

3. Patient Legal Standing Against NHS Policy

Rights and lawful tools a patient can use to influence individual care without claiming a power to compel clinically inappropriate treatment

Law and Policy in Medicine toolkit | Version 1.0 | 27 September 2026

Scope and status. This document focuses on NHS care in England, while also using UK-wide/Great Britain professional, medicines and employment-law sources where applicable. Health-service law differs in Scotland, Wales and Northern Ireland. This is a researched legal-information and assessment tool, not individual legal advice and not a substitute for urgent clinical care.

Core position. The patient has substantial legal rights to consent, information, individualised safe care, rational NHS decision-making, equality, records, choice in specified referrals and complaints. Those rights can force a decision to be reconsidered or properly justified. They do not give a patient a general legal power to compel a doctor to prescribe a treatment that the doctor concludes is not clinically appropriate.

1. Basic patient rights relevant to treatment disputes

Right / tool	Effect
Access	NHS Constitution: access to NHS services must not be refused on unreasonable grounds.
Appropriate individual care	Care and treatment should be appropriate, meet needs and reflect preferences; Regulation 9 requires collaborative assessment and support for participation in decisions.
Safe care	Regulation 12 requires care and treatment to be provided safely, with risk assessment and reasonably practicable mitigation.
Consent / refusal	A capacitous adult can accept or refuse offered treatment, subject to limited statutory exceptions.
Information	The patient must receive sufficient information about available options, material risks and benefits to make an informed decision.
Involvement	The NHS Constitution recognises a right to be involved in planning and decisions about health and care.
NICE-approved treatment	The NHS Constitution states a right to NICE-recommended drugs/treatments for NHS use if the doctor says they are clinically appropriate.

Other treatment funding	Local funding decisions should be rational and based on proper consideration of evidence; relevant bodies have statutory arrangements/reasons duties under Standing Rules regs 34-36.
Choice of GP/practitioner	A person has legal rights around GP registration and may express a reasonable preference for a particular practitioner; the practice must endeavour to comply subject to limits.
Elective referral choice	In qualifying referrals, patients have legal rights to choose a clinically appropriate provider/team; referral-management systems should not obstruct the right.
Records	Patients have rights of access and rectification of inaccurate personal data; disputed opinions may be retained but a supplementary statement/challenge can be recorded.
Equality and reasonable adjustment	Disabled patients may be entitled to reasonable changes to policies, procedures or communication arrangements.
Complaint	A patient has a statutory NHS complaints route; complaints must be investigated and answered under the 2009 Complaints Regulations.
Protection from abuse/neglect/degrading care	Regulation 13 is a legal fundamental standard for registered providers.

2. How a patient can lawfully strengthen a treatment request

- State the clinical objective, not only the name of the medicine or intervention. Explain the symptom/function you are trying to improve and why existing treatment is inadequate or unacceptable.
- Provide relevant evidence and previous treatment outcomes, including adverse reactions, lack of benefit, contraindications and the consequences of no effective treatment.
- Ask the clinician to distinguish: (a) clinically inappropriate, (b) outside competence, (c) legally restricted, (d) not routinely commissioned/funded, (e) prohibited by local policy, or (f) not normally done.
- If the GP cannot initiate the treatment, ask whether referral to an appropriately authorised specialist is clinically indicated and whether a legal right to provider choice applies.
- Ask that the decision and reasons are recorded. Where a commissioning body refuses funding under a general non-funding policy, request the written reasons and the Individual Funding Request/exception process.
- Where disability affects communication, access or ability to use a standard pathway, make a specific reasonable-adjustment request and ask that it is recorded.
- Ask for a second opinion when there is genuine clinical disagreement. This is not generally an absolute statutory right, but GMC standards require doctors to respect the route and consider it when refusing a requested treatment.
- Use records access and rectification rights to ensure important factual safety information - such as medication, allergies/adverse reactions and relevant history - is correct and visible.

3. The patient cannot compel every requested treatment

Limit. R (Burke) v GMC and later case law confirm that a doctor cannot normally be compelled to provide treatment they consider clinically inappropriate. The legal leverage is therefore strongest when directed at the quality and legality of the decision-making process: assessment, information, reasons, equality, referral, funding procedure and review.

4. Conflict map: patient request vs restriction

What the patient is told	What to ask next
"It is illegal."	Which Act/regulation and section makes it illegal for this clinician/patient/indication?
"NICE says no."	Is this a NICE clinical guideline or a technology-appraisal/funding recommendation? Does the guideline preserve patient-specific judgment?
"The NHS will not fund it."	Which commissioner/policy? What are the published reasons? Is there an exception/IFR route?
"Our practice does not prescribe it."	Is the reason competence, legal restriction, shared-care rules or local policy? Is specialist referral appropriate?
"You cannot be referred there."	Does the statutory right to choice apply to this referral/provider? If not, what clinical/commissioning rule prevents it?
"You must take this medicine first."	Is that a legal requirement, evidence-based clinical sequence, commissioning criterion or local policy? What happens if it is contraindicated or previously harmful?
"We cannot communicate that way."	Does the Equality Act / Accessible Information Standard require a reasonable adjustment or accessible format?

5. Legal conflict tools available to a patient

1. Ask for reconsideration by the treating clinician using patient-specific evidence.
2. Ask to see another clinician in the GP practice, using the statutory/pre-contract preference mechanism where applicable.
3. Ask for specialist referral/advice where the GP lacks competence or authority to initiate the requested treatment.
4. Exercise a qualifying legal right to provider/team choice for elective referral.
5. Request an Individual Funding Request or other exception process if the treatment is not routinely commissioned.
6. Request written policy and refusal reasons under the Standing Rules where applicable.
7. Make a formal complaint to the provider OR commissioner (normally the local ICB for most local NHS services), not both for the same complaint at the same time.
8. Escalate an unresolved NHS complaint to the Parliamentary and Health Service Ombudsman.

9. Provide safety/quality intelligence to CQC where fundamental standards may be affected; CQC generally does not resolve an individual complaint on the patient's behalf.
10. Use ICO/data-protection routes where the issue is inaccurate records, access or data processing.
11. Seek specialist public-law advice urgently where judicial review may be necessary; judicial-review time limits can be short.

6. Patient Treatment Request / Legal Standing Sheet

Field	Patient entry
Condition/symptom/function requiring treatment	
Treatment(s) tried and outcome	
Adverse reactions / safety concerns	
Requested clinical objective	
Requested treatment/referral (if any)	
Evidence supplied	
Clinician's stated reason for refusal/alternative	
Is reason: clinical / competence / law / policy / funding / other?	
Exact law/policy cited	
Alternative/referral/second opinion offered	
Reasonable adjustment needed	
Record updated with safety information?	
Written reasons requested?	
Next review / escalation date	

Authorities and references

Primary legislation and official/regulatory sources are preferred. Links were checked for this version on 27 September 2026.

- [1] [NHS Constitution for England](#) — Patient rights on access, appropriate care, NICE treatments, consent, information, records, choice, involvement and complaints.
- [2] [Handbook to the NHS Constitution for England](#) — Explains legal sources and administrative-law limits.
- [3] [Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#) — Regs 9, 11, 12, 13, 17 and 20.
- [4] [Equality Act 2010](#) — Reasonable-adjustment and service-provider duties.
- [5] [NHS England Accessible Information Standard](#) — Accessible communication requirements for publicly funded NHS care.
- [6] [Standing Rules Regulations 2012, Part 7](#) — Healthcare intervention funding, reasons and written arrangements.

- [7] [NHS England Patient Choice Guidance](#) — Current guidance on legal choice rights.
- [8] [GMS Contracts Regulations 2015](#) — Includes essential services and patient preference of practitioner.
- [9] [GMC Decision making and consent - patient request](#) — Para 49 on requests a clinician considers not in clinical interests.
- [10] [Montgomery v Lanarkshire Health Board \[2015\] UKSC 11](#) — Material risk and reasonable alternatives.
- [11] [McCulloch v Forth Valley Health Board \[2023\] UKSC 26](#) — Reasonable alternative-treatment analysis.
- [12] [R \(Burke\) v GMC \[2005\] EWCA Civ 1003](#) — Limits on compelling clinically inappropriate treatment.
- [13] [UK GDPR, Article 16](#) — Right to rectification of inaccurate personal data.
- [14] [ICO Right to Rectification](#) — Practical guidance, including medical-record examples.
- [15] [NHS Complaints Regulations 2009](#) — Statutory handling/investigation/response requirements.