

# Patient Information Leaflet 23

## Mental Health Act 1983

### Patients Admitted to Hospital from the Courts

#### Rights to Appeal

This leaflet provides detailed information on your rights to appeal if you have been admitted to hospital from the Courts. It is suggested that you ask an independent mental health advocate (IMHA) or the person in charge of the ward to assist you in going through this leaflet.

- If you were dealt with by a magistrates' court see Part 1
- If you were dealt with by a Crown Court see Part 2
- For information on Legal Aid see Part 3
- If you are under 17 years at the time the order authorising your admission was made see Part 4.

#### **PART 1**

##### **Patients dealt with by magistrates' courts**

1. If you have been made the subject of a hospital order under section 37 of the Mental Health Act 1983, following a conviction for an offence, you may appeal to the Crown Court. If you pleaded guilty you may appeal only against the hospital order. If you pleaded not guilty you may appeal against conviction or against the hospital order or both.
2. When the Crown Court hears an appeal against conviction, the proceedings take the form of a complete rehearing of the case. The Crown Court may confirm, reverse or vary the decision of the magistrates' court. It may also remit the matter to the Court whose decision is appealed against. If an appeal against conviction has been heard and dismissed, or if the appeal was only against the hospital order, the Crown Court may, if it thinks fit, instead of re-affirming the existing sentence, substitute any other penalty the magistrates could have imposed originally.
3. If the magistrates' court made a hospital order under section 37(3) of the Act without proceeding to conviction you may, if you wish, appeal against the hospital order. On the hearing of an appeal against a hospital order in these circumstances the Crown Court will have the power to rehear the case completely.
4. If you have been convicted by a magistrates' court and committed to the Crown Court for sentence you may appeal to the Crown Court against your conviction.
5. You may conduct your own appeal or you may instruct a solicitor to do so on your behalf, either privately or under legal aid (see paragraph 8 below).

6. The Notice of Appeal must be in writing, and must be signed by you or on your behalf. It must state whether the appeal is against conviction or sentence or both. This Notice must be sent to the Clerk of the magistrates' court which made the hospital order and also to the prosecutor (this will usually be the police). This must be in sufficient time to allow that the Clerk and prosecutor receive the appeal within 21 days (three weeks) of the day on which the decision of the Court was given. If the magistrates' court adjourns sentence after conviction, the time-limit for appealing against conviction runs from the date on which you were dealt with.
7. The Crown Court has, however, power to issue a direction extending the time within which the Notice of Appeal may be given. If you wish the Crown Court to give such a direction you must apply in writing specifying the grounds of the application to the appropriate officer of the Court. If the Court issues a direction you must immediately notify the prosecutor.
8. Legal aid may be granted to you for the preparation and conduct of your appeal if it appears to the court:
  - i. that it is desirable in the interests of justice that legal aid should be granted, and
  - ii. that your means are insufficient to meet the costs of the appeal.

If you wish to apply for legal aid you should do so as soon as possible. You may apply either to the magistrates' court which made the hospital order or to the Crown Court Centre which would hear the appeal. Application may be made either in writing to the Court or orally to the Court on appearance.

## **PART 2**

### **Patients dealt with at a Crown Court**

9. If you are:
  - a. the subject of a hospital order following conviction by the Crown Court; or
  - b. have been found to be under disability (ie unfit to plead) under the Criminal Procedure (Insanity) Act 1964); or
  - c. have been found not guilty by reason of insanity you may appeal to the Court of Appeal (Criminal Division).
10. You may appeal against your conviction or sentence or both. Notice must be given within 28 days of the decision appealed against. The leave of the Court of Appeal is required except in the following cases:
  - i. where the appeal is against conviction and on a point of law alone;
  - ii. where the trial or sentencing judge certifies that the case is fit for appeal.

(This applies to appeals against sentence as well as appeals against conviction).
11. If you are the subject of a hospital order and an order restricting discharge, having been convicted by a magistrates' court and then sentenced by a Crown Court, you have a similar right of appeal within 28 days against the sentence. There is no right of appeal against the sentence in any case in which the Crown Court makes a hospital order without any order restricting discharge in respect of a person convicted by a magistrates' court.
12. On an appeal against a hospital order and/or an order restricting discharge made on conviction, the Court of Appeal may quash the order and pass some other sentence, though not one of greater severity, taking the case as a whole, than that imposed by the Court of Trial. On an appeal against a verdict of not guilty by reason of insanity, the Court of Appeal may acquit you or substitute a verdict of guilty of the offence charged, or any other offence of which the jury could have found you guilty; and

if they substitute such a verdict they will pass sentence in respect of that offence. On an appeal against a finding that the accused was under disability (unfit to plead), the Court of Appeal may, where the question of fitness to be tried was determined later than on arrangement, quash the finding and acquit the appellant. In any other case the court may, on allowing an appeal against a finding of disability, order you to be tried for the offence charged.

13. You must give Notice of Appeal or Notice of Application for leave to appeal on the prescribed form. Copies of the prescribed form may be obtained from:

The Registrar of Criminal Appeals  
Criminal Appeals Office  
Royal Courts of Justice  
Strand  
London WC1A 2LL

Reasoned grounds of appeal must be sent with the notice.

14. If you wish to appeal but do not do so within the period of 28 days mentioned above, you may apply to the Court of Appeal for an extension of time. This application may be made on the prescribed form giving notice of appeal. Grounds of appeal must still be included.
15. You may obtain from the Registrar a copy of any document required for the appeal apart from any transcript of the Crown Court proceedings, the supply of which is at the Registrar's discretion. In either case he may require you to pay the authorised charges.

## **PART 3**

### **Legal Aid**

16. If you apply for legal aid you are normally obliged to submit a statement of means, but a court may waive this requirement if it appears that you are, by reason of your physical or mental condition, incapable of making one. Legal aid may be granted subject to a downpayment being made on account of any contribution which the court may subsequently make. The decision whether to make a contribution order is dependent on your means. It is not dependent upon the outcome of the appeal; an order may be made if it appears to the court that you have the means to pay a contribution towards the costs. If you are under the age of 16, both you and an appropriate contributor (mother, father or putative father) may be required to complete a statement of means and to make a contribution towards the cost of the appeal. Persons financially responsible for applicants under the age of 18, but who are not appropriate contributors, may be required to complete a statement of means, and may have their resources taken into account for the purpose of assessing any contribution towards the costs of the legal aid.
17. You may apply to the Court of Appeal for legal aid to advise you about possible grounds of appeal and, if such grounds exist, for representation at the hearing of the appeal. If you were legally aided in the Crown Court then you will be entitled to advice on possible grounds of appeal and assistance in giving notice of an application and in other preliminary matters. If such advice has not been given you should write to the solicitor concerned and ask for it, before the normal period of giving notice of application for leave to appeal. If, therefore, you wish to appeal, or think you may have grounds to appeal you must ensure that notice is given to the Court of Criminal Appeal within that time, whether or not you have applied to a solicitor for advice and assistance. If the you were not legally aided in the Crown Court, or dismissed your legal advisers before the case was concluded, you may apply to the Court of Appeal for legal aid, limited to the giving of advice on possible grounds of appeal, and assistance in the preparation of the necessary applications. An unassisted applicant may seek advice and assistance from a solicitor under the "green form" scheme, which permits a solicitor to give advice up the value of £40 to a person who is financially eligible.

18. You may apply to the trial judge if he has certified that the case is fit for appeal, or the Court of Appeal, to be admitted to bail pending the determination of this appeal.
19. You are entitled to be present, if you desire it, on the hearing of your appeal, except where the appeal is on some ground involving a question of law alone, or when the appeal is against a finding of disability or a verdict of not guilty by reason of insanity. You are not entitled to be present on the hearing of your application for leave to appeal, or on any proceedings preliminary or incidental to an appeal (except during the examination of a witness).
20. Any application for leave of appeal, or for extension of time, or other application preliminary to the appeal may be decided by a single judge of the court, and the appellant will be informed of his decision. If you, in the event of a judge refusing your application, do not desire to have the application determined by the full Court of Appeal, or do not serve within 14 days on the Registrar the Application for determination by Court of Appeal, the refusal of your application by the Judge is final.
21. You may abandon your appeal by giving notice to the Registrar. By rule 10 of the Criminal Appeal Rules of 1968, upon such notice being given the appeal shall be deemed to have been dismissed by the Court of Appeal.

## **PART 4**

### **Patients under 17 years at the time the order authorising their admission was made**

22. If you are under 17 has and have during criminal proceedings been made subject to a hospital order with or without a restriction order or who have been found not guilty by reason of insanity or unfit to plead, you will have the same rights of appeal mentioned above for those over 17.
23. If you are under 17 you have a right of appeal to the Crown Court if the hospital order was made in care proceedings under Section 1 of the Children and Young Persons Act 1969. You may also appeal against a care order made in conjunction with the hospital order I care proceedings. This appeal may be lodged by yourself or by your parent or guardian on your behalf.

## **Code of Practice for Wales**

The Code of Practice for Wales gives advice to staff about the Mental Health Act 1983. They have to think about what the Code says when they take decisions about your care. You can ask to look at a copy of the Code or you can ask for a copy of the 'Peace of Mind' booklet on the Code of Practice for Wales.

## **Further information and help**

If there is anything you do not understand about your care and treatment, a member of staff will try to help you. Please ask a member of staff to explain if there is anything in this leaflet you do not understand or if you have other questions that this has not answered.

The independent mental health advocacy service is also there to provide help and support to you.

Please ask if you would like another copy of this leaflet for someone else.