



Leaving hospital

Explains the rights you have to get your section lifted if you are being detained in hospital under the Mental Health Act, and your rights to care and support after leaving hospital. Applies to England and Wales.

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Overview

If you have been [sectioned](#) in hospital under the [Mental Health Act](#), you have certain rights to get your section lifted, and get care and support after you leave. These rights are set out in the Mental Health Act.

Quick facts

- If you have been sectioned, or are under a [community treatment order \(CTO\)](#), the Mental Health Act says that you have the right to be [given information](#) on the ways in which you can leave hospital.
- Depending on your situation, there are several ways in which you can leave hospital:
 - You can [ask to have your section lifted](#)
 - Your [responsible clinician can discharge you](#) if they think that you no longer need to be sectioned or stay on a CTO
 - The [hospital managers can hold a review](#) of whether or not you should be discharged at any time
 - Your [nearest relative can apply to discharge you](#) if you are on a section 2, 3 or 4 or are subject to a CTO or guardianship from a section 3
 - You can [apply to the Mental Health Tribunal](#) to be discharged from your section
- You should be involved in the [planning, developing and reviewing of your discharge](#) and participate in decision-making as much as you are able to.
- Sometimes your [discharge may be delayed](#). In some circumstances this may be unlawful, and you should see a mental health solicitor to help you.
- If you want to [stay in hospital after you are discharged](#) from your section, you should discuss with your responsible clinician as early as you can before your tribunal or managers' meeting.

Care planning

- The planning of the care you will receive when you leave hospital should start while you are in hospital, in good time before your discharge.
- In England, most people discharged from section will have their care planned under a system called the [Care Planning Approach \(CPA\)](#). In Wales, everyone discharged from section should have a [Care Treatment Plan \(CTP\)](#).
- Before you leave hospital, a meeting will be organised so you can discuss what kind of care you need. This might include things like practical help around the home, help with finding accommodation, or facilities for day time activities.
- The type of care you receive and the way that it is planned will depend upon a number of factors, including which section you have been detained on, what your needs are and whether you are in England or Wales.

- If you are discharged from certain sections, you have the right to [free aftercare under section 117](#) of the Mental Health Act. This can cover all kinds of things like healthcare, social care and supported accommodation.

If you are a [voluntary or informal patient](#), the discharge process is different than for someone who is under a section or on a CTO. [See our information on voluntary patients](#) to find out more.

Please note

- This guide covers leaving hospital 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.

Terms you need to know

Term	Meaning
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>Find out more on our advocacy information page.</p>
Appropriate treatment or appropriate medical treatment	<p>This means medical treatment for your mental health problem that is:</p> <ul style="list-style-type: none"> • suitable for you • available • takes into account the nature and degree of your mental health problem and your individual circumstances
Approved clinician	<p>A mental health professional who has certain responsibilities related to your healthcare. They are approved to do this by the Department of Health (England) or by the Welsh Ministers (Wales).</p> <p>Approved clinicians may be:</p> <ul style="list-style-type: none"> • doctors • psychologists • nurses • occupational therapists • social workers <p>Some decisions under the Mental Health Act, such as deciding on your medication or giving you permission to leave the ward or hospital, can only be taken by approved clinicians.</p>
Approved mental health professional (AMHP)	<p>AMHPs are mental health professionals who have been approved by a local social services authority to carry out duties under the Mental Health Act. They are responsible for coordinating your assessment and admission to hospital if you are sectioned.</p> <p>They may be:</p> <ul style="list-style-type: none"> • social workers • nurses • occupational therapists • psychologists
Attorney	<p>An attorney is a person over the age of 18 whom you have</p>

	<p>appointed to make decisions on your behalf about your welfare and/or your property and financial affairs. You need an attorney if you are unable to make such decisions yourself. If you do not have the capacity to appoint an attorney, the Court of Protection will appoint a deputy to perform this role.</p> <ul style="list-style-type: none"> • A health and welfare attorney makes decisions about things like your daily routine, your medical care, where you live and, if you specially request this, whether you should have life-sustaining treatment. • A property and financial affairs attorney makes decisions about things like paying bills, collecting benefits and selling your home. <p>See our pages on the Mental Capacity Act for more information.</p>
Barring report	<p>This is the report written by the responsible clinician stopping the discharge of someone under section when an application has been made by the nearest relative.</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>If you do not understand the information and are unable to make a decision about your care, for example, you are said to lack capacity.</p> <p>See our pages on the Mental Capacity Act for more information.</p>
Care coordinator	<p>A care coordinator is the main point of contact and support if you need ongoing mental health care.</p> <p>They keep in close contact with you while you receive mental health care and monitor how that care is delivered – particularly when you’re outside of hospital.</p> <p>They are also responsible for carrying out an assessment to work out your health and social care needs under the care programme approach (CPA).</p> <p>A care coordinator could be any mental health professional, for example:</p> <ul style="list-style-type: none"> • nurse • social worker • other mental health worker <p>This is decided according to what is most appropriate for your situation.</p>

	<p>A care coordinator usually works as part of the community mental health team.</p>
<p>Care Programme Approach (CPA) and Care and Treatment Planning (CTP)</p>	<p>The Care Programme Approach (CPA) is a way that secondary mental health services are assessed, planned, coordinated and reviewed for someone that lives in England.</p> <p>Secondary mental health services include the Community Mental Health Team, Assertive Outreach Team and Early Intervention Team.</p> <p>The Care and Treatment Planning (CTP) is a similar process for people living in Wales. But it comes from a law called the Mental Health (Wales) Measure 2010.</p> <p>In both England and Wales you should get:</p> <ul style="list-style-type: none"> • a full assessment of your health and social care needs • a care plan • regular reviews • a care coordinator who will be responsible for overseeing your care and support
<p>Clinical Commissioning Group (CCG)</p>	<p>CCGs are groups of GP practices and other healthcare professionals and bodies that are responsible for commissioning most health and care services for patients. They have replaced Primary Care Trusts (PCTs) in England.</p>
<p>Community treatment order (CTO)</p>	<p>If you have 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 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>See our pages on CTOs for more information.</p>
<p>Conditional discharge</p>	<p>This is where you are discharged from hospital into the community by a tribunal or the Secretary of State for Justice, but you have to meet certain conditions. If you break these conditions, you can be recalled to hospital by the Secretary of State for Justice.</p> <p>You will only be put under a conditional discharge if you have been:</p> <ul style="list-style-type: none"> • sectioned by a court under certain sections of the Mental Health Act and have been charged with a crime and you are a restricted patient under a restriction order, or • transferred to hospital from prison under the Mental Health

	Act and you are a restricted patient under a restriction direction
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>See our pages on the Mental Capacity Act for more information.</p>
Deprivation of Liberty Safeguards (DoLS)	<p>If you are in a hospital or care home, your liberty can normally only be taken away if health professionals use the procedures called the Deprivation of Liberty Safeguards. This protects you from having your liberty taken away without good reason.</p> <p>See our pages on the Mental Capacity Act for more information.</p>
Deputy	<p>A deputy is a person the Court of Protection appoints to make decisions for you once you have lost capacity to make them yourself. A deputy usually makes decisions about finances and property. The court can appoint a deputy to take healthcare and personal care decisions, though this is relatively rare.</p>
Detained	<p>A person is detained if they are being kept in hospital under section and are not free to leave.</p>
Guardianship	<p>This is where someone called a ‘guardian’ is appointed to help you live as independently as possible in the community, instead of being sectioned and kept in hospital.</p> <p>You would be placed under guardianship if your mental health problem meant that it would be difficult for you to avoid danger or people taking advantage of you. Your guardian has the power to make certain decisions about you and to make conditions that you will be asked to keep to.</p>
Hospital Managers (also known as Mental Health Act Managers)	<p>These are an independent panel of mental health professionals in a hospital or Trust. They have certain important responsibilities and can make decisions related to your sectioning – for example, they can hear your application to be discharged and decide whether or not to discharge you.</p>
Independent mental capacity advocate (IMCA)	<p>A specially trained advocate who can help you if you do not have the capacity to make particular decisions. NHS bodies or local authorities must take an IMCA's views into account when making decisions that affect you if you have lost capacity.</p> <p>They are normally appointed by the local authority in England, and by local Health Boards or other NHS bodies in Wales. They must be independent people of integrity and good character with appropriate experience and training.</p>
Independent Mental	<p>An IMHA is an advocate specially trained to help you find out your</p>

Health Act Advocate (IMHA)	<p>rights under the Mental Health Act 1983 and help you while you are detained. They can listen to what you want and speak for you.</p> <p>You have a right to an IMHA if you are:</p> <ul style="list-style-type: none"> • detained in hospital under a section of the Mental Health Act, but not if you are under sections 4, 5, 135 and 136 • under Mental Health Act guardianship, conditional discharge and CTOs • discussing having certain treatments, such as electroconvulsive therapy (ECT) <p>In Wales, voluntary patients can also have an IMHA.</p>
Informal patient or voluntary patient	<p>These are people who are staying in a psychiatric hospital but are not detained under the Mental Health Act. They should be able to come and go from the hospital within reason and are able to discharge themselves if they decide to go home.</p> <p>See our pages on voluntary patients for more information.</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>
Local Health Boards (LHBs)	<p>These are organisations in the health service in Wales that have been set up to develop and provide health services based on the needs of the local community.</p>
Medical treatment	<p>In the Mental Health Act this means medical treatment that is used to relieve the signs and symptoms of your mental health condition, or to stop it from getting worse. It includes:</p> <ul style="list-style-type: none"> • nursing • psychological intervention and specialist mental health habilitation (learning skills) • rehabilitation (relearning skills) • care
Mental Health Act (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>See our pages on the Mental Health Act for more information.</p>
Mental Health Act Administrator	<p>The Mental Health Act Administrator works in the hospital and deals with collecting and keeping the section or CTO papers safe. They make sure that procedures are followed – like making sure you are given the right information and arranging hearings.</p>
Mental Health Act Code of Practice	<p>This tells health professionals how they should follow the Mental Health Act 1983.</p> <p>It is not law, so it cannot be enforced by going to court, but health professionals should follow it unless there is a good reason not to.</p> <p>The Code covers some areas not specifically mentioned in the Mental Health Act 1983, such as visiting rights and the use of seclusion.</p> <p>If a health professional doesn't follow the Code, you can make a complaint.</p> <p>There is both an English and Welsh Code of Practice. They are mostly identical, but have certain differences based on the fact that there are some laws which are different in England and Wales.</p>
Mental Health Tribunal (MHT)	<p>This is a special court that deals with cases relating to the Mental Health Act 1983. The Tribunal decides whether you can be discharged from your section and can decide about suitable aftercare and make recommendations about matters such as hospital leave, transfer to another hospital, guardianship and CTOs.</p> <p>The court is made of a panel, which normally includes:</p> <ul style="list-style-type: none"> • a legally qualified chairperson • a 'lay person' who has appropriate experience and qualifications in the area of mental health • an independent psychiatrist, who will speak to you and examine you before the tribunal hearing in certain circumstances, and when you request to see them <p>Where you see a reference to the Mental Health Tribunal in this guide, it means:</p> <ul style="list-style-type: none"> • First Tier Tribunal (Mental Health), if you live in England, or • Mental Health Review Tribunal for Wales, if you live in Wales
Nearest relative	<p>This is a family member who has certain responsibilities and powers if you are detained in hospital under the Mental Health Act. These include the right to information and to discharge in some situations.</p>

	<p>The law sets out a list to decide who will be the 'nearest relative'. This can sometimes be changed.</p> <p>See our information on the nearest relative.</p>
Registered medical practitioner	A qualified doctor, for example a GP or psychiatrist.
Remand	<p>This means that you will go to prison until you go to court to have your case considered. Sometimes you can be remanded to hospital instead of prison.</p> <p>This is the approved clinician in charge of your care and treatment while you are sectioned under the Mental Health Act.</p>
Responsible clinician (RC)	<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 information on CTOs).</p> <p>All responsible clinicians must be approved clinicians. They do not have to be a doctor, but in practice many of them are.</p>
Restriction order or restriction direction	<p>This is an order made by the court when it has made a hospital order under section 37 to put restrictions on your discharge, transfer or leave from hospital. The Secretary of State's consent must be obtained in order to do these. This means it will be harder to get discharged by the tribunal or you might have to comply with certain conditions.</p> <p>It can only be made if it is necessary to protect the public from serious harm.</p>
Section	<p>In this guide, 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.</p> <p>See our information on sectioning.</p>
Section 117 aftercare	<p>Health authorities and local social services have a legal duty to provide free aftercare for people who have been detained under Mental Health Act sections 3, 37, 47 or 48, but who have left hospital. The duty to provide aftercare also applies if you are under a CTO. Aftercare services in the aftercare plan should be provided free of charge.</p>
Upper tribunal	<p>This is a tribunal which handles appeals received from lower tribunals. It is not a specialist mental health tribunal.</p> <p>You can appeal to it if the Mental Health Tribunal got a point of law wrong. In practice, it is rarely used in mental health.</p>

Getting information

- [Where can I get information about leaving hospital?](#)
- [What can I do if I'm not given this information?](#)

Where can I get information about leaving hospital?

If you have been [sectioned](#), or are under a [community treatment order \(CTO\)](#), the [Mental Health Act](#) says that you have the right to be given information on the ways in which your section or CTO can end and you can leave hospital. This may also be called being 'discharged' from your section. Your rights will be different if you are in hospital as a [voluntary or informal patient](#).

When you arrive in hospital:

- your rights should be explained to you by a member of staff
- you should receive written information explaining your rights and other important information on how the Mental Health Act affects you
- your [nearest relative](#) and carer, if you have one, should also receive this information

The [hospital managers](#) have a duty under the Mental Health Act to make sure that this happens, and that you understand that help is available from an [independent mental health advocate](#) (IMHA). This information should be readily available to you throughout your stay in hospital.

You may be given this information by your:

- hospital managers
- [responsible clinician](#)
- nursing or other clinical staff responsible for your care
- [Mental Health Act Administrator](#)
- [Approved Mental Health Professional](#) (AMHP)
- social worker
- [IMHA](#)
- mental health solicitor (if you have one)

What can I do if I'm not given this information?

You can ask a member of staff on your ward to arrange for you to have it, or ask to see an [IMHA](#). You have the right to see an IMHA if you are sectioned under certain sections of the Mental Health Act. They or another member of staff should be able to answer any questions you have about your section or getting it lifted, or about leaving hospital.

Getting my section lifted

- [How can I have my section lifted?](#)
- [Can I appeal against my section?](#)

How can I have my section lifted?

There are a few ways in which this can happen, and you may be able to choose several options at the same time. How many options you have depends on which [section](#) of the [Mental Health Act](#) you are under.

If you want to have your section lifted, you can:

- [ask your responsible clinician](#) to lift your section and discharge you.
- [ask your Hospital Managers](#) who will agree to have a meeting with you if you ask for one. Your [IMHA](#) could help you arrange this.
- [ask for a Mental Health Tribunal](#) at a tribunal hearing. You have the right to ask for this if you are sectioned under certain sections of the Mental Health Act. The Tribunal will look at how you are now and whether you should continue to be sectioned. Legal aid will always be available for a mental health solicitor to represent you at this hearing, if you have a right to the hearing at the time you are applying.
- [ask your nearest relative](#), who has the right to apply to take you out of hospital.
- (if you are under a [restriction order or restriction direction](#)) **ask the Secretary of State for Justice**, who must give their permission before your responsible clinician or the managers can discharge you from hospital.

Can I appeal against my section?

High Court

If you want to challenge the fact that you have been sectioned at all, you will need to go to the High Court (not the [Mental Health Tribunal](#)), and show:

- specific reasons why you should not have been sectioned
- medical evidence for your opinion

Legal aid will not always be available for this kind of challenge.

Disagreeing with your medical diagnosis will not always be enough to successfully challenge the fact you were sectioned in the first place. You will need to get legal advice about the possible success of your case, and your mental health solicitor will be able to tell you about whether you are likely to get legal aid.

NHS Complaints procedure

Alternatively, you could use the [NHS Complaints procedure](#) to argue that you should not have been sectioned. This would be free, but you are unlikely to get compensation even if your complaint is successful.

Responsible clinician

- [When can my responsible clinician discharge me?](#)
- [How will my responsible clinician discharge me?](#)
- [What if my section has ended but my responsible clinician hasn't discharged me?](#)
- [What if I only want to leave hospital for a short time?](#)

When can my responsible clinician discharge me?

The rules are different depending on whether you are under a:

- [section](#)
- [CTO](#)

If you are under a section

Your [responsible clinician](#) should discharge you as soon as he or she considers that you no longer need to be [sectioned](#) because the medical reasons for keeping you sectioned no longer apply.

If your section is coming to an end because it is reaching its maximum time limit, which will depend on which section you are under, your responsible clinician must decide whether your section should be renewed. Renewal is normally possible only with some sections, such as section 3 or 37.

They must examine you in the last two months of your section and decide whether the conditions for renewing your section are met and whether you should be discharged. They should also discuss their decision with you.

Then they must do the following:

- Consult one or more professionals involved in your medical treatment.
- Explain in full their reasons in a report to the [hospital managers](#). If they are satisfied that the conditions for renewing your section are met, they must put this in their report.
- Get agreement in writing from another professional. The professional must be involved in your care and treatment, have had recent contact with you and not be in the same profession as your responsible clinician.

If your section is not renewed, then when it reaches its maximum time limit, you should be:

- discharged and free to go, or
- placed under another section

If you think you are no longer sectioned, and are not discharged or free to go, you should

- report this yourself, or ask someone else to report this to the hospital managers as soon as possible
- report this to the [Care Quality Commission](#) as a serious incident

If you are not sectioned again, the hospital managers should make sure that a review is held within one month to:

- find out why this has happened
- find out what has been done to correct the situation
- make sure that it will not happen again in the future

If you are under a CTO

Your responsible clinician should make a decision about your discharge, that considers the least restrictive option and the maximum independence available to you. They should think about whether you should be:

- discharged from your CTO into [guardianship](#), or
- fully discharged from your CTO

If your CTO period is about to come to an end, your responsible clinician must examine you in the last two months before it reaches its maximum time limit and decide whether to discharge you or extend your CTO.

Only your responsible clinician can extend your CTO. In making this decision they should take the following steps:

- Consider whether the [conditions for continuing your CTO](#) are met, but in doing so must consult one or more professionals involved in your medical treatment.
- Consult the wider multi-disciplinary team involved in providing your care and treatment. This would include your [care coordinator](#) and anyone else involved in your care in the community.
- Consult you, your [nearest relative](#), your [IMHA](#) or other representative, family and carers, the local authority and [Clinical Commissioning Group](#) responsible for your aftercare, and any other organisation providing key services for you. This consultation should take place during a [Care Programme Approach](#) assessment and before the responsible clinician decides whether or not to extend the CTO.
- Consider whether extending the CTO is appropriate in your case – for example, the longer you have been on a CTO without the responsible clinician having to recall you to hospital, the more carefully they have to think about whether the conditions for extending are met or whether you should be fully discharged from your CTO.
- Submit a report to the hospital managers if they decide that the conditions for extending the CTO are met, and not to discharge you from it. They should explain their reasons in full in their report, and they must get an [AMHP](#) to agree in writing that it should be extended. They should give the AMHP enough time to interview you before they agree to the extension, but it does not need to be an AMHP who knows you already.

How will my responsible clinician discharge me?

This is different depending on whether you are under a:

- [section](#)
- [CTO](#)

If you are under section

The responsible clinician will do this by making an order in writing. This lets the hospital authorities know that you are no longer under section, and that you should be allowed to leave hospital, and supported to do this.

The law says that there are slightly different reasons for keeping you sectioned under a section 2 or section 3. But generally speaking, your responsible clinician must reach a decision about your mental health, taking into consideration whether:

- your mental health has improved enough for you to leave hospital
- you still have a mental health problem
- you still need assessment and treatment or treatment in hospital
- your health would be at risk, or your safety or someone else's would be at risk if you were discharged from your section and/or left hospital
- there are other options available to you, such as whether it is possible for you to be treated for your mental health problem in the community, and whether [appropriate treatment](#) will still be available to you

Or, if your section has reached the maximum time allowed by the law, then the law says you should:

- be discharged
- have your section renewed, or
- be sectioned under another section. The length of time you are kept under the section may depend on which section you are under

Your responsible clinician can also discharge you for other reasons, and at any time. If the conditions for keeping you under your section or your CTO are no longer being met, they must discharge you, and they should not wait until your section or CTO has ended before discharging you.

Also, if the second professional consulted by the responsible clinician decides not to agree to your section being renewed or the AMHP decides not to agree to your CTO being extended, this does not mean your section or CTO are automatically ended. However your responsible clinician would have stronger reasons to think about discharging you.

If you are under a CTO

The factors the responsible clinician will look at will be similar to when you are being [discharged from section](#). But instead of looking at whether you are well enough to leave hospital or will be able to receive the right treatment in the community, they will look at whether they still need the power to recall you to hospital, and possibly have you brought there for treatment.

To find out more, [see our information on CTOs](#).

What if my section has ended but my responsible clinician hasn't discharged me?

If your section has reached its time limit, and it has not been renewed or replaced by another section, you should be free to go. If you think you should have been discharged but this has not happened, you should let the [hospital managers](#) know. If you need help to do this, an [IMHA](#) should be able to help you.

What if I only want to leave hospital for a short time?

You will need to get permission from your responsible clinician. This is covered under [section 17 of the Mental Health Act](#).

Hospital managers

- [Who are the hospital managers?](#)
- [When can they discharge me?](#)
- [Can they discharge me in the same way as my responsible clinician?](#)
- [Can they discharge me even if the responsible clinician has blocked my nearest relative from discharging me?](#)
- [What will they consider when discharging me?](#)
- [How can I ask the managers to discharge me?](#)
- [What if I get my tribunal hearing before my managers' meeting?](#)
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- [When will the managers tell me their decision?](#)
- [Will there be any aftercare planning?](#)
- [Can the managers transfer me to another hospital?](#)
- [Can I appeal against a managers' decision?](#)
- [When will the managers refer my case to the tribunal?](#)

Who are the hospital managers?

Hospital managers are a panel appointed specially to look at whether people should be discharged. They are independent of the hospital, [Clinical Commissioning Group](#), [Local Health Board](#) or any organisation that runs your hospital, because they cannot be officers or employees.

You should have been given information on how to contact them when you were [sectioned](#) or put on your [CTO](#), or you could ask an [IMHA](#) to find this out for you. This information should be available to you on your ward or at your clinic.

When can they discharge me?

Hospital managers can hold a review of whether or not you should be discharged at any time. They must either consider discharging you themselves, or arrange for their power of discharge to be used by a 'managers' panel'.

They must hold a review if:

- your [responsible clinician](#) sends them a report renewing your detention section or CTO, even if you have not challenged the renewal. They must consider whether you should be discharged anyway.

They should consider holding a review if:

- **you request one.** If you are under a detention section, guardianship, or a CTO, you can [ask the managers to discharge you](#).
- **your responsible clinician has made a report to them.** This is called a '[barring report](#)', and it blocks your nearest relative's right to discharge you. For more information on this see our pages on the [nearest relative](#).

- **your section or CTO is coming to an end**, and your responsible clinician has not held a review.

The hospital managers can't discharge you if you:

- have been sent to hospital by a court under sections 35, 36, or 38
- are being held in hospital under a section 5
- are in a hospital or place of safety under sections 135 or 136

See our [information on sectioning](#) to find out more about what these different sections mean.

Guardianship

Hospital managers can also give permission for you to be transferred into [guardianship](#), if your local authority agrees. This will usually mean you will move to a different care setting that is not a hospital. Your responsible clinician may be given the job of discharging you into guardianship.

Restricted patients or conditional discharge

If you are a restricted patient or on [conditional discharge](#), the managers can discharge you only if the [Secretary of State for Justice](#) agrees. But you still have the right to ask for the managers to hold a review of your detention. For more information see our pages on [mental health and the courts](#).

Can they discharge me in the same way as my responsible clinician?

Yes, they can discharge you in the [same way as your responsible clinician](#).

They also have a duty to consider certain matters independently of the responsible clinician and ward staff, such as problems that may have arisen during your time under section.

But they don't have the power to:

- discharge you into the community onto a CTO or onto conditional discharge
- give you hospital leave, or permission to leave the ward and hospital for a short time, while you are still under section

Only your responsible clinician would be able to do these things.

Can they discharge me even if the responsible clinician has blocked my nearest relative from discharging me?

Yes, they would look at the responsible clinician's [barring report](#) and reach a conclusion for themselves whether you are likely to be a danger to yourself or others if you were discharged.

What will they consider when discharging me?

This is different depending on whether you are under a:

- [section](#)
- [CTO](#)

If you are on a section

They can discharge you if the reasons for your sectioning no longer apply, and should consider whether:

- you still have a mental health problem
- you still need assessment and treatment or treatment in hospital
- your health would be at risk, or your safety or someone else's would be at risk if you were discharged from your section and/or left hospital
- you have other options, such as whether you can be treated for your mental health problem in the community, and [appropriate treatment](#) will still be available to you

They are likely to look at reports from your:

- responsible clinician
- [care coordinator](#)
- named nurse
- other healthcare professionals involved in your care

This is because the managers will need to look at your past history of care and treatment and details of any future plans. This will include your care plan under the [Care Plan Approach or Care and Treatment Plan](#), if you have one.

They will focus especially on any recent risk assessment or risk management plan, and any information that you have self-harmed in the past or used violence against anyone else.

You should be able to see the reports, unless the managers think that this is likely to cause serious harm to your physical or mental health or to someone else's. If that is their decision, they will need to give reasons.

Other people who may get a copy of the reports are your:

- legal or other representative – such as your [attorney](#) or [deputy](#)
- [IMHA](#)
- [nearest relative](#) (if you agree)
- carer (if you agree)

The managers have to consider these factors when coming to a decision about whether to discharge you, but have a discretion to discharge you anyway if they feel your individual circumstances would justify it. They should consider the least restrictive option for you getting treatment and how best to maximise your independence.

Being discharged from the section may mean you leave the hospital at that time, but this will depend on:

- whether the managers think you are well enough and ready to leave hospital
- whether suitable care and treatment will be available to you in the community

Although the final decision will be theirs, the managers will also look at:

- what your responsible clinician's views are
- your care and treatment plan
- the views of people who know you well

If you are on a CTO

The managers can discharge you in the same way as from a section, but [the factors they consider will be slightly different](#).

How can I ask the managers to discharge me?

There are no special forms or procedures, and you can ask them as many times as you like. However the managers may choose to hold a 'paper review' in your absence rather than a full hearing if:

- you have made frequent requests for discharge but your circumstances have not changed within that time
- you have recently had a tribunal hearing where the tribunal decided not to discharge you, and your circumstances have not changed since then
- your responsible clinician has decided to renew your section or CTO but you do not want to challenge or have not yet challenged this

Getting support

If you wanted support when asking the managers to discharge you, you could speak to someone like your:

- [IMHA](#)
- [IMCA](#)
- carer
- [attorney](#)
- [deputy](#)

If you do not have the mental [capacity](#) to ask the managers for yourself, you could also get support from:

- your attorney (if you have appointed one under a healthcare [lasting power of attorney](#)), or
- [a court-appointed deputy](#), who could ask the managers on your behalf

See our pages on the [Mental Capacity Act](#) for general information about mental capacity.

What if I get my tribunal hearing before my managers' meeting?

- **If you are under a section 2**, and have applied to the tribunal, your tribunal hearing will happen first. Your managers' hearing will only happen if you are not discharged, but kept under section and then put under a section 3.
- **If you are under a section 3 or another long-term section**, your tribunal hearing will happen first. If the tribunal does not discharge you from your section, and you are still asking to be discharged, your managers' meeting will be arranged for a later date. If the managers at that hearing find that your circumstances have changed, they may then hold a full hearing, or ask the Ministry of Justice to refer you again to the tribunal.

What will happen at the managers' meeting?

There is no set formal procedure, for example, asking questions in any particular order. But the process that the panel chooses must be fair and reasonable.

Before the meeting, the panel will look at all the relevant information, including any recent reports from your responsible clinician and other healthcare professionals involved in your care.

You should be provided with this information in good time before the meeting so that you, and your representative if you have one, have the opportunity to consider it and prepare for the meeting.

Where will the meeting be held?

There is no set place for the meeting, but the managers will decide its location based on your best interests. If you are on a CTO or on leave from hospital, the hospital may not be the best place for you. The managers should consider other places that are more suitable, that would be practical to use.

What is the process?

Here is what should happen at the meeting:

- You should get the chance to explain fully, with any help you need from an [IMHA](#), why you should no longer be under your section or CTO.
- If you do not have the [capacity](#) to put your views across, your [deputy](#) or [attorney](#) would be allowed to speak for you, if you have one, and you need them to speak for you.
- Your responsible clinician and other professionals should be asked to give their views on whether keeping you under section or a CTO is justified and to give reasons.
- You and the other people giving their views should be able to hear each other's statements to the panel, if you wish, and ask each other questions, unless the panel believes that would be likely to cause serious harm to the physical or mental health of you or any other person. The English and Welsh [Codes of Practice](#) say that unless there is an issue of safety, you

should always be given the opportunity to speak to the panel alone, with or without anyone who has represented or accompanied you.

- You can discuss other matters with the managers if you want to – for example, if you think that your care plan doesn't meet your needs, or your treatment in hospital has not been satisfactory. If you have any other concerns about your stay on the ward, or other things that are happening while you are sectioned and in hospital, you can raise it with them, as they may be able to make recommendations about how the hospital services are run.
- The panel will make their own decision based on the views of the professionals and other evidence they have. But if the professionals do not agree in their views, they will have to form an independent judgement, based on what is the least restrictive option that maximises your independence. They may need to consider adjourning the hearing so that they can ask for more medical or other professional advice.

Getting support

The managers should support you to take part in the process as far as possible, and you should be given enough information so that you can understand the process and use it as fully as you can.

You can have extra support if you want. Managers should arrange hearings and give enough notice so that you can have someone there to support you.

This means you can have:

- a representative of your own choice to help you put your views to the panel – this could be a legal adviser or solicitor
- a relative, friend, carer or [advocate](#) to support you
- the chance to speak to the panel alone if you want to, with or without your representative or anyone else you have asked to support you at the hearing. The only exception is if this is considered too unsafe.

When will the managers tell me their decision?

They must let you know the reasons for their decision as soon as they can. They should also:

- record the decisions and reasons at the end of the review
- give their decisions and reasons to your representative or legal representative, nearest relative, carer, and professionals involved as soon as practicable
- give you the chance to discuss the hearing soon afterwards

If they decide to discharge you, they should give or send you an order in writing.

If they decide not to discharge you:

- They should give you their reasons, and you can ask for these in writing if you do not get them.
- At least one member of the panel should offer to see you or your representative to explain the reasons for their decision in person. They should discuss with you the record of the

decision and reasons, and copies of the review papers should be placed in your medical notes.

- You should also be informed as quickly as possible after the hearing of your right to apply for discharge to the tribunal.

Will there be any aftercare planning?

The managers will hold a meeting to consider what discharging you from section and allowing you to leave hospital will mean for your future care.

Before the meeting, your responsible clinician and your multi-disciplinary care team will think about what care you might need if you were discharged, and whether these would be enough to make it no longer necessary for your section or CTO to continue. These may include:

- community care arrangements
- a [Deprivation of Liberty Safeguards Authorisation](#) (DoLS), or
- a [Court of Protection](#) order

Managers can adjourn the meeting if:

- they don't have enough information about your future care arrangements, and they want to ask for more information
- they believe you should be discharged but there are practical steps that need to be taken for your aftercare before this can happen. They can adjourn for a short time so these steps can be taken before discharging you, but they should try and make this time as short as possible.

Can the managers transfer me to another hospital?

Yes, they can give permission for you to be transferred, but cannot force another hospital to give you a place, or for another [Clinical Commissioning Group](#) to give funding for your care.

They might decide to transfer you because:

- your hospital can no longer offer you the care you need
- they want to move you to a more specialised service
- they want to move you somewhere closer to home

The factors they will consider include:

- whether a transfer would give you better access to your carers
- what effect a transfer is likely to have on your mental health problem or your recovery
- whether there is a suitable place available for you at the hospital you might be transferred to
- whether a transfer would allow you to be in a more suitable place culturally or an environment that meets your needs better, or would it have the opposite effect

When making their decision, they must think about what's best for you when deciding whether or not you should be transferred. This means that:

- **Your human rights should be respected.** They should make sure that their decisions do not interfere with your right to [respect for private and family life](#) under human rights law.
- **You should be involved in the decision-making.** The managers should make sure the reasons for considering a transfer are explained to you, and if you wish, to your [nearest relative](#) and carers, and the reasons should be recorded.
- **You should not be transferred to another hospital without warning.** This should only happen in exceptional circumstances. If you feel this has happened to you without a good reason, you can [complain about the decision](#), or take legal advice if you have a legal adviser or solicitor.
- **If you are asking for a transfer, they should try to meet your wishes.** You might ask for a transfer because, for example, you want to be treated by a different clinical team or be nearer to your family or friends. If the decision is you cannot be transferred, they should give you their decision in writing and the reasons for it.

Does my nearest relative have to be consulted about my transfer?

The law doesn't require your nearest relative to consent to your transfer, but your nearest relative will normally be consulted before you are transferred to another hospital, unless you object. They will normally be informed of the decision to transfer you as soon as possible after the decision is made.

Can I be transferred if I am on a CTO?

If you have been [recalled to hospital under your CTO](#), the managers can give permission for you to be transferred to another hospital during your 72-hour maximum recall period. The decision could be delegated to your responsible clinician.

If the managers or other professionals are considering transferring you, they should make sure that your needs and interests are considered before agreeing to a transfer, in the same way as they should when [agreeing to the transfer of someone sectioned and detained in hospital](#).

The managers can also transfer responsibility for you at other times while you are under your CTO, so that a different hospital will become the hospital responsible for your care and treatment. Again they should make sure they consider your needs and interests before they do this.

Can I appeal against a managers' decision?

If you want to appeal against a decision not to discharge you, see our information in [Getting my section lifted](#).

If you believe the managers have reached a decision without considering all the relevant information, or following the right procedure, you should speak to a legal adviser or mental health solicitor (see [Useful contacts](#)). They can tell you whether it's worth trying to get their

decision reviewed by a court, as it is hard to bring this type of legal claim and to get legal aid for it.

When will the managers refer my case to the tribunal?

The managers may refer your case if you have not applied to the tribunal yourself. This may happen if you can't apply yourself because of your illness or other health reasons. This could happen if, for example, you were detained under section 2 or 3.

They may apply on your behalf if:

- six months have passed since you were first sectioned and you are now under a CTO. But not if you or someone else has applied to the tribunal for you after you were sectioned under section 3.
- you are sectioned, or were sectioned, but are now under a CTO, and three years have passed since your case was considered by the tribunal (or one year if you are under 18)
- you have been transferred from guardianship to a hospital, and six months have passed, unless you have already applied to the tribunal after being transferred from guardianship to a hospital.
- you have been sectioned under section 37, 45A or 47 without being under special restrictions. Or you were sectioned under one of these sections but are now under a CTO, and three years have passed since your case was considered by the tribunal (or one year if you are under 18).
- you were under a CTO, but it has been [revoked by your responsible clinician](#) and you are back in hospital under a section. Your case should be referred to the tribunal as soon as possible after your responsible clinician has revoked your CTO.

Secretary of State/Welsh Ministers

The hospital managers should consider asking the Secretary of State (if you are a patient in England), or the Welsh Ministers (if you are a patient in Wales), to refer your case to the tribunal if you are unable to have your case considered by the tribunal quickly after you were first sectioned and kept in hospital, or at reasonable time intervals after that. This is because this violates your rights under the European Convention on Human Rights.

The hospital managers should normally ask for this if:

- [your nearest relative is being displaced](#) and your section 2 has been extended so that you stay in hospital while this is happening
- you don't have the [mental capacity](#) to ask for a reference yourself, or
- your case has never been considered by the tribunal, or a considerable length of time has passed since it was considered

Read more about [when the tribunal can discharge you](#).

Nearest relative

- [When can my nearest relative discharge me?](#)
- [What happens if my responsible clinician has issued a barring report?](#)

When can my nearest relative discharge me?

Your nearest relative can ask for you to be discharged if

- you are on a [section 2, 3 or 4](#)
- are subject to a [CTO](#), or
- subject to [guardianship](#) from a [section 3](#)

For more information on this process, see our pages on the [nearest relative](#).

What happens if my responsible clinician has issued a barring report?

Your responsible clinician can stop you from being discharged by issuing a [barring report](#) if he or she thinks that you are likely to be a danger to yourself, or others, if discharged.

If a barring report has been issued, then your nearest relative must be informed and they will not be able to apply for your discharge for the next six months.

However, if you are on a section 3 or a CTO, your nearest relative can apply to the [Mental Health Tribunal](#) within 28 days of the barring report. Also, the hospital managers should consider holding a review after any barring report has been issued.

See our pages on the [nearest relative](#) for more information, including a flowchart of this process.

Mental Health Tribunal

- [What is the Mental Health Tribunal?](#)
- [Who can apply?](#)
- [When can I apply?](#)
- [How do I apply?](#)
- [Where will it be held?](#)
- [Who can represent me?](#)
- [What will happen before my tribunal hearing?](#)
- [Can I cancel my tribunal hearing?](#)
- [Why has my tribunal hearing been delayed?](#)
- [What will happen at my tribunal hearing?](#)
- [When will I get the tribunal's decision?](#)
- [If they discharge me, can I leave hospital immediately?](#)
- [Can I complain about my tribunal?](#)

What is the Mental Health Tribunal?

The Mental Health Tribunal is a panel which you have a right to apply to, so that you can be discharged from your [section](#).

Mental Health Tribunal hearings [usually take place in the hospital](#) where patients are sectioned, but they are totally independent of the hospital.

The panel is made up of three members who will be:

- **a judge** – the chairperson of the panel
- **a medical member** – a psychiatrist (but not one who works in the hospital you are in)
- **a lay person** – a professional with relevant experience

They will:

- look at your mental health and how well you are recovering
- speak to you and the professionals involved in your care
- ask for up-to-date reports about you

They will use this information to decide if you:

- still fit the conditions for being sectioned, or
- should be discharged from your section and possibly leave hospital

You cannot usually ask them to look at whether you should have been sectioned in the first place as this would be outside their powers given to them by the [Mental Health Act](#).

Who can apply?

You can apply

You can apply to the tribunal, unless you are under one of these sections:

- section 5
- section 135
- section 136
- a section that has been ordered by a court and you are currently on [remand](#)

If you are under section 4, you can apply to the tribunal, but there will only be a hearing if your section 4 becomes a section 2.

For more information about different sections and what they mean, see our pages on [sectioning](#).

Do I have to apply to the tribunal?

You have the right to apply to the tribunal at certain times, but you do not have to apply – it is your choice.

If you choose to apply, this will not harm your relationship with your [responsible clinician](#) or other professionals – they will expect you to apply when you have the right to do so.

If you do not want to apply to the tribunal, because you feel it is too soon, you do not feel you want to go through the hearing, or you will not be discharged anyway, your wishes will normally be respected. But there may be times where the [hospital managers will refer your case to the tribunal](#).

You should be given information about your right to appeal to the tribunal on arrival in hospital, so you might want to consider this option carefully, or discuss it with someone suitable like an [IMHA](#).

If you do not have the information about the tribunal, you can ask your IMHA or the ward staff about it.

Someone else can apply

In some cases, someone else can apply to the tribunal for you, like:

- your mental health solicitor
- your [nearest relative](#)

The Secretary of State/Welsh Ministers

The Secretary of State, or Welsh Ministers may refer your case to the tribunal at any time, if you are sectioned under most sections of the Mental Health Act, or you are under a [CTO](#). You may request a reference if you wish, and all requests will be decided on the particular facts of your case.

The hospital managers should consider asking the Secretary of State or Welsh Ministers to refer your case to the tribunal if [your human rights are in danger of being violated](#).

When can I apply?

You can apply as soon as you are sectioned, except if you are under section 37, and then each time the section is renewed.

Here is a table that explains when you can apply, depending on which section you are under:

What section	Who has the right to apply	When they can apply
Section 2	You	Within the first 14 days after sectioning
Section 3	You	Once at any time in the first 6 months after sectioning; if your section is renewed, then once in the second 6 months, then once in every 12 month period. You can be referred to the tribunal in the second 6 month period, and after 3 years if you have not applied yourself.
Section 3	Your nearest relative, if your responsible clinician has signed a barring report	Within 28 days of the barring report from your responsible clinician.
Section 7 guardianship	You	Once at any time in the first 6 months after sectioning; if your guardianship has been renewed, then once in the next 6 months, then once in every 12 month period.
CTO	You	Once at any time in the first 6 months of your CTO; if your CTO is extended, then once in the next 6 months, then once in every 12 month period.
CTO	Your nearest relative, if your responsible clinician has signed a barring report	Within 28 days of the barring report from your responsible clinician.
Section 37 hospital order	You or your nearest relative	Once in the second 6 month period and then once every 12 months. You will be referred to the tribunal after 3 years if you have not applied yourself.

- If you are under section 2 and you have applied, your hearing should happen within a week.
- If you are under section 3 and you have applied, your hearing should happen within 8 weeks of your application, or sooner if your case is urgent.
- For other sections, your hearing should happen within a few weeks after you apply. If there is an unreasonable delay, you can challenge this through your solicitor or [make a complaint](#).

How do I apply?

This information should be given to you when you go into hospital, and should be displayed on your ward. You can also ask your [IMHA](#), your carer or someone else supporting you to find this out.

The easiest way is to contact a mental health solicitor who is qualified to represent people at tribunals. The hospital may have details of local solicitors, or you can find out from the [Law Society](#) or from the [Mental Health Lawyers Association](#).

How much will it cost?

It will not cost you anything to apply to the tribunal. Legal aid is available to pay for a mental health solicitor who will be able to:

- represent you at the tribunal hearing
- prepare you for the hearing and answer any legal questions you may have
- find out whether you want to be discharged from your section, or if you have any other requests to do with the hearing

You will not be asked to pay anything towards the cost of the tribunal or your solicitor, even if you have some savings or own a house or flat.

Where will it be held?

Your tribunal hearing will probably be held in a room in the hospital where you are staying if you are sectioned, or at the hospital where you are being treated if you are on a CTO. If you are on a CTO and having the hearing in the hospital is not suitable for you, you or your representative should contact the hospital managers to discuss alternative sites.

The room should be:

- private and quiet
- clean and adequately sized and furnished
- not a room which contains information about other patients
- free of any equipment such as video cameras – if there is any equipment you find worrying, you can mention this and ask for it to be removed

There should also be available a separate room available for you to have discussions with your solicitor and anyone who is with you at the hearing.

Who can represent me at the tribunal?

You can be represented by:

- **a solicitor**. But you won't be able to get legal aid unless they are a [mental health accredited solicitor](#). If you have not contacted a solicitor yourself, the tribunal can appoint a solicitor for you if you tell them that you wish to be represented by one. The tribunal might also appoint

a solicitor for you if you lack the [capacity](#) to appoint one and they believe it would be in your best interests to be represented by one.

- **someone you trust** like a family member, your carer or your [advocate](#). But they will normally have to get permission from the tribunal to do this. If you are not going to the tribunal yourself, it is very important for your carer or advocate to attend and speak for you.
- **yourself** (self-representation). But legal aid will not normally be available to help you get ready for the hearing. You should think very carefully before deciding to represent yourself. A solicitor will be familiar with the sorts of things a tribunal will be looking at, and will know how best to put your case.

You should be given information by the hospital about any free advice and representation available in your local area. Hospital staff should also be available to help you make your application and get ready for the tribunal.

If you are out of hospital and on a CTO, you may need to ask for this information. Your [IMHA](#) may be able to help.

What will happen before my tribunal hearing?

Your solicitor will visit you and introduce themselves – they have the right to visit you in private at any reasonable time.

Before your tribunal hearing, your solicitor can help you in many ways. They can:

- explain what will happen at the hearing
- discuss the issues which may be dealt with at the hearing, for example, how you will look after yourself if you leave hospital and who will support you
- help you get access to your medical records, as well as reports about you from your responsible clinician, social worker or [AMHP](#) and other professionals involved in your care. You can ask if you want to see them, and if you cannot see them you should be told the reasons why
- identify documents or other evidence that might help your case and arrange for copies to be sent to the tribunal or for witnesses to attend
- answer any questions you may have about the hearing and tell you about any information about you that might be mentioned at the tribunal
- ask the tribunal for you if there is anyone you don't want to be involved in your hearing (though usually the tribunal judge will decide on this)
- ask an independent doctor for a report about you, and the doctor may come and examine you before the hearing – this report will then go to the tribunal panel

You may see the tribunal doctor in these circumstances:

- If you are under a section 2, the medical member of the tribunal panel, the tribunal doctor who is usually a psychiatrist, will visit you and examine you in private and in a suitable place, before the hearing, so that they can come to a view on your mental health and whether you should be discharged from your section. They will be able to see your medical notes. You should be warned in advance of when this visit will happen. If you do not want to see the

doctor, you should tell your solicitor or, if you don't have a solicitor, tell the tribunal president.

- If the medical member is not coming to see you because you are under a different section from section 2, and you wish to tell them your views about why you should be discharged, you can ask for them to visit you. But you have to ask **at least 14 days before the hearing**.
- The tribunal can make an order that you should see the medical member of the panel, especially if you are unable to make a decision about this yourself.

You should be given information and support in preparation for your hearing:

- The professionals have a duty to consider your wishes, feelings and medical condition, and should make sure you feel as comfortable as possible at the hearing. So if you have any special requests, you should discuss these with your solicitor as far as possible before the hearing.
- You should also be given information about the tribunal to help you prepare for the hearing properly – if you need the information in picture or video format, ask your [IMHA](#), solicitor or ward staff about this.
- If you need sign language or support with language interpreters so that you can understand what is going on, ask the hospital managers or get someone else to ask them for you – this should be provided for you free of charge.

Can I cancel my tribunal hearing?

It may be possible to cancel your tribunal hearing. If you have been discharged already, you can cancel the tribunal hearing and if it is outside normal working hours, the hospital managers or a member of your ward staff can contact the tribunal office for you.

But you are usually not able to cancel if:

- there are less than 48 hours to go before your hearing
- you have been referred to the tribunal by someone else, such as the hospital managers, instead of applying yourself

Why has my tribunal hearing been delayed?

Sometimes it is because reports the tribunal panel needs to see are missing, not up-to-date or do not provide enough information for the panel to make a decision.

The tribunal will try to get these reports as quickly as possible, and your hearing will have to be rescheduled.

What will happen at my tribunal hearing?

Although the tribunal is a type of court, it will feel more informal than a court.

- The lawyers and tribunal panel will not be wearing special clothes, such as wigs or gowns.
- It will not be in a court room, but may be in a room in the hospital where you are while you are sectioned or near to where you are living if you are under a CTO.
- Usually everyone will be sitting at a table with the relevant reports and papers in front of them.

Who will be there?

Apart from the tribunal panel, the people there will be:

- you, unless you choose not to be there
- your solicitor or representative if you have one
- your responsible clinician
- your social worker or other healthcare professionals involved in your care or on your multi-disciplinary team
- a nurse
- any professional who has sent a report to the tribunal panel

There might be others who could attend the hearing, such as:

- your [IMHA](#) or other advocate, if you have one and you have asked them to be there to support you
- your [nearest relative](#), unless you have told the tribunal you do not want them there
- your carer or family members or friends, if you want them there
- possibly someone taking notes of the hearing for the tribunal

What is the process?

Here is normally what happens during a hearing:

- The judge will introduce the panel to you and confirm that the correct witnesses have attended and may briefly set out what the hearing is about.
- If the medical member of the panel has seen you before the hearing then he or she will say something about your meeting.
- The responsible clinician will be questioned by each of the panel members and by your solicitor. The nurse and then the social worker will also then be asked questions by both the panel and your solicitor.
- You will then be given the opportunity to speak to the panel. Your solicitor may ask you some questions first, and then the panel will ask you questions.
- If your nearest relative or family members or carers have attended then the panel may ask them questions, for example about living arrangements or their views about your being discharged.
- Your solicitor will summarise your case to the panel and will say why the section should be lifted, if that is what you want.

Remember, it is for the professionals at the tribunal to prove that you should not be discharged, not for you and your solicitor to prove that you should no longer be sectioned.

When will I get the tribunal's decision?

The tribunal will normally decide at the hearing whether or not you should be discharged and will tell you and the other people there. They should speak to you personally if this is possible and you want them to. If it is not possible, they will tell your representative.

If you do not have a representative, and it is not possible to discuss matters with you after the hearing, the hospital managers should make sure that you are told their decision as soon as possible. Usually their decision in writing with reasons for the decision should also be posted to you a few days after the hearing, and to all parties to the hearing.

If you are under [guardianship](#), your local authority will contact you about the tribunal panel's decision.

If they discharge me, can I leave hospital immediately?

Yes you can, although you may want to stay as an [informal patient](#) while [aftercare services](#) are put in place for you.

In some cases the tribunal may not discharge you immediately, but may set a future date when you will be discharged. This may be to allow for services to be arranged for you, including aftercare services, although usually at least some of these should have been discussed and planned before your hearing.

If the tribunal does not discharge you, it may make recommendations about your future care, including whether you should continue to be cared for under section or whether in the future you should receive care as an informal patient.

Restricted patients

If you are a restricted patient but did not come to hospital from prison, the tribunal can discharge you, but this may be with certain conditions.

If you are a restricted patient and were transferred from prison to hospital, the tribunal can recommend to the Secretary of State for Justice that you should be discharged from your section, and where you should receive care and treatment after that.

Can I complain about my tribunal?

If you want to complain about anything that happened at your tribunal or about how it was run, you can [send a complaint to the tribunal offices](#). It has its own procedures for dealing with complaints quickly.

If you want to challenge the tribunal's decision not to discharge you, you will need to get legal advice from a mental health solicitor. It is difficult to succeed in this kind of challenge. An appeal to the Upper Tribunal is only allowed if the tribunal has misunderstood the law and applied it wrongly, which happens very rarely.

Frequently asked questions about discharge

- [What can I do if I am not being involved in my discharge planning?](#)
- [What can I do if my discharge is being delayed?](#)
- [What can I do if I am due to be discharged but I do not feel ready to leave hospital?](#)

What can I do if I am not being involved in my discharge planning?

Both the English and Welsh [Mental Health Act Codes of Practice](#) say that you should be given the opportunity to be involved in the planning, developing and reviewing of your care and to participate in decision-making as far as you are capable of doing so.

If you feel that you are not being involved in your discharge planning you can:

- **talk to an [IMHA](#)** who can speak on your behalf
- **speak to a mental health solicitor.** Your hospital should be able to give you details of local solicitors. You can also see [Useful contacts](#) for information on how to contact a solicitor.

What can I do if my discharge is being delayed?

If your discharge is being delayed, this could be for a number of reasons. For example:

- there may be delays in arranging the care you will receive when leaving hospital, or
- there may be a dispute about which local authority will be paying for your care

If the criteria for keeping you in hospital under the [Mental Health Act](#) are no longer met but you are still being detained in hospital, this may be unlawful. A mental health solicitor can help you in this situation. See [Useful contacts](#) for details on how to contact a solicitor.

What can I do if I am due to be discharged but I do not feel ready to leave hospital?

If you want to stay in hospital after you are discharged from your section, you should discuss this with your [responsible clinician](#) as early as you can before your tribunal or managers' meeting, even if you are not sure you are going to be discharged from section.

Your responsible clinician will decide, and may possibly consult other professionals involved in your care whether there are good medical reasons for you to stay in hospital an [informal patient](#), and whether this will help you to get the care and treatment you need.

However, you may be discharged back into the community, either without being under a [section](#), or on a [CTO](#), as long as suitable after hospital care or support will be available to you there.

You may be:

- asked to attend as an outpatient to receive medical treatment or to monitor your mental health, or
- discharged into some other type of accommodation, such as supported living

These arrangements should be discussed with you before you leave hospital, so you will know what to expect when you leave.

Care planning

- [How will my care and support be planned after I leave hospital?](#)
- [Can I get free aftercare services?](#)

How will my care and support be planned after I leave hospital?

If you have been [sectioned](#), then it is very likely that your care planning will be carried out under one of these systems:

- If you are in England, it is called the [Care Programme Approach \(CPA\)](#).
- If you are in Wales, it is called the [Care and Treatment Planning \(CTP\)](#).

Care Programme Approach (England)

The Care Programme Approach (CPA) is for people in England with severe or complex mental health problems and those who may need services from a number of agencies to support them.

The CPA guidance says that if you are currently or have recently been sectioned under the [Mental Health Act](#), then you should be supported under the CPA.

What support should I get under the CPA?

The CPA guidance says you should have:

- support from a CPA care coordinator
- a full assessment of your needs, taking account of all the services who will be giving you support
- a written care plan, which includes plans for risks you may face and what should happen if you are in crisis
- ongoing review of your care, including a full review of all the support you are receiving from all services at least once a year
- consideration of ongoing need for CPA support
- consideration of your need for support from an [advocate](#)
- support for your carers. This means your carers should be identified, and told of any rights they may have to have their needs assessed. This is to find out if your carer needs help to give you care.

What will care planning cover?

The range of issues which your care planning will cover will depend on your condition and your exact needs. It will often include considering:

- what medical treatment you need both for your mental and physical health, including medication
- what risks there are to your own wellbeing and safety and to the safety of others
- what support should be provided to you if you find yourself in crisis

- any needs you may have as a result of problems with alcohol or drugs
- your personal circumstances including family and carers
- your financial circumstances
- your housing needs
- your employment, education and training needs

The CPA guidance is clear that the assessment and planning of your care should aim to meet your particular needs and should not just focus on what services can be offered.

Any discharge plans should be agreed with you and should involve your family and carer if this is what you want. The care plan should also not simply focus on your difficulties and needs but also on your strengths and what you hope to achieve with the support of services.

How is care planning carried out?

As soon as you are admitted to hospital, the people responsible for your healthcare should start assessing your needs and planning your discharge. This is stated in the English [Mental Health Act Code of Practice](#) and guidance from the [National Institute for Health and Care Excellence \(NICE\)](#).

Before you leave hospital, there will be a discharge meeting where people involved in your care will develop a discharge care plan for you addressing your needs.

The care plan should:

- be discussed, planned and agreed with you
- support effective working between the various people who will be involved in your care after you are discharged (such as your social worker, your Community Mental Health Team and your GP)
- include assessments of risks you may face and plans for how to deal with problems you may have after your discharge and give you information about how to contact people who can help you. [NICE guidance](#) says that if you are considered to be at risk of suicide, arrangements should be made to follow-up with you within 48 hours of you leaving hospital.

You should be given at least 48 hours' notice of the date for your discharge from hospital and your care arrangement should be discussed with any family or carers who will be involved in your care.

Care and Treatment Plan (Wales)

A Care and Treatment Plan (CTP) is a written plan in Welsh or English covering what you want to achieve in certain areas of your life and what mental health services will help to do this.

You have a legal right to a CTP if you receive secondary health services in Wales. Secondary health services might be care you receive from a psychiatrist, a community psychiatric nurse, a social worker or a member of the Community Mental Health Team.

What does a CTP cover?

Your CTP will cover eight areas:

- finance and money
- accommodation
- personal care and physical wellbeing
- education and training
- work and occupation
- parenting or caring relationships
- social, cultural or spiritual
- medical and other forms of treatment including psychological interventions

The CTP will have a section setting out the outcomes you want to achieve in these areas. At least one of these outcomes has to be set out, but generally your care planning should try to cover outcomes you want to achieve in more than one of those areas.

The CTP will also have a section which sets out:

- the services which will be provided to you to help you achieve those outcomes
- the date when those services will be provided
- who is responsible for providing them

Who prepares the CTP?

Your care coordinator will be responsible for working with you, other people involved in your healthcare and your family and carer (if you want to involve them) to agree to the outcomes in the CTP.

When you access secondary services, your local health board or local authority should appoint a care coordinator as soon as reasonably practicable. This might be:

- a psychiatrist
- a psychiatric nurse
- a social worker, or
- another healthcare professional

Do I get a CTP if I am detained in hospital?

If you already have a CTP before you are detained in hospital, it will be reviewed within 72 hours of your admission and updated. If you do not have a CTP before you are detained, a care coordinator will be appointed and a CTP will be prepared.

What happens when I am preparing to leave hospital?

- **Assessment and planning.** While you are in hospital, the people responsible for your healthcare should start assessing your needs and planning your discharge.
- **Care services.** The local health board of the hospital you are in and the local authority where you usually live should take steps to identify in good time before your discharge appropriate care services to support you when you leave hospital.
- **Consultation.** They should consult you, your family and carer (if that is what you wish), your care coordinator and other healthcare professionals involved in your care.
- **If [hospital managers](#) or a [Mental Health Tribunal](#) are considering your discharge**, they will expect your healthcare professionals to provide information about what care arrangements have been made for you if you are discharged.
- **Discharge meeting.** Before you leave hospital, there will be a discharge meeting where people involved in your care will develop a discharge care plan for you addressing your needs. You (with support from your family and/or [IMHA](#) if you wish), your care coordinator and other professionals involved in your care should be included in the process, with the arrangements recorded in your CTP.
- **Crisis plan.** Your CTP should also include a crisis plan setting out what you would like to happen if you become unwell again after you have left hospital. [NICE guidance](#) says that if you are considered to be at risk of suicide, arrangements should be made to follow up with you within 48 hours of you leaving hospital.

Can I get free aftercare services?

You are entitled to free aftercare services if you have been:

- sectioned under sections 3, 37, 45A, 47 or 48 (see our information on [sectioning](#) to find out more about what these different sections mean)
- placed on a [CTO](#), or
- placed on a [conditional discharge](#)

This is known as [section 117 aftercare](#).

If you are in England, this will most likely be planned under the CPA and set out in your care plan. If you are in Wales, this will be assessed and planned under the CTP.

Section 117 aftercare

- [What is section 117 aftercare?](#)
- [Who can get section 117 aftercare?](#)
- [What kinds of services are covered?](#)
- [Who is responsible for providing section 117 aftercare?](#)
- [How long will I get section 117 aftercare?](#)
- [What can I do if there are problems with my section 117 aftercare?](#)
- [If I can't get section 117 aftercare services, do I have to have to pay for my after hospital care?](#)
- [Ending section 117 aftercare](#)

What is section 117 aftercare?

Some people who have been kept in hospital under the [Mental Health Act](#) can get free help and support after they leave hospital. The law that gives this right is section 117 of the Mental Health Act, and it is often referred to as '**section 117 aftercare**' .

Aftercare is the help you will get in the community after you leave hospital. This can cover all kinds of things like [healthcare, social care and supported accommodation](#).

Section 117 of the Mental Health Act says that aftercare services are services which are intended to:

- meet a need that arises from or relates to your mental health problem, and
- reduce the risk of your mental condition getting worse, and you having to go back to hospital

Who can get section 117 aftercare?

You can get free aftercare under section 117 if you have been detained:

- for treatment under section 3
- under a hospital order under section 37
- following transfer from prison under section 47 or 48
- under a hospital direction under section 45A

See our information on [sectioning](#) to find out more about what these different sections mean.

You also have the right to section 117 aftercare if you:

- have been discharged onto a [CTO](#) for the entire period of your CTO
- are on section 17 leave of absence from your detention under section 3, or
- are a restricted patient on a [conditional discharge](#)

You have the right to section 117 aftercare after you leave hospital whether you:

- leave hospital immediately, or
- stay on as a [voluntary patient](#)



Examples

- Darren is being discharged from a section 2. This is not covered by section 117, so he is not entitled to section 117 aftercare.
- Hannah is being discharged from hospital after spending a month as a voluntary patient. Voluntary patients are not covered under section 117, so she is not entitled to aftercare.
- Miriam was discharged from her section 3 but did not feel ready to leave hospital and so spent over a month as a voluntary patient. Section 3 is covered by section 117 aftercare, so even though she stayed on as a voluntary patient, she is entitled to free aftercare services under section 117.
- Steve has been transferred to hospital from prison under section 47. When the criteria for detention under the Mental Health Act no longer apply, he is returned to prison. He is entitled to aftercare services under section 117.

What kinds of services are covered?

The English and Welsh Codes of Practice have examples of what sort of things might make up aftercare services under section 117.

These include:

- healthcare
- social care and employment services
- supported accommodation
- services to meet your social, cultural and spiritual needs – as long as they meet a need that arises from or is related to your mental condition and help reduce the risk of your mental condition getting worse.

Housing

You will probably not be provided ordinary housing under section 117 aftercare services. So, for example, you will almost certainly not be provided with an ordinary flat by the council after you are discharged from hospital. However, you may be given free specialist accommodation under section 117.

In some circumstances, if the local authority are to provide you with accommodation, you can choose the accommodation you want to live in rather than accept what has been offered, though you will have to pay the difference if it is more expensive.

Medication

Medication can come under section 117, which means that it should be provided free. If you generally have to pay for your prescriptions, then speak to your [care coordinator](#). They should be able to help you claim free prescriptions for any medication that is part of your section 117 aftercare.



Example

Jorge is being discharged from hospital after being detained under section 3. He has a diagnosis of bipolar disorder and has a history of difficulties with drugs and alcohol, which have had an impact on his mental health. He also has type 1 diabetes.

Jorge is entitled to drug and alcohol counselling services under section 117, as these meet needs which relate to his mental disorder and reduce the risk that he will have to be readmitted to hospital for treatment of his mental condition. He cannot be charged for these services.

But he doesn't have the right to any free social care services under section 117 for his diabetes, as this is a physical rather than a mental condition.

Who is responsible for providing section 117 aftercare?

It is the duty of the:

- [Clinical Commissioning Group](#) in England, or the [Local Health Board](#) in Wales, and

- local social services authority (usually the one in the area you lived in before you were detained)

It is their responsibility to provide you with aftercare services, or to arrange for them to be provided. They often provide them together with voluntary agencies.

Sometimes there are disputes between different Clinical Commissioning Groups, Local Health Boards and local authorities about who has to provide or pay for your aftercare services. Even if this happens, your care planning and discharge should not be delayed.

Direct payments

Local authorities can make payments directly to you, or to someone else suitable, to pay for aftercare services under section 117. For this to happen, you must be an adult, and:

- you must have the [capacity](#) to ask for direct payments
- if you want someone to act on your behalf, they must agree to this
- the local authority must be satisfied that you or anyone acting on your behalf are capable of managing the direct payments, if necessary with help from others, such as family members
- the local authority is satisfied that making direct payments is an appropriate way of meeting your needs for care and support

How long will I get section 117 aftercare?

You will be provided aftercare services under section 117 until the [Clinical Commissioning Group/Local Health Board](#) and the local authority are satisfied that you no longer require these services.

The English and Welsh [Codes of Practice](#) say that you should be fully involved in any decision making process to end your aftercare services.

They also say that aftercare services under section 117 should not be taken away because:

- you have been discharged from the care of specialist mental health service
- an arbitrary period of time has passed since the care was first provided
- you have been [deprived of your liberty under the Mental Capacity Act](#)
- you have returned to hospital as a [voluntary patient](#) or been detained under section 2
- you are no longer on a CTO or on section 17 leave

If your aftercare services have been taken away and your mental condition has begun to deteriorate, then the services should be put back to stop your condition from getting worse.

What can I do if there are problems with my section 117 aftercare?

[Clinical Commissioning Groups/Local Health Boards](#) and local authorities have a legal duty to provide aftercare services under section 117, although they have a choice as to exactly what services are provided.

If you have problems with the aftercare services, you have a number of options:

- **Raise your problem with your [care coordinator](#)** to begin with. They may be able to find a solution for you.
- **If your problem is with health-related services**, you can follow the complaints procedure of that service. If you are not happy with the outcome of your complaint, or the way it was handled, you can ask the **Health Service Ombudsman** to investigate. They can make recommendations to put things right. (See our [guide to complaining about health and social care](#)).
- **If the complaint is about social care provided or paid for by the local authority**, you should follow that local authority's complaints procedure. If you are not happy with the outcome of your complaint, or the way it was handled, you can ask the **Local Government Ombudsman** to investigate. They can make recommendations to put things right. (See our [guide to complaining about health and social care](#)).
- **Ask for a judicial review.** You can take the Clinical Commissioning Groups, Local Health Board or local authority to court and challenge them in a [judicial review](#). This is where the court does not decide whether the decision they made was wrong, but whether it was made properly, taking into account all the relevant circumstances.

Judicial review claims have a very strict time limit and must be brought **within 3 months** of the decision you are challenging. Sometimes, just by writing a letter saying that you want to make a judicial review claim can convince them to reconsider their decision.

If you want to do this, you should get the help of a solicitor (see [Useful contacts](#) for information on how to find a solicitor). You might be able to get legal aid to pay for it too.

If I can't get section 117 aftercare services, do I have to have to pay for my after hospital care?

If you aren't eligible for free section 117 aftercare (for example, if you have been discharged from a section 2), you will not have to pay for your ongoing medical treatment. But you may have to make a contribution towards the cost of your social care treatment on a means-tested basis.

Ending section 117 aftercare

There are no clear rules in the Mental Health Act for deciding when a person no longer needs aftercare; but section 117 of the MHA says that it is up to the health and social services who are dealing with your case to make a joint decision that you no longer need it.

They must be able to give clear reasons for their decision and your needs must be reassessed before the aftercare is ended, to see how your mental health and ability to manage would be affected.

Guidance says that even if you are well settled in the community, aftercare may still continue to prevent you from becoming ill again or from getting worse.

Useful contacts

Mind Legal Line

0300 466 6463 (Monday to Friday, 9am to 5pm)

legal@mind.org.uk

The Mind Legal Line can provide you with legal information and general advice.

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).

Citizens Advice Bureaux (CABx)

03444 77 20 20 (Wales)

03444 111 444 (England)

TextRelay users should call 03444 111 445

citizensadvice.org.uk

Provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. They also have an [online self help](#) service.

Civil Legal Advice

0845 345 4345

gov.uk/civil-legal-advice

The Civil Legal Advice can tell you if you're eligible for legal aid and can give you free and confidential legal advice in England and Wales.

Healthcare Inspectorate Wales

0300 062 8163

hiw@wales.gsi.gov.uk

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

The Law Society

020 7242 1222 (England)
029 2064 5254 (Wales)
lawsociety.org.uk

The Law Society provides details of solicitors you can get in touch with for specialist legal advice.

Mental Health Lawyers Association

mhla.co.uk

Professional association of Mental Health Lawyers in England and Wales.

Mental Health Tribunal (England)

0300 123 2201
gov.uk/mental-health-tribunal/overview

Deals with cases in England relating to the [Mental Health Act 1983](#), for example deciding whether you can be discharged from your [section](#).

Mental Health Tribunal for Wales

029 2082 5328
www.wales.nhs.uk

Deals with cases in Wales relating to the [Mental Health Act 1983](#), for example deciding whether you can be discharged from your [section](#).

Revolving Doors Agency

020 7407 0747
revolving-doors.org.uk

For people with mental health problems in contact with the criminal justice system.

Where can I get support?

Local Mind

Local Minds support over 280,000 people across England and Wales. Their services include 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.

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.

This information was published in January 2017. We will revise it in 2019.