

Rights in mind

mentalwelfare
commission for scotland

A pathway to patients' rights in mental health services



About this pathway

1

- 1. Overarching rights**
2-3
- 2. Key patients' rights in the community**
4-7
- 3. Key patients' rights when being admitted to hospital**
8-11
- 4. Key patients' rights when on the ward**
12-17
- 5. Key patients' rights on discharge from hospital**
18-19

A note about where rights come from

20

About this pathway

This pathway is designed to help staff in mental health services to ensure that patients are afforded their rights. It will also help patients and their families and carers to understand their rights.

The pathway sets out overarching human and legal rights which are important throughout a patient's journey into and through inpatient care. There are also key rights at particular points in a patient's journey. Some rights apply to all patients, and some are specific to patients who are detained in hospital under the Mental Health (Care and Treatment) Act 2003, or to informal patients (patients who are being treated in hospital voluntarily).

The pathway was designed in consultation with patients, relatives and staff with experience of adult acute care, although it may also be helpful in other settings. The questions throughout come from the issues which patients told us are most important to them in relation to their rights.

We hope that this pathway, and the accompanying good practice guide will assist services to improve practice. We intend to test whether this is an effective way of improving practice before considering pathways specific to other groups or settings. We will do this through the Mental Welfare Commission for Scotland's programme of visits, by asking patients and staff about how rights are respected in services.

The Mental Welfare Commission would like to thank our partners who helped to produce this pathway: Scottish Human Rights Commission, Royal College of Psychiatrists in Scotland, Scottish Patient Safety Programme and the many individuals who participated in the consultation.

1. Overarching rights

All patients, whether in the community or in hospital, have the right to:

Be treated in line with the principles of the Mental Health Act

Be treated in line with the Patient Rights Act Charter of Patient Rights and Responsibilities

Be treated with respect, dignity and compassion

Not be discriminated against on the grounds of protected characteristics: age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation

Legislation/Human Rights Treaty

Mental Health Act

Patient Rights Act

Article 8, European Convention on Human Rights (ECHR)
Right to respect for private and family life

Patient Rights Act

Equality Act

How can advocacy help me?

Can I get help from an advocate?

Have independent
advocacy services

NHS care which is
patient-focused and
encourages participation

Liberty, unless
detained lawfully

Adequate healthcare
for their physical and
mental health needs

Agree how much they
want family and friends
involved in their care and
support (unless there is
a legitimate reason to
restrict this, in which case
any restriction should
be the least possible)

Mental Health Act

Patient Rights Act

Article 5, ECHR
Right to Liberty

Mental Health Act

Access to health
promotion and
prevention information

Protection from inhuman
or degrading conditions

Article 25, United Nations
Convention on the
Rights of Persons with
Disabilities (UNCRPD)
Highest attainable
standard of health

Articles 2 & 3, ECHR

Article 8, ECHR
Right to respect for
private and family life

Can I join a collective advocacy group?

Can my partner come to my
appointment with me?

2. Key patients' rights in the community

All patients have the right to:

Access to mental health services when they need them, including early intervention

Good support from primary care/GP

Information about their diagnosis in a way they understand, and an opportunity to discuss this with the team providing care

An explanation of their treatment, its benefits and its side effects, in a way they are able to understand

Discuss any alternative treatment approaches and benefits and risks

Participate in putting together their care plan and risk or safety plan

Information about crisis and out-of-hours services

Legislation/Human Rights Treaty

Article 25, UNCRPD
Highest attainable standard of health

Article 8, ECHR
Right to respect for private and family life

Patient Rights Act

Article 8, ECHR
Right to respect for private and family life

Patient Rights Act

Articles 2 & 3, ECHR
Duties to prevent risk to life and inhuman or degrading treatment

What can I do if I need help in a mental health crisis?

With the patient's consent, have their carer involved and have their views and caring role considered when determining the need for support and services for the patient

Their carer has a right to an Adult Carer Support Plan or Young Carer Statement, and to support if their needs meet local eligibility criteria

Carers Act
(from April 2018)

Support to make an advance statement about their care and treatment choices if they become ill

Mental Health Act

Support to choose a named person who will help protect their interests, if they become ill

Mental Health Act

Have their community care needs assessed, and assessed needs met

Social Work Scotland Act

Care and support services through the local authority, if they are assessed as needing these, and help with travel to access them if they need it

Mental Health Act
s25, s27

Services to promote their wellbeing and social development, through the local authority, and help with travel to access these if they need it

Mental Health Act
s26, s27

What can I do to help me get or stay well, apart from medication?

2. Key patients' rights in the community

Patients subject to the Mental Health Act have the right to:

Have their advance statement choices about care and treatment followed, unless there is a good reason not to, and that reason is explained in writing

Have the Mental Welfare Commission informed if they are treated against their advance statement choices

Be told how long they are subject to the Act for and why

Be told whether and how they can appeal

An explanation of what the conditions are, if they are on a community order, or if their hospital order is suspended to allow them to be in the community

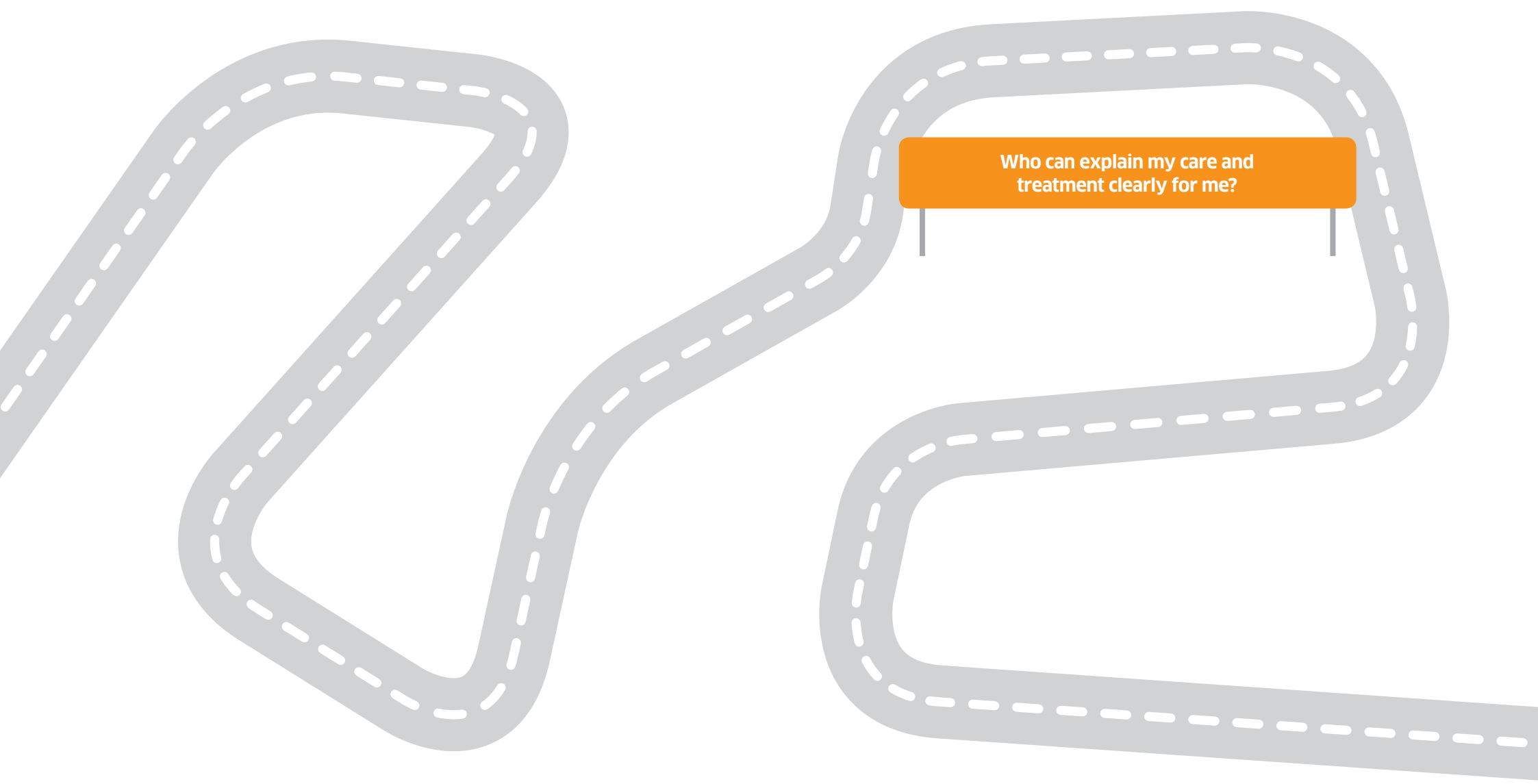
Legislation/Human Rights Treaty

Mental Health Act

Mental Health Act

Mental Health Act

What do I do if I think I'm starting to become unwell?



Who can explain my care and treatment clearly for me?

3. Key patients' rights when being admitted to hospital

All patients have the right to:

Explanation of why they need to be admitted to hospital

The opportunity to agree to go into hospital voluntarily for care and treatment, if they are able to make this decision

Explanation, in a way they are able to understand, of what is happening now and what will happen during admission

The opportunity to make practical preparations for going into hospital, as much as is possible in the circumstances

Legislation/Human Rights Treaty

Article 8, ECHR
Right to respect for private and family life

Article 5, ECHR
Right to Liberty

Article 8, ECHR
Right to respect for private and family life

Article 8, ECHR
Respect for private and family life, home and correspondence

Patient Rights Act

Patient Rights Act

What are my rights?

What about money?

How can I get privacy?

How do I get there?

What about my job?

Who will look after my pet?

Where can I make a private phone call?

Clear, accessible information

Introduction to the ward and key staff

Have their questions answered

Ask to have someone with them for support (but this may not always be possible or appropriate)

Have religious and spiritual needs respected and supported

Information about when family and friends can visit

A special diet if they need it for health or religious reasons

Article 9, UNCRPD
Accessibility

Article 8, ECHR
Right to respect for private and family life

Article 9, ECHR
Right to freedom of thought, conscience, religion

Article 8, ECHR
Right to respect for private and family life, home and correspondence

Article 9, ECHR
Right to freedom of thought, conscience and religion

Can I keep my phone?

Can I use my laptop?

Is there WiFi?

How often will I see my doctor?

When can I see my family?

Can I use the kitchen at night?

3. Key patients' rights when being admitted to hospital

Patients being detained have the right to:

An explanation from the doctor of why they are being detained, in a way they can understand

Follow-up from staff, as often as they need, to make sure they have understood

Information about how long they are detained for

Information about whether and how they can appeal

A mental health officer to explain their rights (for short-term detentions, compulsory treatment orders and, where possible, for emergency detentions)

A solicitor to represent them at the Mental Health Tribunal for Scotland, free with legal aid

Have their named person informed of their detention

Legislation/
Human Rights Treaty

Mental Health Act

Mental Health Act

Mental Health Act

Article 6 ECHR
Fair trial

Mental Health Act

Mental Health Act

What do I need?

Who can come?

What happens about my children?

What about my pet?

What does the law actually say?

When are meal-times?

How can I wash my clothes?

Not to be detained if they no longer need to be

Have their advance statement choices about care and treatment followed, unless there is a good reason not to, and that reason is explained in writing

Have the Mental Welfare Commission informed if they are treated against their advance statement choices

Informal patients have the right to:

Leave the hospital at any time (but they should agree a plan with staff)

Refuse medication or other treatment, if they have capacity to do so

Apply to the Mental Health Tribunal for Scotland, if they are detained without lawful authority

Mental Health Act

Mental Health Act

Article 5, ECHR
Right to liberty

Article 8, ECHR
Right to respect for private and family life

Mental Health Act s291

Can I make cups of tea or snacks when I want?

What about my education?

Can I appeal?

How do I get my own clothes?

Do I share the bathroom?

Can I go out for walks?

4. Key patients' rights when on the ward

All patients have the right to:

A recovery plan or care plan which is personal to them

Be involved in developing their recovery plan or care plan

Know what is in their recovery plan or care plan

Be involved in reviewing their recovery plan or care plan

A clear explanation of their medication and other treatment, in a way they can understand

Be free of restrictions of their independence, choice or control, unless restrictions are for clearly identified reasons and are the least necessary

Be involved as much as possible in agreeing any restrictions

Have any restrictions regularly reviewed to decide whether they are still necessary

A proportionate approach to daily restrictions which may be needed on the ward for safety and security, such as ward policies on door locking, or restricting access to the internet, and to have these explained

Activities for therapy and recreation

Legislation/
Human Rights Treaty

Article 8, ECHR
Right to respect for private and family life

Patient Rights Act

Article 8, ECHR
Right to respect for private and family life

Patient Rights Act

Core principles of ECHR

Core principles of ECHR

Article 26, UNCRPD
Habilitation and rehabilitation

Mental Health Tribunals - what are my rights?

Why was I secluded?

A positive therapeutic environment including sufficient living space, adequate lighting, heating and ventilation, a satisfactory state of repair and hospital hygiene and adequate food and clothing

Access to education for anyone under 18

Vote in elections (apart from some people detained under criminal law)

Ask to see their medical records (but the doctor can decide not to show information if it would risk their health)

Have arrangements made by the local authority, if necessary, to ensure their property, including pets, is looked after while they are in hospital

Support to maintain family relationships

Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards)

Education Scotland Act, s14

Representation of the People Act

Access to Health Records Act

National Assistance Act, s48

Article 8, ECHR
Right to respect for private and family life

How do I prepare for a tribunal?

Why was I restrained?

4. Key patients' rights when on the ward

Detained patients have the right to:

Have their advance statement choices about care and treatment followed, unless there is a good reason not to, and that reason is explained in writing

Have the Mental Welfare Commission informed if they are treated against their advance statement choices

A second opinion from an independent doctor, if they are unable or unwilling to consent to treatment because of their mental disorder, after two months of treatment with medications, or immediately for certain other treatments such as ECT or artificial nutrition

Support to understand and prepare for Mental Health Tribunal for Scotland hearings

Regular review, and not to be detained if they no longer need to be

Legislation/Human Rights Treaty

Mental Health Act

Mental Health Act

Article 6, ECHR
Right to a fair hearing

Mental Health Act

Mental Health Act

Why am I on observations?

Where can I see my children when they visit the ward?

Communicate by phone and post unless it is necessary to restrict this for the individual

Safeguards if their access to phones, letters, parcels, visitors or other things is restricted

Not to be secluded against their will unless it is the only way of managing risk to self or others

Seclusion for as little time as necessary

A discussion and support (debrief) afterwards

Not to be restrained unless it is the only way of managing risk to self or others

Restraint for as little time as necessary and with minimum force

A discussion and support (debrief) afterwards

Only to be put under constant or special observations if it is necessary for their own or others' safety, and for the minimum time

Mental Health Act

Article 3, ECHR
Free from inhuman and degrading treatment

Article 5, ECHR
Right to liberty and security of person

Article 8, ECHR
Right to respect for private and family life

Article 2, ECHR
Right to life

Article 3, ECHR
Free from inhuman and degrading treatment

Article 5, ECHR
Right to liberty and security of person

Article 8, ECHR
Right to respect for private and family life

Article 8, ECHR
Right to respect for private and family life

How do I make sure my house is ok while I'm on the ward?

Can a friend visit me in my room?

4. Key patients' rights when on the ward

Informal patients have the right to:

Leave the hospital at any time (but they should agree a plan with staff)

Refuse medication or other treatment, if they have capacity to do so

Not to be put in seclusion against their will

Not to have restrictions on communications by phone, post, email and social media (although there may be reasonable ward policies to help ensure the health, safety and welfare of patients, staff and visitors)

Legislation/Human Rights Treaty

Article 5, ECHR
Right to liberty

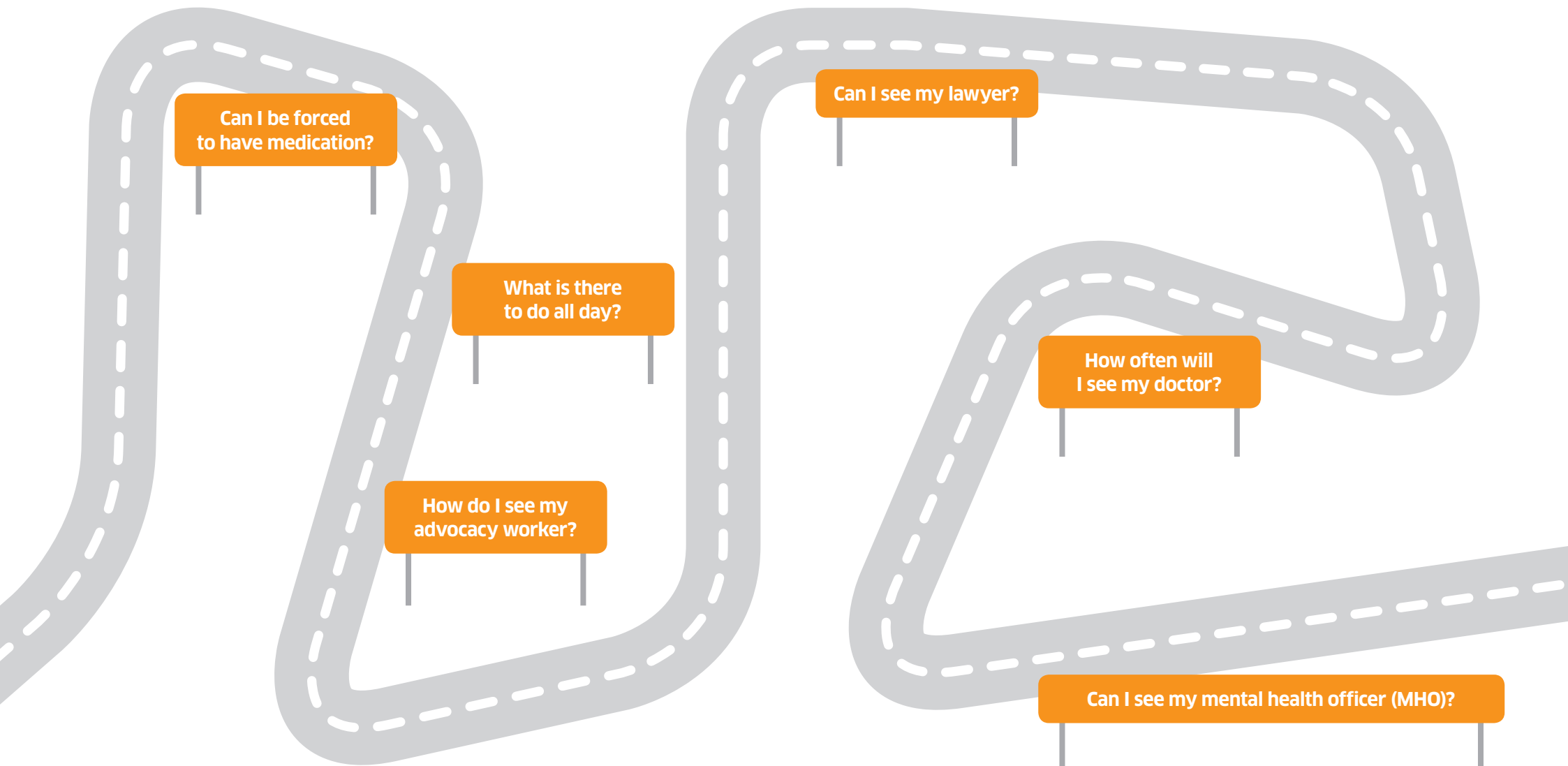
Article 8, ECHR
Right to respect for private and family life

Article 3
Free from inhuman and degrading treatment

Article 8, ECHR
Right to respect for private and family life, home and correspondence

Do I have a choice about my medication?

What if I say no to my medication?



Can I be forced to have medication?

What is there to do all day?

How do I see my advocacy worker?

Can I see my lawyer?

How often will I see my doctor?

Can I see my mental health officer (MHO)?

5. Key patients' rights on discharge from hospital

All patients have the right to:

Participate in planning for discharge

Have their family and friends involved in planning for discharge, if they wish

Have discharge plans explained clearly

Not be discharged without a plan

Discharge plans which include support for recovery

Discharge plans prepared with multi-disciplinary input

Discharge plans which consider meaningful activity such as employment, education or training

Have their community care needs assessed, and assessed needs met

Their carer has the right to be informed and involved in discharge planning

With the patient's consent, have their carer involved and have their views and caring role considered when determining the need for support and services for the patient

Their carer has a right to an Adult Carer Support Plan or Young Carer Statement, and to support if their needs meet local eligibility criteria

Support to make an advance statement about their care and treatment choices if they become ill

Legislation/
Human Rights Treaty

Article 8, ECHR
Right to respect for private and family life

Patient Rights Act

Article 26, UNCRPD
Right to habilitation and rehabilitation

Social Work Scotland Act

Carers Act
(from April 2018)

Mental Health Act

Informal patients have the right to:

Information about how to get further care and treatment, if they discharge themselves against advice

Article 8, ECHR
Right to respect for private and family life

Article 25, UNCRPD
Best possible health without discrimination

Legislation/Human Rights Treaty

What support will I have when I leave hospital?

When will I be discharged?

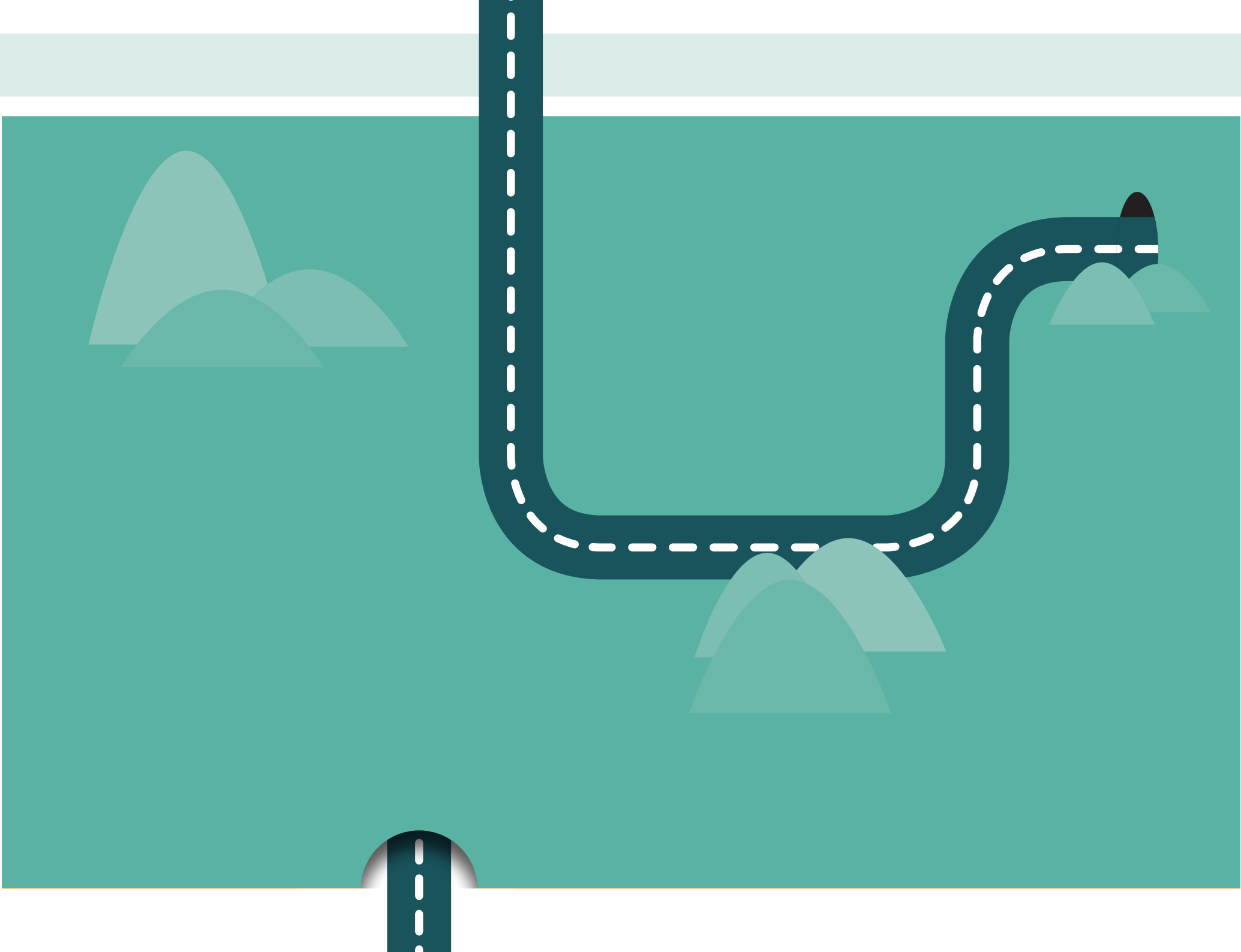
A note about where rights come from

This Rights Pathway lists where each right comes from. Some rights are set out in Scottish mental health law and other Scottish and UK legislation. Other rights come from international human rights conventions. The UK Human Rights Act 1998 put the rights in the European Convention on Human Rights into UK law.

Access to Health Records Act	Access to Health Records Act 1990
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
Education Scotland Act	Education (Scotland) Act 1980
Equality Act	Equality Act 2010
ECHR	European Convention on Human Rights
Mental Health Act	Mental Health (Care and Treatment) (Scotland) Act 2003

National Assistance Act	National Assistance Act 1948
Patient Rights Act	Patient Rights (Scotland) Act 2011
Representation of the People Act	Representation of the People Act 2000
Social Work Scotland Act	Social Work (Scotland) Act 1968
Carers Act	Carers (Scotland) Act 2016 (Scheduled date for implementation April 2018)
CPT Standards	Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The Mental Welfare Commission's **Good Practice Guide - Human Rights in Mental Health Services** has more information about the rights in this pathway.



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