



Consenting to treatment

Explains your legal rights to consent to (or refuse) treatment, including what 'consent' means, when you can be treated without your consent, and how to make a complaint.

Please note

- This guide covers agreeing to treatment from the point of view of a person with a mental health problem.
- This guide applies to England and Wales.
- This guide contains general legal information, not legal advice. We recommend you get advice from a specialist legal adviser or solicitor who will help you with your individual situation and needs. See [Useful contacts](#) for more information.
- The legal information in this guide does not apply to children unless specifically stated.

If you require this information in Word document format for compatibility with screen readers, please email: publications@mind.org.uk

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Overview

If you have a [mental health problem](#), your doctor may suggest certain kinds of treatment for you. In most situations, a healthcare professional can't lawfully treat you unless you agree to that treatment.

Quick facts

- Generally, you need to give your [consent](#) before receiving any kind of health treatment. To give [consent](#), you need to have capacity to decide, have enough information to make that decision, and give your consent freely.
- If you are treated without your consent then it is usually against the law. However, there are some exceptions. You can be legally treated without your consent if:
 - you are detained ([sectioned](#)) under some sections of the Mental Health Act.
 - you don't have [capacity](#) to decide whether to have treatment.
 - it's emergency life-saving treatment.
- The rules on if you could be [treated without your consent](#) are slightly different depending whether you are:
 - living in the community (e.g. at home or in a care home), and not subject to any restrictions
 - a voluntary patient (having in-patient treatment in a psychiatric hospital of your own free will)
 - on a community treatment order (CTO)
 - sectioned in hospital.
- If you don't have capacity to make a decision about your treatment, the health professional in charge of your treatment will normally make the decision for you. They have to take your [best interests](#) into consideration when doing this.

- If you're worried that you may one day lose capacity to make your own decisions about treatment, you can [plan ahead](#) by making an advance decision, advance statement or lasting power of attorney.
- If you feel that you've been made to have treatment that you haven't agreed to, you can [take steps to challenge it](#).

Terms you need to know

Advance decision	<p>An advance decision is a statement of instructions about what medical treatment you want to refuse in case you lose the capacity to make these decisions in the future. It is legally binding.</p> <p>For more information see our pages on the Mental Capacity Act.</p>
Advance statement	<p>An advance statement is a written document that sets out your preferences (apart from refusals of treatment). It is not legally binding. You can ask a professional to follow this document if you ever lose capacity to make these decisions yourself.</p> <p>For more information see our pages on the Mental Capacity Act.</p>
Advocate	<p>An advocate is a person who can both listen to you and speak for you in times of need. Having an advocate can be helpful in situations where you are finding it difficult to make your views known, or to make people listen to them and take them into account.</p> <p>For more information see our pages on advocacy.</p>
Best interests	<p>Health professionals must act in your best interests before taking certain steps that affect your care and treatment.</p> <p>The Mental Capacity Act has a best interests checklist, which outlines what health professionals need to consider before taking an action or decision for you while you lack capacity.</p> <p>For more information see our pages on the Mental Capacity Act.</p>
Capacity	<p>'Capacity' means the ability to understand information and make decisions about your life. Sometimes it can also mean the ability to communicate decisions about your life.</p> <p>For example, if you do not understand the information and are unable to make a decision about your treatment, you are said to 'lack capacity' to make decisions about your treatment.</p> <p>For more information see our pages on the Mental Capacity Act.</p>
Clinical negligence	<p>A clinical negligence claim is when you make a claim for compensation because the care you received from a professional was not good enough and caused you harm.</p>
Community treatment order (CTO)	<p>If you've been sectioned and treated in hospital under certain sections, your responsible clinician can apply for you to be put on a CTO. This means that you can be discharged from the section and</p>

	<p>leave hospital, but you might have to meet certain conditions such as:</p> <ul style="list-style-type: none"> • living in a certain place • going somewhere for medical treatment. <p>For more information see our pages on CTOs.</p>
Consent	<p>Consent is you agreeing with another person about an action that they've proposed.</p> <p>The law says that consent is only valid if you:</p> <ul style="list-style-type: none"> • have capacity to decide • have enough information to make that decision, and • give your consent freely.
Court of Protection	<p>The Court of Protection makes decisions and appoints deputies to act on your behalf if you are unable to make decisions about your personal health, finance or welfare.</p> <p>For more information see our pages on the Mental Capacity Act.</p>
Judicial review	<p>This is a type of court procedure where a judge reviews a public authority's decision, policy, practice, act or failure to act, and decides whether it is lawful or not.</p> <p>If it is not lawful, the court may cancel the decision or action ('quash' it), and require the public authority to reconsider it, lawfully. The court can order the authority to do or not do something.</p>
Lasting power of attorney	<p>A lasting power of attorney is a legal document that lets you appoint someone, called an attorney, to make decisions for you.</p> <p>For more information see our pages on the Mental Capacity Act.</p>
Mental Health Act 1983 (MHA)	<p>This is a law that applies to England and Wales which allows people to be detained in hospital (sectioned) if they have a mental illness and need treatment. You can only be kept in hospital if certain conditions are met.</p> <p>For more information see our pages on the Mental Health Act.</p>
Responsible clinician (RC)	<p>This is the approved clinician in charge of your care and treatment while you are sectioned under the Mental Health Act.</p> <p>Certain decisions, such as applying for someone who is sectioned to go onto a CTO, can only be taken by the responsible clinician. See our pages on CTOs for more information.</p> <p>All responsible clinicians must be approved clinicians (AC). An AC could be a doctor, psychologist, nurse, occupational therapist or social worker.</p>
Second opinion appointed doctor (SOAD)	<p>This is a doctor who is called for a second opinion to decide whether they agree with your treatment if you are detained under the Mental Health Act 1983.</p>

	The Mental Health Act sets out when the hospital should get a second opinion.
Section	Being 'sectioned' means that you are kept in hospital under the Mental Health Act. There are different types of sections, each with different rules to keep you in hospital. The length of time that you can be kept in hospital depends on which section you are detained under. For more information see our pages on sectioning .
Voluntary patient (also known as an 'informal patient')	These are people who are staying in a psychiatric hospital but are not detained under the Mental Health Act. As a voluntary patient, you should be able to come and go from the hospital within reason and are able to discharge yourself if you decide to go home. For more information, see our pages on voluntary patients .

What does 'giving consent' mean?

- [What does 'consent to treatment' mean?](#)
- [What does capacity mean?](#)
- [How can I get information about treatment?](#)
- [Will I be able to agree to treatment if I lack capacity to decide?](#)

What does 'consent to treatment' mean?

Giving 'consent to treatment' means that you agree with a health professional about a treatment they've proposed for you, and you have said 'yes' to receiving that treatment.

Generally, you need to give your consent before receiving any treatment. If a healthcare professional gives you a treatment that you've not agreed to, this may be a criminal offence – although there are some [exceptions](#).

To be able to consent to treatment, you need to:

- have [capacity](#) to decide
- have [enough information to make that decision](#), and
- give your consent freely (not feel pressured or threatened into a particular decision).

You can change your mind at any time.

Example of consent not being given freely

Jamie is a [voluntary patient](#) in hospital receiving treatment for their mental health problem. One of the treatments available is group therapy, but Jamie really doesn't want to do this.

A member of staff tells Jamie that if they don't participate in group therapy then it's pointless for them to be there, and that if they try to leave, they will be [sectioned](#).

Because of this Jamie agrees to doing group therapy. However, Jaime has been coerced (forced through pressure and threats) into agreeing, and so they have not given their consent freely.

What does capacity mean?

Having 'capacity' means having the ability to understand information and make decisions about your life. If you do not understand the information and are unable to make a decision about your treatment, you are said to 'lack capacity' to make decisions about that treatment.

To have capacity to consent to treatment, you must be able to:

- understand the information relevant to the decision
- retain that information
- use or weigh that information as part of the process of making the decision, and
- communicate your decision (whether by talking, using sign language or any other means).

(For more information on what capacity means, see our pages on the [Mental Capacity Act](#).)

How can I get information about treatment?

In order to make a decision about treatment, you should have enough information about it to weigh up its possible advantages and disadvantages. It can help to ask your healthcare professional to answer any questions you have. For example:

- Will it work?
- Will you force me to have treatment?
- How long will it take to work?
- Does it have side effects?
- Are the side effects permanent?
- Is there anything to counter the side effects?
- Are there any alternatives to this treatment?
- What is their success rate?
- Why are you recommending this treatment?
- What [care and treatment guidelines](#) do the National Institute for Health and Care Excellence (NICE) recommend for this diagnosis? (NICE is an independent organisation that provides national guidance on health and care in England and Wales.)
- What will happen if I don't have the treatment?

Remember, for information about [medication](#), you can also speak to you local pharmacist.

Doctors should do their best to give you clear information about any suggested treatment. The [General Medical Council's guidance for doctors](#) says that they should help you make decisions about your treatment, otherwise they may put their registration at risk.

For more tips on getting clear, balanced information, see our pages on [making sense of your options](#) and [being actively involved in treatment](#).

Will I be able to agree to treatment if I lack capacity to decide?

If you lack capacity to make a decision, the health professional in charge of your treatment will make the decision in your [best interests](#). This includes, for example, talking to your family and friends when making this decision.

This could be treatment for a mental or physical health problem. Some more serious treatments can only be decided by the [Court of Protection](#).

(For more information about lacking capacity, see our pages on the [Mental Capacity Act](#).)

Example

Ali lives in a care home. He lacks capacity to decide whether to have life-saving treatment for a physical health problem because of his delusions. The Court of Protection will make a decision about whether he needs it, taking into account his wishes and feelings.

If you're worried that you may lose capacity to make decisions about treatment in the future, there are some things you can do to [plan ahead](#).

Could I ever be treated against my wishes?

The rules on this are slightly different depending on your situation. This page covers your rights to refuse treatment in the following circumstances:

- [What if I'm living in the community \(not subject to any restrictions\)?](#)
- [What if I'm in hospital as a voluntary patient?](#)
- [What if I'm on a community treatment order \(CTO\)?](#)
- [What if I'm in hospital under section?](#)
- [What if I'm being treated for a physical health problem?](#)
- [Is it lawful to restrain me in order to treat me?](#)

Broadly, the law says that you can be treated without your consent in these situations:

- If you are detained ([sectioned](#)) under some sections of the Mental Health Act.
- If you don't have [capacity](#) to decide whether to have treatment.
- If it's emergency life-saving treatment.

What if I'm living in the community (not subject to any restrictions)?

You cannot legally be treated without your consent if you're living in the community (e.g. at home or in a care home) and are not subject to any restrictions – **you have the right to refuse treatment**. This includes refusing medication that might be prescribed to you. (An exception to this is if you lack [capacity](#) to consent to treatment.)

If you want to refuse treatment, you should discuss your reasons for refusing and what other options you have with your care team. Health professionals can't threaten to section you to make you agree to treatment. If they do, you can [make a complaint](#) about it.

If you're thinking of coming off your medication, remember that it's best to come off gradually (not stop suddenly), and get support from people you trust – ideally a healthcare professional. For more information on stopping your medication safely, see our pages on [coming off psychiatric drugs](#).

What if I'm in hospital as a voluntary patient?

You cannot legally be treated without your consent as a voluntary patient – **you have the right to refuse treatment**. This includes refusing medication that might be prescribed to you. (An exception to this is if you lack [capacity](#) to consent to treatment.)

If you want to refuse treatment, you should discuss your reasons for refusing and what other options you have with your care team. Health professionals can't threaten to section you to make you agree to treatment. If they do, you can [make a complaint](#) about it.

See our legal pages on [voluntary patients](#) for more information.

What if I'm on a community treatment order (CTO)?

In general you cannot legally be treated without your consent if you're on a CTO:

- You can't be given a condition that forces you to have treatment.
- You can't be recalled to hospital just because you refuse treatment.

However, if you refuse or stop treatment and there is a risk of relapse – even if you aren't showing symptoms yet – your [responsible clinician](#) may have good reasons to recall you to hospital to force you to have treatment. For more information, [see our legal pages on CTOs](#).

Can I refuse to be on a CTO?

You can be given a CTO even if you don't want one, but you should still be involved in decisions about your treatment. To find out more, [see our page on CTOs](#).

What if I'm in hospital under section?

Although you generally need to give [consent](#) before you can lawfully be given treatment for your mental health problem, the [Mental Health Act](#) says you can be treated against your wishes if:

- you're on a section 2, 3, 36, 37, 38, 47 or 45A (with or without restrictions – see our legal pages on [sectioning](#) for more on this), or
- you've been recalled from a [CTO](#).

However, the following types of treatment have special rules on consent that health professionals have to follow before you can be treated:

Type of treatment	Who needs to agree to treatment	Exceptions
<p>Neurosurgery (NMD) or hormone implants to reduce male sex drive</p>	<p>You can only be given this treatment if:</p> <ul style="list-style-type: none"> • you consent, and • a second opinion appointed doctor (SOAD) agrees to it. 	<p>You still might be treated without your consent if the treatment is immediately necessary to:</p> <ul style="list-style-type: none"> • save your life • prevent a serious deterioration • alleviate serious suffering • prevent you from behaving violently or being a danger to yourself or others (as long as the treatment represents the minimum interference necessary).
<p>Electro-convulsive therapy (ECT)</p>	<p>You can only be given this treatment if:</p> <ul style="list-style-type: none"> • you consent, and it is confirmed by a SOAD or doctor in charge, or • a SOAD confirms that you lack capacity to consent, and that treatment is appropriate and it wouldn't conflict with an advance decision or a Court of Protection decision. 	<p>You still might be treated without your consent if the treatment is immediately necessary to:</p> <ul style="list-style-type: none"> • save your life, or • prevent a serious deterioration.
<p>Medication after an initial 3 month period</p>	<p>You can only be given this treatment if:</p> <ul style="list-style-type: none"> • you consent, or • a SOAD confirms that you lack capacity, or 	<p>You still might be treated without your consent if the treatment is immediately necessary to:</p> <ul style="list-style-type: none"> • save your life

	<ul style="list-style-type: none">• you haven't consented but the SOAD confirms that treatment is appropriate.	<ul style="list-style-type: none">• prevent a serious deterioration• alleviate serious suffering, or• prevent you from behaving violently or being a danger to yourself or others (as long as the treatment represents the minimum interference necessary).
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If you have an advance decision or an advance statement, health professionals should take these into consideration when treating you, even if they don't have to follow them. (For more information, see our page on [planning ahead](#).)

What if I'm being treated for a physical health problem?

If you're being treated for a physical health problem unrelated to your mental health problem, the health professionals can't treat you without your consent.

You can only be treated for a physical health problem without your consent if:

- you lack capacity, or
- your physical health problem is a symptom or underlying cause of a mental health problem. In this case, the [Mental Health Act](#) says that you can be given treatment against your wishes.

Example

- Toni has [anorexia nervosa](#) (an eating problem) and is detained on section 3 of the Mental Health Act.
- It is lawful for her care team to give her food against her wishes via a naso-gastric tube as it is physical health treatment related to her mental health problem.

Is it lawful to restrain me in order to treat me?

The law says that, in circumstances when you can lawfully be given treatment for your mental health problem without your consent, then you can also be lawfully restrained in order to give you that treatment.

However, any force used to restrain you would have to comply with the Human Rights Act 1998 – this is the law that protects your human rights in the UK. (See our [legal pages on the Human Rights Act](#) for more general information about how your human rights are protected.)

Mind is campaigning on restraint

We've been campaigning on the use of restraint and restrictive practices. Read our [guides on restraint in mental health services](#), and [visit our campaigns page](#) to find out more about what we're doing, and how you can get involved in helping us bring about change.

Planning ahead

Why might I want to plan ahead?

You have the right to decide if you want to consent to treatment. But if you lack [capacity](#) to make those decisions, the healthcare professional in charge of your care will normally make them for you (unless it is serious treatment). These decisions will be based on what they think will be in your [best interests](#), but this might not be exactly what you want.

Planning ahead is a way for you to set out how you want to be treated in future, so healthcare professionals can follow your wishes. If you're [sectioned](#), healthcare professionals should also take these wishes into consideration when treating you, even though they don't have to follow them.

How can I plan ahead?

There are three main ways you can plan ahead and set out your wishes for future treatment:

- **Make an advance statement.** This is a non-legally binding written document that sets out your preferences for medical and healthcare treatment. You can ask a professional to follow this document if you ever lose capacity to make these decisions yourself.
- **Make an advance decision.** This is a legally-binding statement of instructions about what medical and healthcare treatment you want to refuse in the future, in case you lose the capacity to make these decisions. See our legal page on [advance decisions](#) for more information about this.
- **Make a lasting power of attorney.** This is a legal document that lets you appoint someone to make decisions for you. See our legal page on [lasting power of attorney](#) for more information about this.

You can find out more about each of these ways to plan ahead in our legal pages on [the Mental Capacity Act 2005](#). You can also find out more about different crisis services and crisis planning options in our pages on crisis services.

How can I challenge my treatment?

If you feel that you've received treatment that you haven't agreed to, and you weren't in a [situation where it was lawful to treat you without consent](#), there are generally three steps you can take to challenge this:

1. **Speak to someone informally.** Depending on the kind of problem, you might want to try to resolve the problem first by informally talking to the person who is responsible for your treatment, for example your GP or your psychiatrist.
2. **Make a formal complaint.** If raising the issue informally doesn't resolve the problem, you can ask that person or organisation for their formal complaints procedure. This will involve writing a letter outlining the problem and explaining what you would like to happen next.
3. **Make a legal challenge.** There are different types of legal claims you could make. Which one you choose will depend on what you want to achieve:
 - A judicial review is a legal challenge to the way a public authority has made a decision or has done or not done something lawfully.
 - A [clinical negligence](#) claim is when you make a claim for compensation because the care you received from a professional was negligent.
 - An application to the [Court of Protection](#) would be relevant if someone needs permission from the Court to make decisions about your health, welfare, financial affairs or property.

For more information about each of these steps, see our pages on [complaining about health and social care](#).

Useful contacts

Mind's services

- **Helplines** – all our helplines provide information and support by phone and email. Our Blue Light Infoline is just for emergency service staff, volunteers and their families.
 - Mind's Infoline – 0300 123 3393, info@mind
 - Mind's Legal Line – 0300 456 5463, legal@mind
 - Blue Light Infoline – 0300 303 5999, bluelightinfo@mind
- **Local Minds** – there are over 140 local Minds across England and Wales which provide services such as [talking treatments](#), [peer support](#), and [advocacy](#). [Find your local Mind here](#), and contact them directly to see how they can help.
- **Elefriends** is a supportive online community for anyone experiencing a mental health problem. See our [Elefriends page](#) for details.

Care Quality Commission (CQC)

03000 616161 (press '1' to speak to the mental health team)
enquiries@cqc.org.uk
cqc.org.uk

For complaints about anything that may have happened during your time in hospital under section (in England).

Healthcare Inspectorate Wales

0300 052 8163

hiw@wales.gsi.gov.uk

For complaints about anything that may have happened during your time in hospital under section (in Wales).

Mental Health Lawyers Association

mhla.co.uk

The Mental Health Lawyers Association provides details of private solicitors in England and Wales. It has a geographical list of solicitors specialising in mental health law.

National Institute for Health and Care Excellence (NICE)

nice.org.uk

Produces guidelines on best practice in healthcare.

Office of the Public Guardian

0300 456 0300 (Monday–Friday, 9am–5pm, except Wednesday 10am–5pm)

justice.gov.uk/about/opg

You can contact the Office of the Public Guardian if you want to appoint someone to make decisions for you, or to get guidance if you're an attorney or deputy acting on behalf of someone else.

Where can I get support?

Local Mind

Local Minds support thousands of people across England and Wales each year. Their services may include things such as supported housing, crisis helplines, drop-in centres, employment and training schemes, counselling and befriending. They may be able to help you find advocacy services in your area.

Find your local Mind [here](#).

Find an advocate

An advocate is a person who can both listen to you and speak for you in times of need. Having an advocate can be helpful in situations where you are finding it difficult to make your views known, or to make people listen to them and take them into account.

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For information on advocacy services and groups in your area, you could start by contacting the [Mind Legal Line](#) and your [local Mind](#). You can also contact the [Patient Advice Liaison Service \(PALS\)](#) in England, or the [Community Health Council](#) in Wales.

Read more about how [advocacy](#) might help you.

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References are available on request.