

Nearest Relative

This factsheet looks at the role of the nearest relative. This is a term used in the Mental Health Act. It covers who someone's nearest relative would be, what the nearest relative's rights are and other important information. You may find it useful if you care for someone with a mental illness who is under the Mental Health Act. You might also find it useful if you yourself are under the Mental Health Act.

- The 'nearest relative' is a legal term used in the Mental Health Act. It is not the same as the next of kin. The next of kin has no rights under the Mental Health Act.
- The nearest relative has some rights when someone is, or may be, detained under the Mental Health Act (this is sometimes called 'being sectioned' or 'being held under section').
- Nearest relatives can ask for an assessment to decide if their relative should be detained under the Mental Health Act. They can also request that their relative is discharged from hospital.
- If someone does not feel their nearest relative is the right person for the role, they can apply to the County Court for them to be removed or changed.
- The nearest relative does not have the right to be told everything about the person who is in hospital. This depends on whether their relative allows for information to be shared.

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1. Glossary

Some information in this factsheet is quite technical. This glossary gives an explanation of some of the phrases and words that are used:

- **Approved mental health professional (AMHP):** This is a specialist mental health professional, who could be a social worker, nurse or therapist. They can make decisions of whether to detain someone under the Mental Health Act. They give a non-medical perspective when detention is being considered.
- **Community Treatment Order (CTO):** A CTO is made so that someone can leave hospital to be treated in the community. A doctor has the power to return that person back to hospital if necessary.
- **Hospital Managers:** Hospital Managers have responsibilities for ensuring that the Mental Health Act is properly used, for example making sure that information is given to detained patients. They can also make decisions about whether a patient should be detained, by holding a hearing.
- **Independent Mental Health Advocate (IMHA):** The IMHA can help patients make decisions about their care and treatment. They are independent of other hospital staff. Everyone detained under the Mental Health Act has the legal right to see an IMHA.
- **Leave:** If someone is detained under the Mental Health Act in hospital, then they are not able to leave the ward freely. Any leave away from the ward has to be authorised by a doctor and is known as 'section 17 leave'. Leave may be given gradually. For example someone may first be allowed leave for one hour, with this slowly being increased over a number of weeks.
- **Section 2 of the Mental Health Act:** Section 2 (s2) allows a person to be admitted to hospital for an assessment of their mental health and to get any necessary treatment. It lasts for a maximum of 28 days.

- **Section 3 of the Mental Health Act:** Section 3 (s3) allows a person to be admitted to hospital for treatment. It lasts for 6 months, but this can be renewed.
- **Supervised Community Treatment (SCT):** This allows someone who has been detained under certain sections of the Mental Health Act to be discharged from hospital under a Community Treatment Order (CTO). This is explained in more detail in section 10.

2. What is the Mental Health Act 1983?

The Mental Health Act 1983 sets out when someone with a mental disorder can be placed in a psychiatric hospital for a certain period of time. This is often known as being detained or being sectioned. This is so that they can be assessed and given treatment, and is only used when that person has put their own or someone else's health and safety at risk. The Act gives the person's NR some important rights which can be used.

Our factsheet '**Detention under the Mental Health Act**' provides more information about how the Mental Health Act can be used. This is available to download at www.rethink.org.

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3. Who is the nearest relative?

The nearest relative (NR) is defined under the Mental Health Act. It is important to remember that the NR and the 'next of kin' can be two different people. The next of kin is usually a relative or close friend chosen by someone soon after they are admitted to any sort of hospital. The next of kin will usually be told about the patient going into hospital (with the patient's consent). The next of kin has no legal powers under the Mental Health Act.

Section 26 of the Mental Health Act sets out a list of people who can be the NR. The approved mental health professional (AMHP) will look at the personal circumstances of the person who may be detained and decide which of his or her partner or close relatives is highest on the list.

This is the list which the AMHP will normally use:

1. Husband, wife or civil partner
2. Son or daughter
3. Father or mother
4. Brother or sister
5. Grandparent
6. Grandchild
7. Uncle or aunt
8. Niece or nephew

However, there are other rules that may affect who the NR will be. It is important that these rules are looked at, along with the list above:

- The NR must be over 18, unless he or she is the husband, wife, civil partner or parent of the person.¹
- Husbands, wives or civil partners (including same sex partners) who are permanently separated cannot be a NR.² Partners are also included when a couple has been living together as husband and wife or as civil partners for six months or more, unless one person in the couple is married to someone else or not permanently separated from them.³
- If there are two or more people in the same category (for example if some has a brother and a sister), the eldest person would be the NR. Full blooded relatives will be preferred over half blooded relatives.⁴ (For example a sister would be preferred to half sister).
- If the person normally lives with or is cared for by a relative (or was cared for by the person before admission to hospital), that person goes to the top of the list and becomes the NR.⁵
- Someone other than a relative, who has been living with the person for five years or more, will be treated as if they are a relative. This means that person can become the NR, unless someone in the above list is either living with or caring for the patient.⁶
- Step children are not treated as relatives, but can become the NR, if
 - there is no other NR and they normally live with the person (or did before that person was admitted to hospital) and have done so for at least five years;
 - a court decides that they should be NR⁷ or;
 - the current NR asks them to be the NR and they agree (this is known as “delegating”).⁸
- A relative living abroad cannot act as NR for someone who lives in the UK.⁹ However, someone living in the UK will still be the NR if on holiday abroad.
- If a child or young person is under a care order by the local authority, then the local authority must act as the NR (unless the person has a husband, wife or civil partner)¹⁰.
- An unmarried father will only be considered to be NR where he has parental responsibility.¹¹
- It is possible for the NR to pass their rights to another person (this is known as ‘delegating’) provided that the other person agrees to take on the role (this is explained in more detail later in the factsheet).

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4. What are the nearest relative's rights?

The nearest relative's (NR) rights are:

- **To get information**

The approved mental health professional (AMHP) must let the NR know within a reasonable time if his or her relative is to be detained under section 2 of the Mental Health Act.

- **To consultation**

The AMHP must speak with the NR before someone can be detained for treatment under section 3, unless it would be difficult to do this from a practical perspective or if it would cause a long delay.¹² If the NR objects, guardianship or detention under section 3 cannot go ahead¹³, unless the County Court removes the NR. This is known as 'displacement'. Displacement of the NR is looked at in Section 5 of this factsheet.

There may be times when it is possible but not a good idea to tell the NR of an admission for assessment (section 2) or to consult the NR about an application for treatment (section 3). It may not be a good idea to tell the NR because it would have a negative impact on the patient. For example it could cause:

- emotional distress
- deterioration in their mental health
- physical harm
- financial or other exploitation.¹⁴

If a NR is to be consulted about an application for a section 3, but their relative does not want information to be shared about them, the NR should get enough information to allow them to do what the Mental Health Act asks them to do.¹⁵

- **To ask for assessment**

The NR can request that social services carry out a Mental Health Act assessment.¹⁶ Some families have found this right helpful in a crisis, if there have been problems with getting someone help and they are very unwell, or at risk to themselves or others. An example letter is set out at the end of this factsheet which you can use to request this. You can also make a verbal request. The local authority has to give written reasons to the NR if they decide not to admit the person into hospital after an assessment.

- **To apply for admission**

The NR can ask hospital managers to detain a person under section 2 or 3, or in an emergency.¹⁷ This could be useful if two doctors say that the person should be detained but the AMHP disagrees.

A specific form is required for NR applications. The forms that a NR would need to fill in can be found here:

<http://www.legislation.gov.uk/ukxi/2008/1184/schedules/made>.

It may be easier to ask the social services department to make an assessment first, before applying to the hospital managers.

- **To discharge**

The NR can discharge someone from detention under sections 2 or 3, or a Community Treatment Order (CTO). However this is not possible if the person has been detained after a judge or magistrate has made a court order.¹⁸

The Responsible Clinician (the professional responsible for someone's care and treatment) is able to stop the discharge in certain circumstances. Please see Section 8 of this factsheet for more information on applying for discharge and Section 10 for information on CTOs.

- **To delegate the role to someone else**

The NR can pass over their rights to someone else by writing to the chosen person and to the Hospital Managers.¹⁹ This is known as 'delegating' their rights. An example letter is set out at the end of this factsheet which can be used for this.

If you are thinking about delegating the NR role to someone else, you could contact an AMHP from the local authority for help.

- **To contact the Independent Mental Health Advocacy service**

People detained under the Mental Health Act can get support from an Independent Mental Health Advocate (IMHA). This includes those under a Community Treatment Order for supervised community treatment.

An IMHA service should visit and talk to the patient if the NR asks them to.²⁰ However, patients can refuse to see an IMHA and do not have to accept help from one if they do not want it.

More information on IMHAs can be found in our factsheet on "**Advocacy**".

Patients or the NR can still get help from a solicitor if there is an IMHA involved.

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5. What can someone do if they think their nearest relative is not a suitable person to carry out the role?

Someone can apply to the County Court to remove his or her nearest relative (NR), if he or she is not a suitable person.²¹ This is known as 'displacement'. They can pick someone they feel would be more suitable. The court will make a decision on whether the person is suitable or whether the original NR should stay in place.²²

If you thinking about displacing your own NR, then you may want to get some legal advice from a mental health solicitor. If you are entitled to legal

aid, then this can be fully funded. If you do not use a solicitor, you can represent yourself in the County Court.

You can get more information about **'How to get legal advice and assistance'** at www.rethink.org.

An approved mental health professional (AMHP) can make an application for displacement, if they believe that there is an unsuitable NR. This is only if it would not be reasonable to expect this person or anyone else to make the application.²³

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6. Can an approved mental health professional remove the nearest relative?

An approved mental health professional (AMHP) can apply to the County Court to 'displace' (or remove) an existing nearest relative (NR), if the NR:²⁴

- is not able to act because of a mental disorder or other illness
- objects to an application for admission for treatment or a guardianship application without good reason
- has exercised the power to discharge a patient without thinking about the patient's welfare or the interests of the public, or
- is not a suitable person to act for any other reason.

The NR has the right to object to a section 3 for any reason. If an NR decides to object, a section 3 can only happen if an application is made to a County Court Judge to remove the NR because they are objecting on unreasonable grounds.

Displacement of an NR is likely for a certain length of time, depending on what section the person is under:

- If the patient was detained on a section 2 before the application to displace the NR, the section 2 would be extended until the case is finally decided on by the Judge. Displacement in this case would only be for as long as the section 3 (or a subsequent Community Treatment Order) applies.
- If the NR is displaced because they have applied to discharge their relative without good reason, this would end when their relative is no longer detained under the Mental Health Act.²⁵
- If an order is made because the NR is not able to act or is not a suitable person, the County Court can give a time limit for this order.²⁶

A NR who has been displaced and whose relative is detained in hospital or is subsequently detained in hospital has the right to apply for their relative's case to be heard by the Mental Health Review Tribunal.²⁷

If the NR is displaced, then a person can be chosen to act as the NR instead (but it is the County Court's decision who this person will be).

The decision to apply to County Court to displace a NR rests with the AMHP.²⁸

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7. What happens if someone does not have a nearest relative?

Under section 29 of the Mental Health Act, the local County Court can appoint someone as nearest relative (NR) if the patient does not have one. The person without a NR can nominate someone he or she would like to be the NR. However it will be up to the court to decide who they feel the person is suitable for the position.

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8. What happens if the nearest relative wants to discharge their relative?

The nearest relative (NR) must give the Hospital Managers 72 hours' written notice if he or she wants to discharge their relative from a section of the Mental Health Act.²⁹ The NR also has the right to apply for the discharge from a Community Treatment Order (CTO). Section 10 of this factsheet has information on CTOs. If someone is detained in hospital under a forensic section (when someone has been involved with the police, court or prison), the NR does not have the right to apply for discharge.

The Mental Health Act Code of Practice has a template letter which can be used to give notice to explain that the NR wants to discharge their relative.³⁰ The letter can be found at the end of this factsheet. If the person's Responsible Clinician thinks that the patient should not be discharged they can issue a 'barring notice'. This will stop discharge going ahead. However the NR will have the right to apply to the Tribunal if the person has been detained under Section 3.³¹ The grounds on which the discharge may be blocked are narrow, and unless the patient is a danger to himself/herself or others, discharge should be allowed.

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9. What is the Tribunal?

This is an independent panel made up of a psychiatrist, a lawyer and a non-legal person (known as a lay person). They hear the case for and against discharge and decide whether or not it can go ahead.³² Patients can apply to the Tribunal for a hearing. The nearest relative (NR) can only do so if discharge has been blocked by the Responsible Clinician and the patient is on section 3, or if the patient has been detained by a court order, including section 37.³³

If the NR has applied for the Tribunal, he or she has the right to attend and speak at the hearing, give a written statement and get written notice of the Tribunal's decision. A friend or advocate can address the Tribunal on the NR's behalf³⁴.

You can find more information on this in our factsheet '**Discharge from detention under the Mental Health Act**', which you can download for free from www.rethink.org.

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10. What is Supervised Community Treatment (SCT)?

Someone can be put on Supervised Community Treatment (SCT) after being detained in hospital under 'treatment sections' of the Mental Health Act. This is normally a section 3 or section 37. A person's Responsible Clinician would make a community treatment order (CTO) which will set out certain conditions. If someone on a CTO fails to comply with the conditions, they can be returned or 'recalled' to hospital. Carers and the nearest relative (NR) should also be involved as far as possible in the care planning process.

A NR cannot object to a CTO and sometimes they will not be told before it is made. This may happen when the patient does not want their NR to be told. A NR can order the discharge of a CTO by giving 72 hours notice in writing.³⁵ However, the Responsible Clinician can prevent the discharge by issuing a 'barring notice'.

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11. Points for nearest relatives to remember

Information sharing

Hospital Managers should give nearest relatives (NRs) copies of any information given to a patient in writing. However the patient can block information from being given to the NR.³⁶ This includes if their judgment or reasoning has been affected by symptoms of mental illness. The NR does not have any additional rights to being given information about their relative's mental health care or treatment when they are detained under the Mental Health Act. The hospital will still have a duty of confidentiality to the patient and will need their permission to share information.

The Mental Health Act Code of Practice says that the progress of the patient should also be discussed with carers, if the patient consents.³⁷

More information on this can be found in our factsheet on '**Confidentiality**'. You can download it for free from www.rethink.org or call 0300 5000 927 and ask for a copy to be sent to you.

Compulsory medication

Someone detained under the Mental Health Act can be treated without their consent. The NR has no rights to stop this. For example, they may be

given their medication by injection, even if they do not want this. This is usually if the person is very unwell.

Hospital Leave (section 17)

The NR has no rights to request that the hospital gives someone leave.

Notice of Discharge

If the patient consents, the NR should be given 7 days' notice of the end of a section or SCT if possible.³⁸

Complaints

Complaints about care and treatment can be made by the NR using the NHS complaints procedure. If the NR has a complaint about the way the Mental Health Act was used, he or she can complain to the Care Quality Commission. Their details can be found in the 'useful contacts' section of this factsheet.

You can find more information on this in our '**Complaining about the NHS or Social Services**' factsheet, which you can download for free from www.rethink.org. Or call 0300 5000 927 and we can send you a copy.

Carers support and advocacy

A member of the ward staff should be able to tell you if there is a carers' advocacy or support service that covers your relative's hospital. You can also find out about mental health advocacy through the Patient Advice and Liaison Service (PALS) at your NHS trust. You can find your local PALS' details at [http://www.nhs.uk/Service-Search/Patient-advice-and-liaison-services-\(PALS\)/LocationSearch/363](http://www.nhs.uk/Service-Search/Patient-advice-and-liaison-services-(PALS)/LocationSearch/363) or we could search for you. You can contact us on 0300 5000 927.

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Care Quality Commission

If you have concerns or a complaint about the way the Mental Health Act has been used you can contact the Care Quality Commission.

Address: CQC National Correspondence, Citygate, Gallowgate, Newcastle upon Tyne. NE1 4PA

Telephone: 03000 616161 (open Monday to Friday, 8.30am to 5.30pm)

Email via website: <http://www.cqc.org.uk/contactus/contactusonline.cfm>

Web: <http://www.cqc.org.uk>



**Example Standard Letter for Nearest Relative to
Require Assessment by Social Services
Department**

Your name
Your address
Date

Approved Mental Health Professional
Community Mental Health Team

Dear Sir/Madam

Re.....

of
.....
.....

I am the nearest relative of the above-named who I believe is no longer able to manage effectively and whose behaviour is causing myself and others grave alarm

Give here details of your relative's behaviour which is causing alarm. List as much of the worrying behaviour as possible.

I request that an approved mental health professional be directed as soon as possible to assess the case with a view to making an application for his admission to hospital. Should the AMHP decide that hospitalisation is not yet the most appropriate form of treatment, I would like the reasons in writing and an interview with the said AMHP to discuss alternative appropriate care and treatment for *my relative*.

This request is made under Section 13 (4) of the Mental Health Act 1983 (as amended in 2007).

Yours faithfully

**Example Standard Letter for Delegation of Nearest Relative
Functions³⁹**

Your name
Your address
Date

Address

Dear ----- / To whom it may concern,

Authority to perform the functions of nearest relative

I, [my name], of [full address] am the [relationship] of [name of patient], and [his or her] nearest relative within the meaning of the Mental Health Act 1983.

This authority is given pursuant to the Act, and also Regulation 24 of the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008.

I hereby authorise [name of person to delegate to] to perform in respect of [name of patient] the functions conferred upon the nearest relative by the said Act.

Signed
Nearest relative

Date

[POSSIBLE ADDITION -]

I, [name of delegatee], of [full address], hereby confirm that I agree to take on the duties of the nearest relative under the Mental Health Act 1983.

Signed
Delegatee

Date

**Example Standard Letter for Nearest Relatives to
Use to Discharge Patients (taken from Mental
Health Act Code of Practice, para 29.23)**

To the managers of [INSERT NAME AND ADDRESS OF HOSPITAL IN WHICH THE PATIENT IS DETAINED, OR (FOR A SUPERVISED COMMUNITY TREATMENT PATIENT) THE RESPONSIBLE HOSPITAL.]

Order for discharge under section 23 of the Mental Health Act 1983

My name is [GIVE YOUR NAME] and my address is [GIVE YOUR ADDRESS]

[Complete A, B or C below]

A. To the best of my knowledge and belief, I am the nearest relative (within the meaning of the Mental Health Act 1983) of [NAME OF PATIENT].

OR

B. I have been authorised to exercise the functions of the nearest relative of [NAME OF PATIENT] by the county court.

OR

C. I have been authorised to exercise the functions of the nearest relative of [NAME OF PATIENT] by that person's nearest relative.

I give you notice of my intention to discharge the person named above, and I order their discharge from [SAY WHEN YOU WANT THE PATIENT DISCHARGED FROM DETENTION OR SUPERVISED COMMUNITY TREATMENT].

[Please note - you must leave at least 72 hours between when the hospital managers get this letter and when you want the patient discharged.]

Signed

Date



-
- ¹ S26(5)(c) MHA
 - ² s26(5)(b) MHA
 - ³ s26(6)
 - ⁴ s26(3) MHA
 - ⁵ s26(4) MHA
 - ⁶ s26(7) MHA
 - ⁷ s 29 MHA
 - ⁸ r 24, Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008. SI 2008/1184.
 - ⁹ s26(5)(a) MHA
 - ¹⁰ s 27 MHA
 - ¹¹ S26(2)(b) MHA
 - ¹² S(11)(4)(b) MHA
 - ¹³ S11(4)(a) MHA
 - ¹⁴ Department of Health. *Code of Practice Mental Health Act 1983*. London: TSO. 2008. (paragraph 4.60); R. (on the application of E) v Bristol City Council [2005] EWHC 74 (Admin).
 - ¹⁵ R (Stevens) v Plymouth City Council [2002] EWCA Civ 388
 - ¹⁶ s 13(4) MHA
 - ¹⁷ s 11(1) MHA
 - ¹⁸ s 23 MHA
 - ¹⁹ See reference 9
 - ²⁰ s130B (5) MHA
 - ²¹ s 29(3)(e) MHA
 - ²² s 29(2), s29(3)(e) MHA
 - ²³ Department of Health. *Code of Practice Mental Health Act 1983*. London: TSO. 2008 (paragraph 8.11)
 - ²⁴ s29(3) MHA
 - ²⁵ s30(4) MHA
 - ²⁶ s29(5) MHA
 - ²⁷ s66(1)(h) MHA
 - ²⁸ Department of Health. *Code of Practice Mental Health Act 1983*. London: TSO. 2008 (paragraph 8.14)
 - ²⁹ s 25(1) MHA
 - ³⁰ Department of Health. *Code of Practice Mental Health Act 1983*. London: TSO. 2008 (paragraph 29.23)
 - ³¹ s 66(1) MHA
 - ³² See <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/mental-health/membership/index.htm> (accessed 2 December 2011)
 - ³³ ss 66(1)(f), (2)(f), 69(1)(a), Sch 1 Pt 1 paras 2, 6, 9 MHA
 - ³⁴ r 11(1) Tribunal Procedure (First Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008. SI 2008/2699.
 - ³⁵ s 25(1A) MHA
 - ³⁶ Department of Health. *Code of Practice Mental Health Act 1983*. London: TSO. 2008 (paragraph 2.27)
 - ³⁷ Department of Health. *Code of Practice Mental Health Act 1983*. London: TSO. 2008 (paragraph 18.5)
 - ³⁸ s 133(1) MHA

³⁹ Department of Health. *Code of Practice Mental Health Act 1983*. London: TSO. 2008 (paragraph 29.23)

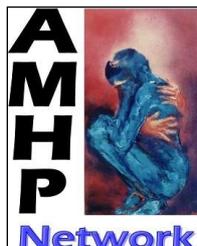
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Rethink Mental Illness

Phone 0300 5000 927
Monday to Friday, 10am to 2pm

Email advice@rethink.org

Supported by the
Approved Mental Health
Professionals (AMHP)
Community of Interest
May 2012

Did this help?

We'd love to know if this information helped you.

Drop us a line at: feedback@rethink.org

or write to us at Rethink Mental Illness:

Feedback
PO Box 68795
London SE1 4PN

or call us on 0300 5000 927.

We're open 9am to 5.30pm, Monday to Friday.



Leading the way to a better
quality of life for everyone
affected by severe mental illness.

For further information
on Rethink Mental Illness
Phone 0300 5000 927
Email info@rethink.org

www.rethink.org

Need more help?

Go to **www.rethink.org** for information on symptoms, treatments, money and benefits and your rights. Or talk to others about your problem at **www.rethink.org/talk**.

Don't have access to the web?

Call us on 0300 5000 927. We are open 9am to 5.30pm, Monday to Friday and we will send you the information you need in the post.

Need to talk to an adviser?

If you need practical advice, call us between 10am and 2pm, Monday to Friday. Our specialist advisers can help you with queries like how to apply for benefits, get access to care or make a complaint.

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