

NHS treatment: your rights

This factsheet is about your rights when you use NHS services. It says how NHS staff should act towards you and what treatment you can get.



KEY POINTS

- The NHS should:
 - ask you if you agree to treatment,
 - give you information about treatment choices,
 - treat you with care and skill,
 - keep your personal information confidential,
 - let you see your health records, and
 - respect your human rights.
- NHS staff should follow codes of practice and guidance.
- If you think that the NHS has not acted properly, you can complain.
- You can take the NHS to court if they break the law.

This factsheet covers:

1. [What are my rights when I use the NHS?](#)
2. [What treatment should I get from the NHS?](#)
3. [What can I do if I have a problem with NHS services?](#)
4. [Can I choose what treatment I get or which doctor I see?](#)

1. What are my rights when I use the NHS?

The NHS always has to respect your legal rights.

Consent

You can refuse treatment, even life saving treatment.¹ This is the case even if other people disagree with your decision. But there are exceptions. Your doctor can treat you even if you don't want it if:

- you are in hospital under the Mental Health Act 1983, or
- you cannot make decisions because you 'lack capacity'.²

Information

Your doctor should give you clear information about risks, side effects and any other relevant information about your treatment. This is to make sure you have all the information you need to make decisions about your treatment.³

Standard of care

Health professionals must use 'reasonable care and skill' when they treat you. This means different things in different situations. Your doctor should follow trusted medical opinion and not do something that no other doctor would do.⁴

Confidentiality

Health professionals must not tell other people about your diagnosis, condition, treatment or other personal information.⁵ They can only tell other people if:

- you tell them they can,
- they need to in an emergency or
- a court orders them to.

Medical records

You have the right to see your medical records. Your medical records must be up-to-date, accurate and relevant.

Human rights

NHS services must respect your human rights. For example, they have to respect your private and family life. The NHS could breach this by saying that you cannot have visits in hospital or you cannot leave the hospital.

Go to www.rethink.org for specific information about:

- Mental Health Act
- Access to health records
- Advance statements
- Mental capacity and mental illness
- Clinical negligence

- Confidentiality

Or call 0121 522 7007 and ask us to send you a copy.

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2. What treatment should I get from the NHS?

The NHS offers different treatments depending on where you live. Your doctor might not be able to offer you something that is available in another part of the country.

There is some guidance that may help you to find out what you are likely to get.

- Health professionals' codes, such as the General Medical Council's Good Medical Practice guidelines⁶
- Guidance from the National Institute of Health and Care Excellence (NICE)⁷ and the Department of Health
- Statements in the NHS Constitution⁸
- Local NHS policies

Guidance and policies are not the same as laws, but the NHS should follow them. If, based on their guidance, you feel like the NHS has not done what they should have done, you can complain. This can sometimes lead to changes in your treatment or an apology if things went wrong.

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3. What can I do if I have a problem with NHS services?

Complain

If you feel that the NHS has breached your rights or not followed guidance, you can complain. A complaint may lead to you getting the treatment that you wanted, or an apology.

If your doctor has behaved unprofessionally, you can complain to the General Medical Council (GMC). The GMC can investigate and may remove a doctor from the medical register. This could be appropriate if the doctor:

- has had a sexual relationship with a patient,
- has lied about their qualifications,
- cannot understand English well enough to do the job,
- makes serious or repeated mistakes,
- has broken your confidentiality without good reason, or
- has put information on your medical records they knew was wrong.⁹

You can find more about '**Complaints**' at www.rethink.org. Or call 0121 522 7007 and ask for the information to be sent to you.

Take legal action

If the NHS has breached your legal rights, you can take legal action.

Clinical negligence

Clinical negligence is when you have been physically or mentally hurt because of a poor standard of health care.

You can take legal action against the NHS or a member of staff and claim compensation. This can be complicated and you should speak to a solicitor about this.

Judicial Review

A judicial review means you can challenge NHS decisions in court. For example, the NHS may have refused to offer you a certain treatment that it was unreasonable for them to refuse.

A judge might decide that the NHS made an unlawful decision if:

- the person who made the decision did not have power to make it,
- the decision is irrational,
- the procedure was unfair or biased, or
- the decision breached your human rights.

The judge can say if the decision was legal or illegal, but they cannot make the NHS give you a certain treatment. The judge cannot make medical decisions on behalf of NHS staff.

If you want to ask for a judicial review, you need to act as quickly as you can. There are time limits. You should start legal action within 3 months of the problem.

Legal Aid may be available for judicial review cases. You can find the details of solicitors working under legal aid by calling Civil Legal Advice on 0345 345 43 45.

You can find more about '**Legal advice**' at www.rethink.org. Or call 0121 522 7007 and ask for the information to be sent to you.

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4. Can I choose what treatment I get or which doctor I see?

Do I have the right to the treatment I want?

Your doctor will offer you treatments that are available locally. They will choose treatment based on your diagnosis and guidelines.

If your doctor doesn't offer you what you want, ask them why. Some people might find it helpful to ask an advocate to help them talk to their doctor.

Your local Clinical Commissioning Group (CCG) decides what treatments are available in your area. If your doctor thinks you need treatment that is not available locally, you may be able to get treatment in a different area.

Your local CCG does not have enough money to offer all possible treatments. If you want a treatment that it doesn't offer, you can ask the CCG to make an exception for you. This is called an 'Individual Funding Request' (IFR). When you make a request, the CCG will look your case and decide if they will pay for your treatment.

When you make your IFR application, you need to show:

- that the treatment you are asking for will help you,
- that other treatments have not worked, and
- that your circumstances are exceptional.

It will help if your doctor supports your application. You can find your local CCG's policy on individual funding requests on their website.

Do I have the right to see a psychiatrist?

You should get treatment from a professional with the appropriate experience and qualifications.¹⁰ You cannot demand to see a psychiatrist, but your GP should offer you a referral if they think you need to see one.

GPs are not trained to diagnose mental illnesses such as bipolar disorder and schizophrenia. They should refer you to a psychiatrist if they think that you need a specialist opinion.

Do I have the right to a second opinion?

A second opinion means that you see another doctor to find out if they agree with your diagnosis or treatment.

You can ask for a second opinion if you do not agree with your doctor's opinion. But you do not have a right to a second opinion. You should ask your doctor about it and explain why you think it is important. If your doctor refuses, ask why. If you are unhappy with the reasons, you could complain through the NHS complaints procedure.

You can get more information on second opinions in our '**Second opinions**' factsheet from www.rethink.org. Or call 0121 522 7007 and ask us to send you the information.

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British Institute of Human Rights (BIHR)

BIHR is an independent human rights charity that is committed to challenging inequality and social justice in everyday life in the UK.

Telephone: 020 7882 5850 (admin only)

Address: BIHR, School of Law, QMUL, Mile End, London, E1 4NS

Email: info@bihr.org.uk

Website: www.bihr.org.uk

BIHR has published a human rights guide for people living with mental health problems, which you can read at <https://www.bih.org.uk/mental-health-advocacy-and-human-rights-your-guide>.

Equality Advisory and Support Service

Advises and assists individuals on issues relating to equality and human rights across England, Scotland and Wales.

Telephone: 0808 800 0082 (Mon-Fri 09:00 to 20:00 and Sat 10:00 to 14:00 Saturday).

Email: via website www.equalityadvisoryservice.com/app/ask

Website: www.equalityadvisoryservice.com



¹ Failure to obtain consent for treatment will mean that treatment could amount to assault. *Williamson v East London & City Health Authority* [1998] 41 BMLR 85.

² S5, Mental Capacity Act 2005 c9.

³ *Chester v Afshar* [2004] UKHL 41

⁴ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 583

⁵ *Hunter v Mann* [1974] QB 767

⁶ General Medical Council. *Good Medical Practice*. http://www.gmc-uk.org/guidance/good_medical_practice.asp (accessed 6 July 2015)

⁷ National Institute of Care and Excellence. <http://www.nice.org.uk/> (accessed 6 July 2015)

⁸ The Department of Health. *The NHS Constitution of England*. <https://www.gov.uk/government/publications/the-nhs-constitution-for-england> (accessed 6 July 2015)

⁹ General Medical Council. *What we can do and what we can't do*. http://www.gmc-uk.org/concerns/making_a_complaint/23361.asp?WT.ac=MCNO140122 (accessed 6 July 2015)

¹⁰ The Handbook to the NHS Constitution April 2013, page 34.

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This factsheet is available
in large print.



Rethink Mental Illness Advice Service

Phone 0300 5000 927
Monday to Friday, 9:30am to 4pm
(excluding bank holidays)

Email advice@rethink.org

Did this help?

We'd love to know if this information helped you.

Drop us a line at: feedback@rethink.org

or write to us at Rethink Mental Illness:
RAIS
PO Box 17106
Birmingham B9 9LL

or call us on 0300 5000 927.

We're open 9:30am to 4pm
Monday to Friday (excluding bank holidays)



**Leading the way to a better
quality of life for everyone
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Need more help?

Go to **www.rethink.org** for information on symptoms, treatments, money and benefits and your rights.

Don't have access to the web?

Call us on 0121 522 7007. We are open Monday to Friday, 9am to 5pm, and we will send you the information you need in the post.

Need to talk to an adviser?

If you need practical advice, call us on 0300 5000 927 between 9:30am to 4pm, Monday to Friday. Our specialist advisers can help you with queries like how to apply for benefits, get access to care or make a complaint.

Can you help us to keep going?

We can only help people because of donations from people like you. If you can donate please go to **www.rethink.org/donate** or call 0121 522 7007 to make a gift. We are very grateful for all our donors' generous support.



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