

# NHS South West London ICB (24 010 714b)

Category : [Health](#) > [Mental health services](#)

Decision : **Closed after initial enquiries**

Decision date : **22 Jan 2025**

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## The Ombudsman's final decision:

**Summary: We will not investigate Miss X's complaint about the decision to detain her under the Mental Health Act, or about how staff entered her home and transported her to hospital. This is because it would have been reasonable for Miss X to appeal to the mental health tribunal about the decision, and because we are unlikely to add to the responses she has already received from the Council.**

## The complaint

1. Miss X complains about Medway Council (the Council) and NHS South West London ICB (the ICB). She says staff forcibly entered her home and illegally removed her. She says she was transported to hospital in a police style van.

- Miss X says she was traumatised by the events and she is seeking compensation.

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## The Ombudsmen's role and powers

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- The Local Government and Social Care Ombudsman and Health Service Ombudsman have the power to jointly consider complaints about health and social care. (Local Government Act 1974, section 33ZA, as amended, and Health Service Commissioners Act 1993, section 18ZA).
- We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
  - it is unlikely we would find fault, or
  - it is unlikely we could add to any previous investigation by the bodies, or
  - the person had a right of appeal and it was reasonable to expect them to use it.

(Health Service Commissioners Act 1993, section 3(2) and Local Government Act 1974, section 24A(6), as amended)

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## How I considered this complaint

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- I have considered information provided by Miss X, the Council and the ICB, including relevant health and social care records.
- I considered the Ombudsman's Assessment Code.
- I also considered the relevant legislation and guidance.
- Miss X has had an opportunity to comment on my draft decision statement and I considered her views before reaching my final decision.

# My assessment

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## Relevant legislation and guidance

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9. Under the Mental Health Act 1983 (MHA), when someone has a mental disorder and is putting their safety or someone else's at risk they can be detained in hospital against their wishes. Usually, three professionals need to agree that the person needs to be detained in hospital. These include an Approved Mental Health Professional (AMHP) and usually two doctors who have been specially approved to carry out Mental Health Act assessments (Section 12 doctors).
10. The AMHP is responsible for deciding whether to go ahead with the application to detain the person and for telling the person. They are also responsible for providing information about the proposed detention to the person's Nearest Relative. Local authorities are responsible for the actions of AMHPs.
11. In this complaint, the two Section 12 doctors were not working for the NHS Trust who ultimately decided to detain Miss X under Section 2. The ICB was therefore responsible for those doctors because it held core responsibility for Miss X.
12. People who have been detained under the MHA can apply for a hearing to the First Tier Tribunal (Mental Health) if they disagree with the decision. The Tribunal must discharge the person from detention if, on the day of the hearing, the person does not meet the criteria for detention.

## Brief background

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13. In January 2024 an AMHP and two section 12 doctors attended Miss X's home to complete a mental health assessment. This followed concerns the Psychiatric Liaison Team raised after Miss X had attended A&E a few days earlier.
14. The doctors recommended Miss X be detained under section 2 of the MHA. However a lack of available hospital beds meant the AMHP could not complete

the application. A different AMHP returned shortly after to complete the application and arranged for Miss X to be taken to hospital.

## My findings

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15. The Council's complaint response recognised it would have been distressing for Miss X to have different people entering her home for the MHA assessment and when the team arrived to take her to hospital. However, it explained that family members let them in on both occasions. The staff were mental health professionals that attended to ensure Miss X's safety. There is no indication of forcible entry to Miss X's home. The Council has also explained the transport used was a non-identifiable vehicle to protect Miss X's privacy. I consider we are unlikely to find fault by the Council in this regard.
16. Miss X could have appealed the decision to detain her. The records I have seen do not show if the AMHP explained appeal rights to Miss X during the MHA assessment. However, records show hospital staff explained these when she arrived at hospital and discussed with her again during her stay. Investigation into the information the AMHP provided is unlikely to achieve more. The records show Miss X was aware of her right to appeal to tribunal but she decided not to. It would have been reasonable for her to use this to challenge her detention.

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## Final decision

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17. We will not investigate Miss X's complaint. It was reasonable to expect Miss X to appeal to the tribunal about the decision to detain her under the MHA, and we would be unlikely to add more to the responses Miss X has already received from the Council.

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### Investigator's decision on behalf of the Ombudsman

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