

## Meeting the challenge **4**

**My family member has been sent to an inpatient unit - what do I need to know?**



## Meeting the challenge 4

# My family member has been sent to an inpatient unit - what do I need to know?

This factsheet will provide you with information that you need to know if your family member is admitted to an inpatient unit for assessment or treatment.

This factsheet includes lots of information from 'Getting It Right for People with Learning Disabilities: Going into hospital because of mental health difficulties or challenging behaviour. What families need to know!' You can read this in full at:

[www.nhs.uk/Livewell/Childrenwithalearningdisability/Documents/NHS-England-Getting-it-right-for-people-with-learning-disabilities-epublication.pdf](http://www.nhs.uk/Livewell/Childrenwithalearningdisability/Documents/NHS-England-Getting-it-right-for-people-with-learning-disabilities-epublication.pdf)

Words in **burgundy** are explained in more detail in the glossary at the end of the factsheet.

### Why is my family member in an inpatient unit?

There are a number of reasons why people with a learning disability and behaviour that challenges can end up being in an inpatient unit.

For example:

- They pose a serious risk to themselves or another person such as life-threatening self-injury;
- They have a mental health problem that has flared up and become serious and they have been detained;
- They have committed a criminal act and their admission has been ordered by a Court;
- There aren't the community-based assessment and treatment services available to them in their area.

There are different types of inpatient units available for people with learning disabilities who require assessment and treatment; which sort of unit will depend on their individual need. These include specialist Assessment and Treatment units and high, medium and low secure units.

Admission to an inpatient unit, especially if it is far away from home, can be a distressing experience for everyone: the person themselves,

**“From the beginning, the reason for admission must be clearly stated and families should be involved in decision making.”**

Transforming Care report <sup>1</sup>

<sup>1</sup>Transforming Care: A national response to Winterbourne View Hospital, Department of Health, 2012  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/213215/final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213215/final-report.pdf)

their family and their support staff. It is therefore important to try and understand:

- The ‘clinical reason’ for them being admitted to an inpatient unit
- What assessment and treatment they need
- Why the assessment and treatment can only take place in an inpatient unit
- What decision-making processes are involved (e.g. who was involved in the decision to admit them, who will be involved in decisions about their treatment in the unit and decisions about their discharge from the unit, how they will ensure you are involved in all decisions)
- What assessments will be carried out and how long they will take
- What should be achieved whilst they are there
- When they are likely to be discharged based on their treatment plan.



### Top Tip

Use the questions listed above to find out more about your family member’s care. The best people to ask are their care coordinator (see below for more about the care coordinator), **Responsible Clinician** (see below for more about the Responsible Clinician) or advocate.

Unfortunately we know that too often people are sent to inpatient units because there has been a failure to provide the right support and services in the local community and the person’s placement has broken down. See factsheet 2 for more about what good support looks like.

If you are not happy with the decision to admit your family member to an inpatient unit or their continued detention in a unit, there are steps that can be taken to challenge their detention (see the ‘When will my family member get out?’ section later on in this factsheet).

## How is the decision made to admit someone?

There are different ways that people can end up being admitted to an inpatient unit. The person may be:

- Sectioned’ under the **Mental Health Act (1983)** – becoming a ‘detained’ patient;
- A voluntary or informal patient, if the person agrees to being admitted for treatment and assessment;
- Placed in the unit with a Deprivation of Liberty authorisation in place. This applies in all cases where the person lacks the capacity to agree to the admission, and where detention under the Mental Health Act is not appropriate for the person at that time. The **Deprivation of Liberty Safeguards (DoLS)** are part of the **Mental Capacity Act (2005)**.

If anyone is in an inpatient unit who lacks capacity to consent to being there, and they are there as an ‘informal’ patient i.e. not under the Mental Health Act (MHA) or DoLS, this should be questioned as it is likely to be unlawful. Raise this issue with your family member’s care coordinator, Responsible Clinician or advocate and/or speak to a solicitor. This is because in practice being in an inpatient unit is likely to be a very restrictive environment and it is important people get the safeguards that the MHA and DoLS provide, such as advocacy and representation.



### Top Tip

The nature of being under section (the Mental Health Act) or under Deprivation of Liberty Safeguards (DoLS) will mean the care is more restrictive e.g. there may be two sets of doors at the front entrance that staff control access to. However it should always be the least restrictive environment possible, and restrictions should always be in the person's best interest. The person should still get good support, which is personalised and meets their needs – the setting doesn't change this. You can raise concerns as the person's representative or relative if you feel you feel your family member is being unfairly restricted (for example, if doors are locked because of the needs of another patient, and your family member does not need them locked).



### More Information

**A person can be detained under different sections of the Mental Health Act. The processes around admission to, and discharge from, an inpatient unit can depend on what section of the Mental Health Act the person has been detained under.**

**You can find out more about the different sections of the Mental Health Act here (Mind):**

[www.mind.org.uk/information-support/legal-rights/sectioning/about-sectioning/#three](http://www.mind.org.uk/information-support/legal-rights/sectioning/about-sectioning/#three)

**You can also see a summary of all the different sections here (Mental Health Law website):**

[www.mentalhealthlaw.co.uk/Summary\\_of\\_the\\_detaining\\_sections](http://www.mentalhealthlaw.co.uk/Summary_of_the_detaining_sections)

### What rights does my family member and our family have?

When someone is detained in hospital under the Mental Health Act (MHA) they have certain rights. These include things like being able to appeal their detention (e.g. via the **Mental Health Tribunal**) and the right to legal representation (fully funded by legal aid) if they are appealing their detention at a Tribunal. Detained patients should be provided with information about their position and their rights.

Here are some of the key things to know about (also see the 'how can my family member get out?' section below):

#### Advocacy

If someone is detained under the MHA they are entitled to an Independent Mental Health Advocate (IMHA). Their role is to support people detained under the Mental Health Act. They help people participate in decision making about their care and treatment while they are in an inpatient unit and help them understand and exercise their rights.

If someone is under DoLS and they have an unpaid representative, for example a member of their family - both the person and that representative are entitled to the support of an Independent Mental Capacity Advocate (IMCA). Somebody would also be entitled to an IMCA where a DoLS assessment is being carried out, or where a DoLS authorisation is in place, where

there is no one else appropriate to consult with (e.g. a family member).

If someone is in an inpatient setting as a voluntary or informal patient it is important that they have access to an independent advocate as well. However, it is not a legal right.

### **Nearest Relative or Relevant Person's Representative**

There are two legal roles for family members that it is important to know about:

Under the MHA the 'Nearest Relative' has an important role and a number of powers. A Nearest Relative is not the same as someone's next of kin and there is a list of the order of who is a person's nearest relative starting with husband/wife in Section 29 of the Mental Health Act. The Act gives a patient's Nearest Relative some rights and powers in relation to detention, discharge and being informed or consulted when certain actions have been taken under the MHA or when these are being proposed.

Under DoLS, when someone is legally deprived of their liberty, they will have a 'Relevant Person's Representative' (RPR). In many cases this will be a family member, but not always. The person and their representative have particular rights under DoLS, including being able to request a review of the DoLS authorisation at any time and accessing the Court of Protection if necessary.



## **More Information**

**Find out more, including how to appeal a detention:**

**Rights and powers of the Nearest Relative (Mind)**

[www.mind.org.uk/information-support/legal-rights/nearest-relative/nearest-relatives-rights/#.VXgcZ\\_IViko](http://www.mind.org.uk/information-support/legal-rights/nearest-relative/nearest-relatives-rights/#.VXgcZ_IViko)

**Mental Capacity and Mental Illness factsheet: (Rethink)**

[www.rethink.org/living-with-mental-illness/mental-health-laws/mental-capacity](http://www.rethink.org/living-with-mental-illness/mental-health-laws/mental-capacity)

**The Mental Capacity Act and DoLS (Mind)**

[www.mind.org.uk/information-support/legal-rights/mental-capacity-act-2005/deprivation-of-liberty/#.VXgb2vIViko](http://www.mind.org.uk/information-support/legal-rights/mental-capacity-act-2005/deprivation-of-liberty/#.VXgb2vIViko)

**Guide to DoLS and the MHA (TV Edwards)**

[www.tvedwards.com/cms/documents/FINAL\\_\\_Detention\\_and\\_CC\\_guidance\\_for\\_Respond\\_26\\_5\\_14.pdf](http://www.tvedwards.com/cms/documents/FINAL__Detention_and_CC_guidance_for_Respond_26_5_14.pdf)

## **What should my family member expect when they go into an assessment and treatment unit?**

The National Institute for Health and Clinical Excellence (NICE) says that wards and psychiatric units should feel safe, should give people privacy and space, and offer separate toilets, washing facilities and sleeping accommodation for men and women.

When someone is admitted to a ward or a unit they should be told:

- The name of the member of staff in the unit who will be coordinating their care, and how they can be contacted
- Why they have been admitted and, if it is under the Mental Health Act, what it means, how long they will be detained and their rights to appeal against the decision (including information about legal representation at a tribunal)
- About their right to complain about the care they receive and how to do this
- Their rights on agreeing to treatments
- How to get independent advice and advocacy support
- What may happen if their behaviour is seen as challenging – for example, if they are physically aggressive.

The information should be provided in a way that is suitable for the person, and they should get the help they need to understand it if needed. This is essential for people with learning disabilities.

Other things your family member should expect while they are in the unit:

- A **thorough initial assessment**, including of their physical health needs - drawing on existing information and plans and involving and listening to the person, their family and professionals from their local community who know them well
- A **person-centred assessment and treatment plan** should be developed, involving the person and their family and relevant professionals, with clear aims and actions
- As part of this assessment and treatment plan there should be a **Positive Behaviour Support plan** (see **factsheet 2** for more on Positive Behaviour Support)
- **Regular physical health checks** including an annual health check (see factsheet 1 for more on health checks)
- A **structured plan** ensuring the person can take part in meaningful activities and maintain and develop their skills while they are in the unit

- Access to **fresh air and exercise, and healthy food**
- Visits from family members and friends
- The person should have a **named care coordinator from their local area** (see **factsheet 6**) – usually a health or social work professional from a community learning disability team. This person should have regular contact with your family member (and their family). They should ensure that the right people are talking to each other to ensure a timely discharge from the unit and that the right community based support is available. They should lead on developing the person's discharge plan
- **Discharge planning** should start from day one of admission to an inpatient unit (see factsheet 6 for more on discharge planning).



### Top Tip

A stay in hospital can affect the welfare benefits that the person and a family carer can claim. See 'a stay in hospital can affect your benefits':

[www.disabilityrightsuk.org/benefits-hospital](http://www.disabilityrightsuk.org/benefits-hospital) (Disability Rights UK)

## Involvement in decisions about your family member

It is important that you are involved in your family member's care and contribute to the decision making process as you have so much knowledge. The more information that the professionals involved in your family members care have, the more likely they are to make good decisions.

As well as checking that your family member is getting the support and information they should be getting (as described above), here are some important things that you can think about and do:

- Request clear information about the service, including contact details for the unit and the names of key staff, as well as things like visiting rules
- Make sure you know who the clinician with overall responsibility for your family member's care and treatment is – this is the **Responsible Clinician** for those detained under the Mental Health Act
- Make sure you ask for the details of your family member's care coordinator, so that you can stay in touch and be kept informed

- Ensure that you know the clinical reason for your family member being in the unit, and why these clinical needs cannot be met in the community. Ask about what other assessment and treatment options in the community have or are being actively considered
- Share as much information and background history about your family member as possible. This should include things about how they communicate and their health background (you may have things like a communication passport or a health action plan you can share)
- Talk to the unit about typical patterns of behaviour and how these have changed; give your perspective on what might have triggered the changes
- Ask about what you can do, and what information they can give you to help ensure treatment plans are right for your family member
- Make sure you understand the role of the Nearest Relative if your family member is being detained under the Mental Health Act and its implication for you in the decision making process
- Make sure decisions involve the community-based professionals who know your family member well
- Ask to see plans about what your loved one does in the day, including meaningful activities, how they access fresh air and exercise etc.
- Ask to see the policy on restraint and seclusion, and how the individual and their family will be involved in deciding the approaches to be used to respond to challenging behaviour
- Ask for information about how you or your family member can raise concerns or make a complaint
- Ask to attend ward round meetings
- If detained under the Mental Health Act ask to attend Care Programme Approach (CPA) meetings.



## More Information

**Many of the prompts outlined in this section are taken from: 'Getting It Right for People with Learning Disabilities: Going into hospital because of mental health difficulties or challenging behaviour. What families need to know!' (NHS England) You can read this in full at:**

*[www.nhs.uk/Livewell/Childrenwithlearningdisability/Documents/NHS-England-Getting-it-right-for-people-with-learning-disabilities-epublication.pdf](http://www.nhs.uk/Livewell/Childrenwithlearningdisability/Documents/NHS-England-Getting-it-right-for-people-with-learning-disabilities-epublication.pdf)*

**A checklist for carers of people with mental health problems: (Royal College of Psychiatrists)**

*[www.rcpsych.ac.uk/healthadvice/partnersincarecampaign/checklistforcarers.aspx](http://www.rcpsych.ac.uk/healthadvice/partnersincarecampaign/checklistforcarers.aspx)*

**If your family member lacks capacity and a decision is being made in their 'best interests', you have a right to be involved. Here is a tool to help challenge if you are not being involved: (Irwin Mitchell)**

[www.irwinmitchell.com/activities/best-interest-decisions-tool](http://www.irwinmitchell.com/activities/best-interest-decisions-tool)

## When will my family member get out?

### Requests for discharge

When someone is sectioned under the Mental Health Act they should be given clear information which sets out their rights whilst detained under section. But how and when someone can leave an inpatient unit - or ways in which they can ask to be discharged - can depend on what section the person is detained under; there are different rules for the different sections of the Mental Health Act.

The different ways that someone can be discharged from an inpatient unit include:

- When the detention comes to an end and it is not renewed
- If the medical conditions that justified admission are no longer applicable (in which case the detention no longer applies) and the Responsible Clinician discharges them
- The person can ask for a **Hospital Managers' (also known as a Mental Health Act Managers')** hearing and ask them to consider discharging them
- The person's nearest relative can discharge by giving the hospital managers at least 72 hours in writing (although the Responsible Clinician can stop this under certain conditions)
- The person or nearest relative can apply to the Mental Health Tribunal for the person to be discharged - i.e. they can appeal the detention.



### More Information

**To find out more see: [Oversights and Appeals section in Getting It Right for People with Learning Disabilities: Going into hospital because of mental health difficulties or challenging behaviour. What families need to know!](#)**

[www.nhs.uk/Livewell/Childrenwithalearningdisability/Documents/NHS-England-Getting-it-right-for-people-with-learning-disabilities-epublication.pdf](http://www.nhs.uk/Livewell/Childrenwithalearningdisability/Documents/NHS-England-Getting-it-right-for-people-with-learning-disabilities-epublication.pdf)

The rules for challenging a decision around detention are different for people who are under DoLS (rather than the Mental Health Act). There is no Mental Health Tribunal involved. The relevant person or the Relevant Person's Representative (RPR) can ask the **supervisory body** (e.g. local authority) to review the DoLS at any time. They can also appeal to the Court of Protection if they disagree with the supervisory body's decision.



## Top Tip

Unfortunately we know that too many people are stuck in units. Being able to access legal representation can be important to help challenge unnecessary detentions.

For people who are detained under the Mental Health Act, Independent Mental Health Advocates (IMHAs) and lawyers can play an important role in helping someone appeal their detention through the Mental Health Tribunal. It is important that IMHAs and lawyers understand your family member and their needs. Explain their needs as fully as you can and make sure they understand what good support for people with a learning disability and behaviour that challenges looks like (see factsheet 2) - this will help them represent your family member well and provide challenge to the evidence of the detaining authority, where needed.

Make sure your loved one gets a lawyer who not only understands the Mental Health Act but also understands learning disability. Check your MHA lawyer has knowledge about human rights and community care law as this can be helpful. If they do not you could ask them to work with a lawyer who does. Remember, if a lawyer does not have the right skills your family member can change lawyers.

See **Meeting the challenge: Frequently asked questions about the law** written by Irwin Mitchell Solicitors for more information about your family member's legal rights: [www.irwinmitchell.com/meetingthechallenge](http://www.irwinmitchell.com/meetingthechallenge)

## Meeting The Challenge 4

# Glossary

**The Mental Health Act (1983)** is the law which sets out when someone can be admitted, detained and treated in hospital against their wishes. This is only done if the person is putting their own health, safety or someone else's at risk and they have a "mental disorder". A "mental disorder" is described in the Act as "any disorder or disability of the mind" and includes a wide range of conditions including illnesses like personality disorders, depression and schizophrenia. The definition includes learning disability, but the Act states that under certain Sections, someone with a learning disability and no other form of mental disorder may not be detained for treatment unless their learning disability is accompanied by abnormally aggressive or seriously irresponsible behaviour.

**The Mental Capacity Act 2005 (MCA)** is the law about people who may lack capacity to make some or all of their own decisions, and how decisions can be made on behalf of the person in their 'best interests'. The Deprivation of Liberty Safeguards (DoLS) are part of the MCA and are intended to provide protection for people who

lack capacity to consent to the arrangements for their care and where their support arrangements are so restrictive that they are considered to be 'deprived of their liberty'. The test as to whether someone is deprived of their liberty is i) are they under continuous supervision and control; ii) are they free to leave and iii) do they lack capacity. The idea is that there are safeguards in place to ensure such a level of restriction is properly authorised and monitored. Some people who lack capacity (and where it is not appropriate to section them under the Mental Health Act), can be admitted into an inpatient unit under DoLS if it is considered in their best interests to be admitted and the arrangement is so restrictive it constitutes a 'deprivation of liberty'.

**Mental Health Act Managers** (or 'hospital managers') are not responsible for the day to day running of the hospital. They are non-executive directors of the hospital and are responsible for ensuring the Mental Health Act is properly used.

**Mental Health Tribunal** (or First-tier Tribunal (Mental Health)) is an independent panel for

patients who are detained in hospital under the Mental Health Act. A judge chairs the Tribunal sitting with a psychiatrist and lay member. The role of the Tribunal is to determine whether the grounds for detention under the Act continue to exist.

**National Institute for Health and Clinical Excellence (NICE)** – sponsored by the Department of Health, but operationally independent of government. Provides national guidance and advice to improve health and social care.

**Responsible clinician** - the person who has overall responsibility for someone who is being assessed and treated under the Mental Health Act, including in relation to day to day decisions about a person's care and treatment. Usually a Consultant Psychiatrist.

**Supervisory body** – if a hospital or care home needs to provide care and support in a way that will deprive someone of their liberty, they must apply for an authorisation for the deprivation of liberty. An application for a standard authorisation will be made to the supervisory body – in England, this is the local authority.

For more information visit  
[www.mencap.org.uk/meetingthechallenge](http://www.mencap.org.uk/meetingthechallenge)

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