

advocacy
focus



Conditional Discharge

Your Rights

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What is a conditional discharge?

After you have been in hospital as a restricted patient on a S37/41 hospital order, you can be given conditional discharge from hospital. A conditional discharge means you no longer need to stay in hospital but there are rules called conditions you are expected to follow.

If you were discharged by the Secretary of State, the conditions that you are expected to follow will be listed on a document called a warrant which should have been given to you. If you were discharged by the Tribunal, the conditions will be in their decision which you can have a copy of.

The conditions on your discharge will be unique to you. They usually include conditions about where you live and how often you need to meet with the medical and social work staff involved in supporting you. You may also have conditions about work or volunteering, people you may not be allowed to have contact with or places which you must not go to.

It is important that you understand these conditions so that you know what you are expected to do and not do. You should ask your responsible clinician, social supervisor, or independent advocate if you need any help understanding the conditions.

You are encouraged to discuss any concerns or significant changes as soon as possible with your social supervisor. For example, if you want to move to a new house, start a new job or go on holiday outside of England or Wales. Your conditions can only be changed by the Secretary of State or the Tribunal.

How long does a conditional discharge last?

If you are conditionally discharged, your conditional discharge is not time limited. This means the conditions will stay in place unless you are successful in being absolutely discharged (see section on absolute discharge below).

People who might be involved

Clinical Supervisor:

You will have a clinical supervisor who is usually also your responsible clinician. This is usually an approved clinician who is also a consultant in their profession such as doctors, nurses, psychologists, or occupational therapists and who is responsible for your mental health treatment. Often the clinical supervisor will ask other health professionals to do some of the supervision visits with you.

Social Supervisor:

You will have a social supervisor, usually a social worker. In addition to their duty to protect the public, it is their job to support your re-integration back into the community from hospital, especially if you have been in hospital for a long time.

Care Coordinator:

You may have a care coordinator, such as a mental health or learning disability nurse, who supports you with your treatment in the community and arranges Care Programme Approach (CPA) and Multi-Disciplinary (MDT) meetings.

Independent Mental Health Advocate (IMHA):

You are entitled to free support from an independent advocate who is specially trained in the Mental Health Act. They are independent and do not work for social services, the NHS, the Ministry of Justice or Probation.

Your IMHA can help you to:

- understand your conditional discharge;
- raise any concerns you may have;
- support you with any important meetings you may have
- make complaints.

Your IMHA does not:

- set the rules of your discharge;
- decide if you have broken rules;
- tell you what to do;
- give you advice about things like whether you should take medication or apply for a Tribunal.

Solicitor:

You are entitled to a solicitor free of charge to help you apply to vary any conditions or apply for absolute discharge. You can get free legal advice from a solicitor if you are unsure about whether to apply for a Tribunal. You can look for a solicitor trained in the Mental Health Act on the Law Society website (www.lawsociety.org.uk/career-advice/individual-accreditations/mental-health-accreditation) or by calling the Law Society on 020 7320 5650 (Monday to Friday from 09:00 to 17:00 charged at local call rates).

An IMHA can support you to contact a suitably qualified solicitor in your local area if you need help with this.

Friends and Family:

Friends and family do not have any legal rights for conditionally discharged patients; however, you may wish to have friends and family supporting you with your conditional discharge. Friends and family can attend meetings and appointments to support you, including Tribunals, if you wish. Your responsible clinician and social supervisor may wish to speak with your friends and family to find out more about how you are managing following your discharge from hospital, they would need your consent to do so.

Care and support staff:

You may live in residential care, supported accommodation, or receive care and support in your own home. Your responsible clinician and social supervisor may speak with your care and support staff to see how you are managing following your discharge. If you think you need more support with day to day tasks, you can talk to your social supervisor about this.

Secretary of State for Justice/Ministry of Justice (MOJ):

The MOJ has to approve some things like whether any of your conditions can be changed and whether you should be recalled back to hospital. The decisions will be made by people working in MOJ called case managers. You can also apply to them to be absolutely discharged (as well as the Tribunal). Case managers also look at the reports sent in by your responsible clinician and social supervisor to see how well you are doing and if there are any problems with your health that may make you riskier to other people.

Rights

What rights do I have?

You should be given information about your conditional discharge and a copy of your discharge warrant by the Secretary of State. If you were discharged by the Tribunal, you will be given a copy of their decision.

You can have the support of an IMHA free of charge.

You can apply to a Tribunal to vary a condition or to request an absolute discharge. You can apply to the Tribunal once between 12 - 24 months after your conditional discharge. You can re-apply to the Tribunal every two years after that.

You can also ask the Ministry of Justice to vary conditions.

You can have a solicitor free of charge to help you with applying to the Tribunal.

You can apply directly to the Secretary of State for Justice for an absolute discharge. There are no limits on timings for this. The Secretary of State will seek the views from your care team and others involved. There is a possibility that views from victims are gathered if you are seeking condition changes.

You can make a complaint if you are unhappy with your care and/or treatment or a decision made by the Secretary of State.



Meetings and reports

Clinical and social supervision:

You may have a condition that tells you how often you need to meet with your social supervisor and anyone else involved in your care and treatment. These appointments are made with you directly and it is important that you attend.

Care Programme Approach (CPA) meetings:

CPA meetings discuss your care, treatment, and discharge plans with you directly, and also review your needs and the plan that is currently in place for meeting your needs. Your responsible clinician and social supervisor would attend this meeting along with other people involved in your care and treatment. You are entitled to have your family, friends and an IMHA attend the meeting if you would like their support. Care and support staff who help you with day to day tasks may also attend these meetings.

Reports:

Your responsible clinician and social supervisor need to send regular reports to the Ministry of Justice. The reports give information on your progress in the community, including feedback on your mental health and whether you are meeting the conditions of your discharge. These reports are usually completed every 3 months.

Recall

Your clinical or social supervisor can ask the Ministry of Justice to return you to hospital for treatment. This is called being recalled to hospital. Your clinical or social supervisor might ask for recall if they think you are unwell and need treatment in hospital. You can also be recalled if the clinical and social supervisor think you are an increased risk to others, including concerns that you may be at higher risk of committing a crime that would harm someone else.

Breaching a condition will not automatically lead to recall. But your clinical and social supervisor may ask the Ministry of Justice to recall you to hospital. This is more likely to happen if the people supervising you are concerned that the breach of conditions is happening because you are becoming unwell; or they are concerned that you are more likely to commit a crime that harms someone else as a result of breaching your conditions. However, the Secretary of State may not recall if you voluntarily go into hospital, or agree to take additional medications, depending on the risks and likely length of time in hospital.

You should be told about the reasons for recall at the time the recall happens unless there are exceptional circumstances. You should always be told the reasons for recall within 72 hours of your return to hospital.

If you are recalled, your case must be referred to the Tribunal within one month of your return to hospital. You would be entitled to free help from a solicitor in this Tribunal. If you are not discharged by this Tribunal, or by the Secretary of State for Justice, then you will remain detained in hospital under the terms of the original s37/41 hospital order as a restricted patient. This will have the same restrictions around your management in hospital that you had originally.

Absolute Discharge

If you are absolutely discharged, you do not have any conditions that you are expected to follow. Any contact you have with the mental health team is voluntary and you cannot be recalled to hospital. If there are concerns about your mental health after absolute discharge, you would need to have a new assessment under the Mental Health Act.

You can apply to the Mental Health Tribunal or the Ministry of Justice for absolute discharge. You can apply for a Tribunal once within 12 - 24 months after your conditional discharge and again every two years after that. However, there are no limits on applying to the Secretary of State.

The Mental Health Tribunal

The Mental Health Tribunal is a special court that hears cases for people who are in hospital or are discharged with conditions under the Mental Health Act. The Tribunal can hear cases from conditionally discharged patients who want to change conditions of their discharge or wish to ask for absolute discharge. You can apply to the Mental Health Tribunal once within 12 - 24 months after discharge and again every two years.

Currently, only you can apply to the Tribunal for absolute discharge. There is a process for other parties to request that the Secretary of State refers to the Mental Health Tribunal. This is called a discretionary referral under Section 71(1).

You are entitled to a solicitor to help you apply for a Tribunal and to represent you in the Tribunal. You do not have to pay for this solicitor.

Your care team, including your responsible clinician and social supervisor will need to provide reports to the Tribunal about your progress in the community. You will be able to read these reports before the meeting.

During the Tribunal, a panel of independent professionals will ask the people involved in your care questions. Your solicitor can also question professionals. You will have the chance to explain your views and wishes to the panel. This can be done through your solicitor or on your own. You can ask the other people to leave the room if you want them to.

You are entitled to have the support of family, friends and/or an IMHA at the Tribunal.

Will the Tribunal grant me an absolute discharge?

The Mental Health Act sets out the rules for Tribunals when deciding whether to grant an absolute discharge or not, it includes matters such as:

- you do not need to be detained in hospital for treatment;
- if your treatment in the community ended, there would not be a risk to yourself or other people;
- you will not need to be recalled to hospital in future for further treatment.

For absolute discharge, there are certain things the Tribunal panel will look at. This includes:

- what happened when you offended;
- how likely they think you are to commit a crime in the future;
- if they think you are likely to commit a crime in the future, how much harm it may do to another person;
- how likely they think you are to become unwell in the future;
- whether they believe you may need to be recalled to hospital for treatment in the future.

Your solicitor can give you more specific information about your case. You do not need to pay for a solicitor to help you with a Tribunal. An IMHA can support you to find a solicitor if you need help with this.

When will the Secretary of State grant an absolute discharge?

The Secretary of State does not have the same constraints as a Tribunal in their decision making for applications for absolute discharge, so they will grant an absolute discharge 'if they think fit'. They will look at the same information as the Tribunal and are also likely to think about the kinds of decisions that Tribunals have made for people in similar circumstances. They will also consider their own risk assessment and other information on file from the reports submitted by your clinical and social supervisors. They may also request additional information from the clinical and social supervisor or others to help them make their decision.

Section 117 after-care

A person who is conditionally discharged from hospital is entitled to Section 117 (S117) after-care. This means that any support and treatment required for your mental health is free while you are living in the community. The goal of S117 after-care is to give you the right amount of support to stay well enough to continue living in the community.

Examples of things that may be part of an after-care package include:

Care and/or support:

If you are living in your own home, any care and support needed at home for your mental health would be covered by S117 after-care. This can include services for social and cultural needs, social care, and employment services.

Medication:

Any prescriptions for your mental health should be free under S117, even if you pay for prescriptions for any physical health needs.

Accommodation:

This is not usually covered by S117 so the cost of renting, council accommodation, or buying your own home would not be included. Sometimes people's mental disorder requires specialist accommodation which might be covered by S117.

You may be entitled to receive direct payments for your care. This means that instead of the services providing support being paid directly, you or someone who helps you with your finances are given the money to pay for services yourself. Your social supervisor can explain more about this and see if you would qualify for direct payments.

S117 lasts for as long as you need the services in place to support you to stay well enough to continue living in the community. After-care package should be regularly reviewed by the professionals, this may happen as part of the Care Programme Approach (CPA). Friends, family and/or an IMHA can support you during S117 after-care reviews.

Other information

You may be subject to other orders and/or restrictions along with your conditional discharge. You can ask your social supervisor if you want to know more information about these.

Deprivation of Liberty - CoPDoL and DoLS

If you lack capacity to choose where you live and you receive constant supervision, you may be deprived of your liberty.

If this is the case, there will be some rules in place to make sure you are looked after properly. These are safeguards for you and can be called a DoLS or CoPDoL. For example, if you go outside, you may have to have someone with you.

One of the rules of the DoLS is that you have a representative. This might be a friend, family member, or Independent Advocate. They may be called a rule 1.2 Representative or Relevant Person's Representative. If you have any questions or problems with your DoLS and/or where you live, your representative can support you with this.

Self-help resources

If you want to learn how to be your own best advocate, there are a number of free online recourses which may assist you. These include:

Advocacy Focus App (www.advocacyfocus.org.uk/services/my-focus-app/)

Advocacy Focus self-help resources (www.advocacyfocus.org.uk/self-advocacy-toolkit/)

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***This document was published in May 2022, please be aware that there may have been legislative changes since publication.**