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OCD & 'DETENTION' UNDER THE MENTAL HEALTH ACT 1983

YOUR RIGHTS

MENTAL HEALTH ACT

OCD AND 'DETENTION' UNDER THE MENTAL HEALTH ACT 1983 (AMENDED 2007)

OCD affects 1-2% of the general population and most people living with the condition and manage it well and never enter hospital, either voluntarily or under a section of the Mental Health Act.

There are times however when you may become very unwell and family, friends, colleagues or healthcare professionals might be concerned about you. If this happens, Mental Health Professionals may discuss the idea of going into hospital for a period of time so treatment can be more closely monitored or changed, or that more intensive therapy can be given. Some people feel that they could benefit from this and go as 'Voluntary or informal' patients. This means that they can leave the hospital at anytime and they

can choose whether to take any medications or partake in therapy. Under the Mental Health Act 1983(amended 2007) and the Mental Capacity Act 2005, professionals are encouraged to use the 'least restrictive options' and consequently bringing you into hospital against your will should be a matter of last resort. If it is felt however that you are so unwell that your life or the lives of others are at risk, The Mental Health Act 1983 can be used to 'Detain' or 'Section' you. This can be a very frightening experience, however you should be aware that the moment you are detained you have a number of rights (enshrined by law) that have to be observed. These rights affect such issues as how long you can be detained, who can be consulted about your detention, and how your care will be administered and by whom.

WHAT HAPPENS WHEN I AM DETAINED OR SECTIONED ?

The decision to detain involves a Mental Health Act Assessment, co ordinated by an 'Approved Mental Health Professional' (AMHP). Assessments will be carried out involving at least two medical professionals, plus the AMPH (who could also be a medical professional or who may come from a social care background such as a social worker). It is the AMPH who eventually will make an application for detention or not, depending on the outcomes of the assessments. It is good practice that you are fully consulted and involved in this process.

If a decision is taken to detain you and you do not agree to go into hospital on a voluntary basis, then you can be admitted without your consent. This can be very distressing, but mental health professionals are trained



MENTAL HEALTH PROFESSIONALS MAY DISCUSS THE IDEA OF GOING INTO HOSPITAL FOR A PERIOD OF TIME SO TREATMENT CAN BE MORE CLOSELY MONITORED

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to handle these situations as sensitively as they can, however 'reasonable force' can be used to detain you if necessary and sometimes the police are involved in these procedures.

Once you are detained you have a right to see an 'Independent Mental Health Advocate' (IMHA). The IMHA will give you information and support during your detention. An IMHA is also duty to inform you about your rights, which include having access to a lawyer if you want to dispute your detention.

If you a detained patient, you can be treated and given medications against your will. The person with overall charge of your care whilst you are in hospital is called the 'Responsible Clinician'.(RC). Your doctors and nurses will be charged with making 'best interest' decisions about your care and treatment. They should however continue to involve, inform and consult you in all treatments and follow the five ' Guiding Principles' of the amended Mental Health Act . These principles are clearly set out in the Code of Practice which accompanies the Act. The code makes it clear that there will be occasions were one principle in more important than another and that the principles are not always of equal importance.

The principles are as follows:

■ **The Purpose Principle:** People must try to use the law to help other people with mental health problems to be as well as possible and to prevent harm to other people.

■ **The Least Restriction**

Principle: The patient must have as much freedom as possible, as long as this does not put them or anyone else in danger

■ **The Respect Principle:**

People who make decisions about the patient must respect the different cultural backgrounds and needs of patients. They should not discriminate against them because of their age, race, religion, gender, culture or sexual orientation.

■ **The Participation Principle:**

Patients should be given the opportunity, as far as possible to be involved in all decisions about their own care and treatment.

■ **The 'Effectiveness, Efficiency and Equity' Principle:**

Patients should receive a good and fair service which does not waste money, time or other valuable resources.

WHO CAN BE DETAINED

In 2007 the Mental Health Act's definition of who could be detained/sectioned widened to include anyone who has a 'disorder or disability of the mind'. This remit is pretty big and now includes in that the category of 'personality disorder 'which was not included in the original Act brought out in 1983.

The most important thing at this stage in terms of your rights, is that in order for you to meet the criteria for detention, you must meet the "Appropriate Medical Treatment test" this criteria has changed recently and now there is a requirement that a patient cannot be detained for treatment unless

WHAT IS A SECTION AND ARE THERE DIFFERENT TYPES?

A Section is really a power granted by the state to hold you and to administer care and treatment- however it has to be ' Appropriate' as outlined above.

There are many different types of sections. The ones that are the most common are as follows:

Section 2 is for up to 28 days and this is so you can be assessed as to what you need for your care and treatment

Section 3 is an admission for treatment for up to 6 months

Section 4 is an emergency admission for assessment for up to 72 hours on recommendation of the doctor in charge of treatment.

Section 135 is a court warrant, authorising the police, a doctor and an AMHP to gain entry into a private property and if necessary to remove a person to a place of safety for up to 72 hours.

Section 136 is the police power to remove a person from a public place to a place of safety for up to 72 hours.

Section 117 is an aftercare section that applies once you have left hospital. It specifies that it is the duty of the local health authority and local social services to ensure that appropriate aftercare services are made available to you.

More information about Sections can be found at www.mind.org.uk

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“Appropriate Medical Treatment” is available for the patient’s particular condition. This has particular relevance to OCD as in theory; you couldn’t be detained unless the appropriate treatment was available.

CAN MY FAMILY BE CONSULTED ABOUT MY DETENTION?

The Mental Health Act 1983 (2007) gives a number of rights and responsibilities to what are called ‘The nearest relative’. The nearest relative is not necessarily the next of kin, the Act decides who he or she is but the usual order is as follows:

- Husband or wife or civil partner (including those living together as husband and wife or civil partner for at least 6 months)
- Son or daughter
- Father or mother
- Brother or sister
- Grandparent
- Grandchild
- Uncle or aunt
- Niece or nephew

If there is nobody to consult, then the court can appoint someone to act in this role.

The nearest relative has the right to:

- Be involved in decisions about whether the patient should be admitted to hospital under section
- Object to a decision to admit (they can’t object to a section 2)
- Discharge the patient from detention under section 2 or 3

by giving 72 hours notice to the hospital manager (however the patients psychiatrist can prevent this by issuing a ‘barring notice’ within 72 hours)

- Be involved in aftercare planning after discharge
- Appeal against various aspects of a patient’s treatment.

Under amendment of the Act a patient can now apply to court to displace a nearest relative.

WHAT HAPPENS IF I'M FEELING BETTER AND WANT TO GO BACK HOME ?

Depending on the type of Section you are held under, if you are deemed fit to be discharged, your Section will be revoked or will lapse and you will be able to return home. You may be placed on a Section 117 ‘ Aftercare’ order or you might be subject to a CTO (Community Treatment Order).

SUPERVISED COMMUNITY TREATMENT OR ‘COMMUNITY TREATMENT ORDERS’

This replaces the old notion of ‘supervised discharge’. If you have been detained and it is necessary for your health and safety and for the protection of other people that you continue

to receive treatment, then this treatment can be administered in the community, however if you breach the treatment order you can be recalled into hospital by your ‘ Responsible Clinician’.

The Community Treatment Order (CTO) is made by the ‘Responsible Clinician’ but only with the support of the ‘Approved Mental Health Professional’ (AMHP).

CTO’s can be made for upto six months initially and then renewed for a further six months and then renewed annually. Virtually any condition can be imposed on a patient, however , any condition imposed but be necessary and appropriate for one or more of the following reasons:

- Ensuring the patient receives medical treatment
- Preventing risk of harm to the patient
- Protecting other persons

If you are on a CTO you can request the services of an Independent Mental Health Advocate (IMHA) to support you whilst your order is in place.

USEFUL WEBSITES

Mind www.mind.org.uk
Mental Health Foundation www.mentalhealth.org.uk
IMHA www.goodadvocacypractice.org.uk
Action for Advocacy www.actionforadvocacy.org.uk
Sane www.sane.org.uk



If you would like further information about OCD please contact the OCD Action Helpline on 0845 3906232 or visit www.ocdaction.org.uk

OCD Action takes every care to make sure that information is up to date and accurate, the charity however, does not offer legal advice. Please consult a legal expert if you need specific legal information about your case.