



The courts and mental health

This resource explains what may happen if you are charged with committing a crime, what happens when you go to court, and how your mental health is taken into account.

Please note:

- This guide covers the courts and mental health and from the point of view of a person with a mental health problem.
- This guide applies to England and Wales.
- This guide contains general legal information, not legal advice. We recommend you get advice from a specialist legal adviser or solicitor who will help you with your individual situation and needs. See [Useful contacts](#) for more information.
- The legal information in this guide does not apply to children unless specifically stated.

If you need this information in Word document format for compatibility with screen readers, please email: publications@mind.org.uk

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Overview

Sometimes, people with mental health problems come into contact with the criminal justice system, and have to go to court. This information explains what will happen if you're charged with committing a crime, what happens if you go to court, and how your mental health is taken into account.

For more information about what happens if you have contact with the police, including if you are arrested and if you are taken to the police station, see our information on [police and mental health](#).

Quick facts

- [If you are charged with an offence](#), you will first have to go to the Magistrates' Court for a hearing. At this first hearing, the magistrates will decide [which court your case will be heard in](#): the Magistrates Court or the Crown Court.

- [You should get legal advice from a solicitor](#) if you can. A solicitor can help you understand what's happening and help you get the best possible outcome. Sometimes you can [get legal aid](#) to help you pay for this.
- [You will need to enter a plea](#) if you are charged with a crime and have to go to court. This means saying you're "guilty" or "not guilty". If your mental health problem means you aren't able to understand the meaning of the charge against you, the court might say that you're [unfit to plead](#).
- [Before your trial](#), the court will decide where you're allowed to stay. Depending on your situation, you might be allowed to [go home on bail](#), be [kept in prison on remand](#), or [sent to hospital](#) for a report on your mental health.
- [If you have a trial](#), the prosecution will try to prove that you're guilty, and you will try to argue that you are innocent. You generally can't use a mental health problem as a defence, although there are [some exceptions](#) to this.
- [If you are found guilty](#), the courts have a number of options of what your outcome might be. The courts should take your mental health problem into account when they decide. You may be able to [appeal the decision](#) if you disagree with it.
- [Don't forget to look after yourself](#). Going through any legal process involving the courts can be very stressful, especially if you're living with a mental health problem. So it's important to make sure you're looking after your own mental health and wellbeing.

Important sections of the Mental Health Act

Here are some important sections of the [Mental Health Act](#) for people with mental health problems who come into contact with the criminal justice system:

Section 37	This is an order to send you to hospital instead of prison.
Section 37/41	This is a section 37 with section 41 restrictions added. The Crown Court might add section 41 restrictions if it thinks you are a serious risk to the public.
Section 47	If you are serving a prison sentence, the prison can send you to hospital for treatment under section 47.
Section 47/49	This is a section 47 with section 49 restrictions added. The Ministry of Justice might add section 49 restrictions if they think it is appropriate.
Section 48/49	If you are on remand in prison or in an Immigration Removal Centre, you can be sent to hospital for treatment under section 48. Usually the Ministry of Justice will add special restrictions to your transfer under section 49, making it a section 48/49.

Terms you need to know

Term	Meaning
Absolute discharge	This is where you are discharged from hospital without any conditions you have to follow. It is different from a conditional discharge .
Acquit	This means you are free from your criminal charge.
Bail	This is where you are released from custody, possibly with certain conditions attached. For example, you may have to return to the police station or to go to court at a certain time.
Community sentence	This is a type of sentence where you won't have to go to prison but you might have some conditions in the community. This might be: <ul style="list-style-type: none"> • unpaid work • living at a particular place, or • receiving mental health treatment.
Conditional discharge	This is where you are discharged from hospital but will have to follow some conditions, such as living at a particular place or meeting healthcare professionals. You can only be conditionally discharged if you are on section 37/41 .
Court of Appeal	The Court of Appeal deals with appeals from the Crown Court .
Crown Court	This is one of the two types of criminal courts. It is the higher of the two courts, above the Magistrates' Court .
Diminished responsibility	If you are charged with murder, but can show that your mental health condition made you commit the crime, the court may convict you of manslaughter instead. This is called diminished responsibility.
Either-way offences	These include theft and handling stolen goods. Cases are heard in either the Magistrates' Court or Crown Court .
Guardianship order	This means that a guardian, usually the local authority, will be able to supervise you in the community and make you live at a particular place.
Hearing	A hearing is a meeting at the court in front of the judge, where decisions are made about your case.
Hospital managers (also known as Mental Health Act Managers)	These are an independent team of people in a hospital who make sure that the requirements of the Mental Health Act are properly applied. They have certain important responsibilities and can make decisions related to your detention – for example, they can hear your application to be discharged from your section and decide whether or not to discharge you.
Indictable offences	These include very serious offences, like rape, manslaughter and murder. Cases are heard in the Crown Court .
Insanity (defence)	If you committed a crime but your mental health condition meant that you did not know what you are doing, or that what you are doing was wrong, you may be able to use the defence of 'insanity'. But even if you are successful with this defence, you will not necessarily be acquitted .

<p>Judicial review</p>	<p>This is a type of court procedure where a judge reviews a public authority's decision, policy, practice, act or failure to act, and decides whether it is lawful or not.</p> <p>If it is not lawful, the court may cancel the decision or action ('quash' it), and require the public authority to reconsider it, lawfully. The court can order the authority to do or not do something.</p>
<p>Legal aid</p>	<p>Legal aid can help meet the costs of legal advice, family mediation and representation in a court or tribunal. It is given to people who cannot otherwise afford legal representation.</p> <p>You'll usually need to show that:</p> <ul style="list-style-type: none"> • your case is eligible for legal aid • the problem is serious • you can't afford to pay for legal costs. <p>However, legal advice at a police station is free and not dependent on your finances.</p>
<p>Magistrates' Court</p>	<p>This is one of the two types of criminal courts. It is the lower of the two courts, below the Crown Court.</p>
<p>Mental disorder</p>	<p>When the Mental Health Act talks about someone with mental health problems and whether or not they should be sectioned, it often uses the term 'mental disorder'. The Act says that this can include "any disorder or disability of mind".</p> <p>Mental disorder can include:</p> <ul style="list-style-type: none"> • any mental health problem normally diagnosed in psychiatry • certain learning disabilities.
<p>Mental Health Act 1983 (MHA)</p>	<p>This is a law that applies to England and Wales which allows people to be detained in hospital ("sectioned") if they have a mental illness and need treatment. You can only be kept in hospital if certain conditions are met.</p> <p>See our pages on the Mental Health Act for more information.</p>
<p>Mental Health Tribunal (MHT)</p>	<p>This is a special court that deals with cases relating to the Mental Health Act 1983. The Tribunal can make decisions about:</p> <ul style="list-style-type: none"> • whether you can be discharged from your section • suitable aftercare <p>The Tribunal can also make recommendations about:</p> <ul style="list-style-type: none"> • hospital leave • transfer to another hospital • guardianship, and • community treatment orders (CTOs).

	<p>Where you see a reference to the Mental Health Tribunal in this information, it means:</p> <ul style="list-style-type: none"> • First Tier Tribunal (Mental Health), if you live in England, or • Mental Health Review Tribunal for Wales, if you live in Wales.
Nearest relative	<p>This is a family member who has certain responsibilities and powers if you are detained in hospital under the Mental Health Act. These include the right to information and to discharge in some situations. The law sets out a list to decide who will be the nearest relative. This can sometimes be changed.</p> <p>See our pages on the nearest relative for more information.</p>
Plea	<p>If you are charged with a crime and have to go to court, you will be asked whether or not you did the crime. This is known as "entering a plea".</p>
Remand	<p>This means that you will go to prison until you go to court to have your case considered. Sometimes you can be remanded to hospital instead of prison.</p>
Responsible clinician	<p>This is the approved clinician in charge of your care and treatment while you are sectioned under the Mental Health Act.</p> <p>All responsible clinicians must be approved clinicians. They do not have to be a doctor, but in practice many of them are.</p>
Section	<p>Being 'sectioned' means that you are kept in hospital under the Mental Health Act. There are different types of sections, each with different rules to keep you in hospital. The length of time that you can be kept in hospital depends on which section you are detained under.</p>
Section 17 leave	<p>This is where your responsible clinician gives you permission to leave the ward or the hospital for short periods. They may ask you to keep to certain conditions, such as returning within a certain time.</p>
Section 117 aftercare	<p>Some people who have been kept in hospital under the Mental Health Act can get free help and support after they leave hospital. The law that gives this right is section 117 of the Mental Health Act, and it is often referred to as 'section 117 aftercare'.</p> <p>For more information see our pages on leaving hospital.</p>
Summary offences	<p>These include motor offences and minor assaults. Cases are heard in the Magistrates' Court.</p>
Tariff	<p>If a court gives you an indeterminate sentence (one without a fixed time limit), or a life sentence, it will set a 'tariff' or 'minimum term'. This is the earliest date at which you could be released. The exception is where the court gives a 'whole life sentence' which doesn't have a tariff.</p>
Trial of the facts	<p>If the court decides that you are unfit to plead, it will have a trial of the facts instead of a full trial. The court's sentencing powers are different if you only have a trial of the facts.</p>

Unfit to plead	A court may decide you're unfit to plead if it seems that you're not able to understand the court process or instruct a lawyer to represent you.
Warned list	Quite often, especially in the Crown Court , you will not be given a fixed date for trial. Instead, your case will be put into what is known as a 'warned list'. This means that you will be given a range of dates, and your trial could start on any day during this period.

Going to court

- [What happens after I am charged with an offence?](#)
- [What will happen at the court hearing?](#)
- [Which court will my case be heard in?](#)
- [What's the difference between the Magistrates' Court and the Crown Court?](#)

What happens after I am charged with an offence?

If you are charged with an offence, you will have to go to court for what is called a ['hearing'](#). The police will send you a letter telling you where and when it will be. It is important that you attend your hearing – it is against the law not to go.

What will happen at the court hearing?

Your first time in court will always be at the [Magistrates' Court](#). A number of things will happen at the hearing:

The magistrates will decide how the prosecution should continue. They will consider a number of things such as the seriousness of the offence and your mental health.

The magistrates will decide whether the case should be heard at the Magistrates' Court or the [Crown Court](#).

You will be asked to [plead guilty or not guilty](#), or if the case is to be sent to the Crown Court, what your plea will be when you get there.

The magistrates will decide whether you can [leave on bail](#), or whether you should be [kept in prison on remand](#).

You could be [sent to hospital](#) for an assessment of your mental health.

Which court will my case be heard in?

All cases start in the [Magistrates' Court](#). At the first hearing, the magistrates will decide which court your case should be heard in: [the Magistrates' Court or the Crown Court](#).

Which court your case is heard in depends on what type of offence it is: an indictable offence, summary offence or either-way offence:

Type of offence	Includes	Which court it will be heard in
Indictable offences	Very serious offences, like <ul style="list-style-type: none">• rape• manslaughter• murder. Also crimes such as <ul style="list-style-type: none">• bag-snatching• robbery of even a small amount of money.	Crown Court
Summary offences	<ul style="list-style-type: none">• motor offences• minor assaults	Magistrates' Court Sometimes the Magistrates' Court might send you to the Crown Court for sentencing after hearing your case.
Either-way offences	<ul style="list-style-type: none">• theft• handling stolen goods	Magistrates' Court or Crown Court You can have an either-way offence heard in the Crown Court if you want to, but you should speak to your solicitor about this.

The Magistrates' Court and Crown Court can give different sentences. Sometimes the Magistrates' Court might send you to the Crown Court for sentencing after hearing your case.

What's the difference between the Magistrates' Court and the Crown Court?

Here are the main differences between the two courts:

Magistrates' Court	Crown Court
<ul style="list-style-type: none">• Less formal, and generally quicker.• Your case will be heard by a panel of magistrates (usually two or three) or one judge. There's no jury.• Has less sentencing powers than the Crown Court. Can give prison sentences and fines, and a section 37 hospital order.	<ul style="list-style-type: none">• More formal than Magistrates' Court.• Your case will be heard by a judge and a jury.• Has more sentencing powers than the Magistrates Court. Can give longer prison sentences, larger fines, and more restrictive hospital orders, for example a section 37/41.

Getting legal advice

- [Do I need to get legal advice?](#)
- [How do I get legal advice?](#)
- [Can I get legal aid?](#)
- [What happens if I can't get legal aid?](#)
- [What can I do to look after myself?](#)

Do I need to get legal advice?

Being charged with a crime is very serious and sometimes may lead to you being sent to prison. That's why it's very important that you get legal advice from a solicitor so that you understand what is happening and get the best possible outcome for yourself.

A solicitor can help you by:

- explaining what you are charged with and what the possible outcomes are
- preparing your defence and gathering evidence for you
- representing you at court or getting a barrister to represent you if necessary.

How do I get legal advice?

If you are arrested, or interviewed under caution, you have the right to free advice and representation from a solicitor. (See more about your rights at the police station in our pages on [police and mental health](#).)

To see a solicitor, you can either:

- ask to see the duty solicitor at the police station, or
- contact a different solicitor yourself. To do this you can contact the [Law Society](#) who can help you find solicitors in your area.

Different solicitors specialise in different areas of law:

- If you've been arrested or charged with a crime, you need a **criminal solicitor**.
- If you've been sent to hospital under the [Mental Health Act](#) and want to be discharged, you need a **mental health solicitor**.

If you are charged with a crime, you might get legal aid to help you pay for legal advice and representation.

Can I get legal aid?

Legal aid can help meet the costs of legal advice and representation in a court or tribunal. It is given to people who cannot otherwise afford it.

You can get legal aid once you have been charged if you pass two tests, the [interests of justice test](#) and the [means test](#).

The interests of justice test

This test looks at:

- the seriousness of the offence
- the complexity of your case
- any disability you may have
- whether your mental health makes it more difficult to represent yourself.

Usually you'll only pass this test if the offence you are charged with could lead to a prison sentence.

The means test

This test looks at whether you receive any benefits, or if you have a low income. You will automatically pass this test if you receive certain benefits, such as:

- Job-Seekers Allowance
- Universal Credit
- income-related Employment Support Allowance.

Otherwise the court will look at your income.

Example

Anton has [bipolar affective disorder](#). He is arrested and charged with manslaughter. At the police station, Anton asks to speak to the duty solicitor, who attends the interview with him.

Afterwards, Anton contacts a different firm of solicitors that have been recommended to him. The solicitors advise Anton that he will get legal aid throughout the trial because of the seriousness of the charge against him, the fact that his mental health makes it more difficult for him to represent himself, and because he is on Universal Credit.

If you do get legal aid, you may have to pay a contribution based on your finances. If you are eventually found not guilty, the court can order that some or all of these contributions must be repaid to you.

What happens if I can't get legal aid?

If you don't get legal aid, you will need to represent yourself at court or pay for a solicitor yourself. You can also get a barrister to represent you without a solicitor by a process called 'direct access'. This will often work out much cheaper than paying for both a solicitor and barrister. You can visit the [Bar Council Direct Access Portal](#) for more information.

You should be aware that, even if you are found not guilty, you will not get back all the money you have paid for representation.

What can I do to look after myself?

Going through any legal process involving the courts can bring up difficult emotions, and be stressful for everyone involved. Our pages on [managing stress](#), [wellbeing](#), [self-esteem](#), [managing anger](#), and our general page on [self-care](#) could help you think about ways to look after yourself and find support. Our pages on [different diagnoses](#) also include guidance on treatment and support to help you manage your mental health problem.

Pleading guilty or not guilty

- [What is a plea?](#)
- [What happens if I plead guilty?](#)
- [What happens if I plead not guilty?](#)
- [What does 'unfit to plead' mean?](#)
- [What happens if the Magistrates' Court decides that I'm unfit to plead?](#)
- [What happens if the Crown Court decides that I'm unfit to plead?](#)

What is a plea?

If you are charged with a crime and have to go to court, you will be asked whether or not you did the crime. This is called 'entering a plea'.

What happens if I plead guilty?

Pleading guilty means that you admit you did the crime. If you plead guilty, the court will decide what should happen next, which could be a fine or a prison sentence.

What happens if I plead not guilty?

Pleading not guilty means that you say you didn't do the crime, or that you had a reasonable excuse for doing so. The court will then have a trial to decide whether you did. If the court decides that you did, this means you will be convicted, and the court will [decide what sentence to give you](#).

You may get a longer sentence after conviction at a trial than if you pleaded guilty. This is why it's important to [get legal advice from a solicitor](#) before making your plea.

What does 'unfit to plead' mean?

If you cannot understand the meaning of the charge against you, what the pleas of 'guilty' and 'not guilty' mean, or cannot instruct a lawyer to represent you, the court may take medical evidence to find out whether you are unfit to plead.

What happens if the Magistrates' Court decides that I'm unfit to plead?

If the magistrates decided that you were unfit to plead, it could give you a [hospital order under section 37](#) (but not [37/41](#)) without having a trial.

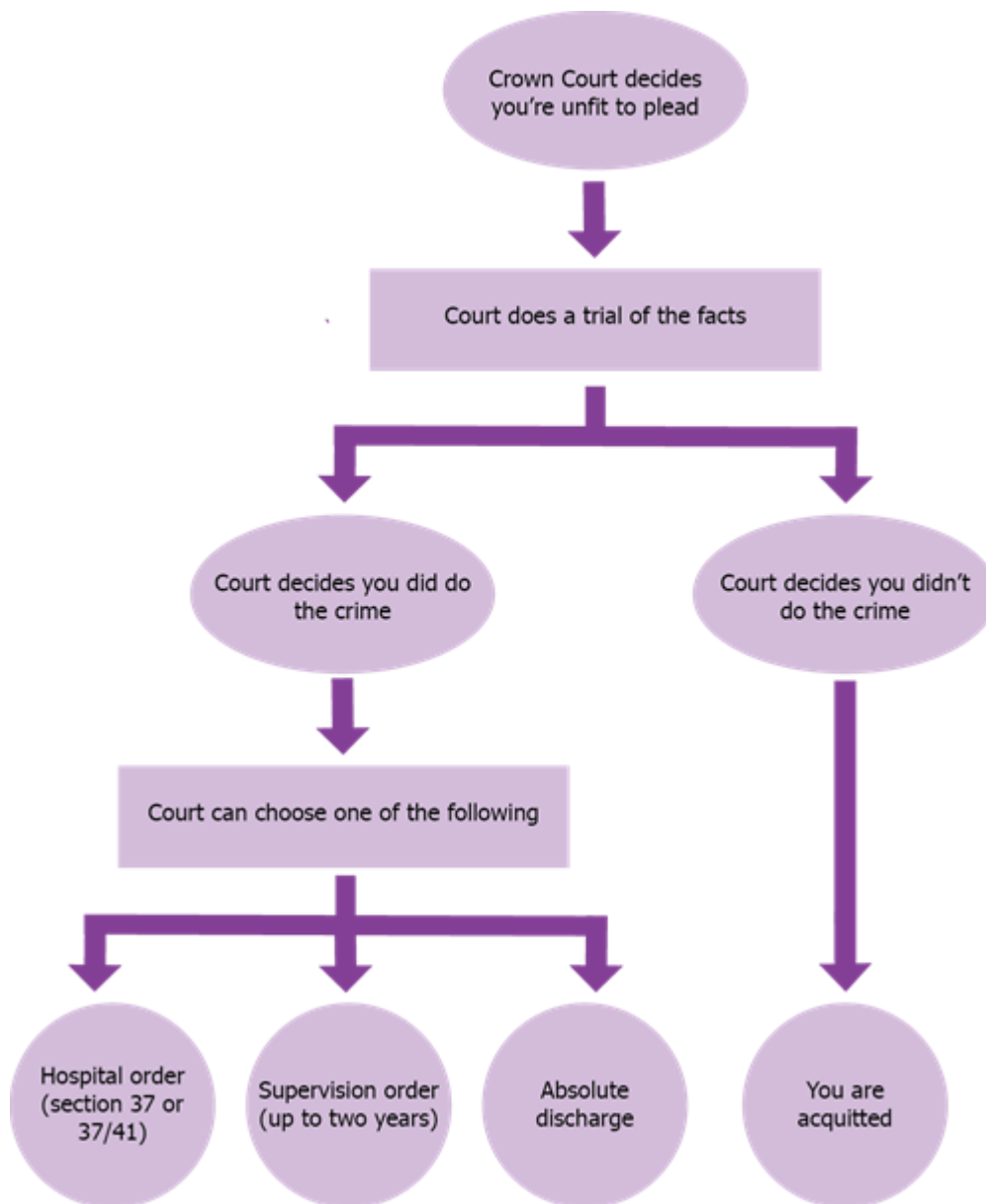
What happens if the Crown Court decides that I'm unfit to plead?

If the Crown Court decided that you were unfit to plead, it would do a [trial of the facts](#) and decide whether you did the crime. If it decides you didn't do the crime, it will [acquit](#) you.

If it decides you did do the crime, the court can:

- give you a hospital order under [section 37](#) or [37/41](#)
- give you a supervision order for up to two years, which means that you will have to get support or treatment
- end the prosecution by giving you an [absolute discharge](#).

Here is a flowchart outlining this process:



Before your trial (bail, remand or hospital)

- [Where will I be while I'm waiting for my trial?](#)
- [What happens if I'm given bail?](#)
- [What happens if I'm on remand?](#)
- [What happens if I'm sent to hospital?](#)

Where will I be while I'm waiting for my trial?

If your case continues to a trial, the court will have to decide whether you should be:

- [allowed to go home on bail](#)
- [kept in prison on remand](#), or
- [sent to hospital for a report on your mental health.](#)

If you are already in hospital for your mental health, the court may decide that you should stay there.

What happens if I'm given bail?

If you're given bail, this means you'll be allowed to stay in the community while your trial is going on but you'll have to go to court sometimes.

You may also be given bail conditions such as:

- living in particular place
- staying indoors during certain hours of the day or night
- not having any contact with certain people
- getting an assessment or treatment for your mental health.

It's very important to keep to your bail conditions, and to attend court when you have to. If you don't, the court can take your bail away, and send you to [prison on remand](#).

What will the courts consider when deciding on bail?

This will depend on the court and the type of offence you're charged with. In general, the court will consider things like:

- the seriousness of your offence
- your character and any previous convictions
- the risk of you running away or causing harm while on bail.

Example

Cheryl is charged with theft. She also has a history of [depression](#). At the first hearing at the Magistrates' Court, Cheryl asks if she can be given bail to live at home while the trial progresses. The court agrees because this is Cheryl's first offence, and it decides that the risk of her running away is low. Cheryl is given a condition to have an assessment of her mental health and must come back to court for the next hearing.

What happens if I'm on remand?

Remand means that you will not be given bail and must stay in prison while your trial is going on.

If you need urgent treatment for your mental health while on remand, the Ministry of Justice can transfer you to hospital later under [section 48 of the Mental Health Act](#). You should be able to get treatment for your mental and physical health while in prison.

What happens if I'm sent to hospital?

The Magistrates' Court or Crown Court can send you to hospital for a report on your mental health before your trial. The report can give the court evidence about:

- whether you're [unfit to plead](#), or
- what your sentence should be.

The courts can only do this if they have evidence from a doctor that:

- you may be suffering from a [mental disorder](#), and
- it would not be possible to make the report if you were on bail.

This order lasts for 28 days but can be renewed by the courts for up to 12 weeks.

At your trial

- [When my trial will be held?](#)
- [What will happen at the trial?](#)
- [Can I use my mental health as a defence?](#)
- [What will the court take into account when deciding?](#)
- [What happens if I'm found guilty?](#)
- [Can I appeal against my conviction or sentence?](#)

When will my trial be held?

Quite often, especially in the [Crown Court](#), you will not be given a fixed date for trial. Instead, your case will be put into what is known as a 'warned list'. This means that you will be given a range of dates (usually one or two weeks), and your trial could start on any day during this period.

You, or your solicitor, will only be told when your trial will start on the afternoon before. It is very important to phone your solicitor at about 4pm every day of the warned list, so you know when you have to go to court.

What will happen at the trial?

If your case goes to trial, the magistrates (at the [Magistrates' Court](#)) or the jury (at the [Crown Court](#)) will decide whether you are guilty or not.

Here's an outline of what will happen:

- The prosecution will try to prove that you are guilty.

- You, through your lawyer if you have one, will try to argue that you might be innocent.
- You will probably have to give evidence at your trial by answering questions.
- There may also be other witnesses.

Can I use my mental health as a defence?

[Mental health problems](#) cannot generally be used as a defence, though they may affect your sentence if you are found guilty.

But there are some exceptions:

- The court may decide that you're [unfit to plead](#).
- The court may find you not guilty if you were [legally insane](#) at the time you committed the offence. If this happens, the judge has to decide whether you still have mental health problems. If they decide you do, they can send you to hospital, or make a supervision order (which means that you will have to get support or treatment). If you no longer have mental health problems, they can give you an [absolute discharge](#).
- If you are charged with murder and can show that you had an 'abnormality of the mind' when you committed the crime, the court will convict you of manslaughter instead. This could mean less punishment. This is called '[diminished responsibility](#)'.

What will the court take into account when deciding?

The court has a lot of things to think about when choosing the most appropriate outcome, including:

- the seriousness of the offence
- any previous convictions
- your mental health.

The court may also take other things into account such as:

- guidance from the Sentencing Council and the Court of Appeal
- a pre-sentence report or a report on your mental health.

What happens if I'm found guilty?

If you are found guilty, the courts have a number of options:

- **Absolute discharge.** This means that you won't get any punishment.
- **Conditional discharge.** This means that you won't get any punishment as long as you don't commit any further offences for a certain period (usually 1–2 years).
- **Pay a fine.** You may be asked to pay money.
- **Community sentence.** This means that you won't have to go to prison but will have some conditions in the community. This could be unpaid work, living at a particular

place or receiving mental health treatment if you agree. You could also get help to deal with drink or drug problems. It is important to stick to the conditions of this type of sentence, because if you don't, the court can order you to come back and be re-sentenced, which could mean you are sent to prison.

- **Prison sentence.** If the court chooses to give you a prison sentence, it will also need to decide the type of sentence and how long it should be. The court can give you what is called a 'suspended prison sentence', which means that you won't go to prison as long as you don't commit any further offences for a certain period (usually 1–2 years).
- **Hospital order** under [section 37 of the Mental Health Act](#). The Crown Court can also add restrictions under section 41, known as a [section 37/41](#).
- **Guardianship order.** This means that a guardian, usually the local authority, will be able to supervise you in the community and make you live at a particular place.

Can I appeal against my conviction or sentence?

You may be able to appeal to a higher court if you disagree with your sentence or conviction. This can be a complicated process, so we recommend you [get legal advice](#) on this.

Section 37 hospital order

- [What is a section 37 hospital order?](#)
- [How long will I be in hospital?](#)
- [How can a hospital order be renewed?](#)
- [How can I be discharged from hospital?](#)
- [When can I apply to the Mental Health Tribunal?](#)
- [When must the Mental Health Tribunal discharge me?](#)
- [Can I appeal the hospital order?](#)

What is a section 37 hospital order?

A section 37 is an order to send you to hospital instead of prison. A [Crown Court](#) or [Magistrates' Court](#) can make this order if it thinks that a hospital order is the most appropriate way of dealing with your situation.

The Crown Court or Magistrates' Court can give you a hospital order if:

- you've been charged with or convicted of an offence which could lead to a prison sentence
- two doctors have given evidence that
 - you have a [mental disorder](#) that means you should be in hospital for treatment, and
 - appropriate treatment is available
- the court decides that a hospital order is the most suitable method of dealing with your case, and

- arrangements have been made for you to go to hospital within 28 days of the order.

If the court thinks that you are a high risk to the public it can add restrictions to the hospital order, known as a [section 37/41](#).

How long will I be in hospital?

A section 37 lasts six months initially, but this can be extended ('renewed') by your [responsible clinician](#).

It must be renewed:

- after the first six months
- again after a second six months
- and then yearly.

There is no limit to the number of times section 37 can be renewed.

If it's not renewed, the section 37 will end, and you will be free to leave hospital if you want to.

How can a hospital order be renewed?

In order to renew the hospital order, your [responsible clinician](#) must see you, consult with another professional and send a report to the [hospital managers](#) saying that they think the hospital order should be renewed.

The hospital managers will likely have a hearing to decide whether the hospital order should be extended. You will be able to attend if you don't agree.

How can I be discharged from hospital?

There are different ways you might be discharged from hospital:

- Your [responsible clinician](#) can end the hospital order at any time.
- You can [apply to the Mental Health Tribunal](#).
- You can ask the [hospital managers](#) to discharge you at any time, even in the first six months. (See our pages on [leaving hospital](#) for more information.)
- Your [nearest relative](#) can apply to have you discharged. (See our pages on the [nearest relative](#) for more information.)

Once you are discharged from section 37, you will be eligible for free [section 117 aftercare](#).

When can I apply to the Mental Health Tribunal?

You can't apply in the first six months of the hospital order. You should check the date of the order.

You can apply:

- once in the second six months, then
- once every year after that.

It doesn't matter when the hearing takes place – it's the date of the application that must be within these periods.

See our pages on [leaving hospital](#) for more information about the Mental Health Tribunal.

When must the Mental Health Tribunal discharge me?

The [Mental Health Tribunal](#) must discharge you if:

- they don't think you have a [mental disorder](#) which means you should be in hospital for treatment
- they don't think it's necessary for your health or safety, or for the protection of others, for you to get treatment, or
- appropriate treatment is not available for you.

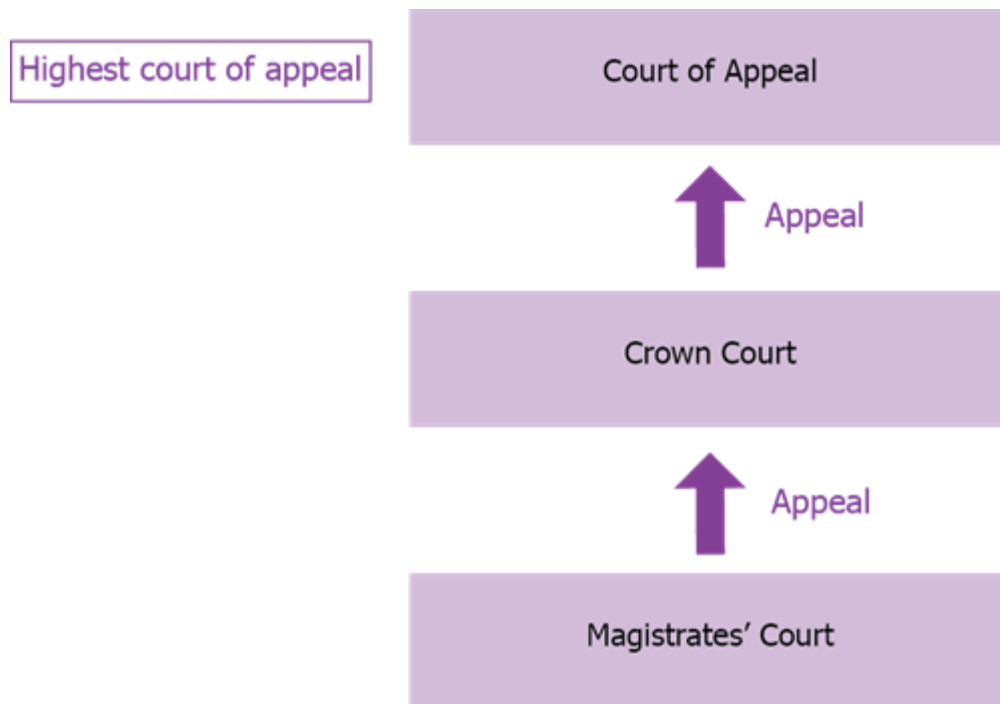
Once you are discharged from section 37, you will be eligible for free [section 117 aftercare](#).

See our pages on [leaving hospital](#) for more information about the Mental Health Tribunal.

Can I appeal the hospital order?

You may be able to appeal the court's decision to give you a hospital order as opposed to some other outcome, such as a prison sentence.

From the [Magistrates' Court](#) you can appeal to the [Crown Court](#), and from the Crown Court to the [Court of Appeal](#). Here is a flowchart that outlines this process:



You should get [legal advice from your solicitor](#) if you want to make an appeal.

Section 37/41 hospital order with restrictions

- [What is a section 37/41?](#)
- [How long will I be in hospital?](#)
- [When I can apply to the Mental Health Tribunal?](#)
- [When must the Mental Health Tribunal discharge me?](#)
- [What is an absolute or conditional discharge?](#)
- [Can I appeal the hospital order?](#)

What is a section 37/41?

This is a [section 37 hospital order](#) with section 41 restrictions added. Only the [Crown Court](#) can add section 41 restrictions. It might add them if it thinks that it's necessary for the protection of the public from serious harm.

When deciding whether to add section 41 restrictions, the Crown Court must consider:

- the seriousness of the offence committed
- any previous offences you may have committed
- the risk of you committing more offences in the future.

How long will I be in hospital?

A section 37/41 lasts until you are discharged by the [Mental Health Tribunal](#) or by your [responsible clinician](#). If your responsible clinician thinks you should be discharged, they will need to get permission from the Ministry of Justice.

The Ministry of Justice also needs to give permission for you to have [section 17 leave](#) or for you to transfer to a different hospital. Getting permission from the Ministry of Justice can take a long time.

When I can apply to the Mental Health Tribunal?

The rules are the same as for a [section 37 hospital order](#).

When must the Mental Health Tribunal discharge me?

The rules are the same as for a [section 37 hospital order](#).

Once you are discharged from section 37/41, you will be eligible for free [section 117 aftercare](#).

What is an absolute or conditional discharge?

The tribunal can give you a [conditional discharge](#) or an [absolute discharge](#).

Conditional discharge

A conditional discharge is where you will have to do certain things after discharge and you might get recalled to hospital if you don't. Conditions could be to:

- meet with professionals
- live at a particular place
- take medication.

If you are conditionally discharged, you can apply to the tribunal for an absolute discharge. You can apply:

- one year after your conditional discharge, then
- every two years after that.

Absolute discharge

In an absolute discharge, you don't have to follow any conditions and don't have to engage with mental health services if you don't want to. If there are concerns about your mental health after discharge then you would need to be assessed again like anyone else.

Can I appeal the hospital order?

Yes, the process is the same as appealing a [section 37 hospital order](#).

Section 47 transfer to hospital from prison

- [What is a section 47?](#)
- [How long will I be in hospital?](#)
- [When can I apply to the Mental Health Tribunal?](#)
- [Can I challenge the transfer?](#)

What is a section 47?

If you are serving a prison sentence, the prison can send you to hospital for treatment under section 47.

You can only be given a section 47 after you've been convicted of an offence and sent to prison. Before that, you can be [transferred to hospital under section 48](#).

If the prison thinks you are unwell and need to go to hospital, they can ask the Ministry of Justice for permission. The prison must send reports from two doctors saying that:

- you have a '[mental disorder](#)' which means you should be in hospital for treatment, and
- treatment is available for you in hospital.

How long will I be in hospital?

Your [responsible clinician](#) can discharge you at any time. You can also apply to the [Mental Health Tribunal](#) or the [hospital managers](#) if you want to be discharged (see our pages on [leaving hospital](#) for more information on how to do this).

You cannot be sent back to prison to finish your sentence. You may end up staying in hospital for a shorter or longer time than your original sentence.

Once you are discharged from section 47, you will be eligible for free [section 117 aftercare](#).

When can I apply to the Mental Health Tribunal?

You can apply:

- once in the first six months after your transfer
- once again in the second six months, and then
- once every year.

It doesn't matter when the hearing takes place – it's the date of the application that must be within these periods.

See our pages on [leaving hospital](#) for more information about the Mental Health Tribunal.

Can I challenge the transfer?

The Ministry of Justice is responsible for deciding whether you should be transferred to hospital or from hospital back to prison. These decisions, including a decision not to transfer you, can potentially be challenged by [judicial review](#). See our pages on [complaining about health and social care decisions](#) for more information on how to do this.

Section 47/49 transfer to hospital from prison with restrictions

- [What is a section 47/49?](#)
- [How long will I be in hospital?](#)
- [When can I apply to the Mental Health Tribunal?](#)
- [Can I challenge the transfer?](#)

What is a section 47/49?

This is a [section 47 transfer to hospital from prison](#), with section 49 restrictions added. The Ministry of Justice can add section 49 restrictions if they think it's appropriate.

Adding section 49 restrictions means that your [responsible clinician](#) will need the permission of the Ministry of Justice before:

- discharging you from hospital
- giving you [section 17 leave](#), or
- transferring you to another hospital.

After the Ministry of Justice has agreed to the transfer, you will need to go to hospital within 14 days.

How long will I be in hospital?

The Ministry of Justice may send you back to prison if your [responsible clinician](#) thinks that you no longer need treatment in hospital. You can also [apply to the Mental Health Tribunal](#) if you want to leave hospital or go back to prison.

- **If you are on a fixed sentence**, once your sentence ends, you will be treated as if you were detained under [section 37](#) (not [37/41](#)) and [have the same appeal rights](#).
- **If you are on an indefinite sentence**, then the section 47/49 will last until you are discharged by the parole board.

When can I apply to the Mental Health Tribunal?

The tribunal doesn't have the power to discharge you. It can only tell the Ministry of Justice that it would discharge you if it did have the power.

The tribunal must consider whether:

- you have a '[mental disorder](#)' which means you should be in hospital for treatment
- it is necessary for your health or safety or for the protection of others for you to get treatment
- appropriate treatment is available.

The tribunal must also consider whether you should remain in hospital if the Ministry of Justice doesn't discharge you. It is important to get both recommendations if you don't want to go back to prison.

Once the Ministry of Justice gets these recommendations a few different things may happen:

- If you haven't reached the end of your sentence or [tariff](#) (for indeterminate sentences) the Ministry of Justice won't discharge you, but might return you to prison. The Ministry of Justice doesn't usually do this if the tribunal recommends that you should go back to prison.
- If you have reached your tariff, the Ministry of Justice will refer your case to the parole board. If the parole board decide to release you, you can then leave hospital.

Can I challenge the transfer?

Yes, the process is the same as for a [section 47](#).

Section 48/49 transfer to hospital before sentencing

- [What is a section 48/49?](#)
- [When can I be given a section 48/49?](#)
- [How long will I be in hospital?](#)
- [Can I challenge the transfer?](#)

What is a section 48/49?

If you are on remand in prison or in an Immigration Removal Centre, you can be sent to hospital for treatment under section 48. Usually the Ministry of Justice will add special restrictions to your transfer under section 49. This is known as a section 48/49.

When can I be given a section 48/49?

Section 48 can only be used before you have been sentenced. After that you can be [transferred from prison to hospital under section 47](#).

If the prison or Immigration Removal Centre think you are unwell and need to go to hospital, they can ask the Ministry of Justice to agree. They must send reports from two doctors saying that:

- you have a '[mental disorder](#)' which means you should be in hospital for treatment
- you are in urgent need of treatment
- treatment is available for you in hospital.

The Ministry of Justice can add section 49 restrictions if they think it's appropriate. This means that your [responsible clinician](#) will need the permission of the Ministry of Justice before:

- discharging you from hospital
- giving you [section 17 leave](#), or
- transferring you to another hospital.

How long will I be in hospital?

If your [responsible clinician](#) thinks that you no longer need treatment in hospital, the Ministry of Justice can send you back to prison.

If you want to go back to prison, you can apply to the [Mental Health Tribunal](#) (see our pages on [leaving hospital](#) for more information). If the tribunal doesn't think you need to be in hospital it will tell the Ministry of Justice, who may transfer you back to prison.

If you don't go back to prison, you will stay in hospital until you are sentenced. The criminal courts will then [decide the most appropriate way to deal with your case](#).

Once you are discharged from section 48, you will be eligible for free [section 117 aftercare](#).

Can I challenge the transfer?

The Ministry of Justice is responsible for deciding whether you should be transferred to hospital or from hospital back to prison. These decisions, including a decision not to transfer you, can potentially be challenged by [judicial review](#). See our pages on [complaining about health and social care decisions](#) for more information on how to do this.

Useful contacts

Mind's services

- **Helplines** – all our helplines provide information and support by phone and email. Our Blue Light Infoline is just for emergency service staff, volunteers and their families.
 - Mind's Infoline – 0300 123 3393, info@mind
 - Mind's Legal Line – 0300 466 6463, legal@mind
 - Blue Light Infoline – 0300 303 5999, bluelightinfo@mind
- **Local Minds** – there are over 140 local Minds across England and Wales which provide services such as [talking treatments](#), [peer support](#), and [advocacy](#). [Find your local Mind here](#), and contact them directly to see how they can help.
- **Elefriends** is a supportive online community for anyone experiencing a mental health problem. See our [Elefriends page](#) for details.

The Bar Council Direct Access Portal

directaccessportal.co.uk

Provides direct access to barristers without the delay and expense of applying through solicitors. The website has an up-to-date list of direct access barristers who you can contact to get legal advice or help you with your case.

The Law Society

020 7242 1222

lawsociety.org.uk

The Law Society provides details of [solicitors in your area](#) that you can contact for specialist legal advice.

Where can I get support?

Find an advocate

An advocate is a person who can both listen to you and speak for you in times of need. Having an advocate can be helpful in situations where you are finding it difficult to make your views known, or to make people listen to them and take them into account.

For information on advocacy services and groups in your area, you could start by contacting the [Mind Legal Line](#) and your [local Mind](#).

Read more about [how advocacy might help you](#).

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References are available on request.