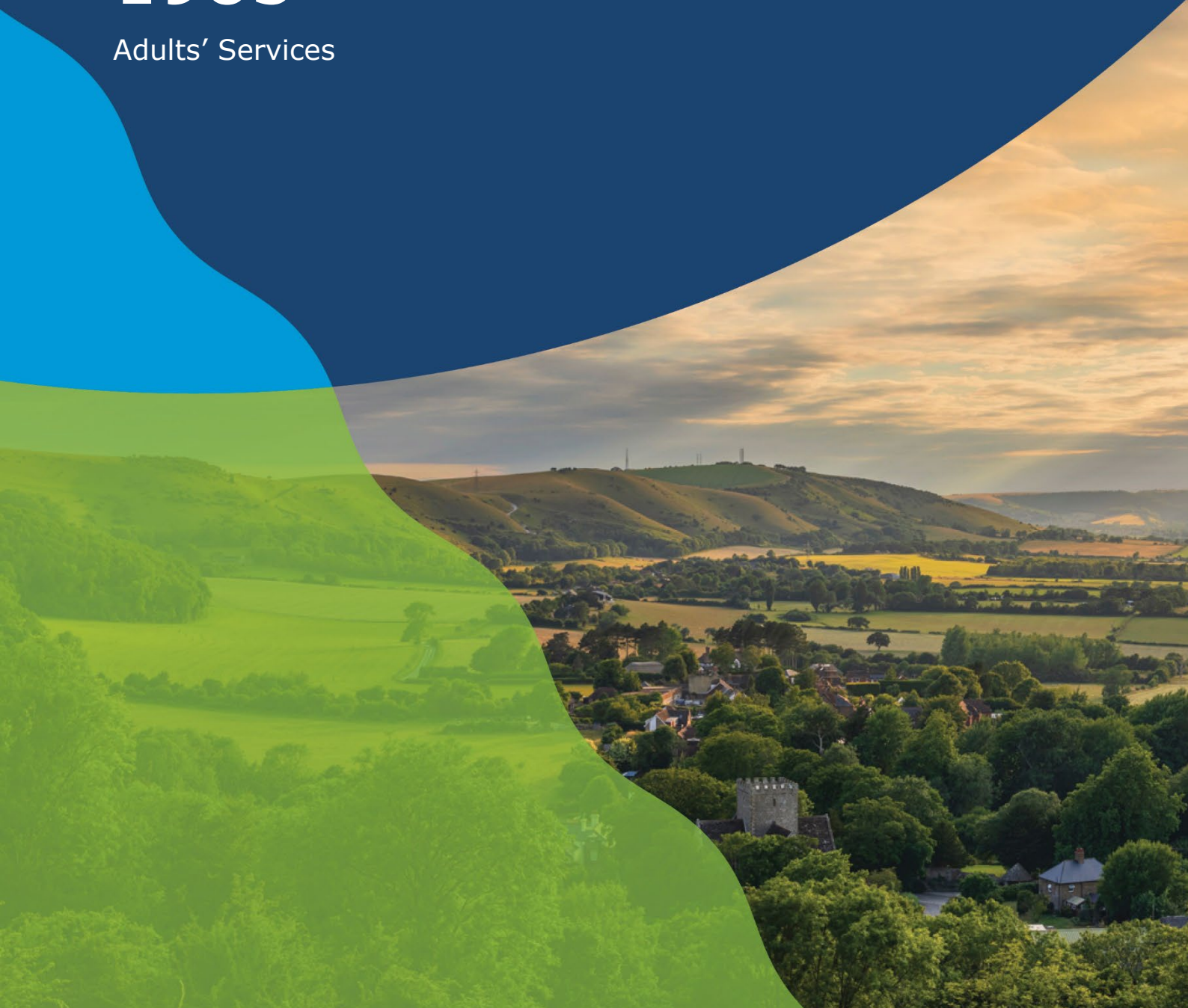


A guide to your rights as the nearest relative under the Mental Health Act 1983

Adults' Services



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Introduction

The Mental Health Act 1983 (the act) makes sure people get the right care and support when they are having a mental health crisis and services in the community can no longer help them to keep safe and well.

This booklet is for the nearest relative of a person who has had an assessment under section 2 or 3 of the act and who has:

- been detained in a hospital; or
- been admitted to a hospital and is staying there voluntarily.

'Nearest relative' is a legal role, and the person who provides it has an important role to play in supporting the legal rights of the person who has had an assessment. The nearest relative role is also important if the person who has had the assessment is being admitted to guardianship under section 7 of the act. See page 12 for more information about appealing against guardianship.

Detention under section 2 of the act

By law, a person can be detained in a hospital for up to 28 days. During this time, the person cannot leave the hospital without a doctor's permission.

The purpose of detaining a person is to give medical staff enough time to find out about their mental health condition and decide how to provide them with help to manage it.

A detention under section 2 cannot be extended.

Detention under section 3 of the act

By law, a person can be detained in a hospital for up to six months. During this time, they cannot leave the hospital without a doctor's permission.

The purpose of detaining a person under section 3 is to provide them with treatment for their mental health condition.

Guiding principles

There are five principles which professionals must always consider when making decisions relating to care, support or treatment. These principles apply at the assessment stage and once the person has been admitted to hospital.

Principle 1: Least restrictive option

Anyone who is assessed and cared for under the act must not be restricted unnecessarily, and the outcome must be provided in the least restrictive way. When

professionals are making decisions on a person's behalf, they must also assess whether there is any need to act at all.

Principle 2: Individuals being supported to make their own decisions – empowerment and involvement

Anyone who is assessed and cared for under the act must be given practical support to make decisions for themselves.

Principle 3: Treated with respect

Anyone who is assessed and cared for under the act, and their family members and carers who are consulted for information, should be treated with respect and dignity and their views listened to by professionals.

Principle 4: Purpose and effectiveness

Any decision about care and treatment under the act must be specific to the person's personal circumstances, have clear therapeutic benefit to them, promote their recovery, and be based on best-practice guidelines.

Principle 5: High quality

Health and social care organisations should work together to make sure that the services they provide are of high quality and will help the person leave hospital safely and with appropriate support in place.

Why might a person be detained under the Mental Health Act 1983?

If a person has been detained in hospital, this is because:

- they are showing signs of mental distress and their mental health is in crisis;
- their health is at risk;
- their safety, or the safety of others, is at risk;
- they need support to get better and be safe, and it is best for them to be in hospital at this time; and
- they have not agreed to be in hospital of their own free will as a voluntary patient.

If they do agree to be in hospital and they want to work with the people there to get better, they should be admitted as a voluntary patient.

Who decided if a person should be detained?

The person will be assessed by:

- an approved mental health professional (AMHP);
- a doctor with experience of mental health conditions; and
- a doctor who knows the person well or, if this is not possible, another doctor with experience of mental health conditions.

The person would usually be interviewed by all three people at the same time.

Local authorities approve people to work as AMHPs. They are not doctors. Most AMHPs are social workers, but they could be a mental health nurse, an occupational therapist or a psychologist.

The professionals in the assessment team have a legal duty to ask the person they are assessing for their views on what has been happening and what needs to happen next. They will want to find out the person's past and present wishes, feelings, beliefs and values.

The professionals will always try to be sensitive to the person's cultural background, faith, sexuality and gender identity, and they will use language appropriately. They must not make assumptions based on the person's age, appearance, disability or behaviour. They will provide a professional translator, including for British Sign Language, if necessary.

The AMHP must decide whether the person meets the legal criteria to be detained by law. They must decide whether the person's health or safety, or the safety of other people, would be at risk if the person were not detained. They must also decide whether being detained in hospital is the best way for the person to get the care and support they need.

Both doctors must also agree that the person needs to be in hospital, and they must put their views in writing.

The views of others, such as family members and people who have an interest in the person's care and support, will be taken into account.

Nearest relative

The AMHP must discuss the plan of action with you (the nearest relative). 'Nearest relative' is a legal term.

The person's 'next of kin' has no legal status and cannot make decisions on their behalf unless they are also their nearest relative.

As the person's nearest relative, you could be someone in their immediate family or a distant relative. Or you could be someone who is caring for the person but is not related to them.

The AMHP must follow the guidance set out in the act to identify the nearest relative and to work with them.

As the nearest relative you have the right to:

- make an application under the act (see below);
- get information about the person's detention under the act;
- be involved in the person's care and treatment;
- write to the hospital to ask for the person to be discharged;
- get information about plans for the person's discharge from hospital;
- object to the person being detained under section 2 or 3 of the act; and
- object to the person being admitted to guardianship under section 7 of the act.

Who can be the nearest relative?

The act says who can be the nearest relative. The AMHP must follow the guidance in the act to identify the nearest relative. The AMHP will explain this to you to make sure you understand why you have been identified as the nearest relative.

If you do not agree with the decision to detain the person for up to six months under section 3 of the act, and there is no other appropriate care available, it may be necessary for the AMHP to consider applying to the county court to change the nearest relative.

If you do not agree with the decision to admit the person to guardianship for up to six months under section 7 of the act, and there is no alternative, it may be necessary for the AMHP to consider applying to the county court to change the nearest relative.

If you want to arrange for someone else to take on the nearest relative role, the AMHP will tell you how to do this. The other person will need to agree in writing that they are willing to be the nearest relative.

Nearest relative requests and applications

If you want to request a referral for an assessment under the act, please call us on the number below. The person you speak to will ask you why you think an assessment is necessary.

Phone: **0330 22 28866**.

The act says that we do not have to arrange an assessment if we do not feel this is necessary, but we must explain our reasons to you in writing if this is what we decide.

The act also allows you to apply for the person to be detained. However, local authorities must make sure that there are enough AMHPs so that you do not need to do this.

If you want to make an application under the act, we will discuss with you what you need to do. The act says that, after the discussion, we must write a report to explain why you made the application, and why it was not made by an AMHP.

Will the police be involved?

The police are not usually involved unless the assessment has taken place at a police station or a court has issued a warrant to gain entry to the person's home. In some cases, the police may be called to support the people carrying out an assessment, to prevent violence or public disturbance.

Who will arrange the hospital place?

The NHS is responsible for finding a hospital that is best able to care for the person, but this may not be close to where they live. Sussex Partnership NHS Foundation Trust provides most of the mental health hospitals in West Sussex.

If there is a delay before a hospital is found, the person should be given extra support at home to keep them safe from harm. This might include being provided with some medication on a temporary basis.

How will the person get to the hospital?

The AMHP is responsible for arranging the transport to take the person to hospital. This will usually be an NHS ambulance, but sometimes it may be necessary to use a private secure ambulance for safety reasons and to manage risk.

What will happen when the person arrives at the hospital?

The hospital staff will introduce them to the facilities and show them to their room. Mental health hospitals have single en-suite rooms and shared dining and leisure facilities. There may be a gym, quiet lounge or enclosed garden that the person can use.

The person will be told how their care and treatment will be arranged, and whether there are any restrictions that they need to be aware of.

By law, the person's rights of appeal must be explained to them.

The arrangements for visitors to the hospital will also be explained to them.

As the nearest relative, you must also have your rights explained to you.

You should expect to be kept informed of the person's stay in hospital. However, in almost all cases, information will not be shared with you if the person objects.

You may also be consulted about some treatment decisions. The hospital will give you more details, in writing, when the person is detained.

How long will the person stay in hospital?

The main priority is to help the person get better and support them to leave hospital when the time is right. They will only leave when they no longer need hospital care, and it is safe for them to do so.

Soon after the person arrives in hospital, the team on the ward will work with the person to plan for when they leave. Their carers, family and friends will be involved if the person would like them to be included.

The person could be referred to mental health services in their local community. If the person is already in contact with any of the services, that service should get in touch with the person before they leave hospital.

If the person has been detained under section 3 of the act, there must be a formal meeting to decide how health and social care services will support them when they leave hospital.

If the person has been admitted as a voluntary patient, they will need to speak to the medical and nursing staff about what they want to achieve from their stay in hospital, and work out a plan together.

The person will have the right to contact and be represented (free of charge) by the Independent Mental Health Advocacy Service (IMHA). The IMHA is independent of mental health services and can speak on the person's behalf and tell the person about the rights they have by law. Staff on the ward will give the person more details on IMHA.

What if the person wants to appeal against being detained?

If the person has been detained under section 2 or 3 and they want to appeal so that they can leave hospital earlier, they will need to get permission from the managers at the hospital or an independent mental health tribunal. The staff on the ward will explain how to make an appeal.

The person has the right to free representation from the IMHA.

If the person has been detained under section 2 or 3 of the act or is a voluntary patient in a mental health hospital, they can find out more about their rights in the Equality and Human Rights Commission's guide, '[Your rights when detained under the Mental Health Act in England – Civil sections](#)'.

What if I want to appeal against the person being detained in the hospital?

If you believe the person should no longer be in hospital, you have the legal right to ask for them to be discharged. To do this, you'll need to write to the hospital. You can also appeal to the mental health tribunal.

What if the person wants to appeal against being admitted to guardianship?

The purpose of guardianship is to provide a protective legal framework to support people with mental health conditions to receive care outside of mental health hospitals.

The guardian is usually a local authority, such as us (West Sussex County Council).

As the person's nearest relative, you will be consulted by the AMHP carrying out the assessment. You will need to approve the guardianship application in order for it to go ahead.

If you do not approve the guardianship application and there is no alternative, it may be necessary for the AMHP to consider applying to the county court to change the nearest relative.

Any decisions the guardian makes take priority over the decisions of anyone with legal authority under the Mental Capacity Act 2005.

The guardian can decide that the person will:

- live in a particular place;
- go to a particular place for treatment or to attend work or training; and
- meet with specified professionals, such as a doctor or an AMHP, at the place where the person is living.

If the person wants to appeal against the guardianship, they will have to write to our Director of Adult Social Services (DASS) for permission to do this. See [page 10](#) for details. Or, they can appeal to an independent mental health tribunal.

If you believe the person should not be on guardianship, you can appeal against it by writing to our Director of Adult Social Services. We will give you more details about this at the start of the guardianship arrangements.

How can I make a complaint?

If you want to make a complaint about the person's care in hospital, you should contact the relevant complaints and representations service or the patient advice and liaison service there. Staff at the hospital will be able to give you the details you need.

The Care Quality Commission (CQC) makes sure that mental health law is used properly. If you are not happy with how duties or powers under the act have been carried out, you can complain to the CQC, and it will investigate.

Phone: 03000 616161 (Press 1 to speak to the mental health team.)

Email: enquiries@cqc.org.uk.

If you want to make a complaint about the AMHP who carried out the assessment under the act, you should contact our Customer Relations Team (see below for details).

Contact us

Adults' CarePoint

- Phone: 01243 642121
- Call using Relay UK: 18001 01243 642121 (from a textphone or the NGT Lite app, which you can download onto a computer, tablet or smartphone)
- Email: socialcare@westsussex.gov.uk
- Website: [the Social care and health page](#) of the West Sussex County Council website
- Post: Director of Adult Social Services, West Sussex County Council, Second Floor, The Grange, County Hall, Chichester, West Sussex, PO19 1RG.

Customer Relations Team

The quickest and easiest way to send us a comment, compliment or complaint, is through [the West Sussex County Council website](#).

Phone: 01243 777100 (Please help us to keep this phone line for people who cannot use the internet without help, or who want general advice about the complaints process.) If you need an interpreter to help you make a complaint, please call 01243 777100 and ask to use the telephone interpreting service.

Call using Relay UK: 18001 01243 777100 (from a textphone or the NGT Lite app, which you can download onto a computer, tablet or smartphone).

If you cannot contact us online or by phone, please write to: Customer Relations Team, West Sussex County Council, County Hall, Chichester, West Sussex, PO19 1RQ.

Mental health support contacts and resources

If the person is experiencing a mental health crisis, they can phone **Samaritans** free of charge, at any time, on **116 123**.

If they need help in an emergency, they (or you) should phone **999** or go to their nearest hospital urgent treatment centre or A&E. There are mental health liaison teams in every A&E in West Sussex.

Togetherall is an online space where people can talk safely and without giving their name. Trained professionals are available 24 hours a day, seven days a week. Visit [the Togetherall website](#).

The free [Hub of Hope](#) app can be downloaded free to a smartphone. The person will need to enter their postcode on the app for details of all available mental health support services in their local area.

A trained and experienced Sussex Mental Healthline team is on hand and ready to listen and offer urgent mental health support, 24 hours a day, seven days a week. Call the team on **0800 0309 500**.

The person's **GP practice** may offer help through talking therapies or by prescribing medication.

Adults' CarePoint

Phone: **01243 642121**. Calls using Relay UK: **18001 01243 642121** (for deaf callers from a textphone or the NGT Lite app downloaded onto a computer, tablet or smartphone).

Email: socialcare@westsussex.gov.uk.

Website: [the Social care and health page](#) of the West Sussex County Council website

Write to: Second Floor, The Grange, County Hall, Chichester, West Sussex, PO19 1RG.