

Guidance on temporary changes to the Mental Health Act due to coronavirus

Who is this guidance for?

Because of the coronavirus crisis, professionals might have to change the way they use the Mental Health Act. The Department of Health and Social Care (DHSC) and NHS England (NHSE) have provided guidance to professionals on:

- The use video technology as part of Mental Health Act assessments
- The use of Section 136 of the Mental Health Act
- The Hospital Managers panel
- Mental Health Tribunals
- Leave and visiting
- The provision of Independent Mental Health Advocates (IMHA)
- The provision of Second Opinion Approved Doctors (SOADs)

This guide explains how the guidance applies to you. It is for any members of the public who are affected by the Mental Health Act. Or anybody who wants to know more about the guidance.

Because of the coronavirus crisis, the government have also made some temporary changes to the Mental Health Act. But at the moment, these changes have not been used. So, professionals will be using the Mental Health Act in the normal way, other than the guidance below. If professionals need to use the temporary changes to the Mental Health Act, we will issue further guidance on them.

You will see some words in this guide are underlined. These words are in the 'Word list' at the end of the guide. It explains what the underlined words mean.

Why have the DHSC and NHSE provided guidance to professionals on some aspects of the Mental Health Act?

When professionals use the Mental Health Act they must stick to the guidance and principles in the Mental Health Act Code of Practice. This is to keep you safe, and to treat you fairly and with respect. You can read the Code of Practice, or an easy read version, by clicking [here](#).

The new guidance is in addition to the Code of Practice, and only affects a few small parts of it. The principles of the Code are:

- Give treatment in the least restrictive way and help people to be as independent as possible
- Involve patients
- Respect patients, families, carers and friends
- Help people get well
- Making fair and efficient decisions

The main safeguards under the Mental Health Act are still there to protect people, including rights of patients to:

- Speak with an independent mental health advocate (IMHA)
- Appeal
- Involve your nearest relative
- Complain
- Access information
- Privacy, safety and dignity.

Where can I get help if I am detained under the Mental Health Act?

You have a number of rights to getting help under the Mental Health Act.

Your right to speak to an Independent Mental Health Advocates (IMHAs)

You can get help from an IMHA if you are under most sections of the Mental Health Act. But you can't get help from an IMHA if you are:

- under an emergency section (Section 4),
- under holding powers of the Mental Health Act (Section 5), or
- in a place of safety under police powers (section 135 or 136).

IMHAs help you to tell staff about your concerns and find out what your rights are. They can also help you to understand your treatment. They are independent of the hospital staff.

Staff should tell you about help from an IMHA as soon as possible after you are detained.

If you think you would find it helpful to speak to an IMHA, ask staff about how to get in touch with one. You may have to ring a number to make an appointment.

Because of coronavirus IMHAs are unlikely to be able to see you face to face. But they can still help you by phone or video call.

Your right to ask the hospital managers to review your detention

When you are detained under some sections of the Mental Health Act, you can ask the hospital managers to review your detention to see if they can discharge you. 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.

But please read the information below in the section called, 'How does the guidance on the hospital managers' panel affect me?'

Your right to appeal to a Mental Health Tribunal

The Mental Health Tribunal is an independent panel that can discharge you from the Mental Health Act. The tribunal has to decide if you meet the criteria for being sectioned.

Please see the section below called, 'How does the guidance on Mental Health Tribunal hearings affect me?' It explains changes to the tribunals procedure that professionals might use during the coronavirus crisis.

Your nearest relative rights to discharge you

Your nearest relative has certain rights under the Mental Health Act. These have not changed.

If you are held under certain sections of the Mental Health Act your nearest relative can discharge you. They need to tell the hospital managers 72 hours before they want to do this.

Your responsible clinician can stop them from discharging you if they think you may be a risk to yourself or others.

You can find more information from about:

- Advocacy by clicking [here](#)
- Discharge from the Mental Health Act by clicking [here](#)
- Nearest relative by clicking [here](#)

You can also contact Rethink Mental Illness Advice and Information Service for more information about your rights. You can call them on 0300 5000 927, Monday to Friday between 9.30am-4pm (excluding bank holidays). The team also provide a webchat facility between 10am and 1pm, Monday to Friday (excluding bank holidays). You can access this facility by clicking [here](#). You can email the team too at advice@rethink.org. The team aim to reply within 3 working days.

Where can I go for help if I'm in not detained under the Mental Health Act?

We have written a separate article giving advice to people who are severely affected by mental illness. This gives information about what to do if you are having a mental health crisis, how to access emotional support lines and much more.

You can read this information by clicking [here](#).

We have many factsheets on our website covering all aspects of mental health related matters. You can find a list of these by clicking [here](#).

If these factsheets don't answer your question you can contact our Advice and Information Service. You can find their contact details by clicking [here](#).

How does the DHSC guidance affect me?

Below we explain how guidance on the following things affects you:

- The use video technology as part of Mental Health Act assessments
- The use of Section 136 of the Mental Health Act
- The Hospital Managers panel
- Mental Health Tribunals
- Leave and visiting
- The provision of Independent Mental Health Advocates (IMHA)
- The provision of Second Opinion Approved Doctors (SOADs)

How can video be used for Mental Health Act assessments?

You might be assessed under the Mental Health Act to see if you need to be detained in hospital to keep you or others safe.

The Mental Health Act says that:

- Doctors must ‘personally examine’ you to see if they think you should be detained, and
- an Approved Mental Health Professional (AMHP) must have ‘personally seen’ you before applying for your detention.

In this resource, we call doctors and AMHPs who might assess you ‘professionals.’

It may be difficult for some professionals to assess you face-to-face at the moment because of:

- the current social distancing rules, and
- the use of personal protective equipment (PPE)

You should still see professionals face-to-face where possible. But if necessary, professionals can see you and assess you using video. But they must follow rules and guidance, which we explain below.

What must professional think about before using video assessments?

Professionals must think about the risks and benefits of using a video assessment, compared to a face-to-face assessment. They should do this on a case-by-case basis.

Professionals must think about:

- your presentation. This means how you look and are behaving, including what you are saying
- any complex needs you have
- if a video assessment is likely to cause you distress and make you very unwell

- if reasonable adjustments can be made to make sure you have a fair experience. If you have a disability, organisations sometimes must make reasonable adjustments for you, to treat you fairly. You can read more about reasonable adjustments [here](#).

In what situations can video assessments be used?

Before professionals use video assessments, it is advisable that 3 conditions apply.

These are that:

1. there is a high risk that you or the professionals might pass on coronavirus,
2. there is a high risk to you or others if the assessment is delayed, and
3. the minimum quality standards and safeguards are met.

[1. There is a high risk that you or the professionals might pass on coronavirus.](#)

There might be a high risk that you or the professionals might pass on coronavirus during the assessment if:

- You, or those you are in contact with, are showing symptoms of coronavirus,
- Personal protective equipment isn't available or adequate, or if professionals use it, it might cause you a lot of distress, or
- Professionals think social distancing isn't possible because of where you are or how you are behaving.
- The professional is showing symptoms of coronavirus.

[2. There is a high risk to you or others if the assessment is delayed](#)

Your face-to-face assessment might be delayed if:

- There are only a limited number of professionals available and they can't see you straight away, or
- Professionals can't enter the place of the assessment. So, for example, if you are in a coronavirus ward at hospital.

In this case, professionals need to think about what might happen to you if your assessment is delayed further. For example, if your mental health would get a lot worse and increase the risk of you harming yourself.

[3. Minimum quality standards and safeguards.](#)

To use videos, professionals should also meet the minimum quality standards and safeguards. These are things like making sure your views are taken into account, and that they have the right equipment.

For more information see the section below called, 'What are the minimum standards and safeguards?'

[What are the minimum standards and safeguards?](#)

The minimum quality standards and safeguards are there to make sure:

- You have a meaningful and high-quality assessment, and
- Your assessment is in a safe environment.

There are minimum standards and safeguards for different aspects of Mental Health Act assessments by video. The minimum standards and safeguards for each aspect are explained below.

[What are the minimum standards of technology and environment?](#)

There should be suitable video technology and a suitable place to have your assessment.

Professionals should make sure that:

- They can clearly see your body language and facial expressions by video,
- The video equipment is tested to make sure there's a consistent connection and it isn't interrupted,
- The place where you have the assessment is calm, appropriate, and free from distractions, interruptions and people who don't need to be there,
- The video link is secure and confidential, and
- The assessment isn't recorded.

[How should professionals consider my views?](#)

Professionals can decide to hold your assessment by video, even if you don't agree to it. But where possible they should try to get your agreement to the video assessment.

When seeking your agreement, professionals should:

- Ask you if you have used video calls before.
- Ask you if you have any concerns about an assessment by video.
- Tell you that if the assessment isn't by video, it may be with staff in full personal protective equipment, and that this means professional's faces may be hidden by masks.
- Fully discuss the video assessment process with you and find out about your communication needs. They should:
 - Explain why a video assessment is needed
 - Give you instructions on how the assessment will happen
 - Ask you if you have any questions
 - Make sure you understand the process
 - Make information available about the assessment in accessible formats such as easy read.

- Make sure you have the mental capacity to understand what's happening, before asking for your joint agreement. Mental capacity means your ability to understand information, weigh it up and make a decision.
- Ask you if you want a relative or advocate at the assessment. But professionals might hold the assessment without your relative or advocate, if they think it's necessary.

[How do professionals manage safeguards and ensure quality?](#)

Professionals should make sure the quality of the video assessment is good enough to meet the requirements of the Mental Health Act. Tell staff if you have any concerns about the quality of the assessment.

Professionals should make sure:

- Everyone who should contribute to the video assessment can do so. This might include a relative of yours.
- That you aren't finding the assessment too difficult or distressing. If you are they should tell staff.
- They can see you properly during the assessment, and you can see them.
- That you can communicate properly. If you need a translator, or are struggling with sign language, for example, tell staff.

What happens if the video assessment can't carry on?

The video assessment might not be able to carry on if:

- you find it too difficult or distressing, or
- there is a problem with the signal or the equipment.

If this happens professionals should arrange a face-to-face assessment as soon as possible.

[What do professionals have to think about in different settings?](#)

You can have a Mental Health Act assessment in different types of settings. For example, it might be at home or in hospital. If professionals use video in an assessment they have to think about different things, depending on the setting.

Community settings

Community settings can include your home, or the home of another.

Professionals shouldn't use video in an assessment in a community setting, unless they really have to. Where possible, an Approved Mental Health Professional (AMHP) and a Section 12 doctor should see you face-to-face and the second doctor can see you by video link.

Places of safety

You might be taken to a place of safety by police. This can happen if they are concerned about the safety of you or others because of your mental health.

A place of safety is normally at a hospital or other health settings. Police stations can be used too, but only as a last resort.

Places of safety can be used for video assessments. But at least one professional involved in the assessment should see you face-to-face. At a police station, this might be through a secure solid screen separating the two halves of the room. This is sometimes necessary for safety.

Mental health hospitals

Video assessments can be used in mental health hospitals if:

- Professionals follow the guidance we talked about earlier, and
- Appropriate mental health staff are available at the hospital.

General hospitals, including accident and emergency (A&E)

Professionals shouldn't use video in hospitals that are not mental health hospitals, unless they really have to.

Professionals might not be able to arrange a proper face-to-face assessment. But they might be worried about your safety or that of others. They can think about detaining you on a temporary basis under [section 4 of the Mental Health Act](#). This will allow them extra time to arrange a proper face-to-face assessment.

Prison and Immigration Removal Centres (IRCs)

Video can be used for Mental Health Act assessments in prison and Immigration Removal Centres (IRCs).

The government know the importance of Mental Health Act assessments in prison and IRCs. Especially as treatment under the Mental Health Act can only be given in a hospital, but not in a prison or IRC.

If video is used for your assessment, you should have time afterwards with someone from the prison or IRC mental health team. You can ask them any questions or tell them about any concerns.

Professionals assessing you should be able to see you in video link.

What extra things do professionals have to think about if I am under 18?

If you are under 18 professionals must think about these extra things for video assessments:

- You might be under 16 and professionals think you can't make a decision on your own. If so, they should consult with those who have parental responsibility for you.
- If the assessment is appropriate, given your age, stage of development and your capacity to make decisions.
- Any special adjustments that are needed to help you with the video assessment.
- Involving your parent or carer to help you with the video assessment.

Also, either:

- the assessment should involve someone with experience in child and adolescent mental health services (CAMHS), or
- the assessing professional should be supported by a CAMHS professional by video link.

What extra things do professionals have to think about if I have a learning disability or autism?

If you have a learning disability or autism professionals must think about these extra things for video assessments:

- Your communication needs. These might mean you either need additional support or a video assessment might not be suitable for you. Or that you need extra support with a video assessment.
- Providing easy to read information on the assessment and what it means.
- Involving your family if necessary.
- Making reasonable adjustments to make the assessment easier for you. You can read more about reasonable adjustments [here](#).
- Making sure that there is a translator if you use Makaton or sign language.
- Getting good quality supporting information from people who know you well.
- To make sure you are only detained if you have a diagnosed mental health problem, and not only because of your behaviour.

What extra things do professionals have to think about if I am an older adult or I have dementia?

If you are an older adult or you have dementia professionals must think about these extra things for video assessments:

- You should be given information in a way you understand, and it should be repeated if necessary.
- They should think about how you best communicate and support you with this, involving your family or carers.
- Making sure you are comfortable with the video technology, making adjustments if necessary.

How should professionals use the Mental Health Act Code of Practice during the coronavirus crisis?

The Mental Health Code of Practice is a document that gives guidance to professionals about how to use the Mental Health Act. It is written by the Department for Health and Social Care (DHSC).

You can read the Code of Practice and an easy read version of it by clicking [here](#).

DHSC has written new guidance on how professions should use some sections of the Code of Practice during the coronavirus crisis.

There is information below on how the guidance might be important to you, if you are affected by the Mental Health Act.

How does the guidance on section 136 assessments affect me?

You might be a risk to yourself or others in a public place because of a mental health issue. The police have powers under [section 136 of the Mental Health Act](#) to take you to a place of safety. This is so you can be assessed to see if you need to be detained in hospital under the Act. A place of safety is usually in a hospital.

When you are in a place of safety, the new guidance says professionals can talk to you or each other by video link, if necessary.

Professionals might think you need to be detained under the Mental Health Act. An Approved Mental Health Professional (AMHP) and a doctor should see you face-to-face if possible.

How does the guidance on the hospital managers' panels affect me?

In the following circumstances the hospital managers' panel can review your detention. This is to see if you should remain detained in hospital under the Mental Health Act:

- If you, or another person such as your carer, request a review.
- If your detention is renewed.
- If your community treatment order (CTO) is extended.
- If your Nearest Relative tries to discharge you but your Responsible Clinician stops them from doing it.

The hospital managers' panel should try to meet you face-to-face during the coronavirus crisis. But the new guidance say that video or phone contact can be used as part of a hospital managers' panel review if necessary.

The hospital managers' panel should continue to join in your Nearest Relative or carer, if different. They can use phone or video if necessary.

If the hospital manager's panel find it too difficult to hold reviews, they can suspend them during the coronavirus crisis. If your review is suspended it should take priority when the crisis is over.

You will still have the right to apply to the mental health tribunal during the crisis. They can decide if you still need to be detained in hospital. Video technology can be used in tribunals during the crisis. See the section called 'How could the guidance on mental health tribunal hearings affect me?' for more information.

How does the guidance on mental health tribunal hearings affect me?

If you are on an assessment or treatment section of the Mental Health Act you have the right to apply to the tribunal. This includes if you are on a community treatment order (CTO). The tribunal can decide if you still need to be detained, or remain on your CTO, and other things.

Temporary legislation and directions from the Tribunal Service have changed the rules about mental health tribunals. The rule changes are temporary while the coronavirus pandemic lasts.

The main changes are shown below.

Staff should continue to make sure you know about your right to apply to the tribunal.

If your solicitor can't see you face-to-face, you should be supported to speak to them by phone or video.

What are the changes to when a tribunal must take place for section 2 patients?

If you are detained under section 2 of the Mental Health Act, you have the right to appeal to a mental health tribunal. They can review your case.

Usually, the tribunal must take place within 7 days of your application. Emergency legislation says the tribunal must take place within 10 days. If the tribunal can't take place within 10 days, the tribunal can decide to extend this time period.

What are paper tribunals?

The tribunal can decide to have a paper only tribunal.

A paper tribunal means that the tribunal will make a decision on the paper evidence that they have. This means you won't be able to speak to the tribunal. But you can give them written evidence. Or your legal representative can.

The tribunal can only decide to have a paper tribunal if:

- The decision is needed urgently, and
- It isn't reasonably practical to hold a hearing; and
- It is in the interests of justice to do so.

Can people join in hearings by video or phone?

Tribunals will make greater use of people joining in by video or phone. This will help to make things safe by cutting down on people meeting face-to-face.

What are the changes to the tribunal panel?

Usually the tribunal is heard by 3 panel members. They are a legal member, a doctor and a lay member. But now tribunals can be heard by a single legal member only. They can make decisions alone.

If this is considered to not be appropriate for your case, a 2 or 3-person panel can hear the case and make decisions.

Will there be any Pre-Hearing Assessments?

Sometimes an appropriate member of the tribunal must examine you to form an opinion of your mental condition. This is known as a 'Pre-Hearing Assessment (PHE)'.

No PHEs will take place during the coronavirus pandemic, due to the health risks they pose.

What about patients on Community Treatment Orders (CTO) or who are conditionally discharged?

You might be a Mental Health Act patient who is living in the community:

- on a Community Treatment Order, or
- on a conditional discharge from a criminal section.

If it has already been agreed that you will have a paper tribunal, this will go ahead as planned.

If a paper tribunal hasn't been agreed, your tribunal is postponed until after the coronavirus crisis has ended.

How does the guidance on leave and visitors affect me?

Under the Mental Health Act, you usually have the right to:

- see visitors, and
- go on leave, if your Responsible Clinician agrees to it.

Leave is when you can leave the hospital for a short time but only if you agree to go back. It is sometimes known as 'Section 17 leave.' There are different types of leave.

Although you have a right to see visitors, professionals can stop you seeing visitors if there's a good reason.

The Department of Health and Social Care (DHSC) are concerned that many hospitals have stopped visiting and leave during the coronavirus. This is to stop the spread of the virus.

What about leave?

DHSC say your Responsible Clinician should agree to you having leave if appropriate and possible. This is especially the case if you have autism or a learning disability, so your routine is kept the same.

Your Responsible Clinician should think about how well you understand public health measures, like social distancing. If your Responsible Clinician thinks community leave isn't appropriate, they should at least think about giving you leave in the grounds of the hospital. They might only agree to leave if you have another person with you. This might be a relative or member of hospital staff.

What about visiting?

If possible, you should be allowed one visitor, especially if you are a child or you have a learning disability, autism or dementia. You and your visitor must stick to non-contact rules.

The hospital shouldn't have blanket visiting bans. But they should think about whether you can have a visitor based on your individual situation.

You should be supported to maintain contact with family and friends by phone and video calls. You should be allowed access to mobile phones or other equipment to be able to do this.

Can I still speak to an Independent Mental Health Advocate (IMHA)?

You should still be able to speak to an Independent Mental Health Advocate (IMHA) by phone or video call. Hospital staff should:

- help you arrange this,
- support you to do this, and
- give you access to your mobile phone or other equipment to allow you to do this.

It might be difficult for you to speak to an IMHA by phone or video call. Staff should arrange for you to see an IMHA face-to-face, if possible.

What are the changes if a second opinion is needed before I'm given medication?

When you are detained under the Mental Health Act professionals should ask you to agree before giving you medication. But if you are in hospital under a treatment section you can be given medication against your will for 3 months. After 3 months, professionals can only treat you without your consent if a 'second opinion approved doctor' (SOAD) agrees.

The SOAD service is still available but they won't visit you in hospital. They will look at your treatment plan without visiting the hospital.

SOADs will speak to the professionals treating you by phone or video if they need to. And if you agree to speak to the SOAD you will be supported by the team looking after you. They will make sure that you can speak to the SOAD, or have a video call with them, by arranging access to a telephone or video technology. SOADs will be sending electronic forms to services, instead of providing them on paper.

If you want to know more about your rights, you can ask to speak to an Independent Mental Health Advocate (IMHA).

Word list

An approved mental health professional (AMHP) is a professional who is trained to deal with the Mental Health Act. They are usually social workers. But they can also be psychologists or other professionals who have been approved by a local authority.

A Community Treatment Order (CTO) is when you live in the community, but you will have to stick to some rules. You are still under the Mental Health Act. Your Responsible Clinician will decide on rules that they think will help you stay well. If you don't stick to the rules, you can be sent back to hospital.

If you are detained under a criminal section of the Mental Health Act, The Secretary of State for Justice may place conditions on your discharge. This is called a conditional discharge. If you don't follow these conditions you can be recalled back to hospital

Independent Mental Health Advocates (IMHA) are there to help you understand your rights and other information about the Mental Health Act. And what health professionals should do to make sure you are looked after. They can speak to staff on your behalf if you want them to.

A Mental Health Tribunal is a legal meeting. At the meeting it will be decided if you still need to be detained in hospital. The tribunal can also decide other things. For example, to transfer you to another hospital.

Your nearest relative is usually person in your family or a carer. They have specific rights under the Mental Health Act, such as the right to information. Your nearest relative is different to your next of kin.

Your Responsible Clinician is the person in charge of your care. They are highly trained mental health professionals. They can make decisions about whether you are well enough to leave hospital on leave or be discharge from hospital. They are usually a psychiatrist, but they can be other mental health professionals too.

Second Opinion Approved Doctors (SOADs) give a second opinion if you refuse treatment, and sometimes in other circumstances. They are appointed, and regulated, by the Care Quality Commission (CQC). They are independent of your treatment team. They would normally come to the hospital to talk to you and your care team about your treatment.

A section 12 doctor is a doctor with special experience in the diagnosis or treatment of mental disorder.