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MENTAL HEALTH ACT 2001 TOOLKIT

Mental Health Reform

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SECTION

1

ABOUT THIS TOOLKIT

1. ABOUT THIS TOOLKIT

Introduction

If you are looking for information and help about mental health law and the Mental Health Act, 2001 in Ireland, this Toolkit is for you.

This Toolkit provides information for you to do the following:

Know the main sources of relevant human rights and law;

Understand your rights and how to use your rights when receiving care under mental health laws;

Understand the professional standards of those delivering your care and how to make complaints;

Identify advocacy services that can offer support, and identify other ways to raise your voice.

The School of Law, University College Cork in collaboration with Mental Health Reform created this toolkit to empower people with mental health difficulties and their supporters to understand their human rights and how to claim your rights. The development of the toolkit is funded by the Irish Research Council.

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Mental Health Reform

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The Limits of this Toolkit

Is this Toolkit Legal Advice? No.

This Toolkit provides simplified information only. It is not legal advice. Law is complex and depends on the situation. If you think the law was broken or your rights were not respected, you should seek legal advice.

I Have a Specific Question; Can the Toolkit Help? Yes.

If you are using an electronic copy of the Toolkit, and want to look for a specific point, **use the find function by pressing "Ctrl" and "F" (Windows) or "Cmd" and "F" (Apple).** In the search box that appears, type the key word or phrase you are looking for, e.g., 'Tribunal', then navigate through the results.

I am not based in Ireland. Does the Toolkit apply to me? No.

The Toolkit is based on Irish law. It provides information for adults who are subject to Irish mental health law.

Does the Toolkit apply if the person I am supporting is a child? No.

For the purpose of mental health law, a child is currently anyone under the age of 18. The rights of children receiving mental healthcare are different and are not included in this version of the Toolkit. For more information on this specialised area, see the Headspace/ Mental Health Commission Toolkit.

Does the Toolkit apply if I am a ward of court? No.

The law concerning wards of court is different and is not dealt with in this Toolkit.

Where can I find further information?

This Toolkit only summarises some of the main issues which may arise for you regarding the Mental Health Act. For more detailed information, please see the sources listed in the Appendix.

NOTE #1

Important Note 1 on Use of Language in this Toolkit

The current law uses language which is now considered outdated and stigmatising. For example, it uses terms such as "mental disorder" rather than mental health difficulties. As we are describing the law, we will use the terms used by the law, even though these terms are no longer considered appropriate.

NOTE #2

Important Note 2 on the Status of Acts, Rules, Regulations, Codes of Practice and Policies:

In this Toolkit, we will refer to various sources and the legal status of each source is different:

ACTS

An Act is a piece of law which is fully binding on everyone.

RULES

Under the Mental Health Acts 2001-2018, the Mental Health Commission may make Rules on certain matters which are legally binding on everyone.

REGULATIONS

Under the Mental Health Acts 2001-2018, the Minister for Health may make Regulations which are legally binding on everyone.

CODES OF PRACTICE

Under the Mental Health Acts 2001-2018, the Mental Health Commission may make Codes of Practice. Legally speaking, these are not binding. However, best practice requires that they be followed. A failure to follow a Code could be referred to in legal proceedings.

POLICIES

Policies are not legally binding as such. However, if a policy summarises legal principles which have been established by the courts in case-law (which are legally binding), then those legal principles should be followed by everyone. A failure to follow a policy could be referred to in the course of legal proceedings.

The focus of this Toolkit is on binding laws and policies (as they stand in October 2022). In order to make the information about laws and policies more meaningful, we have occasionally set out information which we categorise as "Other Information". The source for this Other Information has been our discussions with Mental Health Reform's member organisations and others as part of the drafting process for the Toolkit. Those we consulted included people with lived experience of mental health difficulties and their supporters. The information is drawn from certain examples of practice which individuals have encountered. However, practice on these points may vary widely within Ireland, and so this Other Information must be read with caution.

How Accessible is this Toolkit?

Where possible, we use simple language and have borrowed language from other resources including easy read versions of human rights instruments. Note that it is always important to check the actual language of the legislation as well. The full text of the Act, including updates, is here.

Due to the time limits of this project, the Toolkit is not as accessible as it could be. For example, it is not available in other languages.

People in Forensic Mental Health Services

There are special rules for people who are in forensic mental health services, such as in the Central Mental Hospital. The main law that applies for criminal matters is the Criminal Law (Insanity) Act, 2006. All defendants are automatically given a solicitor. You or the person you are supporting should seek legal advice on if and how this law applies.

If you are detained in the Central Mental Hospital under the Criminal Law (Insanity) Act 2006, your detention will be reviewed by the Mental Health (Criminal Law) Review Board.

If you are detained in the Central Mental Hospital under the Mental Health Acts 2001-2018, your detention will be reviewed by a Mental Health Tribunal.

The Central Mental Hospital is inspected by the Mental Health Commission in the same way as Approved Centres are.

More information is available here: National Forensic Mental Health Services

Changes on the Horizon

Irish mental health law is changing. At the time we are writing this Toolkit, the government has published 'the heads' (themes) of a new set of laws it calls the Mental Health (Amendment) Bill 202X. The Bill sets out what the government plans for mental health law.

In the area of capacity, the law is due to change with the **Assisted Decision-Making (Capacity) Act 2015**. This Act is expected to come into force in late 2022 or early 2023.

How Can I Stay Up to Date on Irish Law & Policy?

This Toolkit states the law as of October 2022. To stay up to date, it may also be helpful to:

- Subscribe to Mental Health Reform's mailing list.
- Go to the website www.oireachtas.ie.
- Follow the Department of Health social media channels (for example, LinkedIn and Twitter). Government departments usually announce important changes on their social media.
- Set up a Google alert for 'Mental Health Acts 2001-2018'. See here for instructions.

Feedback

'Nothing About Us Without Us' is a slogan linked to disability rights. The idea is that laws, policies, and services should be based on the experiences of persons with mental health difficulties. The writers are grateful that this Toolkit had the benefit of input from Mental Health Reform members. We continue to welcome and value your views to inform future versions of the Toolkit. You can find a link to our feedback form **here**.

Project Team

The principal investigator on this project was Darius Whelan. The research assistant was Claire Carroll. The co-ordinator from Mental Health Reform was Ber Grogan.

SECTION

HUMAN RIGHTS

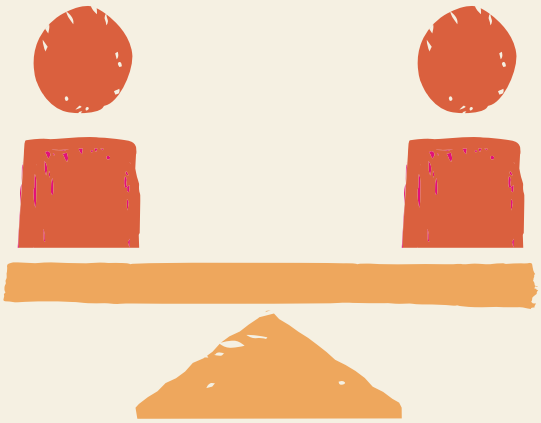
2. HUMAN RIGHTS

What Are Human Rights?

The Irish Human Rights & Equality Commission defines '**human rights**' as **'basic rights and freedoms that belong to everyone.'** The Irish State must respect human rights by its:

- Laws and policies (including mental health law);
- Public services (including mental healthcare)

Human rights 'abuse' or **'violation'** are terms used to describe when the State **unlawfully** interferes with human rights.



Is State interference with human rights always unlawful?

No. There are two types of rights, absolute rights and qualified rights. The government can never interfere with absolute rights such as the right to life, although there may be situations where the right does not apply. Qualified rights can be lawfully interfered with but only in certain circumstances and there are strict rules about this.

Why Do Human Rights Matter in Mental Healthcare?

Human rights are especially important in mental healthcare. Historically, mental health difficulties led to human rights abuse. In Ireland, people spent too long in hospital with no right to review their care. While at hospital, people often lived in poor conditions, experiencing unsafe treatments or even no treatment. Unfortunately, human rights abuse of persons with mental health difficulties is still a global problem. Today, protecting human rights is a strong theme of mental health law.

Where Do Human Rights Come From?

Human rights come from Irish and international sources. Key sources are:

- The Irish Constitution (available here),
- The European Convention on Human Rights (available here) and
- The UN Convention on the Rights of Persons with Disabilities (available here).

What Are the Main Rights in Mental Health Law?

Below are the main rights that matter in mental health law, what they mean (in short and simple terms) and where to find them.

The Right to Life means everyone has the right to life, and if life is in danger, the government must take steps to protect life. *(Article 40.3.2 Constitution, Article 2, ECHR; Article 10 UNCRPD).*

The Prohibition and Freedom from Torture or Inhuman or Degrading Treatment means no one should hurt you on purpose or treat you in a cruel way to punish or intimidate you or to make you do something. For this right to apply, the treatment must cause serious suffering. *(Article 3, ECHR; Articles 15, 16 UNCRPD).*

The Right to Liberty means you should be free, and not be locked up unlawfully. *(Article 40.4.1, Constitution, Article 5, ECHR; Article 14, UNCRPD).*

The Right to a Fair Trial and Access to Justice means you have a right to fairness and to be heard when other rights are taken away. It includes the right to take part at a Mental Health Tribunal and legal representation. *(Article 6, ECHR; Article 13 UNCRPD).*

The Right to Respect for Private and Family Life, a broad right that can mean many different things. It includes the right to respect for your choices, relationships, home and private communication (including by phone). It includes confidentiality and privacy of medical information. *(Article 8 ECHR; Articles 19, 22 & 23 UNCRPD).*

The Right to Freedom of Thought, Conscience, Religion, Expression and Opinion means you should be able to hold your own beliefs, express yourself (as long as it doesn't affect other peoples' rights) and practise your religion. *(Article 44 Constitution; Articles 9, 10 ECHR; Articles 3 & 21, UNCRPD.*

Prohibition of discrimination means you should not be treated unfairly because of who you are, e.g., because of your mental health difficulty (a disability under the UNCRPD) or because of any other 'protected characteristic', like, for example, race, or sex. *(Article 14, ECHR; Articles 3, 5,17 and 25, UNCRPD).*

Protection of property means your property is yours, you should be able to enjoy it and it cannot be unlawfully taken away from you. *(Article 43 Constitution, Article 1, Protocol 1, ECHR; Article 12, UNCRPD).*

SECTION

THE MENTAL HEALTH ACTS

3. THE MENTAL HEALTH ACTS

Reminder throughout this Toolkit:

- See **Important Note 1**, in the 'About this Toolkit' section above, on Use of Language in this Toolkit
- See **Important Note 2**, in the 'About this Toolkit' section above, on the Status of Acts, Rules, Regulations, Codes of Practice and Policies

What are the Mental Health Acts?

The **Mental Health Acts, 2001-2018** govern rights of people with mental health difficulties in Approved Centres**.** The 2001 Act has been amended by other Acts from 2008 to 2018.

We will call the Mental Health Act, 2001 (as amended) 'the Act'. The Act has **6 Parts**:

PART 1	An Introduction, Including Key Definitions
PART 2	When Going to Hospital is Not Your Choice ('involuntary admission')
PART 3	The Mental Health Commission and Mental Health Tribunals
PART 4	Rules on Consent to Treatment
PART 5	Rules for Approved Centres
PART 6	Miscellaneous Rules, Including on Restraint and Seclusion.

Each Part contains numbered laws called 'sections'. The full text of the Act, including updates, is here.

The Act has **3 key principles.** These are broad ideas that guide how we understand the Act:

1. Best interests;
2. The right to be notified of proposals about your treatment and care;
3. Regard for your rights to dignity, bodily integrity, privacy and autonomy.

At the time the Act came into force, it was seen as a positive step for human rights. In 2007, an Irish Judge said the purpose of the Act was to respect and protect constitutional rights. This meant 'to protect the rights of the patient as well as to care for the patient' (The case name was *J.H. v Lawlor*).

What is the Difference Between 'Mental Health Difficulty', 'Mental Illness', and 'Mental Disorder'?

Labels can be controversial and confusing. Some people disagree with labels and say we should focus on the person. However, it's helpful to be familiar with terms to understand rights. Here, we explain:

- **Mental Health Difficulty**
- **Psychosocial Disability**
- **Mental Disorder (Medical Definition)**
- **Mental Disorder (Legal Definition)**

- **Mental Health Difficulty:** We all manage our mental health and face stressors in life but not everyone will be regarded as having a mental health difficulty.
- **Psychosocial Disability:** Highlights how mental health difficulties and resulting barriers in society can affect people's rights. It affects people's rights in their interactions with public services.
- **Mental Disorder (Medical Definition):** Medical professionals use the term mental disorder to describe **a set of symptoms** serious enough to result in diagnosis. They say diagnosis helps to create a picture of what kind of treatment may help someone. The symptoms and tests that make up each diagnosis are found in two professional manuals; the **'DSM-5'** (**Diagnostic and Statistical Manual of Mental Disorders, 5th Edition)** and the '**ICD-11' (International Classification of Diseases. 11th Edition).**
- **Mental Disorder (Legal Definition):** For parts of the Mental Health Act concerning involuntary admission to apply, someone must have a 'mental disorder'. **Mental disorder is not just a set of symptoms, it is a legal test**. This legal test says "mental disorder" is **mental illness, severe dementia or significant intellectual disability** that **causes** either of the following results:

Result 1 (Immediate Harm is Likely)
'A serious likelihood of the person concerned causing immediate and serious harm to themselves or to other persons.'
Result 2 (Treatment is Needed)
The judgement of the person is affected to the extent that their condition would get worse in a serious way, or they would not be able to be given treatment unless they were admitted to an Approved Centre **and** staying at an Approved Centre for treatment would be likely to help or ease the condition

We remind you to check the actual text of the Act. The full text of the Act, including updates, is here. See section 3 of the Act.

Note also that the upcoming Heads of Bill to reform the 2001 law, mentioned in the 'About this Toolkit' section, propose to remove the references to severe dementia or significant intellectual disability from mental health legislation.

See also: Spunout's Introduction to Mental Health Terminology.

Diagnoses listed in the DSM-5 include:

- Schizophrenia Spectrum and Other Psychotic Disorders
- Bipolar and Related Disorders
- Depressive Disorders
- Anxiety
- Obsessive-Compulsive Disorder ('OCD')
- Trauma- and Stressor-Related Disorders (for example, 'PTSD')
- Feeding and Eating Disorders (for example, anorexia)
- Neurodevelopmental Disorders (for example, autism, learning disabilities, intellectual disability)
- Neurocognitive Disorders (including dementia, eg. Alzheimer's Disease or Parkinson's Disease)

Whether someone has a mental illness, severe dementia or significant intellectual disability will be a professional judgement made by the psychiatrist with reference to the medical and legal definitions.

The involuntary admission parts of the Act **do not** apply to people that:

- Have a personality disorder (e.g., borderline personality disorder),
- Are socially deviant (don't follow social rules), or
- Are addicted to drugs or intoxicants (such as alcohol).

In other words, a person does not have a "mental disorder" within the meaning of the Act if they "**only**" have one of these conditions. If they have one of those conditions, combined with another condition, they may have a "mental disorder" within the meaning of the Act. See section 8(2) of the Act.

Can I Make an Advance Healthcare Directive (AHD)?

An **Advance Healthcare Directive (AHD)** is a written statement which shows the type of treatment you would or would not want if you can no longer make your own decisions.

The Decision Support Service has information on Advance Healthcare Directives here.

The Irish Hospice Foundation has a template for advance directives in its Think Ahead form.

In the Health Service Executive National Consent Policy, it is stated that, in general, AHDs should be respected.

The law on AHDs is due to change when the Assisted Decision-Making (Capacity) Act 2015 comes into force, which is expected to happen in late 2022 /early 2023.

What about Enduring Powers of Attorney?

If you have made an Enduring Power of Attorney, and if it has been registered, an attorney who has been expressly given this power may make certain "personal care" decisions on your behalf. These do not include healthcare decisions.

The law on Enduring Powers of Attorney is also due to change when the Assisted Decision-Making (Capacity) Act 2015 comes into force.

Mental Health Services: Service Delivery Principles

The Irish mental health services adopt a number of Service Delivery Principles as outlined in Sharing the Vision:

- **Recovery**: People experiencing and living with mental health issues while pursuing the personal goals they want to achieve in life, regardless of the presence or severity of those mental health difficulties.
- **Trauma-informed**: Everyone at all levels of the mental health services has a basic understanding of trauma and how it can affect families, groups, organisations, communities and individuals.
- **Human rights**: A range of principles that underpin the fulfilment of all civil and political, social and economic rights for all people.
- **Valuing and learning**: Everyone accessing and delivering mental health services should be valued and respected as human beings in their own right, and for the experience, expertise and skills they bring.

The Role and Rights of my Supporters/ Family/ Carers

What Does 'Supporter' Mean?

This Toolkit uses the term 'supporter' to mean trusted people who support you in your care and recovery from a mental health difficulty. It could be a friend, a partner/spouse, and/or family members. The term 'supporter' is used as not everyone has close family.

Can Supporters be Involved in My Care?

Yes, if it is your choice, supporters can generally be involved in your mental healthcare. Sometimes, supporters feel like they are left out of the conversation. However, this should not be the case. According to **The Quality Framework for Mental Health Services** 'family/chosen advocate' involvement is a theme of quality mental health services in Ireland (Theme 6).

How Can Supporters be Involved in My Care?

When you are not in hospital but attending an appointment, you can ask if your supporter can sit in on your appointment or part of it, in order to learn about your care plan.

When at an Approved Centre (hospital) receiving mental healthcare, supporters should be involved as long as it is your choice, and your confidentiality (your right to keep certain information private) is respected. Supporters may, with your consent:

- **Be involved in key decisions** including admission, development of a care plan, transfer, and discharge.
- **Receive notice** of when you are returning home (discharge).
- **Receive verbal and written notice** of follow-up appointments*

*These rules come from the Code of Practice on Admission, Transfer & Discharge.

See also the Health Service Executive National Consent Policy which states that support will usually be given by people who have a close, ongoing personal relationship with the person, such as family or friends, or by anybody chosen by the person. The support of these people may be helpful in finding out a person's values, beliefs and goals. If appropriate and practical to do so, the views of anyone the person requests to be consulted should be considered.

In some cases, it may be helpful for supporters to support a person with mental health difficulty in understanding and engaging with their rights as outlined in this Toolkit and other sources.

At times, supporters may be in communication with an Authorised Officer (see below).

How Can My Supporters Find Out More?

The Mental Health Commission has published a special resource for supporters **'Admission process guide – a guide for family and friends on the admission process'** which focuses on the admission process from a supporter perspective.

Support for Supporters:

Supporters play a valuable role in access to care and recovery. However, seeing a loved one go through a mental health difficulty can be challenging. The writers encourage supporters to mind their own health and seek out supports. For example, Shine offers online support groups, one of which is especially for relatives and supporters. See www.shine.ie for details.

The HSE provides a free Family Peer Support Service which is available to anyone with a family member who is currently attending Adult Mental Health Services. The Family Peer Support Worker can offer information, resources and emotional support. Referrals can be made through the mental health team, self-referral or through community or voluntary organisations. For more information, see www.hse.ie/peersupport.

Information for Supporters regarding Mental Health Difficulties:

There are many sources of information available online regarding mental health difficulties. For example, see the websites of Mental Health Reform's member organisations.

See also the service delivery principles referred to above:

- Recovery
- Trauma-informed
- Human rights
- Valuing and learning

The Important Role of Advocates

An advocate is a person whom you ask to speak up for and represent you. Some advocates are peer advocates, who have experienced mental health difficulties themselves. It can be very helpful to contact an advocacy service for support if you are engaging with the mental health services. We provide further information on advocacy in Section 4 below.

Approved Centres and What to Expect

What is an Approved Centre?

An Approved Centre is a hospital or facility on an official list (called the Register of Approved Centres), where you can stay overnight to receive care and treatment for a mental health difficulty. You can find the list on the Mental Health Commission website.

What Standards Can I Expect at My Approved Centre?

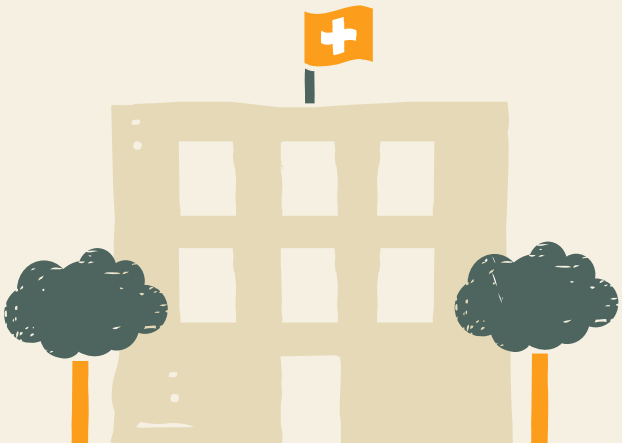
Approved Centres must follow the **Public Sector Equality and Human Rights Duty** (the duty). The duty says public services must:

- Not unfairly discriminate against you, and
- Must respect your human rights.

(Section 42 of the Irish Human Rights and Equality Commission Act 2014).

Approved Centres must also follow the **Mental Health Act 2001 (Approved Centres) Regulations 2006, known as the Approved Centres Regulations.** You can read the full Regulations here.

Approved Centres are inspected regularly to review how well they follow these regulations. We provide examples in the tables on the following page.



The centre must do the following:

A. GENERAL CARE AND WELFARE

Make sure staff can identify you (so that mistakes aren't made with medication). (Reg. 4)

Provide a safe supply of **fresh drinking water and enough nutritious food**, accounting for dietary requirements (Reg. 5) and follow **food safety policies and laws**. (Reg. 6)

Make sure you have enough clean clothes and give them to you if you don't. Unless your care plan says otherwise, you should have a change from night clothes during the day. (Reg. 7)

Have written policies to care for your personal property and possessions. Staff should make a record of your things, and make the record available to you. (Reg. 8)

Offer recreational activities that are appropriate and workable for the Centre. (Reg. 9)

Support you to practise your religion. (Reg. 10)

Support visits, in so far as practicable. This includes letting you know visiting hours, having policies to make sure visits are safe for everyone, respecting your privacy during visits and facilitating any visits from children. (Reg. 11)

Allow you to communicate freely, with due regard to your wellbeing, safety and health. If this could be 'harmful', your communications may be examined. (Reg. 12)

Only search you or your belongings to help create a safe and therapeutic environment. Have written policies on searches. (Reg. 13)

B. CARE OF RESIDENTS

Ensure there is an 'Individual Care Plan' regarding the goals of your treatment and care. (Reg. 15)

Provide a range of therapeutic services and programmes to support your 'physical and psychosocial' recovery. This means more than medication. (Reg. 16)

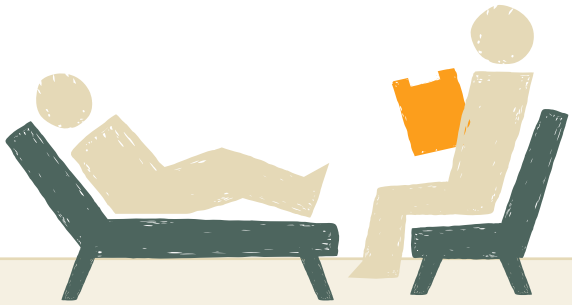
Have rules on transfers (moving between hospitals). The hospital to which someone moves should be told 'all relevant information'. (Reg. 18)

Make sure you receive general (physical) healthcare including access to national screening programmes (e.g., cervical cancer). General health should be assessed every 6 months at least. (Reg. 19)

Provide you with Information including about your multi-disciplinary team, aspects of housekeeping (e.g., visiting hours), diagnosis, medication (including side-effects), and advocacy services. (Reg. 20)

Respect privacy and dignity always. (Reg. 21)

Have rules on medication covering ordering, prescribing, storing and administering (giving) medicines. (Reg. 23)



C. PREMISES	
Keep the premises (building) clean and in good condition. E.g., the centre must make sure there is enough light, heat and ventilation. It must, as far as practicable, be accessible. (Reg. 22) **Follow health and safety laws** and have their own written policies and procedures. (Reg. 24)	**Follow Regulations and have policies on Closed Circuit Television (CCTV).** Any CCTV must only be viewed by a healthcare professional to monitor health/ welfare. CCTV should be clearly labelled so you know about it, footage should not be recorded or stored. (Reg. 25)

D. OTHER PROVISIONS	
Follow rules on staffing. This includes making sure staff have access to education and training, and having policies on vetting. (Reg. 26) **Keep up-date written records that are safely stored.** (Reg. 27) **Keep a Register (up to date list) of Residents.** The Mental Health Commission may ask for this. (Reg. 28)	**Review policies and procedures** at least every 3 years and in response to Inspection Reports. (Reg. 29) **Co-operate (work with) with Mental Health Tribunals** and if you need assistance, help you to attend. (Reg. 30)

What If I believe the Approved Centre Broke the Regulations?

If you are concerned about discrimination or breach of your human rights, you can seek legal advice (see 'Section 4 Complaints, Advocacy & Activism').

In other cases, you may use your knowledge of the Regulations to claim your rights, make a complaint and/or to notify issues to the Mental Health Commission. See the 'Complaints, Advocacy and Activism' section below.

Example of Regulations in Action:

Susan was admitted to hospital on an involuntary basis. At the time, she was experiencing mental health difficulties and received medication. When Susan feels better, she finds some personal belongings she had with her are missing. The staff say she must have misplaced them.

On leaving hospital, Susan decides to:

- Request a copy of the Approved Centre's policy on belongings & possessions and write an email to ask what steps staff members took for her belongings to be kept safely.
- If there is no policy and/or if she believes the policy was not applied correctly, raise a complaint and/or highlight her concern to the Mental Health Commission.
- If she suspects theft / criminality, raise a criminal complaint.

Safeguarding

According to the Mental Health Commission and the Health Information and Quality Authority, safeguarding means measures 'to reduce the risk of harm, to promote people's human rights and their health and wellbeing, and to empower people to protect themselves.'

If you consider you are being abused or mistreated, or if you are concerned that someone you are supporting is being abused or mistreated, it is important to report that concern to the Approved Centre or to the relevant HSE Safeguarding and Protection Team.

To guide health services, HIQA and the Mental Health Commission have produced National Safeguarding Standards, available here.

The HSE policy is called **Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures.** This policy applies to concerns about older adults and persons with a disability (including mental health difficulty). The HSE has a helpline called **HSE Live** which may be well-placed to direct your call.

Voluntary Admission: How it Works

Most people experiencing mental health difficulties attend **Approved Centres** by choice. This process is called **voluntary admission.**

Reminder: An Approved Centre is the legal term for a hospital or facility on an official list (called the Register of Approved Centres), where you can stay overnight to receive specialist care and treatment for a mental health difficulty. The list of Approved Centres is on the Mental Health Commission website.

Accessing mental healthcare, especially at weekends, can be a challenge and there may be delays. To receive care as a voluntary patient, you or the person you are supporting can:

- **Request a Referral Letter from your General Practitioner (GP).** If your GP is of the medical opinion that you need residential treatment in an Approved Centre, they may write to the Approved Centre to request your treatment there.
- **Present at Accident & Emergency ('A&E').** In emergencies (if you feel very unwell) or at weekends, when your GP is unavailable, you may decide to present at your local A&E Department.

What Can I Expect at A&E?

In general, you can expect:

1. **Waiting:** A&E waiting times vary across Ireland. As of May 2022, the average waiting time was reportedly over 12 hours.[1] Waiting can be stressful especially if you or the person you are supporting is experiencing mental distress.
2. **'Triage':** When a nurse or doctor meets you to assess how urgent your need for medical attention is. If they agree you need mental healthcare, they may contact a psychiatrist. This may mean a further wait.
3. **Meeting a psychiatrist:** A psychiatrist will meet you and assess your treatment needs. Depending on their opinion and space at the hospital, they may offer you a bed.

1 https://www.irishtimes.com/news/health/emergency-department-delays-worst-on-record-with-seriously-ill-waiting-13-hours-for-admission-1.4875046

My Rights as a 'Voluntary Patient'

What Does Being A 'Voluntary Patient' Mean?

Being a voluntary patient **can** mean you are at hospital by choice. However, at the time we are writing this Toolkit, some people who are 'voluntary' have not freely chosen to be there. For example, they might have severe dementia but did not resist being admitted to an Approved Centre. This is a problem with the law. So, to be more accurate, "voluntary" means the legal powers under the Act were not used for you to come to hospital. Here are some of the main issues which arise regarding voluntary patients:

- **Your human right to liberty is not directly affected:** you may be able, to some extent, come and go from the hospital, for example, if you'd like to have a coffee. If you decide to leave for a short time or to discharge yourself (to go home), the staff may discuss this with you. In many centres, there will be an expectation that you do not leave, even for a short time, without notifying staff first.

- **Your legal status may be changed to involuntary.** This has can happen in two ways:
  1. If you indicate a wish to leave, if the staff are of the opinion that you have a 'mental disorder' within the meaning of the Act, they can initiate a process to have your legal status converted from voluntary to involuntary. Frequently, the process followed is as set out in sections 23 and 24 of the Act. This involves a second psychiatrist visiting the Approved Centre to speak to you and decide if you satisfy the criteria for change in legal status.
  2. In some cases, if you do not indicate a wish to leave, the procedure followed will be different. Staff may follow the general admission procedure in other sections of the Act.

- **There are fewer legal safeguards:** There is no independent second opinion psychiatrist appointed and there is no Mental Health Tribunal.

- **The Approved Centre Regulations apply to your stay in the Approved Centre**. See the section 'Approved Centres and What to Expect' earlier. These include the requirement that the centre must ensure there is an Individual Care Plan regarding the goals of your treatment and care.

- You may find it helpful to seek support from your family/supporters or an advocacy service if you are asked to sign any document.

- Your consent to treatment (including medication) is governed by legal principles as outlined in the Health Service Executive National Consent Policy. Under these legal principles, it is presumed that you have capacity to provide or refuse consent to treatment.

- If you do not have capacity to consent to treatment, the National Consent Policy states that it is necessary to consider what option, including the option not to intervene, will be in your best interests. The policy includes detailed matters to be considered. For example, any action where a person lacks capacity to make their own decision should to the greatest extent possible give effect to the past and present will and preference of the person; be proportionate to the significance and urgency of the situation; and be as limited in duration as is possible in the circumstances.

- If you are restrained or secluded, the rules and code on seclusion and restraint apply (see below, 'Restraint and Seclusion').

- **As a voluntary patient, you cannot be given Electro-Convulsive Therapy (ECT) without your consent.** If you have capacity to consent to ECT, and you choose to consent to ECT, the Approved Centre is expected to follow the Mental Health Commission's Code of Practice on ECT for voluntary patients.

Restraint and Seclusion

What is Restraint?

Restraint means when a healthcare professional (for example a mental health nurse) stops you from moving freely. There are two kinds recognised by law:

1. **Physical:** when a healthcare professional uses **their body** to stop you moving freely (e.g., holding your arms with their hands) or
2. **Mechanical:** when a healthcare professional uses clothing or something mechanical to stop you from moving freely. This could be a chair with a belt.

Note: The law does not specifically recognise chemical restraint as a form of restraint for the purposes of these rules.

What is Seclusion?

Seclusion means 'the placing or leaving of a person in any room alone, at any time, day or night, with the exit door locked or fastened or held in such a way as to prevent the person from leaving.'

What are the Rules on Restraint & Seclusion?

For all patients, voluntary or involuntary, section 69 of the Act states mechanical restraint and seclusion can only be used when it is:

- **Necessary for treatment** *or*
- To **prevent you from injuring yourself or others**.

In addition, the Mental Health Commission has detailed Rules on Seclusion and Mechanical Restraint and a Code of Practice on Physical Restraint.

When Should Restraint & Seclusion Not Be Used?

Restraint and seclusion should not be used:

- In a way that breaks the law/ rules,
- With the wrong motive; to punish a patient, or
- To address staffing shortages.

Involuntary Admission: What Happens When Hospital is Not My Choice?

If you are very unwell, you might attend hospital when it is not your choice. The Act calls this **involuntary admission.**

When hospital is not your choice, the Act states **three steps must be followed**. Otherwise, the admission would be illegal.

It is common for a **"Clinical Practice Form s.14(2)"** to be used to temporarily detain you for examination for 24 hours once you arrive in hospital. This temporary detention can be authorised by a doctor, nurse or consultant psychiatrist.

The Table on the next page shows the steps, who takes them, and time limits.

Steps to Involuntary Admission	Made By	Time Limit
1. Application	Spouse / Civil Partner, relative, Authorised Officer, Garda who has observed you.	The application must be made within **48 hours** of when that person last observed you.
2. Recommendation	Doctor who has conducted an examination.	The Recommendation must be made within **24 hours** of receipt of the Application under Step 1.
3. Admission Order	Consultant Psychiatrist at Approved Centre (hospital) who has conducted an examination.	The Admission Order must be made within **24 hours** of detention by "Clinical Practice Form s.14(2)."

- For involuntary admission to occur, the consultant psychiatrist must certify that the person has a "mental disorder" according to the legal definition of mental disorder given earlier in this Toolkit.
- **Applications don't always result in going to hospital.** The process could end at Step 1, 2 or 3. For example, an examining doctor at Step 2 might decide not to make a recommendation. The scenario below shows how the process can play out.

Example of Involuntary Admission Process:

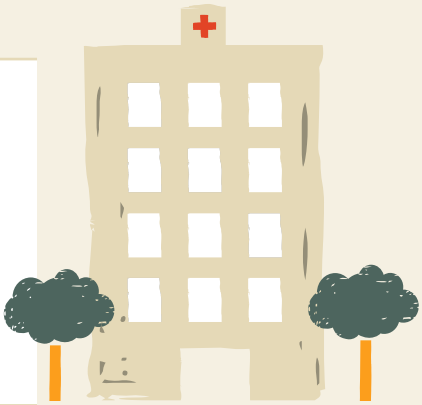
Jack has mental health difficulties. In the past, when he has been unwell, he has received treatment at hospital. Recently, his wife Sarah has noticed changes and believes he is becoming unwell again. Sarah knows Jack does not want to attend hospital but thinks he may need treatment urgently or his health and safety will be at risk.

On Monday morning, Jack agrees to attend the GP. At the appointment, the GP examines Jack. Sarah makes an application (step 1) to the GP at 10:00 a.m. Based on Jack's behaviour, thoughts and mood, the GP makes a recommendation (step 2) at 10:10 a.m. Jack then attends an Approved Centre at 12:30 p.m. Jack is examined by a consultant psychiatrist at the Approved Centre who makes an admission order (step 3) at 3:00 p.m.

How Am I Taken to Hospital?

You can be taken to hospital in one of three ways:

1. You are brought to hospital by the person who makes the application (step 1) or somebody else who is not in category 2 or 3 below.
2. Staff from a service called **"assisted admissions"** may bring you to hospital.
3. If necessary, members of the Garda Síochána (police) might help to bring you to hospital (see Garda Síochána Powers below).



Assisted Admission

If an "assisted admission" occurs, a team may arrive to where you are and transport you to an Approved Centre. A private company is contracted by the Health Service Executive for this purpose. In the Act, Assisted Admission is referred to as removal by "authorised persons". "Authorised persons" are staff of the private company who are authorised to exercise powers under the Act.

Authorised Officers

An 'authorised officer' is a Health Service Executive officer who has been authorised to exercise powers under the Mental Health Act. An authorised officer may be involved in discussions regarding whether a person may be admitted to an Approved Centre. He/she also has the right to sign an application for a recommendation for admission (step one in involuntary admission, above).

An Authorised Officer may be contactable through a request to a doctor or nurse, depending on the configuration of services in the area.

Garda Síochána (Police) Powers

If you or someone you support is very unwell, the Garda Síochána (police) may play a role in your admission to mental healthcare. As we usually associate the Garda Síochána with preventing crime, their involvement in a health matter can be strange and upsetting. However, the role of the Garda Síochána is to help, and their powers are limited. Under the Act, the Garda Síochána can help in two situations:

1. Going to Hospital ('Removal' in Involuntary Admission), *and*
2. Emergencies

1. Going to Hospital ('Removal' in Involuntary Admission)

If the doctor who makes the recommendation (step 2) or the Approved Centre believe bringing you to hospital would involve **'...a serious likelihood'** of **'immediate and serious harm'** either to you or to others, they can request the Garda Síochána to help.

In this situation, the Garda Síochána may, **<u>if necessary</u>:**

- **Forcibly enter a house or premises** where they reasonably believe you are, *and*
- Take 'all reasonable measures' needed to help to bring you to hospital. This can include 'detention' or 'restraint'.

Although these powers are very strong, the section is clear that they are only to be used if necessary.

2. Emergencies

In emergencies, members of the Garda Síochána (police) may:

- Enter your home without permission / by force, *and*
- Take you into custody.

To do this, a Garda must have the 'reasonable belief' that you or the person you are supporting:

1. Has a 'mental disorder' (see above) *and*
2. Because of the mental disorder, 'there is a serious likelihood' of 'immediate and serious harm' to you or to someone else.

This rule comes from section 12 of the Act. The use of this power should be in order to help you to receive hospital care if needed. A member of the Garda Síochána should apply for a recommendation (see above) soon after.

Just like healthcare professionals, members of the Garda Síochána who play a role in your mental healthcare must act within the law and their professional standards. For further details, see section 4.

Example of Garda Síochána Powers in Emergencies:

Marie, who lives alone, has mental health difficulties. Her supporters and social worker have become concerned for her welfare as she has fallen out of contact. They have tried calling and knocking on her door, but Marie isn't answering.

Marie's social worker asks the Garda Síochána to carry out a 'welfare check'. The Garda Síochána attend Marie's home. When they don't get an answer at the door, they force it open. In the opinion of the Gardaí, Marie appears very unwell, with a serious likelihood of immediate and serious harm to herself or others. The Gardaí decide to bring her to the station. They apply for a recommendation and soon after, a doctor examines Marie.

My Rights as an 'Involuntary Patient'

Reminder throughout this Toolkit:

- See **Important Note 1**, in the 'About this Toolkit' section above, on Use of Language in this Toolkit
- See **Important Note 2**, in the 'About this Toolkit' section above, on the Status of Acts, Rules, Regulations, Codes of Practice and Policies

If you are at hospital and it is not your choice, you have certain legal rights and protections under the Act. Many depend on how long you have been at hospital.

We will summarise some of the main provisions concerning involuntary patients below. We recommend that you check the full text of the legislation and check official guidance from the Mental Health Commission at the following web page: Information for Patients. Information is available in a number of languages. For example, see the Mental Health Commission's *Know Your Rights: A guide for involuntary patients receiving mental health treatment*.

You may find it helpful to seek support from your family/supporters or an advocacy service if you are asked to sign any document.

On the first days of your admission

1. An **Admission Order** is made**:** This is a legal document signed by a consultant psychiatrist that gives the Approved Centre the legal authority to keep you at hospital when it is not your choice. The Admission Order only **lasts for 21 days.**
2. **Information Notice:** You must be given an information notice. This notice will be given using the Patient Notification Form available here.
3. Your admission must be communicated to the Mental Health Commission.
4. You have the right to be examined by an independent second opinion psychiatrist for the purposes of your Mental Health Tribunal.
5. You have the right to a legal representative.

Within 21 Days

When you are an involuntary patient, you have the right to a Mental Health Tribunal within 21 days. This right is automatic.

> Note: A **Mental Health Tribunal (which we will call 'the Tribunal')** is a statutory review by independent persons held in private at the Approved Centre within 21 days of involuntary detention and at other points in time (3 and 6 months) if you stay longer at the Approved Centre. See further information below.

After 21 Days (of the Admission Order)

If the Tribunal affirms the Admission Order (see below), your consultant psychiatrist will need to **examine you and make a new Order** for your stay at hospital to continue to be lawful. This new Order is called a **Renewal Order.** The Renewal Order will automatically cause the Mental Health Tribunal process to start again. A new tribunal will be arranged within 21 days of the renewal order.

Within 21 Days of the Renewal Order

When you are an involuntary patient under a renewal order, you once again have the right to a Mental Health Tribunal within 21 days (see below). This right is automatic.

How Long Do Renewal Orders Last?

As shown below, the first Renewal Order can last for up to 3 months while a second, third, fourth and subsequent order can last for 6 months each time. But it is important to note that Renewal Orders can be made for short periods.

- **Renewal Order 1:** Maximum 3-month extension
- **Renewal Order 2, 3, 4 and following:** Maximum 6-month extensions each time

What Protections Are There for Long Renewal Orders?

At the end of the first 3 months of a renewal order period of up to 6 months (a long renewal order), you or your solicitor can apply for an additional Mental Health Tribunal. This Tribunal is not automatic and will only be arranged if you apply for it.

Can I Leave Hospital for Short Periods if I am an Involuntary Patient?

Yes, if your psychiatrist permits it. The Act allows for people to leave hospital with written permission from the consultant psychiatrist responsible for care and treatment. This is called being **absent with leave.** It is for a specific time and there can be conditions attached.

Being **absent without leave means:**

- Leaving the Approved Centre without written permission or not returning after the time on the written permission runs out, *or*
- Not following the conditions of the permission.

If you are absent without leave, the Act gives the Clinical Director of the Approved Centre and psychiatrist the power to arrange for you to return. If necessary and if there is an immediate or serious risk to you or others, they can ask the Garda Síochána (police) to help.

Involuntary Patients: Treatment

The Act states in section 57 that your consent is normally required for treatment. However, if you do not have capacity to consent, then treatment may be given if it is necessary to safeguard your life, restore your health or alleviate (help / ease) your condition.

If you are being administered medicine without consent for longer than three months, a special procedure in section 60 of the Act must be followed. This involves the opinion of a second psychiatrist being sought.

If you are being administered Electro-Convulsive Therapy (ECT), either with or without your consent, the Mental Health Commission's Rules on ECT must be followed. If you are not consenting, section 59 of the Act requires that a second psychiatrist must be involved in the process.

Mental Health Tribunals Explained

What is a Mental Health Tribunal?

A **Mental Health Tribunal** (which we will call 'the Tribunal') is a a statutory review by independent persons held in private at the Approved Centre within 21 days of involuntary detention and at other points in time (for example, within 21 days of each renewal order) if you stay longer at the Approved Centre.

Even if your order is revoked (ended), you can seek to have the legality of your detention reviewed by the Tribunal. However, in this case, you must write to the Mental Health Commission and let them know you still want a Tribunal (this right comes from section 28 of the Act.)

What is the Point of a Mental Health Tribunal?

When hospital is not your choice, the Tribunal tries to make sure that the law and proper procedures are being followed. In this way, **the Tribunal aims to protect your right to liberty (i.e., freedom)**.

Who are the Panel Members?

Each Tribunal is made up of 3 independent people called 'panel members.' They each bring different knowledge and strengths to the table.

1. **A 'Chairperson' / Legal Member** (an experienced barrister or solicitor).
2. **A Consultant Psychiatrist** (not your psychiatrist but someone independent).
3. **A Lay Member** (a member of the public).

Who Must Attend the Tribunal?

- Your Legal Representative, and
- Your Consultant Psychiatrist at the Approved Centre

Who May Attend the Tribunal?

- **You:** you don't have to, but you will have the choice.
- **Your supporter:** if you would like your supporter there, tell your legal representative in good time so that they can ask the Tribunal. The Tribunal decides either way. The role of your supporter at the hearing will be clarified.
- **Witnesses:** sometimes, the Tribunal may ask to speak to people involved in your care or admission.

What happens in advance of the Tribunal?

An independent psychiatrist will visit you in the Approved Centre and write a report which is sent to the Mental Health Commission. This is known as a "section 17 report".

Do I have the Right to Legal Representation?
Yes, automatically. Before the Tribunal, a legal representative (usually a solicitor) will be appointed to you. The representative is state funded, so their service is free to you. Alternatively, you may request a different solicitor from the panel (at no cost) or you may appoint your own solicitor and pay for this service yourself.

What Should I Expect from My Solicitor?
The solicitor should meet with you soon after you are admitted to discuss how you came to be in hospital. The solicitor will ask you to complete and sign a consent form, if you agree that the solicitor may view your clinical file. If you do not have capacity to consent, the approved centre may release your clinical file to your solicitor under the principles established in *E.J.W. v Watters* (2008). Your solicitor will explain the Tribunal process to you and will provide information to you about the section 17 report.

Do I Have to Attend the Tribunal?
No. The Act states that you do not need to attend the Tribunal if you do not want to. You also do not need to attend if, in the opinion of the Tribunal, such attendance might be prejudicial (damaging) to your mental health, well-being or emotional condition. If you do not attend, your Legal Representative will represent you.

What Should I Expect on the Day?
A Tribunal it is not a court room. This means:

- It will be informal, and you will not need to dress up if you do not want to;
- Everyone will understand if you are unwell;
- You may ask for a short break or breaks if you need them;
- An interpreter will be provided if requested.

Although informal, a Tribunal is an important review concerning your rights. If you decide to attend, it can be a good idea to:

- Bring a pen and paper to take notes;
- Be assertive, for example, by letting your solicitor know your view or asking to correct any incorrect facts you hear;
- Be polite and respectful;
- Be open and honest.

Remember, the Tribunal is for you, not against you. It is not about your psychiatrist, or the panel members. It is about you. You should feel heard and respected. You are the most important person at the Tribunal.

What Will the Tribunal Consider?
To decide if your detention is lawful, the Tribunal has 2 questions:

1. Were proper procedures followed? And, if so,
2. Are you 'suffering from a mental disorder' (applying the legal definition of mental disorder, see above) on the day of the hearing?

On the question of procedure, the Tribunal looks at specific procedures in the Act such as the following:

- Persons who may apply for involuntary admission (section 9)
- Making of the recommendation (section 10)
- Powers of Garda Síochána (section 12)
- Admission order (section 14)
- Duration and renewal of admission orders (section 15)
- Provision of information for persons admitted to Approved Centres (section 16)

On the question of mental disorder, the Tribunal looks at the medical evidence. This means:

- The report of the second opinion psychiatrist, the section 17 report.
- Asking your psychiatrist to explain their opinion about your need for care and treatment at the Approved Centre (this comes from the legal test at section 3 of the Act).

What Can the Tribunal Do?

The Tribunal has limited powers. For example, the Tribunal does not have the power to make decisions about care or medication. It **can only review your Admission/ Renewal Order. We will call this 'the Order'.** The Order is the legal document giving the Approved Centre legal authority to keep you at hospital when it is not your choice. Having looked at the evidence, the Tribunal can either:

1. Affirm (agree with) the Order
2. Revoke (cancel) the Order or
3. Adjourn (suspend) the hearing for a limited time – see s.18(4) of the Act.

If the Order is affirmed, your stay in hospital will continue.

If the Order is revoked, the order detaining you is no longer legally valid. Depending on the circumstances, you may either leave the Approved Centre or remain in the Approved Centre as a voluntary patient. You would normally discuss the situation with your solicitor and/or your psychiatrist.

How Soon Will I Know the Outcome?

Tribunals issue their decision on the day of the hearing. The Act says the Tribunal must issue its decision **within 21 days of the Order** at the latest.

In some cases, the Tribunal may be adjourned (suspended) for a limited time – see s.18(4) of the Act.

What If I Believe the Tribunal Made the Wrong Decision?

If the Tribunal has affirmed an Order and you believe the decision is wrong, **you have the right to appeal to the Circuit Court.** Your legal representative can discuss with you whether to make the appeal. Points to note are:

- **Reasons for the Appeal:** successful appeals persuade the Circuit Court that you are no longer suffering from a 'mental disorder'. Other factors, such as whether correct legal procedures were followed, don't play a role.
- **Time Limit**: You must appeal within 14 days of the Tribunal decision.
- If the appeal to the Circuit Court does not succeed, the original order of the Tribunal will stand, which means your detention will continue, unless the psychiatrist revokes the Order.

What If I Disagree with the Decision-Making Process?

In some cases, if you disagree with the tribunal decision, you may be able to bring an application under Article 40 of the Constitution or an application for Judicial Review. This would normally be discussed with your solicitor first.

Discharge from Order by Psychiatrist

If you are an involuntary patient, and the consultant psychiatrist responsible for your care and treatment forms the opinion that you are no longer "suffering from a mental disorder", they must revoke the Order (admission or renewal order) and discharge you from the Order (section 28).

When a person is discharged from the Order, depending on the circumstances, they may either leave the Approved Centre or remain in the Approved Centre as a voluntary patient.

Leaving Hospital

The situation regarding leaving hospital, both for voluntary and involuntary patients, is governed by the Mental Health Commission's Code of Practice on Admission, Transfer and Discharge. This code includes guidance on these areas:

- Notice of discharge
- Return of personal property
- A medical certificate and prescription
- Transport arrangements
- A follow-up appointment

Will I Receive Aftercare?

Yes. If you are being discharged, the relevant Code says you should be provided with a 'timely post-discharge follow-up appointment.' If you have recent history of self-harm or are at risk of suicide, this appointment should be within one week. The appointment could be with a G.P., a primary care team, or community mental health services. You and, where appropriate, your supporters/ advocates, should receive verbal and written notice of this appointment.

Do I Have to Attend My Follow Up Appointment?

No. Attending is your choice. In Ireland, there are no legal or rights-based consequences if you fail to attend a follow-up appointment. However, failing to attend without explaining or making a new appointment could make accessing outpatient services in the future more challenging.

I Am Leaving the Approved Centre, but I Don't Have a Home; What Can I Expect?

A keyworker or social worker should contact and liaise with social, housing, and homeless services for you in order to source appropriate accommodation.

SECTION

COMPLAINTS, ADVOCACY & ACTIVISM

4. COMPLAINTS, ADVOCACY & ACTIVISM

Complaints

In 2019, Mental Health Reform's 'My Voice Matters' research found 53% of surveyed service users wanted to complain about their experience of mental health care but did not actually complain. Meanwhile, most surveyed supporters reported they had not been made aware of HSE complaint processes.

Considering this, the following section aims to:

- Highlight complaints processes, *and*
- Provide practical tips on how to complain

What's the Difference between a Complaint and Feedback?

A complaint is formal, it must be reviewed and should lead to an outcome. Feedback is less formal and there is no guaranteed outcome.

Examples of Complaint Outcomes

If your complaint is unsuccessful, it might be 'dismissed'. Examples of successful outcomes are:

- Written Apology;
- Disciplinary Action (for example, suspension of people involved);
- Change in Policy (where the service changes how it does work).

Should I Complain or Take Legal Action?

For both voluntary and involuntary patients, in some cases, taking a legal action or seeking a legal remedy is more suitable than making a complaint or may be an option in addition to a complaint. We highlight some examples of legal matters below:

- **Personal Injury / Civil Assault:** If you suffered **loss or injury** due to poor mental healthcare, and/or if an Approved Centre treated you without your consent, you may be able to seek compensation and should ask a solicitor for 'personal injury' advice. Your case may be governed by section 73 of the Act.
- **Criminal Matters:** If a **crime** was committed, you should report it to **An Garda Síochána.**
- **Discrimination:** If a public service (for example, an Approved Centre) discriminated against you (treated you unfairly based on a protected characteristic), you may have a right of action under the **Equal Status Acts**. Find out more here.
- **Challenging Detention Beyond the Mental Health Tribunal:** Judicial Review or an application under Article 40.1 of the Constitution are types of legal action that relate to detention. It is recommended that you would take a solicitor's advice in such a case.
- **Breach of Human Rights:** If a public service (e.g., public Approved Centre) failed to respect your human rights (for example, by breaching a Regulation that aims to protects human rights) and you have no other way of seeking a remedy, you may have a right of action under the European Convention on Human Rights Act, 2003. For more information including how to access legal support, see the Irish Human Rights and Equality Commission.

Four Steps to Complain

1. Know the Facts
2. Know the Rules / Standards / Law
3. Use the Correct Channel & Complain in Time
4. Find the Right Words

Step 1: Know the Facts

A good starting point for any complaint is to take a detailed note of events at or close to the time. In legal cases, this is sometimes called a **'contemporaneous note'.** A note like this will help you to recall key facts. **Your note might include:**

- **When:** date, and approximate time of event.
- **Where:** the location (for example, at the Approved Centre).
- **What:** what happened and the order of events.
- **Who:** Names / ID badges of the key persons involved.
- **Who Saw:** Names / ID of people who witnessed the event.
- **How:** how the event made you feel and your response.

What Other Kinds of Evidence Do I Need?

This depends on the kind of complaint you are making. In general, you may wish to gather documentation to support your complaint. If you are concerned that a health care provider holds information about you which you are unable to access, you may wish to make a 'subject access request'. We all have a right under the General Data Protection Regulation (GDPR) to request a copy of personal information (information about us). For more information, see the Data Protection Commission website.

Step 2: Know the Rules/ Standards/ Law

It can be helpful to identify the standards that applied and how you feel the service or service provider fell short of that standard. Tables 4.1 and 4.2 show professional standards and briefly highlight points to note. However, professional standards are usually well-developed. If you wish to make a complaint, it may be best to read the Code or law.

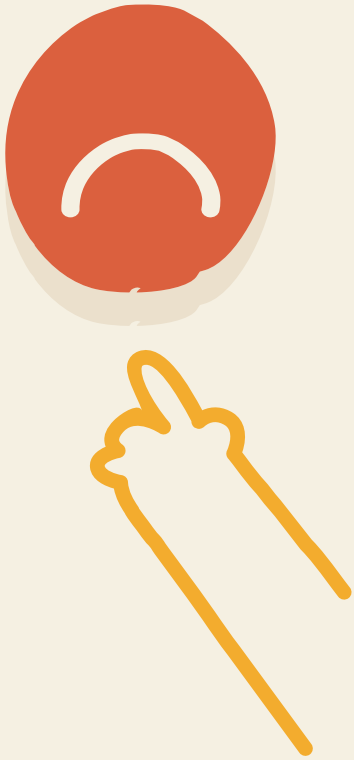


Table 4.1: The following Table shows **key services/professionals involved in mental healthcare**, their professional standards and points to note.

Service / Professional	Professional Standards	Points to Note
Medical Doctors (GP/ Psychiatrist)	Law: The Medical Practitioners Act, 2007 Code of Conduct: The Guide to Professional Conduct and Ethics for Registered Medical Professionals, 8th Edition.	The Code contains 3 'pillars of professionalism' - partnership, practice and performance - from which other rules flow.
Paramedics/ Ambulance Staff	Pre-Hospital Emergency Care Council Code of Professional Conduct & Ethics	Paramedics must uphold 5 key principles: ▸ uphold and maintain a duty of care to patients and public ▸ seek consent of patients ▸ maintain high standards of professional accountability ▸ engage co-operatively with team/colleagues ▸ maintain confidentiality.
A&E / Hospital	Guidance: HIQA Guidance on a Human Rights-based Approach in Health and Social Care Services (2019) HIQA National Standards for Adult Safeguarding (2019) HSE National Consent Policy (2022)	
Approved Centres (public)	As for A & E / hospital above and the Mental Health Act 2001 (Approved Centre) Regulations (Statutory Instrument No. 551/2006)	
Nurses	Health and Social Care Professionals Act 2005. Nurses and Midwives Act 2011. The Code of Professional Conduct and Ethics for Registered Nurses and Registered Midwives.	The Code supports 5 principles from which rules flow. They are respect for you, professional responsibility and accountability, quality of practice, trust and confidentiality and collaboration with others (meaning teamwork with colleagues)

Step 3: Use the Correct Channel & Complain in Time

Complaints Table 4.2: The following Table shows **key services/professionals involved in mental healthcare**, regulators, links to complaint forms and flags including time limits.

Service / Professional	Who to Complain to	Time Limits & Flags
GP/ Psychiatrist	The doctor directly and/or if the complaint is serious, the Medical Council. Find out more here.	No time limit.[2] The Medical Council discloses complaint forms and other personal data to the doctor(s) concerned. There is a link to guidance on this point on the complaint form. If your case becomes a fitness to practise inquiry, inquiries are usually held in public. You can apply for a private hearing.
Paramedics/ Ambulance Staff	The National Ambulance Service of Ireland receives complaints via local complaints manager. Find out more here. The Pre-Hospital Emergency Care Council (PHECC) receives complaints about breaches of the professional Code. Find out more here.	The Code (see Table above) apples to PHECC registered pre-hospital emergency care practitioners. Making a complaint means your name and the complaint form is shared with the professional you are complaining about.
A&E / Public Hospital	HSE 'Your Service Your Say'. Find out more here.	Up to **12 months** after the date on which the matter which is the subject of the feedback occurred or became known (the Health Act, 2004)
Approved Centre (public)	The Approved Centre and then the HSE 'Your Service Your Say' (as above)	As for A & E / public hospital above.
Approved Centre (private)	The Approved Centre	Ask the private Approved Centre if it has a time limit for complaints.
Nurses	The Nursing and Midwifery Board of Ireland. Find out more here.	No time limit but it is advised to complain as soon as possible.[3] A possible outcome of complaining is an inquiry. These are usually public. You can apply for a private hearing.

2 https://www.healthcomplaints.ie/specific-complaints-procedures/medical-council/
3 https://www.nmbi.ie/nmbi/media/NMBI/Publications/Making-a-Complaint.pdf?ext=.pdf

As regards **other services/professionals**, we recommend that you check the internet for regulatory and complaints bodies. Such services and professionals would include:

- An Garda Siochána
- Barristers
- Counsellors and Psychotherapists
- Occupational Therapists
- Pharmacists
- Psychologists
- Social workers
- Solicitors

Step 4: Find the Right Words

When making a complaint, we recommend you clearly explain key facts, set out rules which apply and state what outcome you would like.

For healthcare complaints, the resource hub healthcomplaints.ie provides a series of useful template letters. You can find these at: https://www.healthcomplaints.ie/

Template Complaint:
Below, we show the text of a general complaint. This may help if you are writing to a professional or service. You could also use it to help with the body of your complaint when filling out a complaint form.

RE: [Insert a title here, for example 'Complaint About Professional Standards']

Dear [insert name here],

I wish to make a complaint about the service I received from you. As per my contemporaneous notes, on the **[insert date]** at approximately **[insert time**], at **[insert place], [briefly explain the facts of what happened].**

Also present were [insert names of supporters/ witnesses]. I clearly remember [insert a sentence or two summarising the experience].

I understand that your service/ members of your organisation must adhere to the **[insert title of relevant law or Code here].** In my view (and that of my supporters), my experience fell short of prescribed standards in that: **[list the ways the service did not follow the Code or legal rules]:**

- A
- B
- C

Considering the above, I request **[insert what you would like to happen / the outcome you are seeking.** For example, a written apology, disciplinary action, or a change in policy**].**

In closing, while I feel that your service was unacceptable, I would like to resolve this matter. If you would like to speak with me, please don't hesitate to get in contact.

If I do not hear from you by return within a period of **[insert a time period here, e.g., 14 days**] from the date of this complaint, I will have no option but to consider further steps. I understand the further steps open to me include **[insert next steps including seeking legal advice if this applies].**

Kind regards,

[insert your full name]
[insert your preferred contact details i.e., phone/email/post].

Complaints Checklist

I Have:

- Clarified the facts and gathered evidence ☐
- Identified the rules/standards/law that apply ☐
- Identified the correct channel ☐
- Drafted my complaint ☐
- Considered whether I would like advocacy support ☐

What if I am not Satisfied with the Complaint Outcome?

When you are not satisfied with the result of a complaint against a public service, you may have the right to complain to the Ombudsman. Find out more here.

NOTHING ABOUT ME WITHOUT ME

Advocacy Services

What is Advocacy?

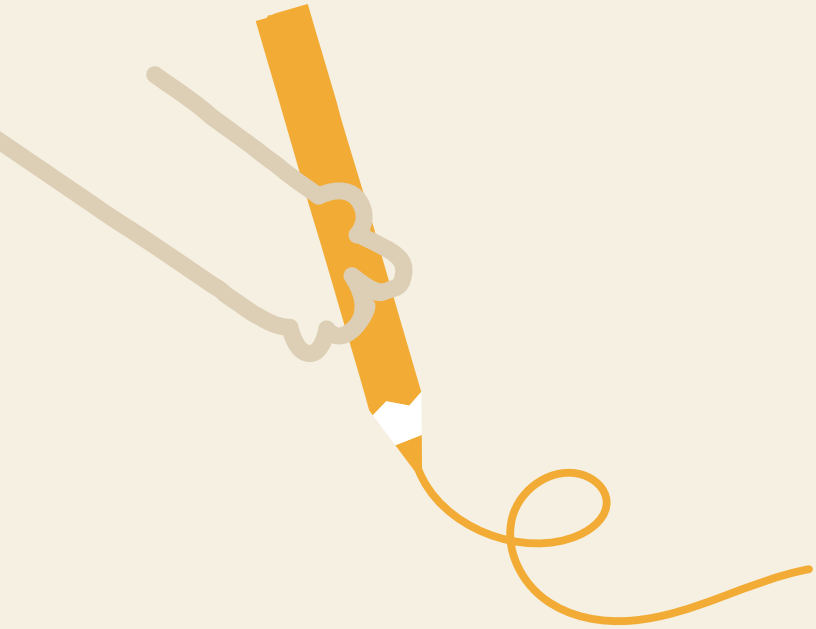
Advocacy can mean different things in different contexts. We use it here to mean sharing your views with a service provider or making a complaint (usually, in writing).

What is Self-Advocacy?

We can all speak up for and represent ourselves; this is called 'self-advocacy'. Self-advocacy can help us to build confidence and to feel resilient in the face of future challenges.

What is an Advocate and How Can They Help?

An advocate is a third party who you ask to speak up for and represent you. Some advocates are peer advocates who have direct personal experience of mental health difficulties.



What Can I Expect from My Advocate?

Some advocacy organisations like the National Advocacy Service have their own Code of Conduct which shows what kind of standards to expect. Generally, good advocacy should be 'person-centred'. This means your advocate should put you first.

Your advocate should:

- Listen to and respect your concerns, wishes and rights;
- Explain rights and options in a way you understand;
- Only write or speak to a third party with your consent.

Your advocate should not:

- Put words in your mouth or do something you didn't ask;
- Share your information without your permission;
- Act in a way that is not in your interest.

Where Can I Find an Advocate?

- **Tribunals:**
  If you are an involuntary patient attending a Tribunal, your automatically appointed solicitor will be your advocate but only in relation to staying in hospital.
- **Legal Advice & Representation:**
  If you need advice and representation outside of your Mental Health Tribunal matter, you may wish to contact a solicitor. The Law Society has a list of solicitors in Ireland, and you can search for firms in your county. See more here.
- **Other Matters:**
  For other complaints and concerns, Ireland does not yet have a comprehensive specialised mental health advocacy service. Below is a list of key services.

Advocacy Services:

- **Citizens' Information.** Advice workers may support you in being your own advocate or help you to work out what kind of advocacy service suits your situation. They are available to support by phone or, if attending a Citizens' Information Centre is workable for you, at drop-in appointments. Citizens' Information Centres may also offer practical help on things like form filling, printing, and internet access. Find out more at https://www.citizensinformation.ie.

- **National Advocacy Service for People with Disabilities** provides an independent, confidential and free, representative advocacy service. The service is funded and supported by the Citizens Information Board. Find out more at www.advocacy.ie.

- **Patient Advocacy Service** is an independent, free and confidential service. It provides information and support to people who want to make a formal complaint through the HSE 'Your Service, Your Say' complaints policy about the care they have experienced in a HSE-funded public acute hospital. Find out more at www.patientadvocacyservice.ie.

- **Sage Advocacy** provides information, support and advocacy for vulnerable adults, older people and healthcare patients. Find out more at www.sageadvocacy.ie.

- **The Irish Advocacy Network CLG** (now trading as **Peer Advocacy in Mental Health**) is an island-wide, independent, mental health organisation led by people with personal experience of mental health challenges. It provides peer advocacy services for persons with mental health difficulties. Peer advocacy means advocates have service-user experience of mental health difficulties and are now in recovery. Find out more at https://www.peeradvocacyinmentalhealth.com/.

- **For younger people, up to the age of 25, there are various youth advocacy services (for example, Jigsaw)** which may be found online.

- **Irish Patients' Association** provides Independent Patient Advocacy. Find out more at www.irishpatients.ie

- **Threshold** is a charity which provides advice and advocacy to prevent homelessness. Find out more at https://www.threshold.ie/

Activism & Raising My Voice

As well as feedback, complaints and advocacy, there are other ways to advance human rights in mental healthcare. If you are feeling unwell, it is important to focus on your own needs. It is not your responsibility as somebody with lived experience of mental health difficulties to improve services. But if you wish to become involved in activism, listed below are some of the main ways to raise your voice for change. Under Article 4(3) of the Convention on the Rights of Person with Disabilities, the government must closely consult with and actively involve persons with disabilities, through their representative organisations, in decision-making.

- **Contribute to Lobbying:** Many charities and non-governmental organisations are **lobbyists. 'Lobbying'** means formally communicating to government on specific topics like mental health to influence policy. Mental Health Reform is one of the main lobbyists for the interests of persons with mental health difficulties. By sharing parts of your experience, such as completing a survey, with a lobbyist, you contribute to their evidence-base. Good evidence can make lobbyists stronger and more persuasive when they communicate with government in the future. Most lobbyists will be happy for information you share to be anonymous.

- **Get Political:** Our politicians are there to help and represent us. You could ask about party positions on mental health when you vote. If there are legal, policy or service changes you'd like to see, you may wish to tell political representatives. The full list of T.D.s and Senators' contact details is available on the Oireachtas website, here. The people of Ireland directly elect the members of Dáil Éireann (who are called Deputies or TDs). You can find out who your local TD is on www.oireachtas.ie, or on www.whoismytd.com. For more guidance, MHR has created a 2-page guide on how to contact your TD about mental health. Spunout has created an article on how to write to your TD.

- **Take Part in Future Public Consultations:** When a government department is reviewing law, it usually starts by a public consultation. This means asking the public what they think about the direction they are taking. As the law is about to be changed, a public consultation is unlikely in the near future. However, as the years go by, there may be more. It's easy to miss when a public consultation is happening. For this reason, it can be helpful to join a lobbyist mailing group for updates or follow the Department of Health on social media.

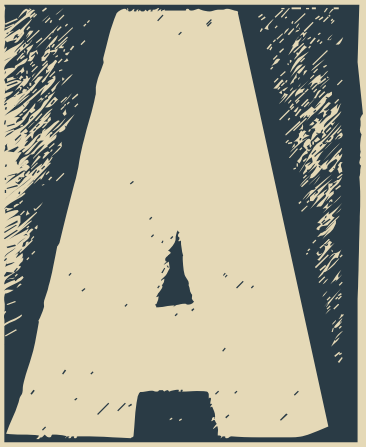
- **Engage with Media:** engaging with media can help to:

  1. Raise Awareness
  Highlighting an issue can help inform public opinion and put pressure on public services or government to make improvements. If there's an aspect of mental health law, policy or services you wish to raise awareness about, you could contact local or national media outlets. It's important to let any media outlet know if you wish to be anonymous.

  2. Improve Media Standards
  The stigma associated with mental health difficulties has been linked to how the media portrays mental health difficulties. You can flag offensive content by contacting the media outlet directly. You can also report content to The Broadcasting Authority of Ireland (BAI) (for Irish television and radio broadcasts) or The Press Council (for news publications). For further information and support in making a complaint like this, refer to Citizen's Information.

- **Become an Activist:** activism is taking an action for social change. Examples include:

  - Taking part in a march or demonstration;
  - Organising or signing a petition;
  - Organising an event.



APPENDIX

APPENDIX - OTHER SOURCES OF INFORMATION

This Toolkit merely summarises some of the main issues which may arise for you regarding the Mental Health Act. For more detailed information, please see the sources listed here:

The Mental Health Acts 2001-2018

The Approved Centres Regulations 2006

Mental Health Commission material:

- Statutory Forms and Notifications
- Rules
- Codes of Practice
- National Standards
- Guidance Documents
- Judgement Support Framework
- Quality Framework for Mental Health Services
- Regulation
- Mental Health Tribunals
- Know Your Rights: A guide for involuntary patients receiving mental health treatment
- Young People: The Headspace/ Mental Health Commission Toolkit

Health Service Executive material:

- National Consent Policy
- Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures

Mental Health Reform material:

- Short Guide to the UN Convention on the Rights of Persons with Disabilities

Irish Hospice Foundation material:

- Resources for 'Think Ahead' - planning for a time when you might not be able to speak for yourself because of loss of capacity through illness or accident.

Mental Health **Reform**
Promoting Improved Mental Health Services

ABOUT MENTAL HEALTH REFORM

Mental Health Reform (MHR) is Ireland's leading national coalition on mental health. Our vision is of an Ireland where everyone can access the support they need in their community, to achieve their best possible mental health. In line with this vision, we drive the progressive reform of mental health services and supports, through coordination and policy development, research and innovation, accountability and collective advocacy. With over 80 member organisations and thousands of individual supporters, Mental Health Reform provides a unified voice to Government, its agencies, the Oireachtas and the general public on mental health issues.

MENTAL HEALTH ACT 2001 TOOLKIT

Mental Health Reform

UCC
University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

IRISH RESEARCH COUNCIL
An Chomhairle um Thaighde in Éirinn