



Assessment of people with M.E. under the Mental Health Act

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A small minority of people with M.E. are being considered for assessment for detention under the Mental Health Act, or being detained, each year.

This factsheet explains what assessment and detention involves, and what your rights are if detained, if you are an adult living in England and Wales.

For arrangements in Scotland, visit www.mwscot.org.uk/the-law/mental-health-act

For Northern Ireland, visit www.nidirect.gov.uk/the-mental-health-act

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One-page summary: what you need to know

Being detained

M.E. is not a mental health condition, and so should not be used as the basis for detention under the Mental Health Act (though an individual with M.E. could have a co-existing or consequential psychiatric disorder which does justify detention).

The Department of Health and the World Health Organization (WHO) define CFS/M.E. as a neurological illness.

However, some doctors do still believe that M.E. is a purely psychiatric disorder, and that the symptoms have no underlying physical cause.

You can only be detained if you have, or are thought to have;

- a mental illness which needs assessment or treatment which is sufficiently serious that it is necessary for your health or safety, or for the protection of other people;
- and you need to be in hospital to have the assessment or treatment;
- and you are unable or unwilling to agree to admission.

In hospital

The assessment section (Section Two) lasts up to 28 days.

The treatment section (Section Three) lasts up to six months.

Once in hospital, a detained patient should be offered the assistance of an Independent Mental Health Advocate.

If you disagree with your detention, you can seek discharge by applying to a Mental Health Tribunal. This is a body totally independent from the hospital. A three person team – a judge, a psychiatrist and a person with a social care background – will organise a hearing.

You are entitled to have a solicitor to represent you, at no cost. The Law Society Mental Health Accreditation Scheme lists suitably qualified solicitors.

Essential contacts

Mind, for information and support with mental health advocacy.
Helpline: 0300 123 3393. Text: 86463. Email: info@mind.org.uk
Legal advice line: 0300 466 6463. Email: legal@mind.org.uk
www.mind.org.uk

Action for M.E., for information about M.E. and its impact
Tel: 0117 927 9551 (Mon to Fri 10am to 4pm), Email: admin@actionforme.org.uk
www.actionforme.org.uk

M.E. is not a mental health condition

M.E. is defined by the World Health Organisation as a neurological condition, and should not be used as the sole basis for detention under the Mental Health Act, though there may of course be a co-existing psychiatric disorder which requires additional attention, possibly (but certainly not automatically) including assessment under the Mental Health Act.

Unfortunately some doctors maintain that M.E. is a purely psychiatric disorder, and that the symptoms have no underlying physical cause, though we understand that compulsory detention on such grounds is very rare.

What is the Mental Health Act?

The aim of the Mental Health Act is to protect people who may need compulsory admission to improve their health, to safeguard procedures, and bring in systems to keep decisions in check at each step.

Although the Mental Health Act may be used about 50,000 times a year in England and Wales, informal admission is far more common, and the preferred option if someone needs admission to a psychiatric hospital for their mental health needs. So most psychiatric patients are admitted on a voluntary (informal) basis.

Being assessed for detention under the Mental Health Act and actual detention can be a very stressful and frightening process.

Acute psychiatric wards can be noisy and chaotic places. You may have to share a bedroom and/or a bathroom. So they are likely to be especially stressful environments for people with M.E. Being detained, rather than voluntarily admitted, makes the experience of being in psychiatric hospital even less pleasant; for example, even to leave the ward for half an hour requires formal written permission in advance.

Why might someone be detained under the Mental Health Act?

Mental Health Act detention is only considered in situations where there is high level of concern about a person's health or safety.

According to the law, a patient can be detained if they have, or are thought to have;

- a mental illness which needs assessment or treatment which is sufficiently serious that it is necessary for their health or safety or for the protection of other people AND
- they need to be in hospital to have the assessment or treatment AND
- they are unable or unwilling to agree to admission.

If a person has M.E., potential health and safety risks may include:

- risk of suicide arising from severe depression (perhaps as a result of coping with a long-term condition as challenging as M.E.)
- distorted and disoriented thinking as a result of low weight, if a person is unable to eat or drink due to symptoms
- a co-morbid (ie. additional to M.E.) mental illness that requires admission to safeguard that person's safety or that of others, as well as improve their mental health.

By definition, there will be difference in opinion between the patient and the professional (usually a psychiatrist) as to the need for admission where compulsory admission under Mental Health Act is considered.

The difference may arise in a number of different situations:

- The medical professional sees M.E. as a mental illness and feels that in order to contain the risk posed, the person should be admitted against their wishes. This is likely to be very rare.
- The psychiatrist recognises that M.E. is a physical illness but considers another mental illness (secondary to having M.E.) to be putting the person at serious risk and needs admission on those grounds.
- The patient believes he or she has M.E., but a medical professional considers the diagnosis to be something different (such as psychosis or an eating disorder), and cannot agree/negotiate a safe enough care plan to manage the person's health needs in the community.

The process of detention usually starts because the patient's GP, a family member, a police officer or psychiatrist is worried about their mental health. The decision is usually made (other than in an emergency) by two doctors and an Approved Mental Health Professional.

One of the doctors must be specially certified as having particular experience in the assessment or treatment of mental illness. If possible, one of the doctors will already know the patient. The Approved Mental Health Professional is usually a social worker, but could be a mental health nurse, psychologist or occupational therapist.

In an emergency:

- If the patient is in a public place, then a police officer can detain them and take them to a place of safety (usually a hospital or police station).
- If the patient is in their own home, and refuses to let a doctor or Approved Mental Health Professional in to see them, then a magistrate can give permission for their home to be entered without their permission and for them to be taken to a place of safety.

It is normally the role of the Approved Mental Health Professional to ensure that the admission is to an appropriate facility. Mental Health Act detention does not automatically mean admission to a psychiatric inpatient unit, though this would be the norm.

Some patients need to be admitted to a medical ward, if they need medical treatment to address their immediate health need that is posing the risk, but mental health services would also need to provide input on the ward. The condition of the section also would normally require that the assessment includes some discussion of what could be provided as an inpatient as treatment which cannot be provided in the community.

Should the person be detained, there needs to be consideration given to what environment would contribute to the improvement of the person's health. This would be driven by individual circumstances. If the person has been a patient of an NHS M.E. service prior to admission, one can recommend that they are consulted.

Supporting people with M.E. who are being assessed or detained

Joan Crawford has experience of supporting people with M.E. who are being assessed or detained under the Mental Health Act.

“Many people often do not understand what it is that psychiatrists are looking for and how they go about making assessments/assumptions about people in intense distress,” she says. “This is compounded by people with M.E. getting often very quickly - and understandably - distressed when faced with the pressure of being sectioned.”

Joan suggests having someone – an empathic friend or relative – with whom you can share any distress, without judgement, rather than sharing it directly and in full with the medical team who may confuse/conflate symptoms of M.E. with common symptoms of psychiatric disorders, eg. confusion, fatigue and lack of energy, social withdrawal, loss of train of thought, usual physical sensations, loss of appetite, emotional lability.

Friends, relative or advocates can get in touch with Action for M.E. (see useful contacts) for information about M.E. and its impact to share with health professionals.

Joan says: “When I’ve found clinicians or social workers to be going down the psychologisation route, I provide them with a copy of the International Consensus Criteria (ICC) for M.E. [www.ncbi.nlm.nih.gov/pmc/articles/PMC3427890] as soon as possible; email is best.

“It’s often lack of knowledge about M.E. that brings this type of situation about. Things can escalate if misunderstandings are not nipped in the bud early.”

She also recommends having “a list of M.E.-friendly clinicians who know the system, and have a sound knowledge of M.E. to hand, too.”

If this or similar evidence is not accepted, Joan suggests that face-to-face challenge, if managed appropriately, can be powerful, along with ensuring that patients know their rights.

The NHS constitution (published at www.gov.uk/government/publications/the-nhs-constitution-for-england) states:

- “You have the right to receive care and treatment that is appropriate to you, meets your needs and reflects your preferences [...]
- “You have the right to choose your GP practice, and to be accepted by that practice unless there are reasonable grounds to refuse, in which case you will be informed of those reasons [...]
- “You have the right to express a preference for using a particular doctor within your GP practice, and for the practice to try to comply.”

Joan says, “One patient I was involved with ‘sacked’ their GP, asked them to leave meetings, and that they not be involved in their case. That proved to the judge and

everyone else involved that she had self-respect and was more than willing to stand up for herself. That does not happen often in people with poor mental health so it provided good evidence of patient well-being and functioning.”

If someone with M.E. is sectioned, Joan strongly suggests:

- making sure they have their mobile phone and charger with them, enabling them to keep in touch friends and family. Often public phones are next to the nurses’ station and are not appropriate for confidential calls.
- a personal visit, and/or letters and cards from supporters, can make a huge difference to someone who has been sectioned.

Preventing detention

There are no legal means of preventing detention. As long as the section papers are properly completed, detention is lawful.

If you are being assessed for detention, the most practical things you can do are:

- ensure that the professionals involved feel you are coping, or can cope, in the community
- ask them exactly why they are assessing you and what concerns they have
- make sure they know your views, how you manage your situation, and any support network you have, such as friends or relatives.

You are entitled to consult a solicitor about your rights, although the professionals do not have to wait for this to happen before they decide whether to section you or not. A solicitor will not be able to stop you from being detained, but can advise on how to apply for discharge. You can contact the Law Society (see useful contacts on p 11) to find a solicitor with proven competency in mental health law.

An Independent Mental Health Advocate may be available to help you express your wishes. Guidance says that the Approved Mental Health Professional should arrange for a familiar person, such as a solicitor, advocate or someone else, to be present, if that is what you want. However, in an urgent situation, the professionals do not have to wait for such a person to arrive before they can make the assessment.

If you are not eligible for an Independent Mental Health Advocate, you could ask for a general advocate. General advocacy services may also be called 'case work', 'community', 'generic', or 'short-term' advocacy.

Mind or Rethink (see useful contacts on p 12) may be able to advise you on what is available in your area. You could also contact your Patient Advice and Liaison Service in England, or Community Health Council in Wales (see useful contacts on p 12).

One member of your family is appointed as your official Nearest Relative, according to a list in the Mental Health Act legislation. (Your spouse or civil partner is the first choice. Then, in order, it is the oldest of your children, or parents, or brothers or sisters and so on.)

The Mental Health Act states that your Nearest Relative should be involved, and that the Approved Mental Health Professional must, if “practicable,” inform your Nearest Relative if you are admitted to hospital under Section Two (the assessment section – see p 9).

Where admission under Section Three (the treatment section – see p 9) is being considered, the Approved Mental Health Professional must consult your Nearest Relative if this is “reasonably practicable.” Your Nearest Relative has the right to object to the use of Section Three and if they do, the Approved Mental Health Professional must consider what to do next.

If your Nearest Relative objects to the use of Section Three, the local authority may decide to take further legal steps.

If professionals are very concerned you, and want to assess you, they have various powers that will allow them to do this. Under Section 135, there are two grounds on which an Approved Mental Health Professional can obtain a warrant to enter your home. These are:

- if you are living alone and not caring for yourself
- if you are cared for by someone else, but not being kept “under proper care or control.”

The police also have the power to remove, from a public place to a place of safety (under section 136), someone who is suffering from a mental disorder and is in need of care or control, in order to have them assessed.

How long can be you detained for?

The assessment section (Section Two) lasts up to 28 days. Section Two allows for a person to be detained if they are suffering from a mental disorder and they need to be detained, at least for a limited period, for assessment (or for assessment followed by medical treatment) for their own health or safety, or for the protection of other people. The section normally can't be renewed (it can only be extended in certain circumstances), but you may be assessed before the 28 days expires to see if detention under Section Three is necessary.

The treatment section (Section Three) lasts up to six months and can be renewed (for a further six months, then annually). Section Three allows for a person to be detained if they have a mental disorder, and it is necessary for their own health or safety, or for the protection of other people, and treatment cannot be provided unless they are detained in hospital.

A patient cannot be detained under this section unless the doctors also agree that appropriate medical treatment is available for him or her. Detention can last for up to six months. The section can then be renewed by six months, initially, and by a year at a time, subsequently. Alternatively, a person can be discharged from a section before it comes to an end.

The emergency sections last up to 72 hours during which time arrangements must be made to assess if a Section Two or Section Three is necessary.

If you are an informal patient in psychiatric hospital already, you can leave when you want. But a doctor can stop you leaving the ward if she or he thinks that an application for detention ought to be made. This is a 'holding power' and lasts up to 72 hours, during which a full assessment should be made (Section 5(2)). If a doctor is not available, a psychiatric nurse can hold you until a doctor arrives, but for no more than six hours. The nurse can do this if it is felt that you are suffering from a mental disorder and it is necessary for your health or safety, or for the protection of others to stop you leaving (Section 5(4)).

Who can help once you are detained?

You can be forced to go to hospital – you would normally be taken to hospital by ambulance, although the police will be asked to help if necessary. Once in hospital, the patient should be offered the assistance of an Independent Mental Health Advocate. The patient can be kept on a locked ward if necessary and can also be required to take medication for their mental illness.

The role of the Independent Mental Health Advocate is to provide information or help obtain advice on any rights that a person or others, such as their Nearest Relative, may have under the Mental Health Act, on any Mental Health Act powers being used by professionals that affect them, and any medical treatment offered to them, or being considered, in connection with their care under the Mental Health Act.

It may be possible for Independent Mental Health Advocates to assist with complaints about a person's care and treatment under the Mental Health Act or to resolve problems with the services received under the Mental Health Act while in hospital or in the community. An Independent Mental Health Advocate cannot apply to a mental health tribunal on a person's behalf, but can obtain information needed for a tribunal or assist in other ways.

Independent Mental Health Advocates are entitled to interview professionals and inspect medical records in connection with their role in assisting a person, as long as that person agrees. They can help patients prepare for ward rounds (a progress review, with the hospital staff, usually weekly), and play an active role at the ward round itself.

The patient will be placed under the care of a person who is called the Responsible Clinician. This is usually a consultant psychiatrist, although it could be a senior nurse, psychologist, occupational therapist or social worker.

The Care Quality Commission (CQC) employs Mental Health Act reviewers to ensure that the powers of the Mental Health Act are being used properly. Reviewers come from a variety of professional backgrounds, and can help patients by:

- listening to their issues
- raising problems with ward managers
- helping them write letters or complain.

If a patient is unhappy with the way the Mental Health Act has been used, a complaint can be made to the CQC (or Healthcare Inspectorate Wales). The patient can also write or speak to the Complaints Officer at the hospital, or ask somebody to do this on their behalf.

There are some matters that the CQC cannot deal with. These include:

- requests for people to be discharged from hospital or from detention
- complaints about treatment that a person does not like or want, but is allowed by the law, eg. having to take treatment that is prescribed by a doctor
- requests to review the results of medical or clinical assessments, decisions and diagnoses made about someone.

Seeking discharge

If you disagree with your detention, you can seek discharge in three ways.

1. The Mental Health Tribunal. This is a body totally independent from the hospital. A three person team – a judge, a psychiatrist and a person with a social care background – will organise a hearing. The patient is entitled to have a solicitor to represent them, at no cost. It is for the staff to 'prove' the patient needs to be detained. Before the hearing a doctor and a social worker will produce reports, and copies will be sent to the patient and their solicitor, and to the tribunal office.

The patient's solicitor will discuss these with them and possibly instruct a doctor to make an independent report on their behalf. The medical member of the tribunal will visit the patient before the hearing in order to form a view on their mental health, and he or she will give the other members of the panel an opinion.

2. The hospital managers. Three hospital managers, usually with a background of clinical or social expertise, can organise a 'hearing' which is very similar to the Tribunal hearing.

3. The patient can also ask their Nearest Relative to discharge them, although, even if they agree, this can be overridden by your Responsible Clinician if they think that the patient may be a danger to themselves or somebody else. More detailed information on seeking discharge is available from Mind (see useful contacts on p 12).

Useful contacts

Action for M.E.

Information and support officers: 0117 927 9551 (Mon to Fri 9am to 5pm)

Email: admin@actionforme.org.uk

www.actionforme.org.uk

Mind

Helpline: 0300 123 3393 (Mon to Fri 9am to 6pm)

Helpline text: 86463

Helpline email: info@mind.org.uk

Legal advice line: 0300 466 6463 (Mon to Fri 9am to 6pm)

Legal advice email: legal@mind.org.uk

www.mind.org.uk

Rethink

Advice line: 0300 5000 927 (Mon to Fri 10am to 2pm)

www.rethink.org

The Care Quality Commission

Tel: 0300 061 6161

www.cqc.org.uk

Healthcare Inspectorate Wales

Tel: 0300 062 8163

www.hiw.org.uk

The Law Society's Find a Solicitor service

Tel: 0207 320 5650 (Monday to Friday 9am to 5.30pm)

solicitors.lawsociety.org.uk

Mental Health Tribunal (England)

Tel: 0300 123 2201

Email: mhrtenquiries@hmcts.gsi.gov.uk

www.justice.gov.uk/tribunals/mental-health

Mental Health Review Tribunal for Wales

Tel: 02920 825328

www.wales.nhs.uk

Mental Health Tribunal for Scotland

Tel: 0800 345 70 60

www.mhtscotland.gov.uk/mhts/Home/Welcome_to_the_Mental_Health_Tribunal

Mental Health Review Tribunal for Northern Ireland

Tel: 0300 200 7812

www.courtsni.gov.uk/en-

GB/Tribunals/MentalHealthReview/Pages/GuideforPatients.aspx