

# **your legal rights** **in hospital**



**Law Centre (NI)**

**Mental Health Legal Advice Service**

## **Who is this leaflet for?**

**This leaflet is for patients ‘detained’ under the civil powers of the Mental Health (NI) Order 1986. There are some differences for patients detained under a criminal justice process, who can contact Law Centre (NI) for particular advice.**

**The leaflet is not for ‘voluntary’ patients. They have a right to leave the hospital at any time, and not to be treated without their consent.**

**You should ensure that you have received and read the information sheets from the hospital.**

## **What are the legal grounds for my detention in hospital ?**

**The hospital can only detain you if the following two legal grounds are met:**

- 1. that you are suffering from a mental disorder which needs to be assessed or treated in hospital; AND**
- 2. that if you were not detained, there would be a ‘substantial likelihood of serious physical harm’ occurring to you or other people.**

**You should have been told the exact circumstances for your detention, and why the hospital believes the legal grounds are satisfied. It is not enough for the grounds simply to be repeated to you. Ask the ward manager for clarification if you are unsure.**

**The harm referred to is ‘serious physical harm’. This does not include psychological harm. The phrase ‘substantial likelihood’ has been interpreted to mean a ‘real probability’. It is not enough to be told that the risk is a ‘possibility’ or even ‘likely’.**

**It is not sufficient for the hospital to say it is ‘desirable’ for your treatment to be administered in hospital. In accordance with the Human Rights Act (1998), your detention must be ‘necessary’ and it must be a ‘proportionate’ measure to the perceived risk.**

**If you feel that treatment can adequately be carried out in the community, or is not required at all, then you should raise this with your consultant. The hospital has an obligation to consider other ‘less restrictive options’, which do not amount to detention.**

# How long will I be detained?

- It may be you are detained by a doctor using temporary holding powers. This can last up to 48 hours. A psychiatric nurse can exercise such powers for up to six hours.
- If you are detained for assessment, this can last for a maximum of 14 days. After this time the hospital can only continue your detention if it makes a detention for treatment order.
- If you are detained in hospital for treatment, the first treatment order can last for up to six months. It can be renewed for a further six months, and then for periods of one year at a time.

## What if I do not want to be detained?

- Your doctor has a duty to discharge you from detention when the above legal grounds are no longer met. Discuss this at your consultations.
- You can write to the Chief Executive of the Trust the hospital belongs to, and ask the Trust to discharge you from detention. Contact details can be obtained from the ward staff.
- The Mental Health Review Tribunal can discharge you from detention. You have the right to apply once in the first six months from date of detention, once in the next six months and once a year after that. Contact details can be obtained from the ward staff.
- Your 'Nearest Relative' (see page 7 for more information) can ask your doctor in writing to discharge you. If the hospital refuses the request in writing within three days, your Nearest Relative may then apply to the Mental Health Review Tribunal to have your detention reviewed. But this must be done within 28 days from refusal.

# Do I have to accept treatment I don't want?

Your doctor should always try to obtain your informed consent before beginning a course of treatment. You may decide to withhold your consent.

However, you should know that for treatments such as the administration of antipsychotic drugs, your doctor can treat you without your consent for a period of up to three months, using restraint methods if necessary. After that, the treatment can only continue if you have subsequently given your consent, or another specially appointed doctor (preferably from another hospital) provides a second opinion that it is the correct course of action.

You may want to avoid a restraint situation. In this case, you should inform the doctor that you will allow the treatment to be administered, but that it is without your consent and under protest. This will ensure that the three-month time limit for treatment without your consent starts. Remind the hospital staff of your continued non-consent on a regular basis.

Special rules apply to electro-convulsive therapy (ECT).

The Mental Health (NI) Order 1986 does not give authority for you to be treated for a physical condition without your consent.

## **What does a Nearest Relative do?**

A Nearest Relative will be appointed on your behalf. This is a useful safeguard to have in place because he or she has certain rights and powers in relation to your detention. If you are unhappy with the person who has been appointed as your Nearest Relative, you can ask the hospital or social worker to appoint a different one. If you need advice, you can contact Law Centre (NI).

## **What do hospital advocates do?**

An independent advocate can support you and help you with many issues you have while you are in hospital. If you would like to speak to an advocate, the hospital staff will be able to give you details of an advocate in your hospital and tell you when the advocate is available.

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

You can apply to the Mental Health Review Tribunal for a review of the lawfulness of your detention. You can do this by a simple letter. Ward staff will give you the address. The Tribunal is independent of the hospital. It is strongly recommended that you obtain legal representation for the hearing. If you require help, or if you need representation at the Tribunal, please contact Law Centre (NI) (see the back of this leaflet for details), or your usual solicitors.

# Contact Law Centre (NI)

## Belfast office

124 Donegall Street, Belfast BT1 2GY

Telephone: 028 9024 4401

[Telephone advice line runs Mon – Fri, 9.30am – 1.00pm]

Fax: 028 9023 6340

Textphone: 028 9023 9938

Email: [admin.belfast@lawcentreni.org](mailto:admin.belfast@lawcentreni.org)

## Western area office

9 Clarendon Street, Derry / Londonderry BT48 7EP

Telephone: 028 7126 2433

[Telephone advice line runs Mon – Fri, 9.30am – 1.00pm]

Fax: 028 7126 2343

Email: [admin.derry@lawcentreni.org](mailto:admin.derry@lawcentreni.org)

**Website:** [www.lawcentreni.org](http://www.lawcentreni.org)

**Twitter:** @LawCentreNI

