

# **A guide to mental health tribunals**

## **Introduction**

This leaflet is for anyone who:

- has been admitted to hospital under section 2 or section 3 of the Mental Health Act;
- is being treated outside hospital under a Community Treatment Order (CTO).

If you feel that this is unfair or unnecessary, you can challenge the decision to keep you in hospital or to keep you on a CTO. This is called an "appeal". If you do appeal, a mental health tribunal will be held.

## **What is the Mental Health Tribunal?**

It is a formal meeting where an independent panel looks at the decision to keep you in hospital.

There are 3 people on the panel:

- a Judge (who is in charge of the hearing);
- a tribunal doctor who is a Consultant Psychiatrist. He or she works with the First Tier Tribunal and is fully independent of the hospital in you are detained;
- a Specialist Lay member who has detailed knowledge of the Mental Health Act and mental health care.

The panel comes to the hospital for the meeting when they will hear evidence from you, your lawyer and your clinical team. The meeting is called a hearing.

## **What can the tribunal do?**

The panel's powers depend on the Section of the Mental Health Act you are detained under - see below.

## **When can I apply to the tribunal?**

That depends on the section used to detain you. Hospital staff on the ward and in the Mental Health Office should tell you about your rights. If you are treated with a CTO, a tribunal will regularly review your case.

## **Can I have a lawyer?**

You are entitled to legal aid and free legal representation for a tribunal hearing. The Mental Health Act office at the hospital will give you a list of solicitors you can choose from. Your solicitor will advise you on when to apply for a tribunal

and how to give your evidence. They may suggest you invite your partner and/or your nearest relative to come to the hearing. You also have the right to an Independent Mental Health Advocate (IMHA) who can support you in doing this.

### **Can I represent myself?**

You can do, but the tribunal will ask your doctor whether you are able to do this properly - the phrase they will use is do you "have capacity".

It is generally not recommended - it is a legal meeting and your lawyer will be familiar with the issues the tribunal will be interested in. He or she will know how best to put your case.

### **Can I have someone else with me for support?**

You may want to have your partner and/or nearest relative with you - this is allowed.

### **Will I see the tribunal doctors before the hearing?**

If you are on a Section 2, the tribunal doctor will always come to see you before the hearing. This is called a 'pre-hearing examination'. The interview is usually just you and the tribunal doctor, in a room where you can be private. You can choose if you want someone else with you, such as a nurse. If you are upset or agitated, your clinical team may advise that someone does sit in with you.

If you are not on a Section 2, then either you or your lawyer must ask for the interview with the tribunal doctor. You must ask for this in writing at least 14 days before the day of the tribunal hearing. You will need to use a form T129 that the Mental Health Act administrator can give you.

### **Before the hearing**

Before the hearing starts, the panel and your lawyer will read the reports written about you by your care team. There will be a medical report, a nursing report and a report from your care co-ordinator. You should be able to see these yourself before the tribunal.

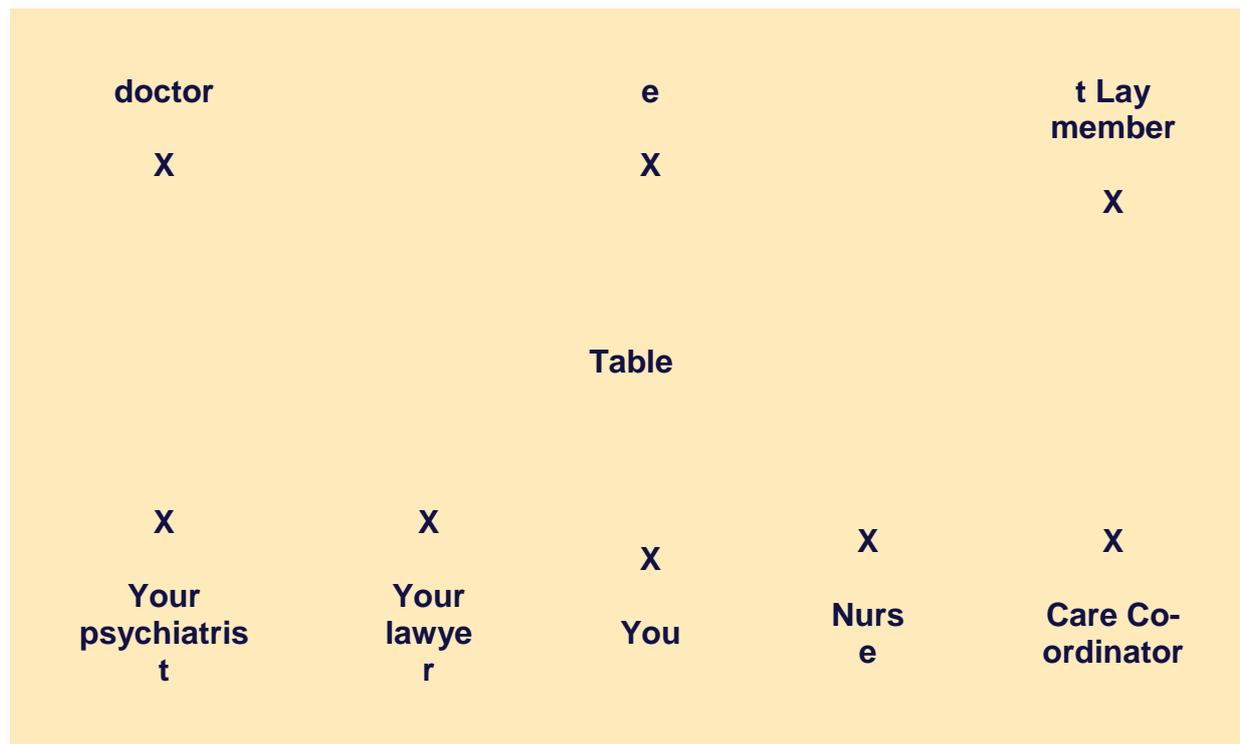
### **What happens at the hearing?**

You can ask to see the room where the tribunal hearing will be held so that you know what to expect - this is the seating plan:

**Tribunal**

**Judg**

**Specialis**



You will sit opposite the judge, next to your lawyer.

The judge will begin by introducing the panel to you, then confirming that the correct witnesses have come.

The members of the panel will then, one by one, put questions to the psychiatrist, the ward nurse and the care co-ordinator. Your lawyer will then put questions to the psychiatrist, the ward nurse and the care co-ordinator.

### **When can I speak at my hearing?**

Your lawyer will advise you as to how and when you can ask questions. For example, even if you disagree strongly with what is being said, you must not interrupt the psychiatrist, nurse or care co-ordinator when they are answering questions from the panel or from the lawyer. And they cannot interrupt you when you are speaking or answering a question.

Your lawyer will advise you as to how you can best make your views clear to the tribunal. They will be very aware that you may not be used to speaking to a group of strangers in this way.

Your lawyer will ask you questions before the panel members ask you anything. You may want to speak to the tribunal panel early in the hearing, so that you are sure the panel knows what you want. Ask the lawyer about this. You may also be invited to have the last word at the end of the hearing.

### **Do I have to stay for the whole hearing?**

No. In fact you do not have to attend the hearing. Do ask your lawyer about this. Make sure that if you do leave early, your lawyer knows what you want from the hearing.

## What does the panel ask my clinical team?

The hearing is a legal meeting and so some of the questions sound complicated as they are about the legal basis for your detention. These are the sort of questions and words you will hear. You'll see that the panel member and your lawyer write notes of the answers to their questions.

1. Question to your doctor and nurse	Explanation
Q. Is the patient suffering from a <b>mental disorder</b> ?	If you were admitted on a Section 2, for assessment, you may not have had a clear diagnosis when you were admitted. Your doctor will be asked about your diagnosis now.
Q. Is the patient's disorder of a <b>nature</b> that requires detention?	'Nature' means that the type of disorder you have. This will include your diagnosis, whether you improve with treatment, what you think about
Q. Is the patient's disorder of a <b>degree</b> that requires detention?	This is now you are at the moment. Your doctor may talk about any symptoms of depression, delusions, hallucinations, and whether you are looking after yourself.
Q. Is the <b>assessment</b> of the patient completed? (For patients detained on Section 2)	This question will be asked if you are detained on a Section 2. The hospital has only up to 28 days to do an assessment.
Q. What is the <b>appropriate treatment</b> for the patient?	<p>This is everything the hospital, or your community team, are doing to try and help. This includes medication, nursing care, occupational therapy, psychology, accommodation, carers support, employment support, and benefits advice.</p> <p>It also includes what follow-up arrangements will be made when you leave hospital. This would usually involve a community mental health team or Crisis/Home Treatment team.</p>

1. Question to your doctor and nurse	Explanation
<p>Q. What is the <b>risk</b> if your Section is lifted? There are 3 categories of risk:</p> <p>Risk to your <b>health</b></p> <p>Risk to your <b>safety</b></p> <p>Risk to <b>others</b> by something that you might do</p>	<p>Risk to your health: this can include your mental and emotional health, being distressed by symptoms, and sometimes your physical health if you have not been looking after yourself.</p> <p>Risk to your safety: by self-harm, or suicide, or whether you put yourself in risky situations when you are unwell.</p> <p>Risk to others: if you become threatening, either verbally or physically, when you are unwell.</p>

## 2. Questions to your care co-ordinator

If you have a care co-ordinator, this will be someone from the community mental health team. They will know more about your social situation and any follow-up arrangements for you after you leave hospital.

Your care co-ordinator may be asked similar questions to your doctor and nurse, but will also be asked about your accommodation, finances, and what the views of your nearest relative are.

## 3. Questions to the ward nurse

If you have been an in-patient on the ward, they will ask the ward nurse about your behaviour on the ward, how you get on with staff and other patients, and how you seem to have responded to any treatment.

## What does my legal advocate ask?

Your lawyer will ask the team to say exactly why you have to stay on the section. After all the questions have been asked by the panel and your lawyer, he or she will give a summary of your cases to the panel as to why the section should be lifted.

## When do the panel decide?

At the end of the presentation of evidence, everyone part from the panel is asked to leave the room. Sometimes, however, hearings do not proceed (the panel adjourns) if there is missing information that would mean that your case cannot be properly heard.

The panel stay in the hearing room and decide whether the legal criteria for detention are met. They consider the information in the reports and your care

team's evidence and what you and your lawyer have said. This takes about 15-30 minutes.

## What can the panel decide?

It can decide on:

- Immediate discharge from you section if the panel feels that the criteria have not been met. You can agree to stay voluntarily in hospital and/or to leave hospital immediately. You can then stop any treatment if you wish.
- Deferred discharge: this means your section will be lifted at a particular date in the future - usually a few days. This is usually to allow time for follow-up arrangements to be made.
- To continue the section - but the panel will make recommendations to your care team about your continuing care.
- To continue the section with the current treatment plan.
- To continue the section, but to suggest that your care team consider a Community Treatment Order (CTO). Please ask your team for more information about this.
- If you are on a 'restriction order', the Secretary of State's opinion has to be taken into account. Your lawyer will advise you about this.

## How will I be told the decision?

You will either come back to the room with your lawyer and be told, or told separately by your advocate. A written version of the decision will be sent to the hospital and to your lawyer in the next few days.

## What if I'm not discharged from the section?

If you wanted to be discharged from Section but that does not happen, your lawyer will advise you on when you can apply again for a tribunal.

Some people may feel that the tribunal was helpful even though the section wasn't lifted as they heard why the clinical team were detaining them, and felt they had had a fair hearing. One question that may be useful to ask the care team is: "What would need to happen for the team to lift the section?". The answer may help you in the future to work with your team.

## Other useful information

- **Rethink Mental Illness**: Helpline: 0300 5000 927 (10.00 am to 2.00 pm Mon - Fri)
- **Mind**: Info Helpline: 0300 123 3393 (9.00 am to 6.00 pm Mon - Fri)
- **SANEline**: 0845 767 8000 (6.00 pm to 11.00 pm every day)
- Information from the RCPsych on '**Being sectioned**'.
- Information about tribunals is online at [yougov](http://yougov.com).

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