



## Legal Support Resource

### This information sheet may be useful for families who:

- Have a relative with a learning disability and/or who is autistic who is currently in an inpatient unit
- Would like legal advice about their relative's rights and discharge



### Introduction

The Government must ensure that people who are stuck in hospitals and units and who have delayed discharge have timely access to lawyers who can help them. This resource provides information about how families can access specialist legal professionals to support them and their family member.

### Why do I need specialist legal support?



If your relative is in an inpatient unit and is “ready for discharge” but hasn't moved out they have a **delayed discharge**. Being in an inpatient unit with a delayed discharge may breach your relative's human rights.

Everyone has legal rights under the Human Rights Act. These rights include:

- Freedom from **unreasonable detention** - you can't be detained or imprisoned without good reason
- Respect for your **family and private life, your home and your correspondence**
- Freedom from **inhuman and degrading treatment** – you have the right to be free from **torture and intense physical/mental suffering**

## How can a specialist lawyer help me?

A specialist solicitor can help you to understand what rights you and your relative have and challenge any breach to these rights. This could help to get your relative **discharged into a suitable community placement with the right care and support.**

Even if your relative already has a lawyer or an advocate, specialist independent legal advice can still be helpful to:

- Provide **an overview of all the different legal frameworks that could be used** – for example, the Mental Health Act, the Mental Capacity Act, the Human Rights Act, and the Care Act
- Consider how these can be used **to help unblock a delayed discharge and get the support your relative needs in the community**
- Explore how specialist legal support can be accessed – **this won't cost you or your relative anything**
- Help you to understand what legal support will cost and whether you/your relative can access this for free

## How can I get support?



If you and your relative need specialist legal support to help with delayed discharge from an inpatient unit, we can help to connect you with specialist lawyers. These solicitors have experience of supporting people with a learning disability and autistic people and their families to navigate the system and get the right community support in place for them to be discharged from inpatient units/hospitals. We can also help you get any information that you may need to proceed with a legal case.

## Steps to support

Charities and legal firms are working together to provide this support.

### Step 1

Contact one of the 3 charities that best meets your/your relative's needs (see below) and say you are calling about delayed discharge support

### Step 2

You will be asked to complete a form with some details the lawyers will need. The charity helpline workers can help if you need help to do this.

### Step 3

Your form will be passed to a panel of lawyers made up of representatives of the main specialist law firms working in this area

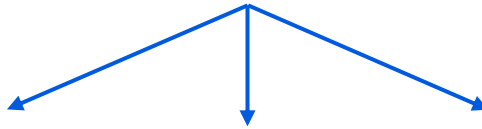
### Step 4

If any of the lawyers are able to help with your situation, they will let you know within 72 hours of the referral being made. If they can't help the charity will let you know.

### Step 5

If one of the lawyers can help, they will explain how, and you can decide the next steps. The charity you contacted at step 1 will also work with you and the lawyer to provide support.

**You and your relative are in need of legal support**



If your relative has a **severe** learning disability, contact the **Challenging Behaviour Foundation**

If your relative has a **mild or moderate** learning disability, contact **Mencap**

If your relative is **autistic** and **does not have a learning disability**, contact the **National Autistic Society**



Helpline advisers will help you to get the information you need to start the legal process enquiry, and, once this has been done, will refer you to the Legal Panel of lawyers from the main firms with expertise in this area



The firms will let us know whether they are able to take your case within **72 hours** – if there is someone who can take your case, they will be in touch with you

If your relative has a severe learning disability, you can contact the Challenging Behaviour Foundation's Family Support team by emailing [support@theCBF.org.uk](mailto:support@theCBF.org.uk) or by calling 0300 666 0126

If your relative has a mild or moderate learning disability, including if they have a learning disability and are also autistic, you can contact Mencap's Learning Disability Helpline (England) on 0808 808 1111 or by emailing [helpline@mencap.org.uk](mailto:helpline@mencap.org.uk). If you are in Wales, please call 0808 8000 300 or email [helpline.wales@mencap.org.uk](mailto:helpline.wales@mencap.org.uk)

If your relative is autistic and does not also have a learning disability, you can contact the National Autistic Society's Autism Inpatient Mental Health Casework Service. This service offers advice and support to autistic people and the families of autistic people in England who have been detained in a mental health hospital or assessment and treatment unit (ATU), or are at imminent risk of detention or re-detention, however, it is not a crisis or clinical service. For more information and access to an online enquiry form please visit [www.autism.org.uk/inpatientsupport](http://www.autism.org.uk/inpatientsupport)

## FAQs

### Who are we?

#### Challenging Behaviour Foundation



We are a charity that support people with a severe learning disability and their families to get the right support, in the right place, at the right time. Our aim is to provide information and support to families, to influence policy, and to improve practice. We have a Family Support service that can provide information and support, including helping you to navigate the system and find the information that you need. You can find out more at <https://www.challengingbehaviour.org.uk/>

#### Mencap



Everything we do is about valuing and supporting people with a learning disability, and their families and carers. Our vision is a world where people with a learning disability are valued equally, listened to and included. We work across England, Wales and Northern Ireland, campaigning for change, providing direct support to over 4,000 people and have an information and advice service that is there to give support with all areas of life. For more information see <https://www.mencap.org.uk/>

#### National Autistic Society



We're here to help the 700,000 autistic people in the UK and their families. Be it running specialist schools, campaigning for improved rights or training companies on being more autism-friendly, we are dedicated to transforming lives and changing attitudes. For more information about who we are and what we do please visit [www.autism.org.uk/what-we-do](http://www.autism.org.uk/what-we-do)

## Who are the lawyers involved?

**The Challenging Behaviour Foundation convenes a Legal Panel, made up of lawyers and legal experts in this area, who can provide legal support.** The Legal Panel is made up of solicitors from the main UK firms that support people with a learning disability and autistic people, and their families, to challenge inadequate support, including helping people to be discharged from hospitals.

For more information about the Legal Panel, please see:

<https://www.challengingbehaviour.org.uk/what-we-do/national-strategy-group/#legal-panel>

## What are the benefits to going through the CBF/Mencap/NAS, compared to going directly to law firms?

**Pooled expertise:** The Legal Panel brings together a wide range of lawyers and legal experts with knowledge and experience of this kind of law and of making sure people with a learning disability and autistic people can be discharged with the right community support. By working together through the panel, they can share knowledge and insight which can help strengthen the cases that they take. This also means that this issue can be tackled nationally and through policy as well as through individual legal cases.

**Faster, streamlined access:** The Legal Panel is made up of representatives from the main firms with expertise supporting people with a learning disability and autistic people to be discharged from hospitals. By going through us, you won't have to contact all of these firms separately to see if they can take your case – we can do that work for you. This should also help you find out if there's a lawyer who can take your case faster, as this process means all of the firms will be contacted at the same time, rather than having to go to each firm in turn.

**The information that is needed:** The Legal Panel have drafted a specific set of questions that will help provide the information that they will need to take forward a case, but we know that not everyone will have this information to hand – our caseworkers will be able to help you to get this information. This might include working out if your relative is eligible for legal aid, finding out whether they have had a care and treatment review or when their next one is scheduled to happen, or whether any options for discharging your relative back into the community have been explored and why there are delays to this.

**Access to specialist barristers:** Getting the right community support for people with a learning disability and autistic people requires different knowledge to what is needed for general Mental Health Tribunals. Our Legal Panel includes specialist barristers who have skills and experience in this area.

## Am I guaranteed to get legal support?

We have worked together to set up this service to help people. But we cannot guarantee that a lawyer will be able to take your case because:

- There are currently 2040 people with a learning disability and autistic people in hospitals, and at least 220 of these people currently face delays to being discharged (NHS Digital Assuring Transformation Data published September 2023)
- The specialist law firms involved already work on a large number of cases, including supporting people with a learning disability and autistic people to challenge inadequate support across a range of settings.

However, we and the Legal Panel hope that by coming through this process, and by helping you to get the necessary information before the case is referred to the Legal Panel, we can make this as smooth as possible and increase the likelihood that there will be a lawyer who can take your case.

### The Challenging Behaviour Foundation

We are the charity for people with severe learning disabilities who display challenging behaviour. We make a difference to the lives of children and adults across the UK by:

- Providing information about challenging behaviour
- Organising peer support for family carers and professionals
- Giving information and support by phone or email
- Running workshops which reduce challenging behaviour

To access our information and support, call 01634 838739, email [info@theCBF.org.uk](mailto:info@theCBF.org.uk), or visit our website: [www.challengingbehaviour.org.uk](http://www.challengingbehaviour.org.uk)

If you have found this information useful, please consider making a donation. You can show your support at [www.challengingbehaviour.org.uk/support-us](http://www.challengingbehaviour.org.uk/support-us). Make a £5 donation by texting CBF DN05 to 70085 Or email us to get involved at [support\\_us@theCBF.org.uk](mailto:support_us@theCBF.org.uk)

Last reviewed: November 2023