power allows this, what safeguards apply, who can review the decision, and who can independently help me understand or challenge it?**

## About this resource

This PDF provides general educational information about rights for people detained under the Mental Health Act in England. Exact rights vary according to legal status and circumstances. It is not individual legal advice.

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## References & further information

**Mental Health Act 1983.** Current statutory framework for detention, treatment, information, advocacy, leave and review rights.

**Mental Health Act 1983 Code of Practice.** Statutory guidance for professionals exercising Mental Health Act functions in England.

**NHS.** *Mental Health Act.* Public information on detention, appeals, IMHA support, consent to treatment, SOAD safeguards and Section 17 leave.

**HM Courts & Tribunals Service.** *Apply to the Mental Health Tribunal.* Current guidance on eligibility, application periods, hearings, legal help and Tribunal decisions.

**Mental Health Act 2025 and Commencement No. 1 Regulations 2026.** The reform Act and commencement provisions currently in force; further reforms remain subject to phased commencement.

### Next in this collection

The next resource will focus on **Independent Mental Health Advocates (IMHA)**: who qualifies, how to access an advocate and the practical ways an IMHA can support rights, participation and challenge.