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Conditional Discharge

A guide for family and friends

Contents

- 3** **What is a conditional discharge?**
- 4** **How long does a conditional discharge last?**
- 4-6** **What conditions the person might have?**
- 6-8** **People who might be involved**
- 9-10** **What rights does a conditionally discharged person have?**
- 10** **What rights do I have as a relative?**
- 11** **How can I offer support?**
- 11** **Meetings and reports for the Ministry of Justice**
- 12-13** **Recall**
- 13** **Absolute discharge**
- 14-15** **The First Tier Tribunal (Mental Health)**
- 15-16** **Will the Tribunal grant an absolute discharge?**
- 16** **Secretary of State and absolute discharge**
- 17** **Section 117 after-care**
- 18** **Other useful information and Signposting**
- 18** **Deprivation of Liberty/Liberty protection safeguards**
- 19** **Acknowledgements**



What is a conditional discharge?

When someone has been in hospital as a restricted patient on a Section 37/41 hospital order, they can be given a conditional discharge from hospital. Section 37 is a Court Order to send someone to hospital for treatment instead of prison. Section 41 refers to restrictions that can be added by the Crown Court for the protection of the public.

Sections 37 and 41 are sometimes called forensic sections. Unlike civil sections (section 2 and 3), where people are detained in hospital by doctors and social workers without court involvement, forensic sections have a dual purpose. These are to provide the right treatment care and support for the person and to ensure protection of the public.

A conditional discharge means the person no longer needs to stay in hospital but there are conditions they are expected to follow. A conditional discharge means they no longer need to stay in hospital but there needs to be an arrangement to be able to return them to hospital and restart the section 37/41. This is called the 'power of recall.' Decisions about recall are made by the Secretary of State, usually following a request by one of the supervisors in the community. A conditional discharge can be made either by the Secretary of State, the Tribunal, or the responsible clinician with the consent of the Secretary of State. Most are made by the Tribunal.

How long does a conditional discharge last?

A conditional discharge is not time limited. This means the conditions will stay in place unless the person is successful in being absolutely discharged (see section on absolute discharge below).

The person will continue to receive Mental Health Act S117 after-care, free of charge, even if they are absolutely discharged for as long as they need it.


What conditions the person might have?

The conditions that your family member or friend is expected to follow will be listed in the Tribunal's decision or on a document called a warrant if they were discharged by the Secretary of State. Details of the conditions should have been given to them when they were conditionally discharged.

The conditions of discharge will be unique to each person. The purpose of the conditions is to provide a framework to reduce the person's risk of committing further offences. Conditions are linked to monitoring the person's mental health, how effective their after-care arrangements are and to protect the public. As clinical and social supervisors are required to monitor and report on the person's mental health and the after-care arrangements, there are usually conditions about engaging with clinical and social supervisors, including allowing these professionals access to their homes. There may also be conditions about taking medication and engaging with other members of the Multi-Disciplinary Team (MDT).

If the person wants to move house, start a new job or go on holiday they are encouraged to notify their clinical and social supervisors as soon as possible, to enable the supervisors to explain any concerns they may have on the person's plans negatively impact their risk and/or mental health.

The clinical and social supervisors will check whether the person is well and is flourishing within their after-care arrangements. They will also review the person's compliance with the conditions and whether the conditions need to remain as they are or be changed. The clinical and social supervisors also need to write regular reports to the Ministry of Justice, no less than three monthly to report on how the person is doing. With the person's consent, the clinical and social supervisor may talk to relatives and friends about how the person is managing now they have been conditionally discharged.



It is expected that the person complies with conditions of the conditional discharge given that these will have been set to maintain positive mental wellbeing and protect the public.

Below is a list of possible conditions. This list is not exhaustive, and your friend or family member may not have some of these conditions listed or they may have others listed instead:

Clinical and social supervision:

- Engage with and meet the clinical team, as directed by the responsible clinician and social supervisor;
- Allow access to their accommodation, as reasonably required by the responsible clinician and social supervisor.

Housing:

- Reside at an address/type of accommodation as directed by the responsible clinician and social supervisor, abide by any rules of the accommodation and obtain the prior agreement of the responsible clinician and social supervisor for any stay of one or more nights at a different address. The Secretary of State also has a clause whereby the Ministry of Justice should be informed of any change of address and informed before moving.

Employment and education:

- Disclose all pending and current employment, whether paid or voluntary, all educational activities and all community activities to the responsible clinician and social supervisor.

Areas:

- Not enter the area(s) of general location as delineated by the zone(s) marked on the map(s) supplied by (specify the name of person/organisation producing map), save as agreed in advance by the responsible clinician and social supervisor.

Medication:

- Comply with medication and other medical treatment (and with monitoring as to medication levels) including... (specify here any particular non-pharmacological medical treatment), as directed by the responsible clinician and social supervisor.

Contact

- To not seek to contact directly or indirectly (specify names);
- Disclose to the responsible clinician and social supervisor any developing intimate relationship with any other person;
- Not to have contact with children or young people under the age of 18 except during an ordinary transaction (such as a purchase in a shop);
- Not to have contact with vulnerable adults except during an ordinary transaction (such as a purchase in a shop);
- All contact with (specific names or stated group of the population) to be supervised by a responsible adult.

Holidays

- Not leave England or Wales without consulting the responsible clinician and social supervisor (only England and Wales are under the jurisdiction of the Mental Health Act).

Other

- Abstain from alcohol (save as directed by the responsible clinician and social supervisor);
- Abstain from illicit drugs and 'legal-highs';
- Submit to random drugs and alcohol testing, as directed by the responsible clinician and social supervisor;
- Only to purchase technology with the knowledge and agreement of the responsible clinician and social supervisor;
- Only access the internet with full supervision of a staff member;
- Allow searches of the property for (name the specific items or group of items) as directed by the responsible clinician and social supervisor.

People who might be involved

Clinical Supervisor:

Your family/friend will have a clinical supervisor who is usually also the responsible clinician. This is usually either a doctor, nurse or psychologist who is responsible for their mental health treatment. Often their clinical supervisor will ask other health professionals to do some of the supervision visits and it is their job to support your family/friend to re-integrate back into the community from hospital, especially if they have been in hospital for a long time.

Social Supervisor:

Your family/friend 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 family/friend to re-integrate back into the community from hospital, especially if they have been in hospital for a long time.

Care Coordinator:

Your family/friend may have a care coordinator, such as a mental health or learning disability nurse, who supports them with their treatment in the community and arranges Care Programme Approach (CPA) and Multi-Disciplinary (MDT) meetings.

Independent Mental Health Advocate (IMHA):

Your family/friend is 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. An IMHA can help them to:

- understand their conditional discharge;
- raise any concerns they may have;
- support them with any important meetings they may have;
- make complaints.

Their IMHA does not:

- set the conditions of their discharge;
- decide if they have breached the conditions;
- tell them what to do;
- give them advice about things like whether they should take medication or apply for a Tribunal.

Solicitor:

Your family/friend is entitled to a solicitor free of charge to help them apply to vary any conditions or apply for an absolute discharge. They can get free legal advice from a solicitor if they are unsure about whether to apply for a Tribunal. They 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 your family/friend to contact a suitably qualified solicitor in their local area if they need help with this. Sometimes they might want to keep the same solicitor who represented them at Tribunals in hospital.

If they are also subject to a DoLS or an authorisation from the Court of Protection they may wish to have a solicitor or solicitor's firm that can support them under both the Mental Health Act and the Mental Capacity Act. (www.lawsociety.org.uk/career-advice/individual-accreditations/mental-health-accreditation the list of current accredited solicitors is at the bottom of this page)

Friends and family:

Friends and family do not have any legal rights for conditionally discharged patients; however, the person may wish to have friends and family supporting them with their conditional discharge. Friends and family can attend meetings and appointments to support a family member or friend, including Tribunals if the person wishes. Their responsible clinician and social supervisor may wish to speak with friends and family to find out more about how the person is managing following their discharge from hospital. The relevant professional would need the consent of your family/friend to do so, or they may involve you if the person is unable to decide themselves.

Care and support staff:

Your family/friend may live in residential care, supported accommodation, or receive care and support in their own home. Their responsible clinician and social supervisor may speak with their care and support staff to see how they are managing following their discharge. If your family/friend thinks they need more support with day-to-day tasks, they can talk to their social supervisor about this.

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

The MOJ must approve some things like whether any of the person's conditions can be changed and whether they should be recalled back to hospital. The decisions will be made by people working in MOJ called Case Managers. The person can also apply to the Secretary of State to be absolutely discharged (as well as the Tribunal). Case Managers also look at the reports sent in by the responsible clinician and social supervisor to see how well the person is doing and if there any problems with their health which may make the person a higher risk to other people.

What rights does a conditionally discharged person have?


The person should be given information about their conditional discharge and a copy of their Tribunal decision or discharge warrant, or conditions set by the Tribunal.

The person can have the support of an IMHA free of charge.

The person, or other people involved, can ask the Secretary of State to vary a condition. Anyone can request a variation of the conditions by writing to the mental health casework section (MHCS) at the Ministry of Justice, although usually, it is the responsible clinician that requests this on behalf of others where they agree with the variation.

The person, their representative (such as an IMHA or solicitor) or responsible clinician can request an absolute discharge by writing to the MHCS at the Ministry of Justice to make a request directly to the Secretary of State for Justice for an absolute discharge, at any time. The Secretary of State must consider this, however, it is more likely to be successful when your family/friend has been stable in the community. A solicitor can give further advice specific to your friend or family member's circumstance.

The person can apply to the Tribunal for an absolute discharge (see sections below on absolute discharge and Tribunal).



The person can make a complaint if they are unhappy with their care and/or treatment. Complaints would be made to the person undertaking that element of the care and treatment, or to the organisation that person works for. There is also a complaints procedure for decisions made by the Secretary of State. The correspondence address can be found here:

www.gov.uk/government/organisations/ministry-of-justice/about/complaints-procedure

What rights do I have as a relative?

There are no formal rights for relatives or next of kin in relation to forensic sections under the Mental Health Act. This includes conditionally discharged patients.

Despite not having formal rights, the guiding principles of the Mental Health Act require patients to be fully involved in decisions about care, support and treatment. The views of families, carers and others, if appropriate, should be fully considered when making decisions. Patients, their families, and carers should be treated with respect and dignity and listened to by professionals. This means you can be fully involved in supporting your friend or family member, if this is something that you both want.

Some decisions require the clinical and social supervisors to also follow the Mental Capacity Act, as well as the Mental Health Act. If you have an authority such as a Lasting Power of Attorney or Court Appointed Deputyship, then your role in decision making will be defined and respected.

If you are an LPA and have questions about this, please refer to www.gov.uk/lasting-power-attorney-duties

How can I offer support?

You should discuss with your friend or family member what may be helpful for them and what is realistic for you. Each situation is different and will be personal to you.

If you are supporting your family member/friend at a meeting, there are several free online resources that may assist you in supporting the person to plan and communicate their views effectively at the meeting:

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

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

If you have caring responsibilities, and would like further support, please refer to your local council's website for further information

Meetings and reports for the Ministry of Justice

Care Programme Approach (CPA) meetings:

Your family/friend may have Care Programme Approach (CPA) meetings. These meetings would discuss their care, treatment and their conditions with them directly, reviewing their needs and the plan that is currently in place for meeting their after-care and other needs. Their responsible clinician and social supervisor would attend this meeting along with other people involved in their care and treatment. Your family/friend are entitled to have their family, friends and an IMHA attend the meeting if they would like their support. Care and support staff who help with day-to-day tasks may also attend these meetings.

Reports:

Your family/friend's responsible clinician and social supervisor need to send regular reports to the Ministry of Justice no less than three monthly. The reports give information on a range of matters related to their progress in the community, including feedback on their mental health and whether they are complying with the conditions of their discharge.

Recall


Your family/friend's clinical and social supervisors can ask the Ministry of Justice to return them to hospital for treatment, this is described as being recalled to hospital. Their clinical and social supervisors might ask for recall if they think that they are mentally unwell and need to be detained for treatment in hospital or if they are an increased risk to themselves or others, including concerns that they may be at higher risk of committing a crime that would harm someone else.

Breaching a condition will not automatically lead to recall but this is more likely to happen if the professionals supervising are concerned that the breach of conditions is happening because the person is becoming unwell, they are concerned that the person is more likely to commit a crime that harms someone else as a result of breaching their conditions, or the person has left the country without informing supervisors. However, the Secretary of State may not issue a recall if the person chooses to voluntarily go into hospital or agree to take additional medications, depending on the risks and likely length of time in hospital.

Your family member or friend should be told about the reasons for recall at the time the recall happens unless there is an exceptional circumstance. This is called a recall warrant which will say which hospital they should go to. They should always be told the reasons for recall within 72 hours of their return to hospital.

If your family/friend is recalled, their case must be referred to the Tribunal within one month of their return to hospital. They would be entitled to free help from a solicitor in this Tribunal. If they are not discharged by this Tribunal, or by the Secretary of State for Justice, then they 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 their management in hospital that they had originally.

The person's length of stay in hospital following recall by warrant will be for a sufficient period to respond to treatment and demonstrate through reports to the Ministry of Justice that they can once again be conditionally discharged. There is no defined period of time that the recall will last for, but their case must be referred to the Tribunal within a month of recall. After the initial Tribunal, they can apply to the Tribunal 6 or 12 months after recall and then once in each 12-month period.



If your family or friend is mentally unwell the responsible clinician may choose to request admission under a civil section of the Mental Health Act (section 2 or 3) or if the person has capacity to decide to arrange an informal admission in order to secure the necessary assessment or treatment for mental disorder in hospital. This would not be considered as a recall. Admission through these routes gives the responsible clinician the ability to discharge your friend or family member from hospital when their assessment or treatment is complete. Your friend or family members rights would be related to the section they are on in hospital, or that of an informal patient. The person remains conditionally discharged throughout this time and can still be recalled into secure hospital on s37/41 if it is deemed appropriate.

Absolute Discharge

If your family/friend is absolutely discharged, they do not have any conditions that they need to follow and there is no power to recall them to hospital. They will continue to be eligible for free after-care under S117 of the Mental Health Act for as long as they need it. Any contact they have with the mental health team is voluntary or for those that lack capacity, in their best interests. If there are concerns about their mental health after absolute discharge, they would need to have a new assessment under the Mental Health Act.

Your family/friend can apply to the Mental Health Tribunal for absolute discharge within 12 – 24 months after being conditionally discharged and, if unsuccessful, again every two years. They can also make a request to the Secretary of State for an absolute discharge at any time but usually the Secretary of State would only consider this after your family/friend has been stable in the community for some years.

They can also apply directly to the Secretary of State through the Mental Health casework section of the Ministry of Justice. There are no limitations on the number of applications that can be made to the Secretary of State. Their contact details are here: <https://www.gov.uk/guidance/noms-mental-health-casework-section-contact-list>

The First Tier Tribunal (Mental Health)

This is usually referred to within health and social care services as the Tribunal or the Mental Health Tribunal. This 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 wish to ask for a condition to be varied or ask for an absolute discharge. Your family or friend can apply to the Mental Health Tribunal once within 12 - 24 months after discharge and again every two years.


Currently, only the person 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). Your family member or friend is entitled to a solicitor to help them apply for a Tribunal and to represent them in the Tribunal. They do not have to pay for this solicitor.

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

The Tribunal panel is made up of a judge, a lay person and a medical person. Only certain Tribunal judges can hear cases related to conditionally discharged people. All Tribunal panel members will be independent of the hospital responsible. For conditionally discharged patients this is the hospital that holds the conditional discharge warrant and is usually within the organisation that the responsible clinician works for. During the Tribunal, the panel will ask the people involved in your family/friend's care questions. The solicitor can also question professionals.

Your family/friend will have the chance to explain their views and wishes to the panel. This can be done through their solicitor or on their own. They can ask the other people to leave the room if they want them to.

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



The responsible clinician's and social circumstances reports must set out any specific circumstances that would suggest a need to make reasonable adjustments to the Tribunal process. You may help your family member or friend pass on any information to the clinical and social supervisors if there are any specific adjustments which may help them.

You can contact a solicitor or advocate if you want further information about this.

Will the Tribunal grant an absolute discharge?

The Mental Health Act says that the Tribunal must grant an absolute discharge if it has not been proven that:

- your family/friend's mental disorder makes it appropriate for them to be liable to be detained in hospital for treatment;
- it is necessary for your family/friend's health or safety or the protection of others that they should receive that treatment;
- appropriate medical treatment is available;
- it is appropriate to have a recall power.

Before granting an absolute discharge, the Tribunal will have to consider whether a conditional discharge is needed (i.e. whether they feel there still needs to be the ability to recall the person to hospital). If you want to know about this and where it came from please see the following case law: *Grey v UK and R (SSHHD) v MHT, re Wilson*. If they feel that absolute discharge should be granted, the Tribunal will need to set out the reasons why this is the case and why a conditional discharge is not needed. They will consider things including:

- what mental disorder your family/friend has, what it was like when they offended, what it is like now and what it may progress to in the future;
- what happened when they offended. They will consider the seriousness of the past offences, who was harmed and how much harm was caused;
- how likely they think they are to commit a crime in future;
- if they think they are likely to commit a crime in the future, how much harm it may do to another person;
- how likely they think they are to become unwell in the future;
- whether they believe your family/friend may need to be recalled to hospital for treatment in the future;
- whether admission under Part 2 of the Mental Health Act (i.e. sections 2 and 3) could instead be used in the future.

It is for your family member or friend to show that they should be absolutely discharged, not upon the clinical and social supervisor to prove that they should not be.

Your family/friend's solicitor can give you more specific information about their case if they consent for the solicitor to speak with you. They do not need to pay for a solicitor to help them with a Tribunal.

Secretary of State and 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'. In practice, the case law is likely to be considered along with the mental health casework section risk assessment and other information held on file from the clinical and social supervisor reports. They may request additional information from the clinical and social supervisor or others to arrive at their decision.

The Secretary of State will normally only grant an absolute discharge in circumstances where it is clear that restrictions are no longer required to ensure the patient's safe management and where the patient no longer requires the provision of recall. There should be no expectation that any conditionally discharged patient will eventually be absolutely discharged.

Section 117 after-care

If your family/friend is conditionally discharged from hospital, they are entitled to Section 117 (S117) after-care. This means that any support and treatment they need for their mental health is free while they are living in the community. The goal of S117 after-care is to give them the right amount of support to stay well enough to continue living in the community.

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

- Care and/or support: if they live in their own home, any care and support they need at home for their mental health would be covered by S117 after-care. This can include services for their social and cultural needs, social care and employment services.
- Medication: any prescriptions they receive for their mental health should be free under S117, even if they pay for prescriptions for their physical health.
- Accommodation: this is not usually covered by S117 so the cost of renting, council accommodation, or buying their own home would not be included. Sometimes people's mental disorder requires specialist accommodation which might be covered by S117.

They may be entitled to receive direct payments for their after-care. This means that instead of the services providing support being paid directly, they or someone who helps them with your finances are given the money to pay for services themselves. If they are interested in finding out more about direct payments, they can ask their social supervisor to see if they qualify.

S117 lasts for as long as they need the services in place to support them to stay well enough to continue living in the community. Their after-care package should be regularly reviewed by the professionals supporting them. This may happen as part of the Care Programme Approach (CPA). You (as family members or friends) and/or an IMHA can support them during S117 after-care reviews.

An IMHA, social supervisor or care coordinator will be able to help them find out more information or answer any questions they have about their after-care package.

Other useful information and Signposting

Your family or friend may be subject to other orders and/or restrictions along with their conditional discharge. It's important that they know which legal frameworks authorise the different parts of the care plan so that they know who to appeal to if they do not agree with it.

In some instances, their legal representative may be able to help them and represent them for free through legal aid.

For anything else, they might have to pay for legal representation to help them.

Their social supervisor should be able to signpost you to websites or provide you with information if you would like further information about any additional restrictions or orders which may be in place.

Deprivation of Liberty/Liberty protection safeguards

If your friend or family member lacks capacity to make decisions about where they live and their care arrangements, and they are under 'continuous supervision and control', they may be deprived of their liberty. If this is the case, there will be some safeguards in place to make sure they are looked after properly. These are safeguards to protect their liberty and provided either by the local authority (if they are in a care home) or the Court of Protection (if they are in any other living situation within the community).

One of the safeguards is that the person will have a representative; this might be a friend, family member, or Independent Advocate. If the person's arrangements are authorised under DoLS (if they are in a care home), the representative is called a Relevant Person's Representative, and if the person's arrangements are authorised by the Court of Protection (if they are not living in a care home but instead are in the community) the person is called a Rule 1.2 Representative. If they have any questions or problems with their safeguards and/or where they live, their representative can support them with this. Their representative may be able to speak with you and answer any questions you may have about this and signpost you to useful information to help you understand more about this.

At the minute, these safeguards are provided by a framework called 'Deprivation of Liberty Safeguards.' This will be replaced by the 'Liberty Protection Safeguards' in the near future.

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