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Mental Health Act 1983

This section of the Family Carer Advocacy Pack 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).

What is the Mental Health Act?

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.



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

[Visit the Rethink Mental Illness webpage](#) for further information including a video clip
[Watch this video clip](#) 'Making Sense of Sectioning' from Mind



The UK Supreme Court has unanimously overruled the 2014 decision in Cheshire West in a significant judgment (UKSC 16, 2 June 2026), we are awaiting updated guidance about how to assess if someone is deprived of their liberty. Therefore some of the information in this resource is out of date and will be updated in due course.

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.



If the situation is urgent and there is no time to organise a CTR [a request for the Blue Light Protocol can](#) be made.



[Read this Crisis Prevention 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.”

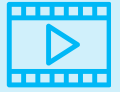
This is probably the most important statement from the Act. Your relative (if they have capacity) or you (on their behalf as their family carer) should always ask “What are the benefits of being admitted to a mental health service. What care, support and/or treatment is being offered that can’t take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

[Watch the video here](#)



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.

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.

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

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.

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



[This case study](#) from Cloverleaf Advocacy shows the positive impact having an IMHA had for somebody they represented

Family Carer Advocacy

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:

- 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.

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
- 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

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.

Equality and Human Rights Commission

The first 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](#)

The second 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](#)

The third 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](#)

Further information



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

Information about Assessment & Treatment Unit solicitors
<https://www.irwinmitchell.com/personal/protecting-your-rights/assessment-and-treatment-unit-solicitors>

Blog about reducing mental health detention of people with a learning disability, autism or both: <https://insights.doughtystreet.co.uk/post/102hfgz/reducing-mental-health-detention-of-people-with-autism-and-or-learning-disabiliti>

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

<https://www.challengingbehaviour.org.uk/wp-content/uploads/2021/02/4-My-family-member-has-been-sent-to-an-inpatient-unit-what-do-i-need-to-know.pdf>

Full set of 'Meeting the Challenge' guides:

<http://www.challengingbehaviour.org.uk/information-and-guidance/when-things-go-wrong/assessment-and-treatment-units-at-us/>

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:

Contact the CQC: <https://www.cqc.org.uk/contact-us>

Information about how to raise a complaint with the CQC about the use of the Mental Health Act: <https://www.cqc.org.uk/contact-us/how-complain/complain-about-service-or-provider>



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, or visit our website: www.challengingbehaviour.org.uk

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