

NHS treatment: your rights

This factsheet aims to answer some of the questions you might have about your legal rights when dealing with the NHS.



KEY POINTS

- You have legal rights when dealing with the NHS. The NHS should:
 - Get your consent for treatment. You can withhold your consent
 - Give you information so that you can make informed decisions
 - Treat you with reasonable care and skill
 - Use your personal information confidentially
 - Treat you in a way that is supported by medical opinion
 - Allow you to access your own health records
 - Respect your human rights
- In addition to meeting your legal rights, your NHS treatment should also follow guidance in officially recognised codes of practice and documents.
- If you feel that the NHS has not followed your rights or that your treatment has not met your reasonable expectations, then you may be able to take legal action or make a complaint.

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1. What is the difference between my rights and my expectations?

Rights

Your 'rights' are legal entitlements. This means that law made by the UK Parliament or by court judgments protects them. If you feel the NHS has not followed your rights, then you may be able to take legal action. You can read more about this in section 4, entitled [What can I do if the NHS does not respect my legal rights?](#)

Expectations

Your expectations are what you can expect from your treatment in addition to your legal rights. For example, you might reasonably expect that your treatment should follow:

- Health professionals' codes, such as the General Medical Council's [Good Medical Practice guidelines](#).¹ These codes set out what doctors should do for their patients and are usually wider than their legal duties.
- Guidance issued by bodies like the [National Institute of Health and Care Excellence \(NICE\)](#)² and the Department of Health.
- Pledges within the [NHS Constitution document](#).³

Whilst expectations are not legally binding, the NHS does acknowledge that it should meet certain 'legitimate expectations' wherever possible. If you feel like your reasonable expectations have not been met, then the NHS has a complaints procedure in place for you to raise your concerns. This can potentially lead to changes in your treatment or to an apology if things went wrong. You can find out more on how to make a complaint in our '**Complaining about the NHS or Social Services**' factsheet. You can download it from www.rethink.org or get a copy by calling 0300 5000 927.

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2. What legal duties does the NHS have towards me?

Several Acts of Parliament set out the way in which the NHS provides care and these include:

The Health and Social Care Act 2012

This Act has made substantial changes to the way the NHS in England is organised. It has set up 'Clinical Commissioning Groups' (CCG)⁴ and a national 'NHS Commissioning Board' (NHS England)⁵. They replace the Primary Care Trusts and Strategic Health Authorities that used to do this job.⁶ The Secretary of State has a duty to provide a comprehensive health service.⁷

The NHS (General Medical Services) Regulations 1992

These regulations set out certain duties that GPs have to patients. The regulations state that a GP should offer you all necessary and appropriate services, such as offering advice, physical checks, immunisation and

referring you along to another part of the NHS if appropriate.⁸ The regulations also cover the rules on GP availability and prescriptions.

Here are some other laws which are also important:

The Data Protection Act 1998 gives people the right to see their medical records and sets out how your personal data should be treated (for example, your records must be up-to-date, accurate, relevant and protected so only people who are allowed to see them can access them).

Go to www.rethink.org for specific information about:

- 'Accessing health records'
- 'Confidentiality'

The Human Rights Act 1998 brings the rights under the European Convention on Human Rights into UK law. The European Convention on Human Rights (among other things) protects the right to life (Article 2), prohibits 'inhuman and degrading treatment' (Article 3) and protects the right to respect for private and family life (Article 8).

You can find out more about human rights from organisations in our [Useful Contacts](#) section.

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3. What are my legal rights when I use the NHS?

A number of court cases have established that you have certain legal rights when using the NHS, including the following:

(a)The right to give or withhold consent –this means that you can give or refuse consent to treatment (including life saving treatment) or examination. This is the case whether or not other people think this as irrational.⁹ If you are an adult who is capable of making a certain decision, a doctor cannot generally override this.

A doctor can treat you without your consent if you are detained under the Mental Health Act 1983. A doctor may also be able to carry out a medical procedure against your wishes if it is in your best interests and you lack the ability (known legally as capacity) to make a decision regarding treatment.¹⁰ A doctor should not think you are unable to make a decision about your treatment just because you have a mental illness.¹¹

(b)The right to information – you are entitled to clear information in an appropriate language, so that you can make informed decisions about proposed treatments and the alternative options, and potential risks and side effects.¹²

(c)The right to an appropriate standard of care – health professionals must use reasonable care and skill when treating you. You are entitled to receive care of a standard, which a 'responsible body of medical opinion' would think is appropriate to your condition.¹³ If the NHS does not meet this duty of care, you may have a claim for negligence.

(d)The right to confidentiality – health professionals must keep information about your diagnosis, condition, treatment and other personal matters confidential.¹⁴ They can only give confidential information about you to your relatives if you consent, and should only be given to other people in very limited circumstances.¹⁵ Doctors should also respect your right to a private and family life under the Human Rights Act.¹⁶

You can find more information at www.rethink.org about:

Detention under the Mental Health Act
Advance Statements
Mental Capacity and mental illness
Clinical Negligence
Confidentiality

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4. What can I do if my legal rights have not been respected?

Complain

If you feel that the NHS has breached your rights or has not met your reasonable expectations, then you may wish to make a complaint through the NHS procedure. A complaint can potentially lead to you getting the treatment that you wanted, or to the NHS apologising to you if things went wrong.

In cases of very serious misconduct by a doctor, you may also wish to complain to the General Medical Council (GMC). The GMC can investigate and if necessary, remove a doctor from the medical register so that they will no longer be able to practice medicine. This could be appropriate if the doctor:

- has had a sexual relationship with a patient
- has falsified their qualifications
- has broken a patient's confidentiality without justification
- has put false information on a patient's medical records

There is more information on making a complaint in our '**Complaining about the NHS or Social Services**' factsheet which is available to download for free from www.rethink.org. Or contact 0300 5000 927 and ask for a copy to be sent to you.

Take legal action

If the NHS has breached your legal rights, then you may be able to take legal action. Your options can include:

(a) Bringing an action for negligence, assault or breach of confidence

If you believe that the NHS has been negligent, assaulted you or breached your confidentiality, you may wish to take legal action against the NHS or a member of staff and claim compensation. This can be a costly and complex process and you should speak to a solicitor about this.

Since 1 April 2013, clinical negligence claimants can no longer claim public funding for claims (legal aid). Clinical negligence claims can be funded by 'No Win No Fee' arrangements. You can find out more information in our '**Clinical negligence**' factsheet, which is available to download from www.rethink.org or by contacting us on 0300 5000 927.

You can find details of a solicitor by searching the Law Society's website <http://www.lawsociety.org.uk/find-a-solicitor/>. If you contact the Rethink Advice & Information Service we would be happy to look for you.

(b) Applying for a Judicial Review

The NHS complaints procedure resolves most problems within the NHS. However, it might be possible for you to challenge the NHS by seeking a judicial review.

A judicial review is a legal procedure that enables you to challenge a decision of an NHS body or the Secretary of State for Health on the basis that it's unlawful.

A decision might be unlawful if:

- the decision-maker does not have power to make the decision, or is using their power improperly
- the decision is irrational
- the procedure followed by the decision-maker was unfair or biased
- the decision was in breach of the Human Rights Act
- the decision breaches European Community (EC) law.

You should be aware that judicial review is not a form of appeal: the judge will consider how the decision was made, as opposed to the decision itself. You must have a direct, personal interest in the action or decision being challenged in order to successfully apply for a judicial review. You also need to act quickly for judicial review as there are strict time limits. This is a complex area and you should seek specialist legal advice if you think you have grounds for a judicial review. You can find further guidance on applying for judicial review on the justice website:

<http://www.justice.gov.uk/courts/rcj-rolls-building/administrative-court/applying-for-judicial-review>.

Judicial review can be very costly. Public funding (Legal Aid) is still available for judicial review cases, subject to a successful application. You can find the details of Public Law solicitors by visiting the Civil Legal Advice website <http://legaladviserfinder.justice.gov.uk/AdviserSearch.do> or by calling them directly on 0845 345 43 45.

You can get more information on finding legal help in our '**How to get legal advice and assistance**' factsheet from www.rethink.org.

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5. Rights in relation to NHS treatment - FAQ's

(a) What does NICE do?

The National Institute for Health and Care Excellence (NICE) gives guidance to health professionals on the best way to treat certain health conditions. Professionals are expected to take guidance fully into account when they make decisions. However, they are allowed to use clinical discretion within limits (you can find out more information on these limits at [section 3 \(c\): the right to an appropriate standard of care](#)). NICE guidelines are not legally binding.

Our mental illness factsheets each have information on the NICE guidelines relevant to that condition. However, the guidelines are regularly updated and so you may wish to check the www.nice.org.uk website to make sure you are reading the most up-to-date guidance.

(b) Do I have the right to a specific type of treatment?

Generally speaking, you do not have a legal right to a specific type of treatment that you want. Your doctor should take NICE guidelines into account when deciding what treatment is appropriate, but the guidelines themselves are not legally binding and a doctor may make a different decision.

If you are not offered what you want, it may be that there are health reasons why you cannot be offered this. Ask your doctor exactly why you have been refused. Some people might find it helpful to ask an advocate to help them negotiate treatment options with a doctor.

You can find more information about '**Advocacy**' at www.rethink.org. Or contact 0300 5000 927 and ask for a copy to be sent to you.

The NHS has limited resources and so your local Clinical Commissioning Group (CCG) may not fund a specific type of treatment. Generally speaking, it is legal for CCGs to do this.

However, any treatments that have been recommended by a NICE 'technology appraisal' must be funded by the NHS.¹⁷ For example, a technology appraisal has recommended Computer Based Cognitive Behavioural Therapy (CCBT) as a treatment for depression and anxiety and therefore the NHS must fund this. This does not mean that everyone with depression and anxiety will be offered this – only that it must be available.

If a doctor thinks you need treatment that is not provided by your local CCG, there may be procedures that allow you to receive this treatment in a different geographical area.

Your local CCG is allowed to take its resources into account when deciding what services it should pay for in your area. However, it must consider your individual circumstances if you ask it to. You can do this by making an 'Individual Funding Request' (IFR). Once you have made a

request, a panel will consider your case and decide whether the NHS will fund your treatment. To make a successful application, you need to show that the treatment you are requesting will help with the symptoms of your illness and that other available treatments have not worked. It will help if your doctor supports your application. You can often find the individual funding request policy on the CCG's website.

(c) Do I have the right to be referred to a Psychiatrist or specialist?

The short answer is sometimes, depending on the circumstances.

Legally, a GP should offer you a referral to a specialist worker if it is appropriate and necessary to do so.¹⁸ You have the legal right to be treated with 'reasonable care and skill',¹⁹ and this includes being treated by a professional with the appropriate experience and qualifications.²⁰

However, the words 'appropriate' and 'necessary' are open to interpretation. Your view of what is 'appropriate' and 'necessary' may differ from your GP's. What these terms mean legally is based on professional practice rather than your own opinion.

(d) Do I have the legal right to a second opinion?

There is no legal right to a second opinion. The National Institute of Health and Clinical Excellence guidance for schizophrenia says that if you are diagnosed with schizophrenia, your doctor should support you to get a second opinion if you wish.²¹ However, this is not a legal right and will rest on the clinical discretion of your doctor. However, if your doctor refuses, you may wish to complain through the NHS complaints procedure.

You can find more information about '**Second opinions**' at www.rethink.org. Or contact 0300 5000 927 and ask for a copy to be sent to you.

(e) Do I have the right to a care plan?

Generally speaking, you have no legal right to a care plan from the NHS.

You have a right to a care plan if you have been detained under certain sections of the Mental Health Act. You can find out more information about this in our 'Section 117 Aftercare' factsheet from www.rethink.org.

If you receive support under the Care Programme Approach (CPA), guidance says you should have a care plan. You can find out more about the '**Care Programme Approach**' at www.rethink.org. Or call 0300 5000 927 and ask for a copy to be sent to you.

The new NHS constitution was published in April 2013. It says health professionals should aim to "involve you in discussions about planning your care and to offer you a written record of what is agreed if you want one".²² This means that care plans are now something that everyone can reasonably expect to receive as part of their treatment. This gives rise to a legitimate expectation that the NHS should meet wherever possible. If you are not given this option you could make a formal complaint through the NHS procedure.

You can find more information about '**Complaining about the NHS or Social Services**' at www.rethink.org. Or contact 0300 5000 927 and ask for a copy to be sent to you.

If you are just getting support for your social care needs from social services, our '**Community Care**' factsheet looks at getting a care plan from social services.

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6. Useful contacts



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. They have published a human rights guide for people living with mental health problems, which can be accessed here:

http://www.bihar.org.uk/sites/default/files/bihar_mental-health_guide.pdf²³

Tel: 020 7882 5850

Email: info@bihr.org.uk

Web: www.bihar.org.uk

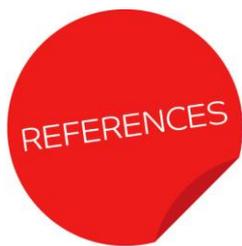
Equality and Human Rights Commission (ECHR)

The ECHR has a statutory remit to promote and monitor human rights; and to protect, enforce and promote equality. You can contact the Equality Advisory Support Service (EASS) if you need expert information, advice and support on discrimination and human rights issues and the applicable law.

Tel: 0808 800 0082

Opening times: 09:00 to 20:00 Monday to Friday and 10:00 to 14:00 Saturday. Closed on Sundays and Bank Holidays.

Website: <http://www.equalityhumanrights.com/about-us/contactus/>



- ¹ General Medical Council. *Good Medical Practice*. http://www.gmc-uk.org/guidance/good_medical_practice.asp (accessed: 11/06/2013)
- ² National Institute of Care and Excellence. <http://www.nice.org.uk/> (accessed: 11/06/2013)
- ³ The Department of Health. *The NHS Constitution of England*. <https://www.gov.uk/government/publications/the-nhs-constitution-for-england> (accessed: 11/06/2013)
- ⁴ Health and Social Care Act 2012, s.10.
- ⁵ Health and Social Care Act 2012, s.9.
- ⁶ Health and Social Care Act 2012, s.33 and 34.
- ⁷ Health and Social Care Act 2012, s.1.
- ⁸ National Health Service (General Medical Services) Regulations 1992 N635, Schedule 2, para. 12.
- ⁹ Failure to obtain consent for treatment will mean that treatment could amount to assault. *Williamson v East London & City Health Authority* [1998] Lloyd's Law Reports Medical
- ¹⁰ Mental Capacity Act 2005 c9, s.5.
- ¹¹ *Re C (Adult: Refusal of Treatment)* [1994] 1 WLR 290
- ¹² *Chester v Afshar* [2004] UKHL 41
- ¹³ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 583
- ¹⁴ *Hunter v Mann* [1974] QB 767
- ¹⁵ See, for example, *W v Egdell* (1990) Ch 359 (CA)
- ¹⁶ Human Rights Act 1998 c42 (implementing Article 8 of the European Convention on Human Rights 1950).
- ¹⁷ See: The National Institute for Health and Care Excellence (Constitution and Functions) and the Health and Social Care Information Centre. (Functions) Regulations 2013.
- ¹⁸ National Health Service (General Medical Services) Regulations 1992 N635, Schedule 2, para 12 (2)(d).
- ¹⁹ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 583
- ²⁰ The Handbook to the NHS Constitution April 2013, page 34.
- ²¹ *The NICE Guideline on core interventions in the treatment and management of schizophrenia in adults in primary and secondary care (updated edition)* (2010) para 4.6.7.1., page 72.
- ²² The NHS Constitution March 2013, page 9.
- ²³ British Institute for Human Rights. *Your Human Rights. A guide for people living with mental health problems* http://www.bihhr.org.uk/sites/default/files/bihr_mental-health_guide.pdf (accessed 11/06/13).

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in large print.



Rethink Mental Illness

Phone 0300 5000 927

Monday to Friday, 10am to 2pm

Email advice@rethink.org

Did this help?

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

Drop us a line at: feedback@rethink.org

or write to us at Rethink Mental Illness:

Feedback

PO Box 68795

London SE1 4PN

or call us on 0300 5000 927.

We're open 9am to 5.30pm, Monday to Friday.



Leading the way to a better
quality of life for everyone
affected by severe mental illness.

For further information
on Rethink Mental Illness
Phone 0300 5000 927
Email info@rethink.org

www.rethink.org

Need more help?

Go to **www.rethink.org** for information on symptoms, treatments, money and benefits and your rights. Or talk to others about your problem at **www.rethink.org/talk**.

Don't have access to the web?

Call us on 0300 5000 927. We are open 9am to 5.30pm, Monday to Friday 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 between 10am and 2pm, 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.

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