

OCD – DETENTION AND INFORMAL ADMISSION TO HOSPITAL (IN ENGLAND & WALES)

Please note this information is for England and Wales only. For leaflets regarding detention and informal admission in Northern Ireland or Scotland please see the relevant leaflets which will be available shortly at www.ocdaction.org.uk.

OCD affects 1-2% of the general population and most people living with the condition do not enter hospital, either voluntarily or under a section of the Mental Health Act.

There may however, be times when you may become so unwell that family, friends, colleagues or healthcare professionals are concerned about you. If this happens, an Approved Mental Health Professional (AMHP) may discuss with you the idea of going into hospital so that you can be assessed for treatment, or so that treatment can be more closely monitored or changed, or so that more intensive therapy can be given.

VOLUNTARY/INFORMAL ADMISSION

Some people may decide to go voluntarily into hospital (frequently referred to as 'informal patients'). If you are an informal patient, you can decide to leave hospital at any time (unless you subsequently become placed under a section of the Mental Health Act) and you can also decide whether or not to take medication or receive therapy.

If it is felt however that you are so unwell that your safety or your health, or the safety of others, are at risk, you may be assessed for detention under the Mental Health Act.

THE DETENTION PROCESS

An Approved Mental Health Professional (AMHP) or your Nearest Relative can make an application for detention.

An AMHP will consider whether there are alternative means of providing you with the required care and treatment. If they deem that there are no alternative means they will then interview you to establish whether, or not, there are grounds to admit you under a section of the Mental Health Act.

Generally, to be placed under the Mental Health Act (frequently referred to as 'sectioned') two doctors must both determine that the detention criteria set out under the Mental Health Act are met (with the exception of s4, s5(2) and s5(4)). Both doctors will then need to make a written recommendation for admission. Generally, one of these doctors should have met you before. Then if the AMHP deems it appropriate they will make an application for your admission to hospital under the relevant section of the Mental Health Act.

This can be a very distressing time but mental health professionals are trained to handle these situations as sensitively as they can. Furthermore, if you are detained,

you are generally safeguarded by a number of rights: in England the statutory right to an Independent Mental Health Advocate (IMHA¹); the legal right to appeal against your detention (within specified time frames) with the assistance of a solicitor; and the support of a service regulator (in England, it is under the remit of the Care Quality Commission and in Wales, this is provided by the Health Inspectorate Wales).

SECTIONS OF THE MENTAL HEALTH ACT

Section 2

Under section 2 of the Mental Health Act you may be detained for assessment where you are:

- ‘Suffering from a mental disorder of a ‘nature or degree’ which warrants detention in hospital for assessment or assessment followed by medical treatment ;

and

- It is assessed that it is necessary for you to be detained for your own health or safety or for the protection of others.

Detention under Section 2 runs for a maximum of 28 days, beginning on the day of admission. Section 2 cannot be renewed, although you can subsequently be placed under Section 3.

Section 3

Under section 3 of the Mental Health Act you may be detained for treatment where you are:

- Suffering from a mental disorder of a ‘nature or degree’ which makes it appropriate to receive ‘medical treatment in hospital’;

and

- It is necessary for your own health or safety or for the protection of others that you receive this treatment and that unless you are detained this treatment cannot be provided;

and

- Appropriate medical treatment is available. Appropriate medical treatment does not only include medication, it can also include treatment such as therapy and nursing care. The treatment must be treatment for your mental disorder, not for any other health issue.

¹ In Wales the Mental Health (Wales) Measure 2010 extended the statutory right to an IMHA to all people admitted to psychiatric hospital.

Detention under section 3 can last for up to 6 months, which can then be renewed for a further 6 month period and subsequently for a year at a time, if the criteria are still met.

Section 4

This section is used in an emergency to allow admission to hospital for assessment. The application is also made by an AMHP, or your nearest relative, but with just one medical recommendation, which must have been made within the last 24 hours. Detention under section 4 runs for a maximum of 72 hours.

The criteria for detention under section 4 requires:

- That the criteria for detention under section 2 are fulfilled;
- That your detention is needed as ‘a matter of urgent necessity’; and
- That ‘obtaining a second medical recommendation would cause undesirable delay’

Section 5(2)

This section provides holding powers to doctors and approved clinicians who are in-charge of a hospital in-patient.

Under Section 5(2) the maximum length of time you can be held for is 72 hours, thus allowing you to be assessed with a view to making a subsequent application under one of the other sections. This section is authorised by one doctor or approved clinician.

Section 5(4)

This section provides holding powers to nurses (who will usually be specialists in mental health) for in-patients who are receiving treatment for their mental disorder.

This section requires that you are:

- Suffering from a ‘mental disorder’ of such a degree that it is necessary to prevent you leaving hospital for your own health or safety, or the protection of others;

and that

- A doctor or approved clinician cannot be practicably obtained to ‘submit a report under the other holding power, section 5(2).

Under Section 5(4) you can be detained for a maximum of 6 hours.

RIGHT TO AN INDEPENDENT MENTAL HEALTH ADVOCATE

In England if you are detained under the Mental Health Act (with the exception of detention under s4, 5(2), 5(4), 135 or 136) or subject to Supervised Community Treatment, you have the right to consult an Independent Mental Health Advocate (IMHA). You should be given the opportunity to consult your IMHA in private, if required.

An IMHA's role includes providing you with information to facilitate your understanding: of your rights under the relevant section of the Mental Health Act; of your current/proposed medical treatment; and your rights regarding this treatment.

DISCHARGE FROM A SECTION

There are a number of different ways in which you could be discharged from your section:

- If at any time your responsible clinician believes you no longer meet the criteria for detention, they can discharge you from your section.
- You have the right to speak to a solicitor who can assist you with making an application to a Mental Health Tribunal (MHT) or a Hospital Managers' Hearing. Both a MHT and a Hospital Manager's Hearing can discharge you from your section, if they decide the criteria are no longer met.
- If you are detained under section 2 and you want to apply to a MHT, you must do so within the first 14 days of your detention. If you are detained under Section 3 you can apply to an MHT once, at any time, during the six months of detention. If you want to make an application to the Tribunal, you can speak to your advocate, tell a nurse on the ward or ask to speak to the hospital's Mental Health Act administrator.
- Your Nearest Relative also has the right to request that you are discharged from your section 2 or section 3. Your Nearest Relative must provide 72 hours notice of their intention to discharge you from you section. However, your responsible clinician may over-ride this by submitting a 'barring' report to the Hospital Managers, if they believe you should not be discharged.

If you want to challenge your detention by making an application to the Mental Health Tribunal, you will be entitled to legal aid, regardless of your financial circumstances.

NEAREST RELATIVE

The Mental Health Act prescribes who your Nearest Relative is (it is not necessarily your next of kin) in the following descending order:

- **Husband or wife or civil partner (including those living together as husband and wife or civil partner for at least 6 months)**

- **Son or daughter**
- **Father or mother**
- **Brother or sister**
- **Grandparent**
- **Grandchild**
- **Uncle or aunt**
- **Niece or nephew**

If your Nearest Relative is deemed to be an unsuitable person (as defined under the Mental Health Act) then the County Court can issue an order, or you the patient, can apply for an order, to replace your Nearest Relative. It is also possible for your Nearest Relative to delegate their powers to another person in certain circumstances.

LEAVE OF ABSENCE

If you have been detained under the Mental Health Act under Sections 2 or 3 then you may be granted leave under section 17 of the Mental Health Act. Your 'responsible clinician' is the only person able to grant this section 17 leave. It is possible for your responsible clinician to place conditions on leave.

TREATMENT UNDER THE MENTAL HEALTH ACT

Whilst in hospital you will be allocated a 'responsible clinician' who will be responsible for the overall care of your case.

You should be provided with information about your proposed/current treatment. Your consent should, wherever possible, be sought. However, if you are detained under certain sections of the Mental Health Act, treatment can be carried out even if you do not give your consent.

Under section 2 you can be given some treatment without your consent. Under section 3 you can also receive treatment without your consent within the first 3 months of your detention, after which time a Second Opinion Appointed Doctor (SOAD) will need to approve your proposed treatment.

Under sections 4, 5(2) and 5(4), you cannot receive treatment without consent unless a second medical recommendation has been obtained.

Some treatments such as Neurosurgery and Electro-Compulsive Therapy (ECT) cannot be given, where you do not consent. You may wish to speak to your Independent Mental Health Advocate or legal adviser about your rights concerning treatment.

AFTER-CARE

Supervised Community Treatment (SCT)

If you were detained under section 3 of the Mental Health Act you may be placed under a Community Treatment Order (CTO) once you are discharged from hospital.

CTOs were created to prevent relapse and to facilitate re-call to hospital, where necessary. Your responsible clinician can make the decision to place you under a CTO and this must be approved by an AMHP. CTOs can last for up to 6 months and can be renewed for 6 months, then a year thereafter.

If you are subject to a CTO you can be required to make yourself available for examination. It is also possible for your responsible clinician to attach conditions to the CTO, such as requiring you to meet regularly with a social worker. If you do not comply with the terms of your CTO you may be recalled to hospital for assessment or your detention under section 3 may be resurrected, if certain criteria are met. You may wish to consult an Independent Mental Health Advocate to find out about your rights under a CTO.

Section 117 - Aftercare

Once you leave hospital you may receive aftercare under Section 117. If you were detained under section 3 of the Mental Health Act, you have a right to receive s117 after-care from your Clinician Commissioning Group (CCG) and your local social services authority (LSSAs). A multi-disciplinary meeting involving you and those involved in your care and treatment should be organised before your discharge. A care plan should then be put in writing and regularly reviewed with you. This after-care plan may cover issues such as your accommodation, day care and treatment.

The Care Programme Approach

If you are identified as having complex needs, perhaps because you need support from a number of different agencies or because you have been detained under the Mental Health Act, then you should be provided with community care under the Care Programme Approach (CPA).

Under the CPA an assessment of your community needs should be undertaken by a mental health care specialist (the care co-ordinator²). The care co-ordinator is often a social worker or a nurse. You should be involved in this assessment. As a result of this assessment, a care plan should be written detailing how issues around your care and treatment will be addressed. You should be provided with a copy of your care plan and this should be regularly reviewed.

SERVICE REGULATORS - THE CARE QUALITY COMMISSION/THE HEALTH INSPECTORATE WALES

In England, the Care Quality Commission (replacing the previous Mental Health Act Commission, the Healthcare Commission and the Commission for Social Care Inspection) has a duty to maintain the rights of people detained under the Mental Health Act. Mental Health Act Commissioners from the Care Quality Commission regularly visit hospital wards to check patients' rights are being upheld and to check that the paperwork carried out under the Mental Health Act have been completed correctly. In Wales, the Health Inspectorate Wales (HIW) carries out this regulatory role.

If you are detained under the Mental Health Act, you can contact the Mental Health Act Commissioners from the Care Quality Commission (if you are in England) or the Health Inspectorate Wales (if you are in Wales) to raise any serious concerns you have about the care you are receiving in hospital. You may also wish to speak to your Independent Mental Health Advocate (IMHA) about these concerns.

USEFUL WEBSITES

OCD Action: www.ocdaction.org.uk

Mind: www.mind.org.uk

Mental Health Foundation: www.mentalhealth.org.uk

Sane: www.sane.org.uk

Care Quality Commission: <http://www.cqc.org.uk>

Health Inspectorate Wales: <http://www.hiw.org.uk/>

Mental Health Wales: www.mentalhealthwales.net

OCD Action takes every care to make sure that information is up to date and accurate; the charity however does not offer legal advice. Please consult a legal expert if you need specific legal information about your case.

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