

Rights in relation to NHS treatment

This factsheet sets out answers to some of the common questions people have about their rights to NHS treatment.



Some of the main rights you have when dealing with the NHS are:

- To withhold or give consent to treatment
- To be given information so that you can make informed decisions
- To be treated with reasonable care and skill
- To have your personal information treated confidentially
- To be treated in a way that is supported by a body of medical opinion
- To access your own health records
- To respect for your human rights

The standard of care and treatment that you can expect is also set out in guidance created by organisations such as 'NICE' and the Department of Health.

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1. Where do patients' rights and expectations come from?

Your legal rights come from:

Law made by the UK Parliament (e.g. Mental Capacity Act and the Human Rights Act) or by court judgments.

Your expectations might come from:

- Health professionals' codes, such as the General Medical Council's [Good Medical Practice guidelines](#).¹ These codes lay down the obligations that doctors, nurses and other professionals have toward their patients and are usually wider than their legal duties.
- Guidelines issued by bodies like the National Institute of Clinical Excellence (NICE) and the Department of Health.
- The [NHS Constitution document](#).

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2. Do I have the right to be referred to a psychiatrist/specialist?

A GP should offer you a referral to a specialist worker if it is appropriate and necessary to do so.² The NHS constitution states that you have the right to be treated by someone with the appropriate experience and qualifications.³

In some circumstances, it might be appropriate for you to be referred to specialist mental health treatment by your GP or psychiatrist. This will depend on the doctor's judgement of your situation and on any NICE guidance that applies to the treatment of people with your diagnosis (see [section 4](#) of this document).

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3. Do I have the right to a specific type of treatment?

Generally speaking, you do not have a legal right to a specific type of treatment that you want. However, a doctor must act reasonably and in a way that is supported by medical opinion. If you are not offered what you want, it may be that there are health reasons why you cannot be offered this. Ask your doctor exactly why you have been refused. Some people might find it helpful to ask an 'advocate' to help them negotiate treatment options with a doctor.

Further information can be found in our factsheet on '**Advocacy**' which is available to download for free from www.rethink.org/factsheets or by contacting the Rethink Advice & Information Service directly. Our contact details are at the end of this factsheet.

The NHS has limited resources and so your local NHS Trust may not fund a specific type of treatment. Generally speaking, it is legal for a trust to do this. However, any treatments that have been recommended by a NICE 'technology appraisal' must be funded by the NHS. For example, Computer Based Cognitive Behavioural Therapy (CCBT) as a treatment for depression and anxiety has been recommended by a technology

appraisal and therefore must be funded by the NHS. This does not mean that everyone with depression and anxiety will be offered this, only that it must be available.

If a doctor thinks that it is necessary for you to have treatment that is not provided by your local trust, there may be procedures that allow you to receive this treatment in a different area. However, this may not be the case.

Your local NHS Trust is allowed to take into account its resources when deciding what services should be paid for in your area. But the Trust must consider your individual circumstances if you ask it to. You can do this by making an 'individual funding request' (IFR). Once you have made a request, a panel will consider your case and decide whether the NHS will fund your treatment. In order to make a successful application, you need to show that the treatment you are requesting will help to alleviate the symptoms of your illness and that other treatments have not worked. It will help if your doctor supports your application. You can often find the individual funding request policy on the Trust's website.

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4. What does the National Institute of Health and Clinical Excellence (NICE) do?

NICE was set up to give guidance to health professionals on quality standards and also to patients, on what they should expect. Professionals are expected to take guidance fully into account when using their clinical judgment, but they are allowed some discretion. Current guidance (March 2011) includes the following:

- [Schizophrenia](#)
- [Bipolar Disorder](#)
- [Post Traumatic Stress Disorder](#)
- [Obsessive Compulsive Disorder and Body Dysmorphic Disorder](#)
- [Depression in Adults](#)
- [Depression in Children](#)
- [Anxiety](#)
- [Borderline Personality Disorder](#)
- [Antisocial Personality Disorder](#)
- [Psychosis and Substance Misuse](#)

These guidelines are regularly updated, so check the www.nice.org.uk website to make sure you are reading the most up-to-date guidance.

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5. What duties does the NHS have towards patients?

Several Acts of Parliament set out the way in which care is provided by the NHS. These include:

- The NHS Act 2006 which gives the Secretary of State for Health a duty to provide a range of hospital, medical and other services “to such an extent as he considers necessary to meet all responsible requirements”. But it does not give individuals a right to insist on the treatment choice, and allows those who provide services some discretion in how they manage their resources, provided reasonably adequate care is provided.⁴
- The NHS (General Medical Services) Regulations 1992, which set out certain duties that GPs have to patients. The Regulations state that a GP should offer all necessary and appropriate services, such as offering advice, physical checks, immunisation and arranging a referral if appropriate.⁵ The Regulations also cover the rules on GP availability and prescriptions.

Some other laws are also important:

- The Data Protection Act 1998 which gives patients the right to see their medical records.
- The Human Rights Act 1998 which brings the rights under the European Convention on Human Rights into UK law. The Human Rights Act protects the right to life (Article 2), prohibits ‘inhuman and degrading treatment’ (Article 3) and protects the right to respect for private and family life (Article 8).

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6. What legal rights do I have as a patient?

Courts have said that patients have the following rights:

The right to give or withhold consent – to give or refuse consent to treatment (including life saving treatment) or examination.⁶ This is still the case even if the decision is seen as completely irrational by other people. A decision made by an adult who is capable of making that decision cannot be overridden by a doctor unless the patient is detained under the Mental Health Act 1983. However, a doctor may be able to carry out a medical procedure against the wishes of a patient if it is in the best interests of that patient and if the patient lacks the capacity to make a decision regarding treatment.⁷ A person should not be treated as being unable to make a decision about their treatment just because they have a mental illness.⁸

The right to information – patients are entitled to clear information given to them in an appropriate language, so that they can make informed decisions about proposed treatments and the alternative options, and potential risks and side effects.⁹

The right to an appropriate standard of care – health professionals must use reasonable care and skill when treating patients, and patients are entitled to receive care of a standard which a ‘responsible body of medical opinion’ considers to be appropriate to their condition.¹⁰ If this duty of care is breached, the patient may win a negligence claim.

The right to confidentiality – information about a patient’s diagnosis, condition, prognosis, treatment and other personal matters must be kept confidential by health professionals.¹¹ Confidential information may only be given to relatives if the patient consents, and should only be given to other people in very limited circumstances.¹² Doctors should also respect your right to a private and family life under the Human Rights Act.¹³

Further information is in our factsheet on ‘**Confidentiality**’, which is available to download for free from www.rethink.org/factsheets or by contacting the Rethink Advice & Information Service directly. Our contact details are at the end of this factsheet.

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7. What if I am unable to make decisions about treatment because my mental capacity is impaired?

If you are unable to make a decision because you do not have the capacity to do so, in some circumstances other people can make decisions for you regarding treatment.

The law around this is covered by our factsheet on the ‘**Mental Capacity Act 2005**’, which is available to download for free from www.rethink.org/factsheets or by contacting the Rethink Advice & Information Service directly. Our contact details are at the end of this factsheet.

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8. What if I make an advance statement about treatment?

Advance statements are a useful way of deciding in advance how you will be treated if you ever lose the ability (‘capacity’) to make that decision for yourself. If you are detained under the Mental Health Act 1983 and can be treated without your consent, doctors can go against your wishes in an advance statement, but it should be fully taken into account even in these circumstances.¹⁴¹⁵

Further information is in our factsheet on ‘**Advance Statements**’, which is available to download for free from www.rethink.org/factsheets or by contacting the Rethink Advice & Information Service directly. Our contact details are at the end of this factsheet.

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9. Do I have the right to a second opinion?

There is no legal or enforceable right to a second opinion. However, because diagnoses like schizophrenia have very serious implications for the patient and their treatment, and there is sometimes uncertainty about the diagnosis, there are strong arguments as to why a second opinion should be available. The National Institute of Health and Clinical Excellence clinical guidance says that patient diagnosed with Schizophrenia should be supported in having a second opinion if they wish.¹⁶

Further information can be found in our factsheet on '**Second Opinions**' which is available to download for free from www.rethink.org/factsheets or by contacting the Rethink Advice & Information Service directly. Our contact details are at the end of this factsheet.

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10. What about the National Service Framework for mental health?

This sets out the standards which are to be achieved by service providers but does not give individuals any new rights. Even so, it creates legitimate expectations. The areas covered by the Framework include standards on promoting good mental health, access to mental health services and providing effective services for people with severe mental illnesses.¹⁷

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11. What can I do if my rights are not respected, or if my treatment does not meet my expectations?

If you feel that your rights have been breached or that your treatment has not met your reasonable expectations, you can take action to try to rectify this. You may wish to:

Make a complaint

A complaint could lead to you getting the treatment that you wanted, or to you receiving an apology if things went wrong.

Further information on making a complaint is contained in our factsheet on '**Complaints**' which is available to download for free from www.rethink.org/factsheets or by contacting the Rethink Advice & Information Service directly. Our contact details are at the end of this factsheet.

Complain to the General Medical Council

In cases of very serious misconduct, the GMC may act to remove a doctor from the medical register so that they will no longer be able to practice medicine. This could be, for example, if a doctor was having inappropriate relationships with patients or was acting in an otherwise criminal manner.

Take Legal Action

In some circumstances, it may be appropriate to take legal action. This could include an action for negligence, assault, breach of confidence or applying for judicial review. This will depend on all of the circumstances, and you will need to seek advice when considering your options.

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- ¹ http://www.gmc-uk.org/static/documents/content/GMP_0910.pdf
- ² *National Health Service (General Medical Services) Regulations* 1992 N635, Schedule 2, para 12 (2)(d)
- ³ *The Handbook to the NHS Constitution for England* (March 2010) page 29
- ⁴ *National Health Service Act* 2006 c41
- ⁵ *National Health Service (General Medical Services) Regulations* 1992 N635, Schedule 2, para 12
- ⁶ Failure to obtain consent for treatment will mean that treatment could amount to assault. *Williamson v East London & City Health Authority* [1998] Lloyd's Law Reports Medical
- ⁷ *Mental Capacity Act 2005* c9, section 5
- ⁸ *Re C (Adult: Refusal of Treatment)* [1994] 1 WLR 290
- ⁹ *Chester v Afshar* [2004] UKHL 41
- ¹⁰ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 583
- ¹¹ *Hunter v Mann* [1974] QB 767
- ¹² See, for example, *W v Egdell* (1990) Ch 359 (CA)
- ¹³ *Human Rights Act 1998* c42 (implementing Article 8 of the European Convention on Human Rights 1950)
- ¹⁴ *Mental Capacity Act 2005 Code of Practice*, Department of Constitutional Affairs (2007) page 237
- ¹⁵ NICE recommends that when a patient has been detained under the MHA 1983, advance statements should be honoured whenever possible - The NICE Guideline on core interventions in the treatment and management of schizophrenia in adults in primary and secondary care (updated edition) (2010) para 10.1.8.2.
- ¹⁶ *The NICE Guideline on core interventions in the treatment and management of schizophrenia in adults in primary and secondary care (updated edition)* (2010) para 4.6.7.1., page 72
- ¹⁷ *National Service Framework for Mental Health*, Department of Health (1999)
- http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4077209.pdf (Accessed 23/03/11)

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