

Discharge from the Mental Health Act

This factsheet looks at how your detention under sections 2, 3 and 37 of the Mental Health Act 1983 can end. Detention means that you are taken to hospital against your will. This is also known as 'sectioning'. For more information on detention, please see our 'Mental Health Act' factsheet. This information is for adults affected by mental illness and detained in England. It's also for their loved ones and carers and anyone interested in this subject.

Key Points.

- You can be discharged by certain people, e.g., your Responsible Clinician or your Nearest Relative.
- Your responsible clinician should discharge you if they don't think that you meet the conditions of being under the Mental Health Act anymore.
- You can ask the Hospital Manager to review your detention.
- If you are detained under section 2, section 3 or section 37, you can apply to a tribunal to appeal against your section. A solicitor can help you with this.
- A Community Treatment Order (CTO) allows you to remain under the Mental Health Act but be treated safely in the community rather than hospital.
- Before you are discharged from hospital a care plan should be put in place to cover your care needs in the community.

This factsheet covers:

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1. How can I be discharged?

You can be discharged by:

- your Responsible Clinician,
- your Nearest Relative,
- the Hospital Managers, or
- a tribunal.¹

You will also be discharged if the section you are under runs out and it is not renewed.

When you are discharged from the Mental Health Act, this isn't the same as being discharged from hospital. Even if you aren't detained anymore, you might agree to stay in hospital as a voluntary patient.

This is sometimes known as being 'an informal patient'.

Your Nearest Relative is a legal term used in the Mental Health Act. It is not the same as the next of kin.

You can find more information about '**Nearest Relative – Under the Mental Health Act**' at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

2. When can my Responsible Clinician discharge me?

Your Responsible Clinician is the person in charge of your care while you are under the Mental Health Act.²

Your Responsible Clinician is usually your psychiatrist, but other professionals can sometimes be Responsible Clinicians.³ The staff at the hospital should tell you who your Responsible Clinician is.

Your Responsible Clinician can discharge you. They should discharge you if they don't think that you meet the conditions of being under the Mental Health Act anymore. They shouldn't just wait until your detention period comes to an end.⁴

If your detention period is coming to an end, your Responsible Clinician must decide whether the detention should be renewed. Or whether you should be discharged.

If your detention isn't renewed, then you must either be discharged or moved on to another section. Your Responsible Clinician should talk you through their decision.⁵

3. What is a Hospital Managers' review?

When you are detained under the Mental Health Act, you can ask the Hospital Managers to review your detention. This is to see if they can discharge you.

You can ask the staff on the ward for an application form. You could try to get in touch with the 'Mental Health Act administrator', who can tell you about the process.

Who are the hospital managers?

The name "managers" can be confusing because it does not mean the people who run the hospital.

Hospital managers can be the NHS trust or NHS foundation trust.⁶ They can delegate their functions. The decision to discharge would be made by 3 or more people called "associate managers" or "Mental Health Act managers".⁷

Who can ask for a Hospital Managers' review?

You can apply for a Hospital Managers' review at any time if you are under:

- section 2,
- section 3, or
- section 37.

You can ask for a review as many times as you like. But the hospital may have a policy that says how many times you can ask. They may say you cannot have a review if you had one recently or if you have a tribunal coming up.

Reports for hearing

To help the managers decide if they should discharge you, they get written reports before seeing you.⁸

Medical, nursing and social care staff write reports. You have a right to read these reports.

But sometimes you may not see all the information if it might harm your mental health to see it. They should give reasons if this happens.⁹

What happens at a Mental Health Act managers' review?

A Mental Health Act managers' review is normally held on the ward or in a separate room. The following people will usually be there.

- You
- The managers

- Your Responsible Clinician
- A nurse from the ward
- A social worker

Your Nearest Relative may be invited if you want them to be there.¹⁰ If you don't want your Nearest Relative there, a professional member of your care team will be asked to put your nearest relative's views in their report. The professional will invite your Nearest Relative to do this.¹¹

The managers will have read through the reports. After this, they will give you a chance to speak.¹²

At the end of the hearing the Hospital Managers will decide if you should stay under your section. All of them have to agree for you to be discharged.¹³

What if the Hospital Managers discharge me from section?

If they discharge you, you can leave the hospital. You can stay in hospital as a voluntary patient if the medical team agree to this.

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4. How can I appeal to a tribunal?

The First Tier Tribunal is an independent panel that can discharge you from the Mental Health Act.¹⁴

The tribunal hearings take place at the hospital.¹⁵ The tribunal has to decide if you meet the criteria for being sectioned.

What can the tribunal do?

Tribunals have the power to:

- discharge you from your section,
- recommend that you get leave,
- recommend supervised community treatment instead of staying in hospital,
- decide on a delayed discharge or conditional discharge,
- transfer you to another hospital, or
- meet up again if their recommendations aren't followed.

However, the hospital isn't legally obliged to follow their recommendations.¹⁶

Who can have a tribunal?

If you are detained under section 2, section 3 or section 37, you can apply to a tribunal to appeal against your section.

Section 2

If you are detained under section 2, you must appeal within 14 days

from the start of your detention.¹⁷ The tribunal must take place within 7 days of your application.¹⁸

Section 3

If you are detained under section 3, you can appeal to a tribunal once in the first 6 months of your detention. After that, you can apply once in each renewal period.¹⁹

If you apply to the tribunal while you are on section 2. But are moved to section 3 before the hearing. You can still apply to the tribunal under Section 3.²⁰

Your section 3 can be renewed after 6 months. After that, it can be renewed every 12 months. The hearing should take place within 8 weeks of your application.²¹

Section 37

If you are detained under section 37, you can only apply to a tribunal after the first six months of detention, and then once in each renewal period.²²

A section 37 can be renewed for 6 months and then 12 months after.²³ As above, the hearing will usually take place around 8 weeks after you apply.²⁴

How do I ask for a tribunal?

You apply using a T110 form.²⁵ The form may be available on your ward, ask staff about this. Or you can access the form here:

www.gov.uk/government/publications/form-t110-application-to-first-tier-tribunal-mental-health-mental-health-act-1983-as-amended

If you would find it difficult to fill in the form yourself, ask the staff or an advocate for help.

Who is involved in a tribunal?

A tribunal must each have a:

- legal member (usually a solicitor or a barrister),
- doctor (usually a psychiatrist), and
- lay member (a person who is not medically or legally trained) with some mental health experience.²⁶

You, the Responsible Clinician and social worker will be at the tribunal. The legal member will be in charge of the tribunal.²⁷

Your Nearest Relative or carer can go to the hearing if you want them to.²⁸ You can have a solicitor if you want one.

If you don't want to go to the hearing, then the tribunal will check that you have decided this yourself. If you have, then the tribunal may decide to have the hearing without you being there.²⁹

Evidence for the tribunal

The panel members get reports before the tribunal. These help them to decide if you should be discharged from the Mental Health Act or not.

Reports usually include a medical report, a nursing report and a social circumstances report.³⁰

Before the tribunal, the medical member of the tribunal will meet you and look at your medical notes. But you do have a right to refuse this.³¹

Your solicitor may ask for you to see an independent psychiatrist, who will do a report.³² This gives the tribunal more information to make a decision.

You or your solicitor should be able to get copies of any reports that go to the panel members.

Sometimes you will not see some of the information in the reports. This happens if the tribunal thinks that seeing the information would cause you harm.³³

What happens at a tribunal?

The tribunal is a legal hearing but should take place in an informal setting at the hospital.³⁴

At the hearing, your Responsible Clinician and social worker may give evidence. The tribunal members might ask them questions.

You may be able to ask them questions at certain times, your solicitor will tell you when. You can give evidence if you want to. The tribunal members might ask you questions.³⁵

You can ask for breaks at any time if you are finding the situation difficult. The tribunal members may not be able to agree to stop the hearing, but you can leave the room for a break.

Your doctor or social worker may think that some of the information at the hearing might damage your health. If this is the case, they can ask you to step out of the room for those parts of the hearing. The tribunal will decide whether to allow this or not.³⁶

If you don't meet the criteria to be under the Mental Health Act the tribunal must discharge you. The tribunal must explain why they made that decision in writing. You should get a copy of their decision.³⁷

For an easy read guide on what to expect at a tribunal click here:

<https://www.gov.uk/government/publications/what-to-expect-at-a-mental-health-tribunal-hearing-easyread-guide>

Can I appeal the tribunal's decision?

Sometimes you can challenge the decision of a tribunal. For example, you may feel the hospital didn't give the tribunal important evidence.

If this happens you could ask them to look at the decision again. This means that the tribunal could restart.³⁸

You could ask if you can appeal to the Upper Tribunal. This is where a judge looks at your case. You can only do this if you think the tribunal made a legal mistake. For example, if you think they got the law wrong. If the judge agrees there was a legal mistake the Upper Tribunal can look at the case again.³⁹

You need to challenge a tribunal decision within 28 days of getting the written decision.⁴⁰ This is a complicated process, so we recommend you get help from a specialist mental health solicitor to do this.

What happens if I am waiting for aftercare services to be arranged?

If the tribunal agrees to discharge you, you can leave hospital straight away. But sometimes you can stay as a voluntary patient, so suitable aftercare services can be arranged for you. This might be something like supported housing.

Being a voluntary patient means you are no longer detained under the Mental Health Act. And you are free to leave hospital at any time.

The tribunal can say that you can only be discharged at a later date.⁴¹ This might give time to arrange aftercare for you.

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5. Can my Nearest Relative discharge me?

Your Nearest Relative can discharge you if you are detained under section 2 or 3.⁴²

Your Nearest Relative needs to tell the Hospital Managers 72 hours before they want to discharge you. They must do this in writing. There is a sample letter at the end of our Nearest Relative factsheet that your Nearest Relative can use to discharge you.

Your Responsible Clinician can stop your nearest relative from discharging you if they think you may be a risk to yourself or others.⁴³ If this happens and you are under section 3 or section 37,⁴⁴ your Nearest Relative can apply to the tribunal to discharge you.⁴⁵

You can find more information about '**Nearest Relative**' at www.rethink.org. Or call 0121 522 7007 and ask us to send you a copy.

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6. Can someone help me appeal to a tribunal?

If you appeal to the tribunal, you can get free legal representation through the Legal Aid scheme.⁴⁶ This means you can get a solicitor to come to the tribunal with you.

You can get a list of mental health solicitors from the ward staff.⁴⁷ If you don't want this you can look on the Law Society website. They have a list of solicitors that you can search through. You can find this at <http://solicitors.lawsociety.org.uk/>

If you are under the Mental Health Act, you should be able to get help from Independent Mental Health Advocates. You may hear these shortened to IMHAs, pronounced "im-ha".⁴⁸

IMHAs can tell you about your rights under the Mental Health Act and get your voice heard. They could help you apply to the tribunal or find a solicitor.⁴⁹

Staff on your hospital ward should be able to give you details of the advocacy service. You can also find your local IMHA online using a search engine. Type in Independent Mental Health Advocate and the area you live in.

An IMHA can help you with understanding:

- your rights under the Mental Health Act, including your discharge rights
- the rights that other people have under the Mental Health Act
- the parts of the Act that apply to you
- any conditions or restrictions that affect you under the Act
- Any medical treatment that you are receiving

You can see the IMHA in private to talk about any concerns that you have about your stay in hospital. They can talk to staff on your behalf to help to understand the reasons for decisions, and to get across your concerns. They can also go with you to meetings with the people that are treating you.

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7. What if I am under a different section?

If you have a mental illness and are in the criminal justice system you may be under a different section of the Mental Health Act. These are known as "forensic sections".

You could be in the criminal justice system if you are arrested, going to criminal court or are in prison.

If you are under a forensic section, there are different rules about how you can be discharged.

You can find more information on forensic sections can be in the following factsheets:

- Section 35 of the Mental Health Act – Criminal courts send you to hospital for a medical report
- Section 36 of the Mental Health Act – When the Crown Court sends you to hospital for treatment
- Section 37 of the Mental Health Act – Hospital orders
- Section 37/41 of the Mental Health Act – Hospital orders with restriction
- Section 38 of the Mental Health Act – Interim hospital orders by the criminal courts
- Section 47/49 of the Mental Health Act – Transfer of a sentenced prisoner to hospital
- Section 48/49 of the Mental Health Act – Transfer of an unsentenced prisoner to hospital

at www.rethink.org. Or you can call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheets.

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8. What are Community Treatment Orders?

A Community Treatment Order (CTO) allows you to remain under the Mental Health Act but be treated safely in the community rather than hospital.

If you are on a CTO you must keep to certain conditions. A condition might be that you must take your medication. Your Responsible Clinician can recall you back to hospital if you don't stick to your conditions, and you become unwell.

If you are put under a CTO, you are still under the Mental Health Act, so can still speak to an Independent Mental Health Advocate (IMHA).

If you are on a CTO, the tribunal can recommend that you be discharged from the Mental Health Act.⁵⁰

You can find more information about '**Community Treatment Orders (CTOs) – Made under the Mental Health Act 1983**' at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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9. How should my discharge be planned?

Health professionals should start planning your discharge and aftercare as soon as you get into hospital.⁵¹

Before you are discharged from hospital a care plan should be put in place to cover your care needs in the community.

You should meet with professionals to discuss your needs.

Your Nearest Relative or other carer can join in these meetings if you want them to.

A lot of people who have been detained under the Mental Health Act will get a package of care that is used by secondary mental health services. In this package, you will have:

- a care plan,
- someone called a care coordinator to plan and arrange your mental health and social care, and
- a crisis plan.⁵²

This care package used to be called a 'Care Programme Approach (CPA)'. CPA has been superseded by the Community Mental Health Framework (CMHF) which is still being rolled out across the country.⁵³ The NHS have said that people who're supported by NHS mental health teams:

- shouldn't have a lower standard of care with this change if they're on CPA, and
- should receive better care if they're not on CPA.

What is section 117 aftercare?

You might be entitled to free aftercare after you are discharged from hospital. This is known as 'section 117 aftercare.'

You are entitled to section 117 aftercare if you have been in hospital under sections 3, 37, 45A, 47, or 48 of the Mental Health Act 1983.

All your mental health and social care should be provided for free, for as long as you need it.

You can find more information about:

- Section 117 aftercare – Under the Mental Health Act 1983
- NHS mental health teams

at www.rethink.org. Or you can call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheets.

Further Reading

You can find more information in the following factsheets.

- Mental Health Act
- Advocacy for mental health – Making your voice heard
- Legal Advice – How to get help from a solicitor

The Equality and Human Rights Commission have published guides on your rights when detained under the Mental Health Act in England. You can download free copies of the guides here:

[Your rights when detained under the Mental Health Act in England | EHRC \(equalityhumanrights.com\)](http://equalityhumanrights.com)

There is information about Tribunals available at the UK Department of Justice website - <http://www.justice.gov.uk/tribunals>.

Broken links?

All links to other pages on our website, and other websites, worked when we last reviewed this page. If you notice that any links no longer work, you can help us by emailing us at feedback@rethink.org and we will fix them. Many thanks.

Incorrect information?

All the information in this factsheet was correct, to the best of our knowledge, when we published it. If you think any information is incorrect you can help us by emailing us at feedback@rethink.org. Many thanks.

References

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² Mental Health Act 1983 s34 (1)

³ Department of Health. *Reference Guide to the Mental Health Act 1983*. UK: TSO; 2015. Para 9.28.

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- ¹⁶ Mental Health Act 1983 s72
- ¹⁷ Mental Health Act 1983 s66 (2(a))
- ¹⁸ HM Courts and Tribunals Service *Information for non-restricted patients detained under the Mental Health Act 1983* page 2 <https://www.gov.uk/guidance/first-tier-mental-health-tribunal-applications-and-referrals#time-limits-for-referrals-of-non-restricted-patients> [Accessed May 2023]
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