

Mental Health Act 1983

This section is about the Mental Health Act 1983, when and how it is used, your relative's rights and your rights (as a family carer or Nearest Relative).

[The Mental Health Act](#) (MHA) 1983 is the law which allows your relative to be admitted, detained (sectioned) and treated if their wellbeing or safety are at risk, or to protect other people. The term "section" describes which part of the MHA has been applied (e.g. Section 2) and the set of rules which are used to keep your relative in a mental health service.

Visit the Rethink Mental Illness webpage for further information including a video clip:

[Click here to visit the webpage](#)



Watch this video clip 'Making Sense of Sectioning' from Mind:

[Click here to watch the video](#)



A person can only be detained under the Mental Health Act or 'sectioned', if:

- They need to be assessed or treated for a mental health condition. Assessment is covered by Section 2 of the MHA, while treatment comes under Section 3.
- They might pose a serious risk to themselves or another person if they did not receive treatment, e.g. behaviour described as challenging.
- They have a mental health condition that is serious, and their health would be at risk of getting worse if they did not get treatment.
- They have been found guilty of a criminal act and their admission has been ordered by a Court (because prison has been identified as inappropriate). This is Part III of the Act and relates to Patients Concerned in Criminal Proceedings or Under Sentence, sometimes called a 'forensic' section

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A number of factors can increase the likelihood of admission to a mental health service, but should not be the main reasons:

- If there are no community-based assessment and treatment services available in their area
- If their community placement has broken down
- If their family can no longer provide accommodation and care and support
- If the care and support they are receiving (in the community) is failing to address their emotional and/or mental health needs and/or behaviour described as challenging
- Transition from children to adult services has been poorly managed and they are in a position where there is no community based placement available following the end of their educational placement

If your relative has previously been in a mental health service and discharged, or you are worried that there is a possibility that they will be placed in a mental health service, ask the professionals involved in their care, support, and/or treatment to support you to develop a crisis plan.

Key message

If you (family carer), other family members, friends or paid support staff notice a change in your relative's emotional and/or mental health or behaviour described as challenging you can ask for a Care and Treatment Review (CTR).

Read this guide from Bringing Us Together about the process:

[Click here to read more](#)



If the situation is urgent and there is no time to organise a CTR a request for the Blue Light Protocol can be made:

[Click here to read more](#)



[Read this guide from Bringing Us Together](#)

If your relative is detained under the Mental Health Act, these 5 guiding principles should be followed:

- 1. Least restrictive option and maximising independence.** Where it is possible to treat your relative safely and lawfully without detaining them, this is what should happen. Wherever possible your relative's independence should be encouraged and supported with a focus on promoting their recovery. They should maintain skills, develop new ones but not lose any existing skills.
- 2. Empowerment and involvement.** Your relative should be fully involved in decisions about their care, support and/or treatment. Your views (family carer), other family members and friends, if appropriate, should be fully considered when decisions are made. If decisions are made which are not in line with the views expressed by your relative, the reasons for this should be given.
- 3. Respect and dignity.** Your relative, you (family carer), other family members and friends should be treated with respect and dignity and listened to.
- 4. Purpose and effectiveness.** Decisions about care, support and/or treatment should be appropriate for your relative (e.g. person centred) with clear therapeutic aims, promote recovery and should be delivered to current national and/or current available best practice guidelines, for example Mental Health Act Code of Practice, National Institute for Health and Care Excellence (NICE).
- 5. Efficiency and equity.** Providers, commissioners and other relevant professionals and organisations should work together to ensure that the quality of commissioning and delivery of mental health services are of high quality and considered as equally important as physical health and social care services. All relevant services should work together to ensure timely, safe, and supportive discharge to the community.



Where it is possible to treat your relative safely and lawfully without detaining them, this is what should happen.

This is probably the most important statement from the Act. Your relative (if they have capacity) or you (on their behalf as their family carer) should always ask “What are the benefits of being admitted to a mental health service. What care, support and/or treatment is being offered that can’t take place in the community”.

Admission to a mental health service should always be avoided wherever possible for the following reasons:

- Admission and detention may result in a further deterioration in emotional and/or mental health or increase in behaviour described as challenging due to:
 - Separation from a person’s family or friends. Placements are typically far from home, for long periods which isolates your relative from their family, friends, and wider community
 - The hospital environment makes it difficult to deliver person-centred care, support, and/or treatment. For instance due to difficulties adjusting lighting, noise, or access to preferred activities.
- Loss of skills necessary to thrive in the community because of a lack of opportunity to practice, e.g. cooking, shopping
- Limited choice and control
- “The average weekly fee of £3,500 per patient was no guarantee of patient safety or service quality.”..... “Hospitals for adults with learning disabilities and autism should not exist but they do. While they exist, they should be regarded as high-risk services i.e. services where patients are at risk of receiving abusive and restrictive practices within indefinite timeframes. Such services require more than the standard approach to inspection and regulation. They require frequent, more thorough, unannounced inspections, more probing criminal investigations and exacting safeguarding investigations” (Source: Margaret Flynn, [Winterbourne View Hospital Serious Case Review](#))
- Mental health institutions have been identified as at a great risk of developing ‘[closed cultures](#)’ and can have an increased risk of the use of [restrictive interventions](#).

There are several national programmes which aim to support the discharge of people and reduce admissions because it is recognised that mental health services for people with a learning disability, autism or both are not necessarily appropriate or safe places. This includes the government’s national ‘[Building the Right Support](#)’ programme.

In this video self-advocates and family carers talk about their experiences and views of mental health services:

[Click here to watch the video](#)



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Before your relative can be lawfully detained they will be assessed by a team of health care professionals:

- Approved Mental Health Professional (AMHP). An AMHP is a health care professional (e.g. nurse, occupational therapist, psychologist) who is specially trained to carry out certain duties under the Mental Health Act.
- a doctor who has special training in mental disorders, called a 'section 12 approved doctor'
- another doctor

At least one of the health professionals must have met your relative previously

There are many different types of section, but the main ones are:

Section 2

This section of the Mental Health Act authorises the detention of a person for assessment of their mental health condition (or assessment followed by treatment). Detention under Section 2 can normally only last for up to 28 days.

People with a learning disability, autism or both are considered under the MHA to have a 'mental disorder' and can be detained:

- Their behaviour is associated with abnormally aggressive or seriously irresponsible conduct of a nature or degree which warrants their detention for assessment
- There is a need to detain the person in the interests of their own health or safety or with a view to the protection of others
- The symptoms they are showing (of a mental health condition) warrants their detention for assessment

Section 3

This section of the Mental Health Act authorises the detention of a person so that they can receive treatment for a mental health condition. Detention

under Section 3 can last for an initial period of up to 6 months, after which it can be renewed if necessary.

People with a learning disability, autism or both can be detained under section 3 of the MHA if:

- Their behaviour is associated with abnormally aggressive or seriously irresponsible conduct of a nature or degree which makes it appropriate for them to receive medical treatment and
- It is necessary for the health or safety of the person or for the protection of others that they should receive treatment and it cannot be provided unless they are detained
- Their mental health condition makes it appropriate for them to receive medical treatment

Key message:

The way in which the Mental Health Act is used for people with a learning disability, autism or both is changing. The proposed revised Act will make it harder to admit your relative to a mental health service unless there is a clear clinical mental health diagnosis. Having a learning disability, autism or both will no longer be considered a mental disorder.

For further information read:



[This page from the Local Government Association](#)



[This article from learning disability today](#)



[This information on the Challenging Behaviour Foundation's website](#)

Voluntary/informal patient

If your relative has been assessed as having the capacity to consent to treatment as a voluntary patient, this may seem like a better option than being sectioned and there are some advantages:

- Your relative should be entitled to more freedom. For example, they can leave the ward when they want although they will be expected to engage in a treatment plan which will mean spending some scheduled time in the mental health service. Mental health services are locked but if your relative is a voluntary patient, staff should provide clear instructions about what they need to do if they want to leave the service.
- They can refuse treatment, including medication.

But also disadvantages:

- They lose their right to the protection the MHA provides.
- Discharge planning is not as detailed and there is no entitlement to Section 117 aftercare (which has a funding stream). This means they could be discharged without the right community support
- Increased risk of readmission (if community support or aftercare are not in place)
- If your relative attempts to leave the service but the doctor or nurse involved in their care feels they meet the criteria for detention your relative could be held for a period of time (up to 72 hours) to allow for a formal mental health assessment to be completed under Section 5 Holding Powers

Admission with a Deprivation of Liberty authorisation in place

Admission to a mental health service will include restrictions. These need to be within a legal framework, for example detention under the MHA. If your relative is assessed as lacking the capacity to consent to admission to a mental health service

and they object e.g. by trying to leave the service, they can be detained under the MHA. Even if your relative does not object, they are still being deprived of their liberty by simply being in the service and without a DoLS this is unlawful. If you think this applies to your relative, raise this issue with their commissioner, responsible clinician, or professional independent advocate and/or speak to a solicitor. If your relative is deprived of their liberty the full guidance should be followed, e.g. best interests decision, the least restrictive option.

Read this report from CQC "Monitor the use of the Mental Capacity Act Deprivation of Liberty Safeguards 2012/13". Appendix A (pg 53-54) includes a case study about a resident of Winterbourne View:



[Click here to read the report](#)



[Read about other types of sections here](#)

Key message

Make sure you and your relative are clear about their legal status

There are different types of mental health services available for people with a learning disability, autism or both. The type of service your relative is admitted to should depend on their individual need. The provider of the service may be the NHS or an independent provider.

Advocacy and the Mental Health Act

Self-advocate

If your relative is assessed as having capacity, they can advocate for themselves. They can do this with support from you (family carer) and/or an Independent Mental Health Act Advocate.

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Independent Mental Health Advocate (IMHA)

Your relative has a statutory (legal) right to an Independent Mental Health Advocate, if they are:

- Detained under the MHA
- A conditionally discharged restricted patient
- Subject to Guardianship under the MHA
- Receiving supervised Community Treatment

An IMHA advocate can support your relative by helping them understand:

- The reasons for their detention and how to appeal using the Mental Health Review Tribunal process
- Their rights under the Mental Health Act and the safeguards that apply
- Any conditions or restrictions which apply
- The treatment they are currently receiving or might be given and any requirements that would apply in connection with the treatment

An IMHA can also support your relative to:

- Access information e.g. by ensuring it is provided in a format that your relative can understand. This could be easy read or organising a BSL interpreter
- Talk with staff and prepare for meetings to ensure their voice is heard
- Explore their options and be involved in decisions about their care and support and/or treatment
- Raise queries or concerns about the treatment they are receiving

To support them in their role IMHAs have the right to:

- Access the mental health service your relative is using
- See your relative in private unless they are under close observation, in seclusion, long term segregation or clinical staff advise against it

for safety reasons. If your relative is moved to seclusion the mental health service should inform their IMHA and if your relative agrees offer the IMHA the opportunity to be involved in reviews

- Attend meetings with staff if your relative requests this
- Meet with and hold discussions with professionals involved in your relative's care and support and/or treatment
- Access relevant records if your relative provides consent. If your relative has been assessed as not having the capacity to consent, then access to the records should be permitted if it contributes to the IMHA carrying out their role effectively

Watch this video from SCIE about improving the quality of access:



[Click here to watch the video](#)

This case study from Cloverleaf Advocacy shows the positive impact having an IMHA had for somebody they represented:



[Click here to read the case study](#)

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Unless there is a clear reason, the Mental Health Act states that family carers should be involved in the care, support and/or treatment of their relative.

Nearest Relative

Additionally, there is a legal entitlement for a family member to act as the Nearest Relative.

Nearest Relative is a legal term used in the Mental Health Act 1983. It gives one member of your relative's family certain rights and responsibilities if they are:

Watch this video clip explaining the role of the Nearest Relative:

[Click here to watch the video](#)



- detained under sections 2, 3, 4 or 37
- under a community treatment order (CTO)
- under a guardianship order

Nearest Relative is not the same as next of kin. A next of kin has no rights under the Mental Health Act.

Although you may be the main family carer this does not automatically mean you are the Nearest Relative. For example if you have taken on the role of family carer as a sibling but your relative's father or mother are still living.

Who can be the Nearest Relative

Section 26 of the Mental Health Act 1983 sets out who can be the Nearest Relative. The list is in strict order and the person who is highest on the list is the Nearest Relative.

1. Husband, wife, or civil partner (including cohabitee for more than 6 months)
2. Son or daughter
3. Father or mother (an unmarried father must have parental responsibility in order to be nearest relative)
4. Brother or sister
5. Grandparent

6. Grandchild
7. Uncle or aunt
8. Nephew or niece

In certain situations a Nearest Relative can be displaced (changed). These include:

- they cannot act because of health reasons
- they have unreasonably objected to a section 3 or guardianship application
- they have tried to discharge the person they are representing without considering all the circumstances, e.g. will the person be safe, where will they live, who will provide the necessary care and support and/or treatment
- they are unsuitable to act
- there is no Nearest Relative from the list
- it is not practical to identify the Nearest Relative

The role and rights of the Nearest Relative

The role of the Nearest Relative is an important safeguard for people who are detained under the Mental Health Act. It is another way of making sure that your relative's rights are protected when they are unwell and there is somebody they trust involved in their care, support and/or treatment.

If you are identified as the Nearest Relative then the following applies:

- The Approved Mental Health Professional (AMHP) must let you know within a reasonable time if your relative is to be detained under Section 2 of the MHA. They should provide the following details:
 - their name and contact details
 - the names of the 2 doctors (involved in the assessment and decision to detain your relative)
 - the date of the assessment and the outcome

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- The AMHP must speak to you before your relative can be detained under Section 3 of the Mental Health Act, unless it is not reasonably practical/would cause unreasonable delay. If you object, then the detention under Section 3 cannot go ahead unless the Court removes you as the Nearest Relative. This is known as displacement of the Nearest Relative.
- You can request Adult Social Care consider carrying out an MHA assessment to decide if your relative should be detained or placed under a guardianship order.
- You can object to your relative being detained or placed under a guardianship order.
- You can discharge your relative if they are detained. The Responsible Clinician (RC) can stop the discharge in certain circumstances. In this instance you can apply to a Mental Health Tribunal.
- You can ask for involvement from an Independent Mental Health Act (IMHA) advocate.
- You must be consulted and/or given information. If your relative has been assessed as having the capacity to decide the level of involvement, they want from others this will be followed.
- You can appoint someone else to act as the Nearest Relative.

For further information read this factsheet from Mind:

[Click here to read more](#)



Read this series of three guides produced by the Equality and Human Rights Commission about the Mental Health Act. Each section contains the option to record whether you and your relative think good practice is being followed.

This guide is about your relative's rights if they are detained under Section 2 or 3 of the MHA or in a

mental health service as a voluntary patient.



[Click here to read the guide](#)

This guide is about:

- Who can support your relative and their role and responsibility
 - Nearest relative
 - Responsible clinician
 - Independent Mental Health Act Advocate
 - Care co-ordinator
 - Hospital manager
- About length of stay in a mental health service
- Treatment
- Type of service and ward
- Information about personal belongings (in the mental health service)
- Your relative's right to continue to do the activities they enjoyed
- Reasonable adjustments
- Cultural needs
- What happens to your relative's home and belongings, their job/volunteer roles, benefits and bills



[Click here to read the guide](#)

This guide is about your relative's rights if they are detained because they are suspected or have been convicted (found guilty) of a crime.



[Click here to read the guide](#)

Family Carer Advocacy Resource

If you are unhappy with your relative's detention Irwin Mitchell provide free legal surgeries:

[Click here for more information about Assessment & Treatment Unit solicitors](#)



[Click here for more information about free Assessment & Treatment Unit legal surgeries](#)



The Care Quality Commission (CQC) are responsible for regulating, inspecting (against 5 key questions: is the service safe, effective, caring, responsive to people's needs, and well-led) and rating both NHS and independent mental health services.

In addition, they are responsible for checking that mental health services are following the law (Mental Health Act) for anyone who is detained or under a Community Treatment Order. They do this by carrying out visits and meeting with people (in private) and listening to their experiences.

If during inspections or visits the CQC are concerned about the use of medication, e.g. somebody appears heavily sedated (sleepy) they can appoint a Second Opinion Appointed Doctor to explore this further and check that the medication people are receiving is correct.

If you have any concerns about what you see or hear (even if it is not related to your relative's care and support and/or treatment) then you can contact the CQC directly:

[Click here to contact the CQC](#)



[Click here for information about how to raise a complaint with the CQC about the use of the Mental Health Act](#)



Further information:

Read this blog about reducing mental health detention of people with a learning disability, autism or both:



[Click here to read the blog](#)

Read this Challenging Behaviour Foundation guide: My family member has been sent to an inpatient unit - What do I need to know?



[Click here to read the guide](#)

Use this link for the full set of 'Meeting the Challenge' guides:



[Click here to read the guides](#)

Guardianship Order



If detention (section) under the Mental Health Act is suggested for your relative, ask whether a guardianship order is an option. This will allow your relative to receive treatment under the Mental Health Act (Section 7) in the community instead of a mental health service. If approved, a guardianship order is a better option than being detained (sectioned) because it means your relative will have less restrictions placed on them and be able to go about their daily life with more freedom.

Your relative can only be placed under a guardianship order if it is absolutely necessary for their wellbeing or to safeguard other people and must be approved by two doctors.

Who can be your relative's guardian

The appointed guardian may be the local social services authority, or someone who has been approved by a social services authority. If the guardian is not a social services authority, they are called a 'private guardian'.

A Guardian has the legal power to tell your relative:

The 3 A's:

Abode (where they live)

Attendance (to attend appointments for medical treatment, work, education or training at set places and at set times)

Access (to allow a doctor or another named person to see your relative)

How to apply for a guardianship order

- An application is made via an approved mental health professional (AMHP) or the Court is made
- As part of the application process, there is a case conference involving your relative, you (as family carer and/or nearest relative) and all relevant professionals
- The conference will cover how your relative's needs are going to be met and whether a guardianship order is the right decision
- If the application for a guardianship order is agreed by the local authority it will last 6 months. It can then be renewed for another 6 months
- After this, the guardianship order is renewed once a year
- The renewal must happen within the last two months of the guardianship order period

Ending the guardianship order

- Every time the guardianship order is renewed, you (if you qualify as the nearest relative) or mental health professionals can decide whether or not it should be ended. This decision needs to be approved by the local authority
- Each time the guardianship order is extended your relative can appeal to a Mental Health Tribunal to end it
- Sometimes the local authority decides the nearest relative (this could be you) cannot discharge your relative. If this happens you can ask a Mental Health Tribunal if they will discharge your relative
- The local authority or your relative's responsible clinician can discharge your relative from a guardianship order at any time
- A guardianship order ends immediately if your relative is detained (sectioned)

Your relative has a statutory entitlement to an Independent Mental Health Act advocate if they are placed under a guardianship order.

Further information:

Read this information on the Mind website, including the forms you will be required to complete:



[Click here to visit the Mind website](#)

Criminal Justice System

This section is about what to do if your relative becomes involved in the Criminal Justice System (CJS):

- As a suspect
- As a witness
- If a decision is made about a place of safety
- As a victim

and how you can support them as a family carer.

As a suspect

People with a learning disability, autism or both are over-represented in the criminal justice system (CJS).

- Autistic people are 7 times more likely to come into contact with the police than the general population, and 15% of young people in custody are autistic
- Young people with learning disabilities are 10 times more likely to find themselves in custody than their peers without a learning disability, and represent about 30% of people in custody
- It is thought that about 10% of the prison population has a diagnosed learning disability, but around 60% of prisoners (as well as those in custody) have difficulties with communication

Source: Association for Real Change (ARC) 'People with learning disabilities in the CJS: A guide for carers and learning disability services', England 2016

Read the ARC full report here including the policing pathway - from allegation through to prosecution:



[Click here to read the report](#)

People with a learning disability, autism or both become involved in the CJS for a number of reasons, including:

- Lack of early intervention and skill teaching, e.g. sexual appropriate behaviour.



[Read this factsheet from the Challenging Behaviour Foundation](#)

- No formal or a delay in receiving a diagnosis which results in inadequate support, e.g. not meeting the threshold for social services input

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- Unusual or behaviour described as challenging, which can be misinterpreted by the public and police
- Social naivety. This can mean that people are easily taken advantage of e.g. mate (hate) crime. This term refers to people with a learning disability, autism or both being befriended by people who then exploit (take advantage of) them

Watch this video clip called Tricky Friends with your relative to help explain what friends should do (and not do):

[Click here to watch the video](#)



- Communication difficulties, e.g. not understanding what is being said, what is required of them and how this is interpreted by professionals such as the police
- Suggestibility and acquiescence. This means 'going along with what somebody has said' whether because of a lack of understanding or because your relative thinks that agreeing is the right thing to do. This may lead to a false confession
- More likely to get caught and less likely able to conceal a crime
- Substance misuse
- They do not want to acknowledge or are embarrassed to disclose their learning disability, autism or both

Sometimes people with a learning disability, autism or both become involved in the CJS because support staff (community and hospital services):

- Call the police when they are unable to manage behaviour described as challenging
- Want to take action against the person with a learning disability, autism or both due to the behaviour described as challenging. Instead of recognising this as communicating an unmet need or a sign of distress they view it as an 'assault'



... About a third of patients in long term segregation had acquired a criminal record, often whilst in hospital for assaults on staff or other patients but with no recognition that their behaviour was a consequence of long standing and inadequate understanding of their needs...

- Baroness Hollins, letter to the Rt Hon Matt Hancock MP, 18th December 2020



[Read the full letter here](#)

To reduce the risk of this happening, family carers can:

- Ask services what their policy is at an organisational level. They cannot prevent a member of staff taking action at a personal level
- Liaise with the local police and ask their advice about the potential of this happening
- Make sure that your relative's care and support and/or treatment and positive behaviour support plans contain detailed information about what to do to prevent behaviour described as challenging, early warning signs, triggers for behaviour, types of behaviour, what to do and what might make a behaviour escalate. For example, if your relative's support plan states that all types of touch (including physical restraint) cause an extreme response because of tactile defensiveness (find touch uncomfortable) and should therefore be avoided. If support staff do not follow this guidance, this places accountability with them not your relative

Until a court, following a police investigation, decides a crime has been committed, the offence is only alleged and your relative has the same legal rights to a defence.

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If your relative is found guilty of an offence but it is recognised by the CJS that they would be unable to cope with a prison environment, they should be assessed and diverted to another more appropriate service, which may be a mental health service. The identified service should be able to address their care, support and also their offending behaviour needs, e.g. education about appropriate sexual behaviour, recommendations about better community support.

Read Stan's story:

Stan had been told that he might be sentenced to prison. He was therefore relieved when he realised this was not the case. Stan was given a community sentence that involved a curfew between the hours of 6pm and 7am.

Within a week Stan was returned to court for breaking his curfew – he had been playing football with his friends in the local park at 7pm.

Stan didn't know what the word 'curfew' meant, and he didn't have a watch because he couldn't tell the time.

Stan was sentenced to prison, where his learning disability was recognised. He was later diverted away from prison into a secure mental health unit. Stan subsequently received support to help him to live independently in the community. He now does voluntary work, which involves giving talks to school children about why it is important to stay away from crime.

(Source: Prison Reform Trust)

[This link provides further information about Liaison and Diversion services](#)



As a witness

This document produced by the Crown Prosecution Service explains the process of being a witness (either as a victim or an observer of a crime) and the support your relative is entitled to, e.g. referral to victim support. There are case studies you can read including one about involvement from a professional independent advocate:



[Click here to read the document](#)

If a decision is made about a place of safety

Your relative may become involved with the CJS because it has been identified that they need to be 'removed to a place of safety' for their own protection or the protection of others.

A place of safety could be a mental health service or police station. Taking someone to a place of safety is to allow them to be assessed by a doctor and interviewed by an approved social worker.

The maximum time someone can be detained is 48 hours.

If the police remove someone under the Mental Health Act to a police station, the person being removed is entitled to:

- have another person of their choice informed of their whereabouts (this could be a family carer)
- access to legal advice
- the support of an 'Appropriate Adult' (this could be a family carer)
- medical treatment from a suitable healthcare professional if needed, e.g. if they have a physical injury

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Victim

Being a victim of a crime is a distressing situation, and for your relative this might involve:

- being interviewed
- an impact on self-esteem and confidence, e.g. did this happen to me because I have a learning disability, autism or both
- conflict of loyalty, e.g. mate crime - "I thought they were my friend. I didn't know what they were doing to me was wrong"
- providing evidence if the case goes to court

If your relative finds themselves in this situation, use this information from Dimensions to explain to the police how they can make the situation less stressful:

[Click here to read the information](#)



This link provides information about your relative's rights as a victim of a crime:

[Click here to read the information](#)



Your relative's rights

If your relative is identified as a vulnerable person under the [Police and Criminal Evidence Act 1984 Code of Practice](#) they will be entitled to support from an Appropriate Adult.

The police should not interview your relative until the Appropriate Adult is present. The exception to this is if a delay would result in a risk of harm to property or people.

An Appropriate Adult should not be employed by the police and have experience of supporting people with a learning disability, autism or both.

You, another family member or friend can act as your relative's Appropriate Adult but if you

do not feel able to take on this role then it is the responsibility of the police to identify somebody on your relative's behalf.



[This link provides information about who can be an Appropriate Adult](#)



[Watch this video about being an Appropriate Adult](#)

An Appropriate Adult can request reasonable adjustments (Equality Act 2010), e.g.

- Sensory needs: where your relative is interviewed
- Communication needs: the way in which information is presented, somebody who can sign
- Access to disabled toilet, food and drink, regular breaks

Visit this webpage for more information about liaison and diversion if your relative becomes involved with the Criminal Justice System as a suspect. It includes case studies and video clips:



[Click here to visit the webpage](#)

Taking proactive action

Read this fact sheet (including a template form to share useful information about your relative with the police) about asking if your relative can be 'flagged' on the police system. This is like a 'reasonable adjustments' flag for health care services. Not all police systems operate a flag system but there are other ways they can record information that alerts them to your relative's needs.



[Click here to read the factsheet](#)

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The type of information which is useful to share includes:

- Information about who to contact in an emergency
- The address of your relative. This means that if the police have to visit your relative's home, they will be aware that somebody vulnerable lives there, what their needs are and the best way to interact with your relative
- Communication needs, e.g. my relative uses sign language to communicate, my relative may repeat what you say (echolalia), they are not being disrespectful
- Sensory needs, e.g. my relative is tactile defensive (reacts strongly to being touched). Please consider ways for them to co-operate with you without touching them. Instead of guiding them physically, tell them what you want them to do, or show them

Litigation Friend

Having a 'Litigation Friend' allows your relative to access the justice system fairly and with support, for example a court case relating to:

- a civil case (e.g. if your relative wants to take legal action against a provider because of abuse)
- a Court of Protection case

Who can be appointed a Litigation Friend

There are two groups of people who can be appointed as a Litigation Friend:

1. A person with authority as a Deputy
2. If there is no appointed Deputy, then an Appropriate Adult (this could be you) can put themselves forward as a Litigation Friend. You will need to meet certain criteria:
 - You can fairly and competently conduct proceedings on behalf of the protected party (your relative)
 - You have no interest adverse to that of the protected party (your relative) and

- You undertake to pay any costs which the protected party (your relative) may be ordered to pay in relation to the proceedings subject to any repayment they might be entitled to



[This link provides further information](#)

Legal support

Read this information from the Challenging Behaviour Foundation:



[Click here to read the information](#)

Case studies

John

John has an autistic spectrum disorder and mild learning disabilities. He was a victim of mate crime (when a person is harmed or taken advantage of by someone they thought was their friend) and was arrested because his flat was used by 'friends' to store marijuana plants. The arresting officer noticed that John was not responsive to his questions and did not give eye contact. John kept talking about needing to go home to watch EastEnders at 7pm. The officer called for an Appropriate Adult because he felt that John had a communication difficulty and needed help to understand what was happening. The Appropriate Adult spent time with John explaining what was happening. She gave him time to understand what she had said after each sentence and also wrote down the questions so he could read them. At times she used pictures. She drew his house and where his friends lived and asked him to name his friends who stored the plants in his house. She asked him if he preferred her not to look him in the eye and he said yes. The information gathering took longer, but by using these reasonable adjustments they were able to get a clearer picture of what was going on

Family Carer Advocacy Resource

Pete

A community psychiatric nurse supported a client with mild learning disabilities with an intervention to reduce his drug taking. He realised that simply talking about the pros and cons of taking drugs was not helping Pete, so he printed out a photo of a set of weighing scales from the internet and stuck it to a flip chart which was divided into two columns with 'good things' and 'bad things' about taking drugs. He talked to Pete and wrote down Pete's responses in simple language accompanied with images, such as a pound sign to represent having more money, and a set of bars to represent going to prison. After the session he gave it to Pete to go home and look at it for homework. The visual representation really helped Pete and he began to respond to treatment.

Matt

Matt was arrested for assault. While in police custody he was seen by a nurse who thought he might be on the autistic spectrum. Although Matt didn't have a formal diagnosis of autism, his family reported concerns about his behaviour consistent with that reported by the nurse.

Matt's case went to court, and he was found guilty of assault. During his trial, the magistrates felt that something wasn't "quite right" and asked for a medical report to help them decide what sentence would be appropriate. Matt was remanded into custody for medical reports, which took longer than expected. Eventually Matt was seen by two doctors and their reports were presented to the court.

Both reports described Matt as being on the autistic spectrum with underlying psychosis and recommended hospital to see if Matt would respond to treatment. He is currently in a low secure hospital ward in his local area that specialises in autistic spectrum disorders and mental illness.

Matt now has a diagnosis, which means he is likely to receive appropriate treatment and support for his condition. This, in turn, should help him to manage his behaviour and reduce re-offending.

(Source: Rethink Mental Illness)

Further information:

This report was commissioned by the LGA for the Greater Manchester Health and Justice Steering Group (Learning Disability and Autism). It details how the Criminal Justice System, and its prevention partners are working to address the challenges faced by people with a learning disability, autism or both people. It includes a section about family carers, how they have supported their relative and what support for them should look like:



[Click here to read the report](#)

NHS Health Education England: Working in community settings with people with learning disabilities and autistic people who are at risk of coming into contact with the CJS. A resource for health and social care staff:



[Click here to access the resource](#)



[This link takes you to resources provided by Keyring](#)



[Read this information and guidance from the National Autistic Society](#)



[Books Beyond Words has a range of picture stories about involvement in the CJS](#)

Read the NHS guidance about ensuring the healthcare needs of people with a learning disability, autism or both are met whilst in prison:



[Click here to access the resource](#)

Family Carer Advocacy Resource

The charity User Voice has published this report titled "Neuro...What? Neurodiversity in the Criminal Justice System" including personal accounts:



[Click here to read the report](#)

Read this report from Keyring (including case studies demonstrating positive outcomes and identifying areas which need to improve):



[Click here to read the report](#)



[This guidance is for the criminal justice system and how they can support autistic people](#)



[Read this factsheet from the Challenging Behaviour Foundation](#)