

# NHS treatment: your rights

This factsheet is about your rights when you use NHS services. It explains how NHS staff should act towards you, and what treatment you may get.



KEY POINTS

- The NHS should:
  - ask you if you agree to treatment,
  - give you information about treatment choices,
  - treat you with care and skill,
  - keep your personal information confidential,
  - let you see your health records, and
  - respect your human rights.
- NHS staff should follow codes of practice and guidance.
- If you think that the NHS has not acted properly, you can complain.
- You can take legal action against the NHS if they break the law.

**This factsheet covers:**

1. [What are my rights when I use the NHS?](#)
2. [What treatment should I get from the NHS?](#)
3. [What can I do if I have a problem with NHS services?](#)
4. [Can I choose what treatment I get or which doctor I see?](#)

## 1. What are my rights when I use the NHS?

The NHS always has to respect your legal rights.

### Consent

You can refuse treatment, even life saving treatment.<sup>1</sup> This is the case even if other people disagree with your decision. But there are exceptions. Your doctor can treat you even if you don't want it if:<sup>2</sup>,

- you are in hospital under the Mental Health Act 1983, or
- you cannot make decisions because you 'lack capacity'.

### Information

Your doctor should give you clear information about risks, side effects and any other relevant information about your treatment. This is to make sure you have all the information you need to make decisions about your treatment.<sup>3</sup>

### Access to treatment

You have the right to use NHS services if they can help you. The services cannot refuse to help you without a good reason. If the waiting times for a service are too long you may be told about different places you can get the same or similar treatment.<sup>4</sup>

### Standard of care

Health professionals must use reasonable care and skill when they treat you. This means different things in different situations. Your doctor should follow trusted medical opinion and not do something that other doctors wouldn't do.<sup>5</sup> You should always get care and treatment that is appropriate for you and your needs. Your health professionals should also think about your preferences.<sup>6</sup>

You have a right to be cared for in somewhere safe, clean and suitable. You should be given suitable food and drink to keep you well while you are there.<sup>7</sup>

### Confidentiality

Health professionals must not tell other people about your diagnosis, condition, treatment or other personal information.<sup>8</sup> They can only tell other people if:<sup>9,10</sup>

- you tell them they can,
- they need to in an emergency, or
- a court orders them to.

### Medical records

You have the right to see your medical records. Your medical records must be up-to-date, accurate and relevant.<sup>11</sup> It is possible to have some mistakes corrected in your records, although medical opinions are usually not removed.

## Human rights

NHS services must respect your human rights. For example, they have to respect your private and family life. The NHS could breach this by saying, for example, that you cannot have visits in hospital or you cannot leave the hospital.

## Discrimination

You have the right to use NHS services without being unlawfully discriminated against on the grounds of disability or other characteristics.<sup>12</sup> This protection is under the Equality Act 2010.

## Complaints

You also have a right to complain about any NHS service if you are unhappy. The NHS must acknowledge your complaint and investigate it properly.

You can read more about complaints in [Section 3](#) below.

You can find more information about:

- Mental Health Act
- Access to health records
- Planning your care: advance statements
- Mental capacity and mental illness
- Clinical negligence
- Confidentiality
- Complaints
- Discrimination and mental health

at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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## 2. What treatment should I get from the NHS?

The NHS offers different treatments depending on where you live. This means your doctor might not be able to offer you something that is available in another part of the country.

### Clinical Commissioning Groups (CCGs)

A Clinical Commissioning Group (CCG) is a part of the NHS. There are several different CCGs across the country. They are responsible for arranging some NHS services in their area.

A CCG is responsible for patients registered with a GP in their area, and for patients who do not have a GP but who are 'usually resident' in their area.<sup>13</sup> The rules around this can be complicated. For more advice you can call the Rethink Mental Illness Advice Service on 0300 5000 927.

A CCG is responsible for arranging mental health services including teams such as Community Mental Health Teams (CMHT) and Crisis Teams. They do not arrange any service provided by a GP.<sup>14</sup>

They also arrange:<sup>15</sup>

- urgent and emergency treatment, such as ambulances and accident and emergency departments,
- some out-of-hours GP services,
- pre-arranged care in hospital,
- community health services,
- rehabilitation services,
- services for people with learning disabilities, and
- NHS continuing healthcare.

The CCG is responsible for assessing the local population in its area. Based on this they will decide which services are needed, and which ones are not needed.<sup>16</sup> This means that there may be some services that are not available in your area, but are available elsewhere.

This does not always mean you cannot access services outside your area. You might be able to get funding to do this. You can read more about this in [Section 4](#).

## **NHS England**

NHS England is another part of the NHS. They fund different services than the CCGs across England.

These services include the following.<sup>17</sup>

- Services delivered through a GP.
- Some out-of-hours GP services.
- Pharmaceutical services, such as community pharmacy services.
- Health services apart from emergency treatment.
- Health services for people in prisons and other similar places such as young offender institutions and immigration removal centres.
- Secondary health services for the armed forces and their families. This means the health services not arranged through a GP.
- Specialist services.

In mental health a specialist service might cover a certain condition, such as Obsessive Compulsive Disorder.<sup>18</sup> Usually these services are for people with very severe symptoms. They have their own rules on who can and cannot go there.

Because specialist services are arranged by NHS England, this means that you may still go to one even if it is not in your area.<sup>19</sup> Services have their own rules about who can and cannot join.<sup>20</sup> Ask your doctor if you think they could help.

## How can I find out what services are in my area?

Below is some guidance that may help you to find out what you may get in your area. If you don't think the NHS has followed the guidance you can complain. This can sometimes lead to changes in your treatment or an apology if things went wrong. There is more information about this in [Section 3](#).

### Health professionals' codes

These are guidelines produced by different professional bodies for healthcare professionals. They have some general guidance on what healthcare services should be provided.

One example is the General Medical Council's Good Medical Practice Guidelines which you can find here:

[www.gmc-uk.org/guidance/good\\_medical\\_practice.asp](http://www.gmc-uk.org/guidance/good_medical_practice.asp)

### NICE Guidelines

The National Institute for Health and Care Excellence (NICE) write guidelines on what treatment should be given for different conditions. You can find them here:

[www.nice.org.uk/guidance](http://www.nice.org.uk/guidance)

### The NHS Constitution

The NHS Constitution says what your rights are in the NHS. All NHS services have to follow the constitution. You can read it here:

[www.gov.uk/government/publications/the-nhs-constitution-for-england/the-nhs-constitution-for-england](http://www.gov.uk/government/publications/the-nhs-constitution-for-england/the-nhs-constitution-for-england)

### Local NHS Policies

You can look on your local CCG's website for more information about their services. You can read their policies on what services exist and who can access these. You can also look online for NHS England services and their policies.

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## 3. What can I do if I have a problem with NHS services?

### **Complain**

If you feel that the NHS has done something wrong you can complain. A complaint might lead to the treatment that you wanted, or an apology.

If you are unhappy with your treatment, you can make your complaint directly to the NHS service. This can be in person, in writing, or over the phone. If you are complaining it is important to make it clear that this is what you are doing. If you want to complain about a GP surgery, you can also contact NHS England.

The NHS should acknowledge your complaint within 3 working days and then look at what happened. They will tell you when this is finished. If you are not happy with their response you can take your complaint higher to the Parliamentary and Health Service Ombudsman (PHSO).

If you need help making your complaint you can get the help of an Independent NHS Complaints Advocate. This is someone independent of the NHS, who can help you with making your complaint. You can find your local service online.

If your doctor has behaved unprofessionally, you can complain to the General Medical Council (GMC). The GMC can investigate and may remove a doctor from the medical register. This could be appropriate if the doctor:<sup>21</sup>

- has had a sexual relationship with a patient,
- has lied about their qualifications,
- cannot understand English well enough to do the job,
- makes serious or repeated mistakes,
- has broken your confidentiality without good reason, or
- has put information on your medical records they knew was wrong.

You can find more about:

- Complaints
- Advocacy

at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

### **Take legal action**

If the NHS has breached your legal rights, you can take legal action.

#### Clinical negligence

Clinical negligence is when you have been physically or mentally hurt because of a poor standard of health care.

You can take legal action against the NHS or a member of staff and claim compensation. This can be complicated and you should speak to a solicitor about this.

You can find more information about '**Clinical negligence**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of or factsheet.

#### Judicial Review

A judicial review means you can challenge NHS decisions in court. For example, the NHS may have refused to offer you a certain treatment that it was unreasonable for them to refuse.

A judge might decide that the NHS made an unlawful decision if:<sup>22</sup>

- the person who made the decision did not have power to make it,
- the decision was irrational,
- the procedure was unfair or biased, or
- the decision breached your human rights.

The judge can say if the decision was legal or illegal, but they cannot make the NHS give you a certain treatment. The judge cannot make medical decisions on behalf of NHS staff.<sup>23</sup>

If you want to ask for a judicial review, you need to act as quickly as you can. There are time limits. You should start legal action within 3 months of the problem.<sup>24</sup>

Legal Aid may be available for judicial review cases. You can find the details of solicitors working under legal aid by calling Civil Legal Advice on 0345 345 43 45.

You can find more about '**Legal advice**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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#### **4. Can I choose what treatment I get or which doctor I see?**

##### **Do I have the right to the treatment I want?**

Your doctor will offer you treatments that are available locally. They will choose treatment based on your diagnosis and guidelines. If there is more than one provider of the same treatment in your area, you may be able to choose between them.

If your doctor doesn't offer you what you want, ask them why. Some people might find it helpful to ask an advocate to help them talk to their doctor.

##### Clinical Commissioning Group services

As we explained above, your local Clinical Commissioning Group (CCG) decides what treatments are available in your area. If your doctor thinks you need treatment that is not available locally, you may be able to get treatment under a different CCG.

##### Individual Funding Request (IFR)

The NHS does not offer all possible treatments. If you want a treatment that it doesn't offer, you can ask the NHS to make an exception for you. This is called an 'Individual Funding Request' (IFR). When you make a request, the NHS will look your case and decide if they will pay for your treatment.<sup>25</sup>

When you make your IFR application, you need to clearly show:<sup>26</sup>

- that the treatment you are asking for will help you,
- that other treatments have not worked, and
- that your circumstances are exceptional.

It will help if your doctor supports your application.

### NHS England specialist services

As we explained above, NHS England may arrange different specialist services across the country. These are usually for people who have more needs or worse symptoms. You may be expected to try local services first, if they are available. Each specialist service will have their own rules on referral. Ask your doctor for more information.

### **Do I have the right to see a psychiatrist?**

You should get treatment from a professional with the appropriate experience and qualifications.<sup>27</sup> You cannot demand to see a psychiatrist, but your GP should offer you a referral if they think you need to see one.

GPs can only usually diagnose conditions such as mild-moderate depression or anxiety. They are not trained to diagnose mental illnesses such as bipolar disorder and schizophrenia. They should refer you to a psychiatrist if they think that you need a specialist opinion.

### **Do I have the right to a second opinion?**

A second opinion means that you see another doctor to find out if they agree with your diagnosis or treatment.

You can ask for a second opinion if you do not agree with your doctor's opinion. But you do not have a right to a second opinion. You should ask your doctor about it and explain why you think it is important. If your doctor refuses, ask why. If you are unhappy with the reasons, you could complain through the NHS complaints procedure.

You can find more information about '**Second opinions**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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### **British Institute of Human Rights (BIHR)**

BIHR is an independent human rights charity that is committed to challenging inequality and social justice in everyday life in the UK.

BIHR has published a human rights guide for people living with mental health problems, which you can read at <https://www.bih.org.uk/mental-health-advocacy-and-human-rights-your-guide>.





## Equality Advisory and Support Service

Advises and assists individuals on issues relating to equality and human rights across England, Scotland and Wales.

**Textphone:** 0808 800 0082

**Telephone:** 0808 800 0084 (Mon-Fri 9am-7pm and Sat 10am-2pm)

**Address:** FREEPOST EASS HELPLINE FPN6521

**Email:** Online form via website

**Website:** [www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)



<sup>1</sup> *Williamson v East London & City Health Authority* [1998] 41 BMLR 85.

<sup>2</sup> s5, Mental Capacity Act 2005 c9.

<sup>3</sup> *Chester v Afshar* [2004] UKHL 41.

<sup>4</sup> Department of Health. *The NHS Constitution*. London: Department of Health; 2015. Page 6.

<sup>5</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 583.

<sup>6</sup> As note 4. Page 9

<sup>7</sup> As note 4. Page 7

<sup>8</sup> *Hunter v Mann* [1974] QB 767.

<sup>9</sup> General Medical Council (GMC). *Confidentiality: good practice in handling patient information*. Manchester: GMC; 2017. Para 22-23.

<sup>10</sup> Department of Health. *Confidentiality: NHS Code of Practice*. London: Department of Health; 2003. Annex B, para 50.

<sup>11</sup> Sch 1 para 4, Data Protection Act 1998 c29.

<sup>12</sup> s4 Equality Act 2010 c.15.

<sup>13</sup> NHS England. *Who pays? Determining responsibility for payments to providers*. London: NHS England; 2013. Page 7.

<sup>14</sup> NHS Commissioning Board. *Commissioning fact sheet for clinical commissioning groups*. London: NHS Commissioning Board; 2012. Page 3.

<sup>15</sup> As note 14 Page 3-4

<sup>16</sup> As note 13. Page 6.

<sup>17</sup> As note 14. Page 4.

<sup>18</sup> Schedule 4, *The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012*. SI 2012/2996. London: TSO; 2012.

<sup>19</sup> s3, National Health Service Act 2006 c.41.

<sup>20</sup> NHS England. *Specialised services*.

<https://www.england.nhs.uk/commissioning/spec-services/> (accessed 29 September 2017).

<sup>21</sup> General Medical Council. *What we can do and what we can't do*. [http://www.gmc-uk.org/concerns/making\\_a\\_complaint/30432.asp](http://www.gmc-uk.org/concerns/making_a_complaint/30432.asp) (accessed 12 September 2017).

<sup>22</sup> Public Law Project. *An Introduction to Judicial Review*. [http://www.publiclawproject.org.uk/data/resources/6/PLP\\_Short\\_Guide\\_3\\_1305.pdf](http://www.publiclawproject.org.uk/data/resources/6/PLP_Short_Guide_3_1305.pdf). Page 7.

<sup>23</sup> As note 22. Page 12.

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<sup>24</sup> Ministry of Justice. *Civil Procedure Rules Part 54 Judicial Review and Statutory Review*. <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part54#54.5>. Para 54.5. (accessed 29 September 2017).

<sup>25</sup> NHS England. *Individual Funding Requests- A guide for patients and services users*. <https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2015/06/individl-fund-reqts-info-pats.pdf> (accessed 29 September 2017).

<sup>26</sup> As note 25.

<sup>27</sup> Department of Health. *The Handbook to the NHS Constitution*. London: Department of Health; 2015. Page 38.

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This factsheet is available  
in large print.



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## Rethink Mental Illness Advice Service

**Phone 0300 5000 927**  
**Monday to Friday, 9:30am to 4pm**  
**(excluding bank holidays)**

**Email [advice@rethink.org](mailto:advice@rethink.org)**

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### Did this help?

We'd love to know if this information helped you.

**Drop us a line at:** [feedback@rethink.org](mailto:feedback@rethink.org)

**or write to us at Rethink Mental Illness:**  
RAIS  
PO Box 17106  
Birmingham B9 9LL

**or call us on 0300 5000 927.**

We're open 9:30am to 4pm  
Monday to Friday (excluding bank holidays)



**Leading the way to a better  
quality of life for everyone  
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For further information  
on Rethink Mental Illness  
Phone 0121 522 7007  
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### Need more help?

Go to **[www.rethink.org](http://www.rethink.org)** for information on symptoms, treatments, money and benefits and your rights.

### Don't have access to the web?

Call us on 0121 522 7007. We are open Monday to Friday, 9am to 5pm, and we will send you the information you need in the post.

### Need to talk to an adviser?

If you need practical advice, call us on 0300 5000 927 between 9:30am to 4pm, Monday to Friday. Our specialist advisers can help you with queries like how to apply for benefits, get access to care or make a complaint.

### Can you help us to keep going?

We can only help people because of donations from people like you. If you can donate please go to **[www.rethink.org/donate](http://www.rethink.org/donate)** or call 0121 522 7007 to make a gift. We are very grateful for all our donors' generous support.



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