

Meeting the challenge

Guide 2:

Your rights if you are in an Assessment and Treatment unit

Supporter version



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About these guides

This is one of two guides which outlines the rights of people with a learning disability when living in the community and their rights when in inpatient settings, like Assessment and Treatment units.

Guide 1 is about the rights of people with a learning disability **when living in the community**.

Guide 1 has an easy read version for people with a learning disability, and a version for supporters of people with a learning disability, which has more background about the issues raised in the easy read guide, so supporters can be prepared to answer questions and provide more information.

Guide 2 is about the rights of people with a learning disability **who are in Assessment and Treatment units**.

Guide 2 has an easy read version for people with a learning disability, and a version for supporters of people with a learning disability, which has more background about the issues raised in the easy read guide, so supporters can be prepared to answer questions and provide more information.

The development of these guides has been funded by the Department of Health through its Strategic Partners Programme.

Know your rights

The purpose of the guides is to help people with a learning disability, and the people who support them, know and understand their rights. We hope that if people know their rights, this will help them get the support they need in the community and reduce the number of people being sent to in-patient settings like Assessment and Treatment units.

Winterbourne View

Since the Winterbourne View abuse scandal in 2011, it has been a big concern that too many people with a learning disability are in in-patient units, like Assessment and Treatment units. The government and the NHS have recognised that changes need to be made to make sure that people with a learning disability can live full lives in the community.

Meeting the challenge

Your rights if you are in an Assessment and Treatment unit

Guide 2: Supporter version

Introduction

This is **Guide 2**. It is about the rights of people with a learning disability if they are in an Assessment and Treatment unit.

There are two versions of Guide 2.

An **Easy read version** and a **version for supporter**.

This is the **version for supporters**. It has more background about the issues raised in the easy read guide, so supporters can be prepared to answer questions and provide more information.

The rights of people with a learning disability when they are living in the community are covered in **Guide 1**. That has two versions as well.

This guide tells you about the rights of people with a learning disability **if they are in an Assessment and Treatment unit**. 'Rights' are things that someone should get or that should happen.

Rights are very important. They help make sure a person can be safe and happy.

This guide should help you understand the rights of the person you support and what you or they can do if their rights are being ignored.

What is this guide about?

In 2011 a place called Winterbourne View was closed down after a television programme showed staff hurting the people staying there. The people all had learning disabilities and they were in Winterbourne View to get special care with their behaviour or mental health but instead they were being abused.

Winterbourne View was a special type of hospital called an 'Assessment and Treatment unit'. This means it was there to look after and treat people with a learning disability for mental health problems or if their behaviour was challenging, so that they could go home happier, healthier and safer.

Since Winterbourne View it has been made clear that too many people with a learning disability are being sent to Assessment and Treatment units. Lots of people are staying there for too long and are too far away from home.

This is happening because there is not the right support available in the community.

The government and NHS have said this must change. They have said the **right support must be developed in the community**.

They have said it is important people are only sent to Assessment and Treatment units if they really need to be there. And if they do need to go to one it is important they are:

- Only there for a short time
- Sent to one as close to home as possible
- Told what their rights are
- Treated in the right way

This guide aims to help you understand the rights of the person with a learning disability you are supporting, so that they can get the right services and support to meet their needs. This will help keep them safe, happy and healthy and make sure they know when things are not going the way that they should, so you both can take action to make things better.

Human rights

The Human Rights Act is a special law that sets out all of the rights that every person should have.

It says that everyone should have:

- The right to not be hurt by people or treated badly
- The right to be free- This means being able to live somewhere that you choose, and being able to leave your home and go out.
- The right to be safe
- The right to a family life- this includes being able to talk to your family, write letters to them and see them
- The right to be able to be yourself and make decisions for yourself.

(Note: these rights are called 'qualified' rights, which means there are circumstances in which interference with these rights can be justified by the State).

The Human Rights Act helps to make sure that basic rights are met.

The Human Rights Act should be followed by the people who care for and look after a person with a learning disability. Knowing what the Human Rights Act means is important to make sure the person you are supporting knows when they are not being treated in the right way.

To find out more about the Human Rights Act see the Equality and Human Rights Commission's booklet 'Ours to own: your human rights':

www.equalityhumanrights.com/sites/default/files/documents/publications/ours_to_own_easy_read.pdf

What other laws do you need to know about?

The Mental Capacity Act

The 'Mental Capacity Act' is another important law that is there to help make sure people with a learning disability get the support they need to make their own decisions. Where they are not able to make their own decision, a decision is made in their 'best interests'.

The Mental Capacity Act says that people should always support a person to make their own decisions if they can. This might mean giving them easy read information or explaining something in a different way.

But if a decision is too big or complicated for a person to make, even with support, then people supporting them must work with the person and their family to make a 'best interests' decision for them. This means they make a decision that is the right one for the person with a learning disability. They must involve the person as much as possible in working out what the right decision is.

Just because someone is not able to make one decision, this does not mean they can't make other decisions. People should always support a person to make their own decisions if they can do so.

What is a person's 'best interests'?

Making a decision in someone's best interests means the people around the person make a decision that they believe is the right one for them. When making a best interests decision, the person making the decision, for example a social worker or GP, must listen to the person with a learning disability, their family and supporters.

If they have a meeting to discuss this (a 'best interests' meeting), the person with a learning disability, and their family have a right to be there.

What if the person concerned, or their family, are not happy with the decision?

A person with a learning disability, or their family, have the right to challenge a best interests decision if they do not think the decision made is really in the person's best interests. There are various things that can be done, for example:

- Ask for an advocate to be involved
- Ask for a second opinion
- Make a complaint.

If none of these things work, and there is still a disagreement, the **Court of Protection** could be asked to decide the matter.

For more information about the Mental Capacity Act 2005, see the Local Government Association, NHS England and the Care Provider Alliance's easy read guide:

www.local.gov.uk/documents/10180/12137/ntal+Capacity+Act+2005+easy+read+guide/38683f88-4b96-49d6-86ab-89b2404d2e7a

The 'Mental Health Act'

The Mental Health Act is another law. This allows a person to be 'detained' for assessment or treatment of a mental health problem.

Detained means being made to stay in an inpatient unit.

Detained is sometimes called being 'sectioned'. You can read more about this later in this guide.

If a person is detained under the Mental Health Act (MHA) it is important they understand their rights.

For example, their right to have an advocate and their right to have a Mental Health Lawyer.

They must be given information about their rights.

Read the Department of Health's easy read factsheets about the Mental Health Act Code of Practice:

'Information you must be given'

www.nhs.uk/NHSEngland/AboutNHSservices/mental-health-services-explained/Documents/easy-read/MH-CoP-Information-you-must-be-given.pdf

'Detention and your rights'

www.nhs.uk/NHSEngland/AboutNHSservices/mental-health-services-explained/Documents/easy-read/MH-CoP-Being-detained.pdf

Assessment and Treatment units

What is an Assessment and Treatment unit?

An Assessment and Treatment unit is a type of inpatient unit. It is a place where people look after someone while they decide if the

person has a mental health problem and what treatment the person might need to help them.

The person you support might have chosen to come to an Assessment and Treatment unit to get help or they might have been sent or taken here by someone without choosing to go.

Why is the person you support here?

The person you support is in the Assessment and Treatment unit because they or someone else thinks that they might need help with their behaviour or mental health. They might be here because:

- they have a mental health problem that is serious and they need help to feel better
- people are worried that they might hurt themselves
- people are worried that they might hurt someone else
- they have broken the law and the courts have sent them here to get help
- there are not the right support and services in the community.

What is being ‘sectioned’?

The person you support might have been told that they have been ‘sectioned’ and have to stay in the unit for a while.

There are different ‘sections’ a person can be kept in a unit under.

These different sections mean different things. For example:

If a person is under Section 2 - they can only be detained for up to 28 days, although they may not stay for that long. At this point they will either be:

- discharged from section 2 and agreed to stay in hospital
- discharged from section 2 and moved out of the unit into the community
- detained under section 3 for treatment.

If the person is under Section 3 - they can be detained for up to 6 months although they could be discharged (moved out) before this time is

up. Detention under section 3 can be renewed for a further 6 months. After that, detention can be renewed again, one year at a time.

A person should always be told:

- if they have been sectioned
- why they have been sectioned
- what type of section they are under and what this means for them.

If the person you support doesn’t know these things, you or they should ask someone.

See section ‘Can they leave the Assessment and Treatment unit now?’ to find out more about how and when the person you support can leave a unit.

Good support

What is good support?

Good support means that a person is getting the support they need to live a safe and healthy life. Good support means different things for different people.

If a person is in a unit they should be able to:

- go outside and get fresh air
- do exercise
- eat healthy food
- do activities.

Their care should be as least restrictive as possible. Restrictive means stopping them from doing things.

A person should only be restrained if it is really necessary. They should only get medication if they need it - and not more than they need.

See 'Your treatment and care plan' – a Department of Health Mental Health Act Code of Practice easy read factsheet about your medical treatment and rights in the unit:

<http://www.nhs.uk/NHSEngland/AboutNHSservices/mental-health-services-explained/Documents/easy-read/MH-CoP-Your-treatment-and-Plan.pdf>

The unit should help a person keep contact with their family, for example support them to speak to them on the phone and to make it as easy as possible for their family to visit them. If they restrict visits they must have a very good reason why they think that is best for the person's health. A person should tell their advocate or lawyer if there is anything they are not happy about to do with their care in the unit.

See 'Visiting' – a Department of Health Mental Health Act Code of Practice easy read factsheet about your right to have visitors when you are detained in a unit:

www.nhs.uk/NHSEngland/AboutNHSservices/mental-health-services-explained/Documents/easy-read/MH-CoP-Visiting.pdf

To get good support the right things need to be in place to keep someone happy, healthy and safe.

The doctor in the unit should involve the person in meetings about their care in the unit. The person's family and advocate should be involved as well. If the person is not being involved, they should ask to be.

What is an Advocate and how can they help?

An advocate is someone who can help a person speak up and tell people what they think. They can also speak up for people where they find it hard to do so themselves.

There are different types of advocate as well as the normal advocate that someone might have.

If a person is in a unit and sectioned under the Mental Health Act (MHA) they have a right to an **Independent Mental Health Advocate (IMHA)**. If the person you support hasn't got one, they should ask for one.

An Independent Mental Health Advocate is an advocate who understands the Mental Health Act. They help people understand their rights under the Mental Health Act and speak up about what they want and need.

Find out more about IMHAs in the Department of Health Mental Health Act Code of Practice easy read factsheet on IMHAs:

www.nhs.uk/NHSEngland/AboutNHSservices/mental-health-services-explained/Documents/easy-read/MH-CoP-IMHA.pdf

If someone is under the Mental Health Act they have a right to an IMHA. They also have the right to an IMHA if they are not under the Mental Health Act but they are discussing certain serious types of treatment.

If they don't have the right to an IMHA they should still be able to get an advocate to support them and help speak up. They should ask for an advocate if they haven't got one.

What is a lawyer and how can they help?

A person has the right to challenge being in a unit if they do not think they should be there - lots of people can help them do this like their family, or lawyer.

The person has a right to a Mental Health lawyer if they are under the Mental Health Act (MHA). They can help the person challenge being in the unit (see section below on 'Can they leave the assessment and treatment unit now?').

What if the person is not getting good support?

If the person doesn't feel safe, happy or healthy something might need to change to improve their support.

If they don't think you're getting the right support they could talk to:

- their family
- their advocate
- their doctor in the unit
- somebody else who is supporting them in the unit
- their social worker from home.

If things don't get better they could make a complaint - they should ask the unit how to do this (their advocate could help them) and they should talk to their lawyer and ask them to help them.

What should a person do if they experience abuse?

The people at Winterbourne View experienced abuse. It is important the person you support knows what to do if they are being abused.

What is abuse?

Abuse is when a person is treated badly by someone. This could happen anywhere. It might be by someone a person lives with, someone who supports them, a friend or a member of your family or someone else. A person should always

make sure they speak to someone who can help them if they think they are being abused.

Nobody should be abused and it is against the law.

There are different types of abuse. Abuse includes things like:

- being hit or hurt by someone
- being called names or victimised
- being forced to have sex with someone or do sexual things that a person does not want to do
- having money or belongings stolen
- having health or care needs ignored by those who are meant to be caring for a person.

If the person you support is worried that someone is treating them badly they should make sure they talk to someone about it.

Getting help?

There are lots of ways to get help if someone is being abused or thinks they might be.

If they are being abused now:

- they should talk to someone they trust. This might be a family member, advocate, a service manager, social worker or someone else
- they should explain to them what has happened and ask them to help
- the social services 'Safeguarding Team' should be called, who are there to make sure people are safe.

If someone is ever in **immediate danger** they should contact the police.

If someone has been abused before:

There are lots of ways a person can get help if they have been abused before:

- they could talk to someone they trust. This might be a family member, advocate, a service manager, social worker or someone else

- they could ask to see a counsellor
- they could talk to a charity called **Respond** who could help get the right support
- they could report it to the police
- they could talk to a lawyer.

If the person you support has not already told someone about what has happened it is not too late for them to speak to someone and get help.

Remember: no one should have to face abuse- it is not allowed and is against the law.

See Change’s ‘What is safeguarding?’ easy read document:

www.changepeople.org/blog-and-news/what-is-safeguarding-easy-read-guide-from-change-updated-2015/

See BILD’s webpage on easy read information about Keeping Safe:

www.bild.org.uk/easy-read/easy-read-information/keeping-safe-easy-read-information/

See The Ministry of Justice’s ‘The support you should get if you are a victim of crime’ easy read document:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/264850/easyread-victims-code.pdf

Respond – a charity that works with children and adults with learning disabilities who have experienced abuse through psychotherapy, advocacy, campaigning and other support. They offer support to families through their family support service.

www.respond.org.uk

Leaving the Assessment and Treatment unit

Can they leave the Assessment and Treatment unit now?

A person should only stay in the unit for as long as they need to be there. Assessment and Treatment units are not meant to be homes.

If the person has asked to come into the unit themselves and nothing has changed they can leave at any time - this is because they are a ‘voluntary patient’.

If a person is in a unit and they have been sectioned (they should ask someone if they don’t know) then they won’t be able to leave straight away, instead they will be allowed to leave when staff at the Assessment and Treatment unit say that they are ready to.

A person has the right to challenge being there if they do not think they should be - lots of people can help the person do this like their family, or lawyer.

Most people who have been sectioned have someone who is called their ‘nearest relative’. The Mental Health Act tells the hospital how to work out who that will be in each case. The ‘nearest relative’ has certain rights and you should be told what these are if you are the nearest relative for the person you are supporting.

How the person can appeal against their detention

The person can ask to speak to the hospital managers or apply to the Tribunal.

Who are the hospital managers?

These are the people who run the hospital. They have the power to take the person off their section. The hospital managers might want to speak to the person and the people who care for and look after them. They might then hold a meeting (sometimes called a “managers hearing”) to make a decision on whether the person should stay on section or

not. The person might ask an advocate or a lawyer to support them.

If the person is not happy with the decision they should speak to their advocate or lawyer about what they can do next.

What is a tribunal?

A tribunal is a panel of people who can make a decision about whether a person still needs to be on section in an Assessment and Treatment unit.

The people on the panel are independent - this means that they do not work for the unit that the person is in.

The decision about whether the person you support still needs to be in an Assessment and Treatment unit is made in a special meeting called a 'hearing'. What the panel decides, has to happen.

A person or their lawyer can ask the Tribunal for a hearing.

The person should be involved in this hearing as well as their lawyer and they can ask for their family and their advocate to be here too. It is important professionals from their home area like their social worker, psychiatrist or psychologist come to this too. If they are able to say how the person could be supported to live in the community, this can help show that the person is ready to leave the unit.

The tribunal panel should ask the person and other people what they think. They will then make a decision.

The decision that is made will either mean that the person you support has to stay on section or that they are ready to be discharged from the section.

If they are discharged from the section this could mean the person agrees to stay voluntarily, or that they leave the unit. Either way it is their decision.

If they say the person can't leave, the person should talk to their lawyer about what they can do next. It might be that professionals from the person's home area need to do more to get the right support in the community for the person.

Getting the right legal advice

A person has a right to a Mental Health lawyer if they are under the Mental Health Act (MHA).

Lawyers are there to give a person legal help. If the person you support has been in the unit for too long or they are too far away from home or if they aren't being treated in the right way a lawyer should be able to help.

If a person is under the Mental Health Act and wants to apply to the Tribunal their Mental Health lawyer can be fully funded through legal aid (this means the person does not have to worry about paying for the lawyer themselves).

The hospital should have a list of Mental Health lawyers the person could contact. The person should ask them for this list.

A Mental Health Act lawyer should be an expert in the Mental Health Act but it can be important for them to know about these things as well:

- about Community Care law - so they understand about getting the right support in the community
- the Human Rights Act
- the needs of people with a learning disability.

The person you support should ask the lawyer if they know about these things. If the lawyer doesn't, the person you support might want to try and get a different lawyer or they could ask them to work with another lawyer who does understand about these things.

If the person you support gets a lawyer and they are not happy with them, they can make a complaint or ask to change lawyers. Their advocate should be able to help them do this.

Easy read guide on making a complaint about a mental health act lawyer (law society):

<http://www.lawsociety.org.uk/for-the-public/using-a-solicitor/documents/Mental-health-complaints-guidance-easy-read>

- Their social worker from home
- The people looking after them in the unit
- Other professionals from their home area like a psychologist, psychiatrist or nurse who knows them well.
- And anyone else that might be able to help plan the best life for them after they leave.

The person can ask to see their discharge plan at any time. If they are told they don't have one, they should ask the doctor in the unit to start one straight away.

What will happen when they leave the Assessment and Treatment unit?

Discharge planning (planning to leave the unit)

The first day the person goes in to the Assessment and Treatment unit the people looking after them should start something called 'discharge planning'. This means that they should start deciding how to give the person the best life when they leave the unit and make sure the person leaves without spending too much time in the unit.

A discharge plan is a piece of paper that explains what the person will need when they leave the hospital. It should say:

- Where the person should live
- Who the person should live with, if anyone
- What support they will need
- What help they will need for their mental health or behaviour
- And other information

To work out what care the person needs in the community, an assessment of their needs will need to be done. See **Guide 1** 'good support' section for more information about assessments.

Discharge planning is very important and should involve the right people to make sure that it works. The person you support has the right to be involved in the planning and they can ask for their family to be involved too. Other people involved could be:

Do a person's rights ever change?

A person's rights will change when they leave the Assessment and Treatment unit and go back into the community.

Look at **Guide 1** to find out about a person's rights in the community.

There are some other situations where a person's rights might change but they should always be supported to be happy, safe and healthy.

The person you support should always remember that they have the same human rights as everyone else and should always be treated in the right way.

For more information

Department of Health Mental Health Act Code of Practice easy read factsheets:

www.nhs.uk/NHSEngland/AboutNHSservices/mental-health-services-explained/Pages/easy-read-mental-health-act.aspx

Department of Health factsheet which lists important words to do with the Mental Health Act and what they mean:

www.nhs.uk/NHSEngland/AboutNHSservices/mental-health-services-explained/Documents/easy-read/MH-CoP-Glossary.pdf

Meeting the challenge guides for families:

www.mencap.org.uk/meetingthechallenge

Meeting the challenge frequently asked questions about the law

www.irwinmitchell.com/meetingthechallenge

For more information visit
www.mencap.org.uk/meetingthechallenge

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