

# A guide to your rights if you have been assessed under section 2 or 3 of the Mental Health Act 1983

Adults' Services



# Contents

|                                                       |    |
|-------------------------------------------------------|----|
| Contents .....                                        | 2  |
| Introduction .....                                    | 3  |
| Detention under section 2 of the act .....            | 3  |
| Detention under section 3 of the act .....            | 3  |
| Guiding principles .....                              | 3  |
| PRINCIPLE 1.....                                      | 3  |
| PRINCIPLE 2.....                                      | 4  |
| PRINCIPLE 3.....                                      | 4  |
| PRINCIPLE 4.....                                      | 4  |
| PRINCIPLE 5.....                                      | 4  |
| Why might I be detained? .....                        | 4  |
| Who decides if I should be detained? .....            | 5  |
| Nearest relative .....                                | 6  |
| Will the police be involved? .....                    | 6  |
| Who will arrange my hospital place? .....             | 6  |
| How will I get to the hospital? .....                 | 7  |
| What will happen when I arrive at the hospital? ..... | 7  |
| How long will I stay in hospital? .....               | 7  |
| How can I appeal against being detained? .....        | 8  |
| Information about guardianship .....                  | 8  |
| How can I make a complaint? .....                     | 9  |
| Contact us .....                                      | 9  |
| Customer Relations Team.....                          | 9  |
| Mental health support contacts and resources .....    | 10 |
| Adults' CarePoint .....                               | 11 |
| Other formats .....                                   | 11 |

# Introduction

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

This booklet is for people who have had an assessment under section 2 or 3 of the act and who have:

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

There is also information in this leaflet about what happens if you have had an assessment under the act, but you are going to stay at home or you are being admitted into guardianship.

## Detention under section 2 of the act

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

The purpose of detaining you under section 2 is to give medical staff enough time to find out about your mental health condition and decide how to provide you with help to manage it.

A detention under section 2 cannot be extended.

## Detention under section 3 of the act

Under section 3 of the act, you can be detained in a hospital for up to six months. During this time, you cannot leave the hospital without a doctor's permission.

The purpose of detaining you under section 3 is to provide you with treatment for your 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 you have 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 I be detained?

If you have been detained in hospital by law, this is because:

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

If you agree to be in hospital and you want to work with the people there to improve your mental health, you should not be detained but should be admitted as a voluntary patient.

## Who decides if I should be detained?

For detention under the act to be lawful, you will be assessed by:

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

You would usually be assessed 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 people who are assessing you have a legal duty to ask for your views on what has been happening and what needs to happen next. They will want to find out your past and present wishes, feelings, beliefs and values.

The people who are assessing you will always try to be sensitive to your cultural background, faith, sexuality and gender identity, and they will use language appropriately. They must not make assumptions based on your age, appearance, disability or behaviour. They will provide a professional translator, including for British Sign Language, if you need one.

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

Both doctors must also agree that you need to be in hospital, and they must put their views in writing.

The views of others who have an interest in your care and support will be taken into account. If you agree, this could include your relatives or friends. If you have been assessed before, the record of that assessment may also be considered.

## Nearest relative

The AMHP must discuss the plan to admit you to hospital with your nearest relative.

'Nearest relative' is a legal term and is not the same as 'next of kin'. Your nearest relative may be someone in your immediate family or a distant relative. It could also be someone who is caring for you but who is not actually related to you.

Your 'next of kin' has no legal status and cannot make decisions on your behalf unless they are also your nearest relative.

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

If you do not have a nearest relative and would like someone such as a friend to take on this role, the AMHP will explain what you need to do.

Your nearest relative has the right to:

- get information about your detention under the act;
- be involved in your care and treatment;
- write to the hospital to ask for you to be discharged;
- get information about plans for your discharge from hospital; and
- object to you being detained by law.

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

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

## 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 your 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 my hospital place?

The NHS is responsible for finding a hospital that is best able to care for you, but this may not be close to where you 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, you should be given extra NHS support to keep you safe from harm. This might include being provided with some medication on a temporary basis.

## **How will I get to the hospital?**

The AMHP is responsible for arranging the transport for you to get 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 I arrive at the hospital?**

The hospital staff will introduce you to the facilities and show you to your 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 you can use.

You will be told how your care and treatment will be arranged, and whether there are any restrictions that you need to be aware of.

By law, your rights of appeal must be explained to you.

The arrangements for people visiting you in hospital will also be explained.

## **How long will I stay in hospital?**

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

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

You could be referred to mental health services in your local community. If you are already in contact with any of the services, that service should get in touch with you before you leave hospital.

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

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

You 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 your behalf and tell you about the rights you have by law. Staff on the ward will give you more details on IMHA.

## How can I appeal against being detained?

If you have been detained under section 2 or 3 and you want to appeal so that you can leave hospital earlier, you will need to get permission from the managers at the hospital or a mental health tribunal. The staff at the hospital will explain how to make your appeal.

Remember that you have the right to free representation from the IMHA.

If you have been detained by law or are a voluntary patient in a hospital, you can find out more about your rights in the guide, 'Your rights when detained under the Mental Health Act in England – Civil sections'. This is available online on [the Equality and Human Rights Commission website](#) or you can ask hospital staff or a health professional to print it out for you.

## Information about 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).

By law, the AMHP carrying out your assessment will consult your nearest relative, who will need to approve the guardianship application in order for it to go ahead.

If your nearest relative does 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 your nearest relative.

A guardianship order lasts for up to six months, but it can be renewed if necessary. Any decisions your guardian makes take priority over the decisions of anyone with legal authority under the Mental Capacity Act 2005.

The guardian can decide that you 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 you are living.

If you want to appeal against the guardianship, you will have to write to our Director of Adult Social Services for permission to do this. See our contact details on the back page for more information. Or, you can appeal to an independent mental health tribunal. Your nearest relative can also appeal against the guardianship order if they feel it is no longer needed.

If you have a guardianship order under section 7 of the act, you have the right to free representation from IMHA.

## How can I make a complaint?

If you are in hospital and want to make a complaint about your care, you should contact the relevant complaints and representations service or the patient advice and liaison service there. Staff on the ward 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
- Email: [enquiries@cqc.org.uk](mailto:enquiries@cqc.org.uk).

**Healthwatch West Sussex** represents the interests of patients, customers and the public, locally and nationally. It is independent of local councils and the NHS.

- Phone: 0300 012 0122
- Visit [the Healthwatch West Sussex website](http://thehealthwatchwestsussex.org.uk).

If you want to make a complaint about the AMHP who carried out your assessment under the act, you should contact our **Customer Relations Team**.

## Contact us

### Customer Relations Team

The quickest and easiest way to send us a comment, compliment or complaint is through [the West Sussex County Council website](http://theWestSussexCountyCouncil.org.uk).

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 1RG

## Mental health support contacts and resources

Phone **116 123**, at any time, to speak free of charge with Samaritans if you are experiencing a mental health crisis.

Phone **111**, at any time, and select the mental health option.

Phone **999**, at any time, if your life is in immediate danger.

If you need help in an emergency, go to your nearest hospital urgent treatment centre or accident and emergency (A&E) department. There are mental health liaison teams in all the A&E departments in West Sussex.

Togetherall is an online space where you can talk freely, without giving your name. Trained professionals are available 24 hours a day, seven days a week through the [Togetherall website](#).

Download the free [Hub of Hope](#) app on your smartphone. Enter your postcode on the app for details of all available mental health support services in your local area.

Sussex Partnership NHS Foundation Trust provides NHS mental health services in West Sussex. For more information, visit [the Sussex Partnership NHS Foundation Trust website](#).

[Mind](#) provides free representation by the Independent Mental Health Advocacy Service (IMHA). The IMHA are independent of mental health services and can speak on your behalf. Phone 01273 666950. For information about other advocacy services in West Sussex, ask your health or social care worker.

PAPYRUS runs a confidential support and advice service – HOPELINE247 – for children and young people under the age of 35 who are experiencing thoughts of suicide. Phone 0800 068 4141 or text 88247. For more information, visit [the Papyrus website](#).

Your GP practice may offer help through talking therapies or by prescribing medication.

We are committed to equality, celebrating diversity and preventing unlawful discrimination. We value the people we support, our staff and partners for who they are, and we actively promote fairness and respect for all. We also expect our staff to be treated politely and with respect by the people we support.

## 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)

Website: visit [the How to get adult social care support page](#) on the West Sussex County Council website, and fill in the 'Contact us' form.

Write to: Adults' CarePoint, County Hall, Chichester, West Sussex, PO19 1RG.

Current versions of all our public information are available on [the Adults' social care publications page](#) on the West Sussex County Council website.

## Other formats

If you would like more copies of this booklet or need this information in another format, for example, in large print or Easy Read, on audio CD or in a different language, please contact us. Please see [our contact details](#).