

# **Complaining about the use of the Mental Health Act**

**Policy (October 2012)**

## About the Care Quality Commission

The Care Quality Commission (CQC) is the independent regulator of health care and adult social care services in England. We also protect the interests of people whose rights are restricted under the Mental Health Act.

We make sure that the care provided by hospitals, dentists, ambulances, care homes and home-care agencies meets standards of quality and safety.

We put the views, experiences, health and wellbeing of people who use services at the centre of our work, and we have a range of powers we can use to take action if people are getting poor care.

## Our role in complaints about the use of the Mental Health Act

The Mental Health Act 1983 gives CQC the power to investigate certain complaints. It states that we can look into:

“the exercise of powers or discharge of duties, in respect of people who are or were subject to the restrictions of the Mental Health Act.”

## Complaints we can deal with

Our powers under the Mental Health Act mean that we can **only** look into complaints from, or about, people who are, or have been:

- Detained in hospital.
- Subject to a Community Treatment Order.
- Subject to guardianship.

If you ask us to investigate a complaint, we will usually ask you to complain first to the managers of your NHS or private hospital (the service provider). If you need us to, we can help you, or tell you who else could help you do this. Our job is to ensure that the complaint has been dealt with justly and fairly. This might mean that we agree with the way the complaint was dealt with, even if you do not accept the outcome.

The types of complaints we might deal with include:

- Concerns that an assessment and decisions about someone's detention were not carried out in line with the Mental Health Act, or the Code of Practice that supports it.
- Not being given information about your rights under the Mental Health Act.
- Not being involved in decisions about your care.
- Not being able to have approved leave.
- The use of secluding people from others and restraining them.
- Arrangements for discharging people from hospital.

## Complaints we cannot deal with

Our powers under the Mental Health Act are discretionary – this means that we can decide whether or not we will investigate an individual complaint. There are also areas that our powers do not cover. However, we will always read and consider every complaint we receive so that we decide fairly whether or not to investigate.

If we decide not to investigate further, we will write to you and tell you why.

The types of complaints we will **not** look into include:

- Those from 'informal' patients – those who are not detained under the Mental Health Act.
- If the events that are being complained about finished happening over a year ago.
- When the complaint is already being investigated by someone else, such as a solicitor or the police, or if the matters described in the complaint are already the subject of legal proceedings. In some cases, we might look at a complaint when any such investigations or proceedings have finished.
- Requests for people to be discharged from hospital or from detention.
- Those about treatment that a person does not like or want, but is allowed by the law. For example, 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.

- Complaints that we think would be better dealt with by another organisation – for example a professional body that regulates clinical professional standards of conduct.
- Requests to require service providers to give people access to their medical records.

## **Who can make a complaint under the Mental Health Act?**

The following people can complain to us (they are described as ‘relevant patients’ in the Mental Health Act). Anyone who is, or has been:

- Detained (or liable to be detained<sup>1</sup>) in hospital.
- Subject to a Community Treatment Order.
- Subject to guardianship.

A relevant patient, carer, family member or friend can ask an advocate or solicitor to make a complaint on their behalf. We will always ask permission from the relevant patient before we give information about them to an advocate or solicitor.

## **How we will deal with your complaints**

When we receive a complaint, our first step is to decide whether it is a complaint that we can help with.

If we cannot help, we will tell you why not and whether anyone else might be able to help you. If we can look into it, we will write to tell you what will happen next. In either case, we aim to send our first reply within three working days.

If we decide we can help, there are a number of things we might do:

- We will usually ask your service provider for a copy of the written response they gave you so that we can review it. We allow 10 working days to receive this. If they have not responded to you so far, or you

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<sup>1</sup> ‘Liable to be detained’ includes detained patients on leave of absence from hospital.

haven't yet complained to them, we will tell you how we can help with that.

- If we are concerned for people's safety, or your complaint contains allegations of abuse, we will follow our standard procedures to alert your local authority's safeguarding team.
- We may share the information in your complaint with the local CQC compliance team, so they can consider it as part of their checks to see if your service provider is meeting standards of quality and safety.
- We may ask one of our Mental Health Act reviewers to review the issues when they next visit your service provider.
- We will add the information you share with us in your complaint to the knowledge we already have about the service provider to help us to make our judgements and target our work.

Once we fully understand your complaint – what has happened so far, and what you would like to see happen next – we aim to write to you within 25 working days. We will tell you everything we have done, or plan to do, to follow up your concerns. If we cannot reply with a full answer within that time, we will tell you about the delay and give you an update.

## What you can expect from us

If you ask us to help you with your complaint, we will:

- Be polite and helpful.
- Deal with your complaint fairly and efficiently.
- Tell you how we are getting on with your complaint.
- Try to help you find the right organisation to talk to if we cannot deal with your complaint.

## Recording complaints

We keep a record of all the complaints we receive so that we can:

- Monitor the types of problems people have and whether there are themes that we might want to look into when our Mental Health Act reviewers visit service providers.
- Work out the best ways to sort problems out.
- Look at how long we are taking to deal with them.

## Your feedback

We are always looking at ways to improve our complaints activity, and we may include a survey with our letter of response. The survey comes with a prepaid envelope so that you can fill it in and return it to us free of charge, telling us how you think we dealt with your concerns.

We may use this information in our Monitoring the Mental Health Act annual reports, but we always make sure that individuals who send their comments to us cannot be identified.

We may also ask members of our Service User Reference Panel, who help us in our work, to comment on the replies we send. Again, these are always made anonymous first.

## Useful contacts

### **Parliamentary and Health Service Ombudsman**

(who consider complaints that government departments, a range of other public bodies in the UK, and the NHS in England, have not acted properly or fairly or have provided a poor service)

**Millbank Tower**

**Millbank**

**London**

**SW1P 4QP**

Phone: **0345 015 4033**

Email: **phso.enquiries@**

**ombudsman.org.uk**

Website: **www.ombudsman.org.uk**

### **Information Commissioner's Office**

(who help people find out what personal information is held about them, and access information from a public body)

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**

Phone: **0303 123 1113**

Email: **casework@ico.org.uk**

Website: **https://ico.org.uk/**

### **Local Government Ombudsman**

(who look at complaints about councils and some other authorities and organisations, including adult social care providers, such as care homes and home-care providers)

**PO Box 4771**

**Coventry**

**CV4 0EH**

Phone: **0300 061 0614**

Fax: **024 7682 0001**

Website: **www.lgo.org.uk**

### **Department of Health**

(for information about the government's health and social care policies)

**Customer Service Centre**

**Richmond House**

**79 Whitehall**

**London**

**SW1A 2NS**

Phone: **020 7210 4850**

Website: **www.dh.gov.uk**

## **How to contact us**

Call us on **03000 616161** and press '1' to speak to the mental health team.

Write to us at:

**CQC Mental Health Act**

**Citygate**

**Gallowgate**

**Newcastle**

**NE1 4PA**

Email us at

**enquiries@cqc.org.uk**

Other CQC publications (available at **www.cqc.org.uk**) that you might find useful include:

- How to complain about a health care or social care service
- How we support the rights and interests of people who are detained in hospital
- How we support the rights and interests of people on community treatment orders (CTOs)
- Electro-convulsive therapy (ECT) – Your rights about consent to treatment