

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 sectioning please see our 'Mental Health Act' factsheet. This factsheet looks at how you can be discharged from the Mental Health Act. This factsheet is for adults in England who experience mental illness and their loved ones and carers.

Key Points.

- If you are under section 2, 3 or 37 you can:
 - ask the Hospital Managers to discharge you,
 - apply to a tribunal to appeal your section,
 - get free representation from a mental health solicitor at a tribunal, and
 - get help from an Independent Mental Health Advocate (IMHA).
- If you are under section 2 or 3, your Nearest Relative can discharge you. But your psychiatrist can prevent this if they think you are 'dangerous' to yourself or others.
- If you are on section 2 and you want to appeal, you have to apply to the tribunal within 14 days of being sectioned.

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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**' 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. 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. The decision is actually made by 3 or more people called "associate managers" or "Mental Health Act managers".⁶

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.⁷

Medical, nursing and social care staff write reports. You have a right to see 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.⁸

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.⁹ 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.¹⁰

The managers will have read through the reports. After this they will give you a chance to speak.¹¹ 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.¹²

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.¹³ The tribunal hearings take place at the hospital.¹⁴ 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.¹⁵

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.¹⁶ The tribunal must take place within 7 days of your application.¹⁷

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.¹⁸

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 3.¹⁹

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.²⁰

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.²¹

A section 37 can be renewed for 6 months and then 12 months after.²² As above, the hearing will usually take place around 8 weeks after you apply.²³

How do I ask for a tribunal?

You apply using a T110 form.²⁴ 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.²⁵

You, the Responsible Clinician and social worker will be at the tribunal. The legal member will be in charge of the tribunal.²⁶

Your Nearest Relative or carer can go to the hearing if you want them to.²⁷ 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.²⁸

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.²⁹

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.³⁰

Your solicitor may ask for you to see an independent psychiatrist, who will do a report.³¹ 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.³²

What happens at a tribunal?

The tribunal is a legal hearing but should take place in an informal setting at the hospital.³³

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.³⁴

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.³⁵

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.³⁶

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.³⁷

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.³⁸

You need to challenge a tribunal decision within 28 days of getting the written decision.³⁹ 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 after-care 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 after-care 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 later date.⁴⁰ This might give time to arrange after-care 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 3.⁴¹

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.⁴² If this happens and you are under section 3, your Nearest Relative can apply to the tribunal to discharge you.⁴³ If you are under section 37 your Nearest Relative can apply to the tribunal.⁴⁴

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.⁴⁵ 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.⁴⁶ 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".⁴⁷

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.⁴⁸

Staff on your hospital ward should be able to give you details of the advocacy service. You can also find an IMHA online using a search engine. Type in Independent Mental Health Advocate and the area you live in. It should come up with the organisation that provides IMHAs your area.

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
- Section 36 of the Mental Health Act
- Section 37 of the Mental Health Act
- Section 37/41 of the Mental Health Act
- Section 38 of the Mental Health Act
- Section 47/49 of the Mental Health Act
- Section 48/49 of the Mental Health Act

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. ⁴⁹

You can find more information about '**Community Treatment Orders (CTOs)**' 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.

9. How should my discharge be planned?

Health professionals should start planning your discharge and after care as soon as you as you get into hospital.⁵⁰

Before you are discharge 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 be supported through the Care Programme Approach (CPA) after they are discharged from hospital. CPA is a package of care that is used by secondary mental health services. You will have a care plan, and someone called a care coordinator to plan and arrange your mental health and social care. All care plans must include a crisis plan.⁵¹

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

- Care Programme Approach (CPA), and
- Section 117 after-care

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 download our factsheets and booklets for free from www.rethink.org/resources. Or call 0121 522 7007 and ask for a copy to be sent to you.

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You can find more information in the following factsheets.

- Mental Health Act
- Advocacy
- Legal Advice

You can download our factsheets and booklets for free from www.rethink.org/resources. Or call 0121 522 7007 and ask for a copy to be sent to you.

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: www.equalityhumanrights.com/en/publication-download/your-rights-when-detained-under-mental-health-act-england.

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

References

- ¹ Mental Health Act 1983 s23(2)
- 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.
- ⁴ Department of Health. *Mental Health Act 1983: Code of Practice*, 2015. Para 32.18
- ⁵ Department of Health. *Mental Health Act 1983: Code of Practice*, 2015. Para 32.2
- ⁶ As note 3. Para 27.7.
- ⁷ Department of Health. *Mental Health Act 1983: Code of Practice*, 2015. Para 38.27
- ⁸ As note 3 Para 38.28
- ⁹ As note 3 Para 38.30
- ¹⁰ Department of Health. *Mental Health Act 1983: Code of Practice*, 2015. Para 32.31
- ¹¹ As note 3 Para 38.34
- ¹² As note 3 Para 27.9
- ¹³ As note 3 Para 27.25
- ¹⁴ As note 3 Para 6.5
- ¹⁵ As note 1 (MHA 1983) s72
- ¹⁶ As note 1 (MHA 1983), s66 (2(a))
- ¹⁷ HM Courts and Tribunals Service *Information for non-restricted patients detained under the Mental Health Act 1983* page 2 <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/t122-eng.pdf> [Accessed March 2016]
- ¹⁸ As note 1 (MHA 1983) s66 (2(b))
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- ²⁰ As note 1 (MHA 1983),
- ²¹ As note 3. Figure 16
- ²² As note 3. Figure 16
- ²³ As note 17 page 2
- ²⁴ Gov.uk. *Apply to the Mental Health Tribunal*. <https://www.gov.uk/government/publications/form-t110-application-to-first-tier-tribunal-mental-health-mental-health-act-1983-as-amended>
- ²⁵ As note 17 page 1
- ²⁶ As note 17 page 3
- ²⁷ As note 3. Para 12.28
- ²⁸ Reg 39 (2). *The Tribunal Procedure (First Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008*. SI 2008/2699

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- ²⁹ Tribunals Judiciary. *Practice Direction First Tier Tribunal Health Education and Social Care Chamber Statements and Reports in Mental Health Cases*. Para 7
- ³⁰ As note 28, Reg 34
- ³¹ As note 17
- ³² As note 28, Reg 32
- ³³ As note 3. Para 12.36
- ³⁴ As note 17 page 3
- ³⁵ As note 3, Para 12.28
- ³⁶ As note 28, Reg 41
- ³⁷ As note 17
- ³⁸ As note 17
- ³⁹ As note 17
- ⁴⁰ As note 1 (MHA 1983), S72
- ⁴¹ As note 1 (MHA 1983) s25
- ⁴² As note 3 Para 32.22
- ⁴³ As note 3 Para 30.39
- ⁴⁴ As note 3 Para 2.2
- ⁴⁵ As note 3 Para 6.21
- ⁴⁶ As note 3 Para 12.26
- ⁴⁷ As note 3 Para 6.8
- ⁴⁸ As note 3 Para 6.13
- ⁴⁹ As note 1 (MHA 1983), s72 (1)
- ⁵⁰ Department of Health. *Mental Health Act 1983: Code of Practice*, 2015, Para 33.10
- ⁵¹ Department of Health. *Refocusing the Care Programme Approach: Policy and Positive Practice Guidance*. London: Department of Health; 2008. Page 19

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