

Mental health laws

Your rights if you have mental health problems

What rights do I have if I've been sectioned?

Can my psychiatrist make me have treatment I don't want?

Who says when I can leave hospital?



0845 345 4 345

www.communitylegaladvice.org.uk

See page 10 for useful phone numbers and website addresses

A free and confidential advice service paid for by Legal Aid

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legal advice

Community Legal Advice

This guide has been produced by Community Legal Advice (CLA), a free and confidential advice service paid for by legal aid.

Community Legal Advice provides:

- advice leaflets on a range of topics
- a helpline **0845 345 4 345**
- a website

www.communitylegaladvice.org.uk

People on a low income can get free, specialist legal advice from the CLA helpline.



What are my rights if I have mental health problems?

If you use mental health services, you are generally free to choose which services to use, including which treatments to have, and whether to stay in hospital. However, if you're 'sectioned', you may have to stay in hospital for treatment whether or not you want it. Sectioning means having you held (detained) in hospital for treatment because of your mental illness.

This leaflet looks at some common questions and concerns about sectioning and your rights if you have mental health problems.

To find out where to get more information and advice, see 'Where can I get help and advice?' on page 10 of this leaflet.

How does sectioning work, and who can get me sectioned?

Sectioning is when you have to go into hospital because of your mental illness. A family member or your doctor may ask for you to be sectioned if they're worried about you.

By law, two doctors must agree that you need to be in hospital. A third person must then decide whether to section you. This person could be your 'nearest relative' (see 'Who is my 'nearest relative' and can I change who it is?' on page 4) but is normally an 'approved mental health professional', that is an expert in mental health matters. This could be a social worker, a nurse, an occupational therapist or a psychologist.

You can be sectioned only according to the terms set out in a law called the Mental Health Act. But you can say what help you think you need for your mental illness. Your doctors and an approved mental health professional must then try to arrange this help if it will prevent you being sectioned.

Different types of section

There are three different types of section:

- **Section 2 (Admission for assessment)** is if you need time in hospital for assessment and to see what treatment might help you. You can be detained (held) in hospital for up to 28 days. You can only be held longer if you are assessed and sectioned again (under section 3) before the 28 days are up.
- **Section 3 (Admission for treatment)** is if you need treatment in a hospital for your mental health problems. You can be held for up to six months, but the section can be renewed.
- **Section 4 (Admission for assessment in cases of emergency)** is used if you urgently need to go into hospital for your mental health problems. In this case, you may be assessed by only one doctor and another person, but you can be held for only three days. Within that time, if a second doctor agrees that you need to be in hospital, your section can be turned into a section 2.

Can my psychiatrist force me to have treatment I don't want?

Any doctor, including a psychiatrist, should always ask if you agree (consent) to a treatment, for example drugs. But in some cases if you have been sectioned, you can be given treatment for a mental disorder even if you say you don't want it. There are rules about how this can happen:

- You can be made to have treatment for your mental health problem, but not for anything else. If you're not sure what the treatment is for, seek expert advice.
- If a doctor wants to give you treatment that you don't want, a second doctor must agree that you should have it.

If you don't want a particular treatment, tell your doctor and explain why. If the doctor still says you must have the treatment, seek advice from someone with expertise in mental health law – see 'Where can I get help and advice?' on page 10.

Who is my 'nearest relative' and can I change who this is?

Your nearest relative is a person who has certain rights and powers about:

- you being sectioned
- you being discharged (leaving hospital), and
- other things to do with your care and treatment under the Mental Health Act.

You do not choose your nearest relative. Who it is depends on rules set out in the Mental Health Act. For example, if you have a wife, husband or civil partner, they are your nearest relative. Otherwise, it will be another member of your family or a person who lives with or cares for you – it is not always someone related to you.

You can sometimes apply to the County Court to change your nearest relative, for example if that individual is not a suitable person. If your nearest relative does not want to be involved in decisions about your mental health care, they can allow someone else to do this.

If I am in a mental health hospital as a 'voluntary' patient, can I leave when I want?

If you agree to go into hospital for treatment and have not been sectioned, you are normally free to leave when you want. But the doctor in charge of your care can keep you in hospital for up to three days to assess you to see whether you should be sectioned. Unless you are then sectioned, you are free to leave after the assessment.

What rights do I have if I've been sectioned?

If you are held in hospital because you've been sectioned, you should be told:

- why you are being held, and how you can be released from hospital
- about the Mental Health Tribunal (see 'If I've been sectioned, how can I leave hospital?' on page 7)
- how and when you can be treated without your agreement, and
- about your right to meet Care Quality Commission commissioners when they visit the hospital. The commissioners check whether you really need to be in hospital and that you are being cared for properly.

You may also have the right to help and advice from an 'independent mental health advocate' (IMHA). This is someone who has been specially trained to listen to you and, if necessary, can speak for you. Hospital staff should tell you about the IMHA service and how to contact a local advocate.

If you are held in hospital, you also have the right to:

- see your medical records, and
- have your friends and family visit you (unless the doctors have a very good reason why they should not).

If I've been sectioned, how can I leave hospital?

You should be discharged, and your section should end, as soon as it is clear you no longer need to be held in hospital. The doctor in charge of your care and treatment will decide this. You can then leave hospital or agree to stay as an 'informal' (sometimes called voluntary) patient.

If you are held under section 2 or section 3, your nearest relative can write to the hospital managers asking for you to be discharged. The hospital managers may consider letting you leave, though they don't have to.

If you are held under section 3, a doctor can discharge you from hospital under a 'community treatment order' or CTO. This means you can leave hospital but once outside, you must comply with certain conditions laid down in the CTO, such as taking your medication and attending outpatient appointments. If you don't comply with the CTO, you can be brought back to hospital.

At any time you can tell the hospital managers that you think you should be discharged. They may then decide to hold a hearing where you can explain why.

What if the hospital won't discharge me when I ask?

If the hospital doesn't agree to discharge you, you can apply to the Mental Health Tribunal (MHT). The MHT is independent from the hospital. It will hear your case and decide whether you should be discharged.

You can have a specialist mental health solicitor to put your case for you to the tribunal. Legal aid will pay for the solicitor's legal costs.

You can find specialist mental health solicitors through **Community Legal Advice** – phone **0845 345 4 345** or visit www.communitylegaladvice.org.uk

Can I get help when I leave hospital?

You should be assessed to see what help you will need when you leave hospital. This could include things such as:

- somewhere to live
- social care support
- home help, and
- daytime activities (for example, access to a day centre).

The people who assess you should ask you what you think you will need. If a friend or relative helps or looks after you, they should be asked too.

In many parts of the country, there are local support groups for people with mental health problems. You can find out about support groups in your area from **MIND** – see page 10 for contact details.

What rights do I have if I am arrested?

If you are arrested for something that was not very serious, and the police think you have mental health problems, they may just drop the case. If the police question you, you should ask to have a solicitor so that you get proper legal advice.

The police should also make sure you have help from an 'appropriate adult' – a family member or social worker, for example, who will help you while you are at the police station.

Where can I get help and advice?

There are two charities that provide help for people with mental health issues, their families and their carers.

MIND

- Phone the confidential infoline, **0845 766 0163**, or
- call MIND's legal advice helpline, **0845 225 9393**, or
- visit www.mind.org.uk

SANE

- Phone the SANEline phone support service, **0845 767 8000**, 6pm to 11pm every evening
- email the SANE support service, at sanemail@sane.org.uk or
- visit www.sane.org.uk

Community Legal Advice

If you need legal advice, for example, if you want to apply to the Mental Health Tribunal to be discharged from hospital, we can put you in touch with solicitors in your area who specialise in mental health issues.

We can also help if you have other types of problems, for example, to do with claiming benefits, or housing, debt or employment.

How to contact us

You can speak to our advisers in several ways:

- Call us on **0845 345 4 345** from 9am to 8pm Monday to Friday or 9am to 12.30pm Saturday. Calls cost no more than 4p per minute from a BT landline. Calls from mobiles usually cost more. Worried about the cost? Ask an adviser to call you back.
- Request a callback through our website, at www.communitylegaladvice.org.uk
- Text 'legalaid' and your name to 80010 and we'll call you back within 24 hours.

Help on the internet

If you have internet access, our website www.communitylegaladvice.org.uk has lots of help, including:

- our online directory of advisers, organised by areas of law
- more information about legal aid and who can get it
- online factsheets and leaflets that you can download, on lots of topics, and
- links to specialist organisations, charities and support groups in your area.

Can I get legal aid?

If you need help with the costs of legal advice, you can apply for legal aid. Whether you will get it will depend on:

- the type of legal problem you have
- your disposable (spare) income and how much disposable capital (money, property, belongings) you have
- whether there is a reasonable chance of winning your case, and
- whether it is worth the time and money needed to win.

There is an online calculator on our website, at www.communitylegaladvice.org.uk/en/legalaid where you can see whether you could be financially eligible for legal aid.

What if I think I am eligible?

If you think you could be eligible for legal aid, you should speak to a legal adviser who can deal with legal aid cases. You can search our directory to find an adviser in your area, at the 'Find a legal adviser' section of our website www.communitylegaladvice.org.uk or call our helpline 0845 345 4 345.

Help for other problems

This leaflet is one of a series of free leaflets produced by Community Legal Advice giving easy-to-read advice on a range of problem areas. The leaflets in this series are:

- C1 Dealing with rent problems**
- C2 Domestic abuse**
- C3 Fair treatment at work: your rights if you are disabled**
- C4 Your rights at work**
- C5 Dealing with debt**
- C6 Losing your home**
- C7 Claiming benefits**
- C8 Problems with school**
- C9 Mental health laws**
- C10 Community care**
- C11 Divorce and separation**
- C12 Living together**
- C13 Medical accidents**
- C14 Dealing with the police**
- C15 Care proceedings**
- C16 Claiming asylum**
- C17 Removal and deportation**
- C18 Dealing with a will**

You can order any of these leaflets free by:

- phoning **0845 3000 343**
- faxing **0845 5438 258**, or
- emailing orderleaflets@communitylegaladvice.org.uk.

All these leaflets are also available in Welsh, Braille and Audio.



The Legal Services Commission manages the Community Legal Service and Community Legal Service Fund (legal aid). To find out more about us, visit www.legalservices.gov.uk

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