

Livewell Southwest

**Nearest Relative - Appointment /
Displacement Policy (Mental Health Act 1983)**

Version No 1.2

Review: November 2017

Notice to staff using a paper copy of this guidance

The policies and procedures page of Intranet holds the most recent version of this guidance. Staff must ensure they are using the most recent guidance.

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Nearest Relative - Appointment/Displacement Policy - Mental Health Act 1983 as amended by Mental Health Act 2007

1 Introduction

- 1.1 Any course of action taken under the Mental Health Act 1983 (The Act) must be done with consideration to the Guiding Principles. Section 118 of the Act states the Code of Practice (CoP) shall include a statement of principles which will inform decisions under the Act.

The Guiding Principles are:

- Purpose Principle
 - Least Restriction Principle
 - Respect Principle
 - Participation Principle
 - Effectiveness, Efficiency and Equity Principle
- 1.2 This document has been reproduced from chapter 8 “The Nearest Relative” contained in the Mental Health Act 1983 Code of Practice. The Mental Health Act 1983 Reference Guide (Chapter 33) has also been referred to. Whilst this document has been amended to reflect local practice, it fundamentally has remained unchanged from the CoP.
- 1.3 Relatives have an important role to play in the assessment, treatment and care of patients, which includes treatment under the Mental Health Act 1983. It is important to remember that the nearest relative for the purposes of the Act may not be the same person as the patient’s next of kin. The identity of the nearest relative may also change with the passage of time e.g. if the patient enters into a marriage or civil partnership.
- 1.4 The nearest relative has legal rights and responsibilities under the Act, and provides additional safeguards and to help ensure that the compulsory powers of the Act are used appropriately. The definition of a nearest relative is contained in Section 26 of the Act. Defining the nearest relative can be complex and should be undertaken by an Approved Mental Health Professional (AMHP) or someone who has experience of the Act.

2 Purpose

- 2.1 The purpose of this document is to confirm what steps should be taken when there is a need to change a persons’ or appoint, a nearest relative, as defined in the Mental Health Act 1983. The need for change may come about because the nearest relative is deemed to be unsuitable or unable to act as such, the identified nearest relative may wish to delegate their function to another person, or the patient does not have an identified nearest relative.

- 2.2 The document will outline the course of action that will need to be taken by the patient, health and social care staff when the need to take action to change, or appoint, a nearest relative has been identified

3 Duties

- 3.1 It is the duty of the AMHP to identify the person who appears to be the nearest relative in accordance with section 26 of the Mental Health Act 1983, as part of the assessment for detention under the Act.
- 3.2 The AMHP has a duty to inform the nearest relative of the application for detention under section 2, and must consult with the nearest relative in relation to an application under section 3 of the Mental Health Act 1983, unless it is not practicable to do so, or the nearest relative has not been identified.
- 3.3 The Mental Health Act Office will monitor the identification of the nearest relative and will contact the AMHP Duty Team if a patient is detained and they have no identifiable nearest relative. The AMHP Duty office will keep a record of all notices from the Mental Health Act Office regarding the lack of a nearest relative. It will be the responsibility of the AMHP team to update the MHA Office of action taken.
- 3.4 It will be the responsibility of the AMHP Duty Team to monitor the appointment / displacement of nearest relatives for all patients detained to Livewell Southwest or by Plymouth City Council. This will include keeping electronic records up to date.

4 Definitions

- 4.1 “Nearest Relative” is the person who is informed or consulted with about the patient becoming subject to the provisions of the Act. The identification of the nearest relative is a matter of fact in law and is identified through a hierarchical list contained within section 26 of the Act. The nearest relative has certain rights under the Act, which includes the right to order the discharge of the patient and to object to some provisions under the Act. These rights act as important safeguards to the patient.
- 4.2 “Approved Mental Health Professional” (AMHP) is a role defined within the Mental Health Act 1983, and is a mental health professional approved by the Local Social Services Authority (LSSA) to carry out the functions of an AMHP.
- 4.3.1 “Code of Practice” is produced by the Department of Health as required by Section 118 of the Act. The Code provides guidance to registered medical practitioners (“doctors”), approved clinicians, managers and staff of hospitals,

and approved mental health professionals on how they should proceed when undertaking duties under the Act.

- 4.3.2 It also gives guidance to doctors and other professionals about certain aspects of medical treatment for mental disorder more generally.
- 4.3.3 While the Act does not impose a legal duty to comply with the Code, the people listed above to whom the Code is addressed must have regard to the Code. **The reasons for any departure from the guidance within the Code should be recorded.** Departures from the Code could give rise to legal challenge, and a court, in reviewing any departure from the Code, will scrutinise the reasons for the departure to ensure that there is sufficiently convincing justification in the circumstances.
- 4.4 “Hospital Managers” means the Chair and the Non Executive Directors of the Livewell Southwest board. Hospital Managers have many functions under the Act and delegate many of them to other officers on the staff of the hospital.
- 4.5 “Local Social Services Authority” (LSSA) is the local authority (or council) responsible for social services in a particular areas of the country.

5 Identification of the nearest relative

- 5.1 Section 26 of the Act defines “relative” and “nearest relative” for the purposes of the Act. It is important to remember that the nearest relative may not be the same person as the patient’s next of kin. The identity of the nearest relative may also change with the passage of time (e.g. if the patient enters into a marriage or civil partnership). (See paragraphs 4.56-4.65 of the Code of Practice for further information.)
- 5.2 Patients remanded to hospital under sections 35 and 36 of the Act and people subject to interim hospital orders under section 38 do not have nearest relatives (as defined by the Act). Nor do patients subject to special restrictions under Part 3 of the Act (restricted patients).
- 5.3 The Department of Health have produced a leaflet regarding the nearest relative which covers many of the issues discussed in this policy (Appendix A). This leaflet is to be given to patients, and the nearest relative, in accordance with the Hospital Managers Information Policy at the intervals specified.
- 5.4 The nearest relative will be identified at the time of detention by the AMHP. If any member of staff is made aware of information that may change the nearest relative, this information must be passed to the Duty AMHP team who will ascertain if the nearest relative has changed. A change in circumstances such as a child reaching the age of 18 years, a death of a relative or separation from a spouse may result in a change in nearest relative.

5.5 Any confirmed change to the nearest relative must be recorded on patient's electronic record and the details passed to the MHA Office and clinical team.

6 Rights of the nearest relative

6.1 The Mental Health Act gives specific legal powers in connection with the patients care and treatment. These things are called the nearest relative's "rights". They are as follows:

- The right to ask for the patient to be detained or put on guardianship
- The right to ask for an approved mental health professional to see the patient
- The right to be told about the patients detention or guardianship
- The right to be given information
- The right to be told if the patient is to be discharged
- The right to discharge the patient
- The right to apply to the Tribunal for the patient to be discharged (limited rights of appeal to the Tribunal).

6.2 These rights are identified in the patient information leaflet "Your Nearest Relative under the Mental Health Act 1983". (Appendix A)

7 Delegation of nearest relative functions

7.1 A nearest relative is not obliged to act as such. They can authorise, in writing, another person to perform the functions of the nearest relative on their behalf. The procedure for doing this is set out in the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008. A form has been produced for this purpose (Appendix B).

7.2 An AMHP can discuss the process with the nearest relative and provide them with a form to complete, or a letter containing the contact details of the nearest relative and the person they are nominating can be sent to the Mental Health Act Office who will notify the duty AMHP. The person who the nearest relative wishes to delegate their functions to must be willing to take on this responsibility; this agreement will be required in writing.

7.3 On receipt of the delegation form, or letter, the Mental Health Act Office will ensure that the details are recorded on the patients' electronic record and a letter will be sent to both parties confirming the delegation, and the functions of the Nearest Relative under the Act. The MHA office will also send a letter to the patient confirming the delegation and the identity of the acting nearest relative.

7.4 A copy of the delegation form (or letters) will be forwarded to the relevant LSSA and clinical team for insertion into the patients' notes.

8 Where there is no nearest relative

81 Where an AMHP discovers, when assessing a patient for possible detention or guardianship under the Act (or at any other time), that the patient appears to have no nearest relative, it is the AMHP's duty to advise the patient of their right to apply to the County Court for the appointment of a person to act as their nearest relative and to give information about the process and professional assistance. The AMHP must record on their MHA Assessment form that the patient has been informed of this right and any assistance that may be required.

8.2 The AMHP has a duty to consider applying to the court to appoint an acting nearest relative in certain circumstances; this is covered in more detail in paragraph 9.3. Particular attention must be given to those cases where the patient lacks capacity to make an application to the court on their own behalf.

8.3 As part of the duty to provide patients with their rights under section 132 of the Act, the professional informing the patient must also inform them of their right to apply to the County Court to appoint a nearest relative if they do not have one, as well as their right to apply to displace an unsuitable nearest relative.

9 Displacement of nearest relatives and appointment of acting nearest relatives by the County Court

9.1 Grounds for displacement and appointment

9.1.1 An acting nearest relative can be appointed by the County Court on the grounds that:

- the nearest relative is incapable of acting as such because of illness or mental disorder;
- the nearest relative has objected unreasonably to an application for admission for treatment or a guardianship application;
- the nearest relative has exercised the power to discharge a patient without due regard to the patient's health or wellbeing or the safety of the public;
- the nearest relative is otherwise not a suitable person to act as such;
- the patient has no nearest relative within the meaning of the Act, or it is not reasonably practicable to ascertain whether the patient has a nearest relative or who that nearest relative is.

9.1.2 The effect of a court order appointing an acting nearest relative is to displace the person who would otherwise be the patient's nearest relative.

9.1.3 However, as an alternative to an order by the court, it may sometimes be enough for the actual nearest relative to delegate their role to someone else (see paragraph 7.1).

9.2 Who can make an application to the court?

9.2.1 An application to displace the nearest relative may be made by any of the following people:

- the patient;
- any relative of the patient;
- anyone with whom the patient is residing (or was residing prior to admission);
- an AMHP.

9.2.2 If a patient wishes to apply to the County Court to displace or appoint a nearest relative, the ward staff will contact the AMHP team in the first instance, and also advise the patient to seek legal advice. An AMHP will then advise the patient on the grounds on which they can apply to court. An AMHP will not be expected to make the application, but may do so in exceptional circumstances.

9.3 Applications to the court by AMHPs

9.3.1 AMHPs will need to consider making an application for displacement or appointment if:

- they believe that a patient should be detained in hospital under section 3 of the Act, or should become a guardianship patient, but the nearest relative objects;
- they believe that the nearest relative is likely to discharge a patient from detention or guardianship unwisely.

9.3.2 They should also consider doing so if they think that:

- a patient has no identifiable nearest relative or their nearest relative is incapable of acting as such; or
- they have good reasons to think that a patient considers their nearest relative unsuitable and would like them to be replaced; and it would not be reasonable in the circumstances to expect the patient, or anyone else, to make an application.

Locally AMHPs decisions whether or not to apply to the Court where there is no identifiable nearest relative will be monitored and reviewed by the Duty Team Manager.

9.3.4 AMHPs should bear in mind that some patients may wish to apply to displace their nearest relative but may be deterred from doing so by the need to apply to the County Court. The AMHP should offer assistance to the patient to empower them to make an informed decision on whether or not to apply. Patients may also wish to discuss the issue with an Independent Mental Health Advocate.

9.3.5 It is entirely a matter for the court to decide what constitutes “suitability” of a person to be a nearest relative. But factors which an AMHP should consider

when deciding whether to make an application to displace a nearest relative on grounds of unsuitability, and when providing evidence in connection with an application, should include:

- any reason to think that the patient has suffered, or is suspected to have suffered, abuse at the hands of the nearest relative (or someone with whom the nearest relative is in a relationship), or is at risk of suffering such abuse;
- any evidence that the patient is afraid of the nearest relative or seriously distressed by the possibility of the nearest relative being involved in their life or their care; and
- a situation where the patient and nearest relative are unknown to each other, there is only a distant relationship between them, or their relationship has broken down irretrievably.

This is not an exhaustive list.

9.3.6 In all cases, the decision to make an application lies with the AMHP personally. As part of the decision process AMHPs should discuss the consideration of displacement with the patients' clinical team. A record of the reasons for the decision should be recorded in the patients' notes.

9.3.7 Before making an application for displacement, AMHPs should consider other ways of achieving the same end, including:

- whether the nearest relative will agree to delegate their role as the patient's nearest relative to someone else;
- providing or arranging support for the patient (or someone else) to make an application themselves. This could include support from an independent mental health advocate.

9.3.8 Before an AMHP decides to make an application they must consult with the Lead AMHP and obtain any necessary legal advice and support.

10 Making an application

10.1 People making an application to the County Court will need to provide the court with the facts that will help it make a decision on the application. Exactly what will be required will depend on the type of application and the specific circumstances of the case.

10.2 When applying to displace a nearest relative, AMHPs should nominate someone to become the acting nearest relative in the event that the application is successful. Wherever practicable, they should first consult the patient about the patient's own preferences and any concerns they have about the person the AMHP proposes to nominate. AMHPs should also seek the agreement of the proposed nominee prior to an application being made, although this is not a legal requirement. Agreement should be obtained in writing.

- 10.3 The AMHPs decision on who is appropriate to be nominated should be made after seeking guidance from the LSSA.
- 10.4 If the patient has any concerns that any information given to the court on their views on the suitability of the nearest relative may have implications for their own safety, an application can be made to the court seeking its permission not to make the current nearest relative a party to the proceedings. The reasons for the patient's concerns should be set out clearly in the application.
- 10.5 Hospital managers (via the clinical team) should provide support to detained patients to enable them to attend the court, if they wish, subject to the patient being granted leave under section 17.
- 10.6 If, exceptionally, the court decides to interview the patient (as the applicant), the court has the discretion to decide where and how this interview may take place and whether it should take place in the presence of, or separate from, other parties.
- 10.7 If the court decides that the nearest relative should be displaced and finds the proposed replacement to be suitable, and that person is willing to act as nearest relative, then the court will appoint them.

11 The effect of the order

- 11.1 If the order is granted then the rights of the nearest relative are transferred to the person acting as nearest relative. This could be a person who in the opinion of the Court is a proper person to act as a nearest relative and is willing to do so, or the Local Social Services Authority.
- 11.2. If Plymouth City Council Social Services Authority is appointed as acting as nearest relative then those responsibilities are delegated to Service Managers who will ensure that an appropriate Social Worker is allocated to undertake the necessary duties.
- 11.3. If the functions of the Nearest Relative are transferred to the Local Social Services Authority then the Authority acquires additional duties. If the client is admitted to any hospital or nursing home the authority must in accordance with Section 116 to the Act arrange for the client to be visited whilst in hospital or the nursing home in the same way that a parent would be expected to visit a child in similar circumstances.
- 11.4 A copy of the order must be given to the patient, and must highlight the duration of the order. A copy will also be placed on the patient notes, a copy sent to the LSSA and the details will be recorded on the patients' electronic record.

11.5 A displaced nearest relative has the right to make an application to the Mental Health Tribunal once during the period of 12 months starting with the day of the court's order; and subsequently once in each 12 month period for which the order is in force. This applies to those displaced on the following grounds:

- Have unreasonably objected to an application for admission for treatment or a guardianship order; or
- Have exercised, or are likely to exercise, their power of discharge without due regard to the welfare of the patient or the interests of public safety.

12 The duration of the order

12.1 Duration of orders appointing acting nearest relatives

Order made on the grounds of	continues in force (unless discharged) until
<p>unreasonable objection to application (section 29(3)(c))</p> <p>or</p> <p>use of power of discharge without due regard (section 29(3)(d))</p>	<p>If the patient was not a detained patient, an SCT patient or a guardianship patient on the date of the order, and has not since become one:</p> <ul style="list-style-type: none"> • at the end of three months starting with the day of order. <p>Otherwise:</p> <ul style="list-style-type: none"> • when the relevant application for admission for treatment or application for guardianship under Part 2, or order or direction under Part 3, ceases to have effect either because the patient is discharged or for some other reason. <p>But the order does not end as a result of the patient being discharged from detention onto SCT, or being transferred to or from guardianship under section 19.</p>
<p>no nearest relative (section 29(3)(a))</p> <p>or</p> <p>incapacity of nearest relative (section 29(3)(b))</p>	<p>The date (if any) specified in the order</p>

<p>or</p> <p>unsuitability of nearest relative (section 29(3)(e))</p>	
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13 Discharge of the order

13.1 The order can be discharged by an application to the County Court (Section 30(1)). This can be undertaken:-

- by the person having the functions of the nearest relative by virtue of the order;
- by the actual nearest relative if the order was originally made under Section 29(3) (a) "no nearest relative" or Section 29(3) (b) "nearest relative incapable of acting" and it transpires that the patient has a nearest relative within the meaning of the Act or that the nearest relative is subsequently capable of acting as such.
- by a "new" nearest relative if it transpires that the person who was the nearest relative at the time of the order is no longer the nearest relative.

14 Variation of the order

14.1 Section 30(2) of the Act allows for the order to be varied. Application can be made by:

- the person having the functions of the nearest relative by virtue of the order;
- an Approved Mental Health Professional

14.2 The County Court can vary the order and substitute a new nearest relative who could be the local Social Services Authority or any other person who in the opinion of the Court is able to exercise the functions of the nearest relative and is willing to do so.

14.3 If the person who is a nearest relative by virtue of an order under Section 29 dies then in accordance with Section 30(3) the duties of the nearest relative cannot be exercised by anybody else. However, any relative within the meaning of the Act can then apply to the County Court for the order to be discharged or varied.

15 Monitoring Compliance and Effectiveness

15.1 The MHA Office will inform the Lead AMHP when a patient is admitted under section and the nearest relative has not been indentified or informed.

15.2 The Lead AMHP will keep records of the notifications and allocate the matter to an AMHP to investigate. The Lead AMHP will notify the MHA Office when:

- The patients nearest relative has been identified, and if they have been informed of the detention. If the nearest relative has not been informed the rationale for this.
- If no nearest relative has been identified what course of action is proposed. If the decision is not to apply to the court to appoint a nearest relative then the AMHP must again ensure the patient is informed of their right to apply.

15.3 Any issues of concern will be reported through the Mental Health Act Governance Group

All policies are required to be electronically signed by the Lead Director. Proof of the electronic signature is stored in the policies database.

The Lead Director approves this document and any attached appendices. For operational policies this will be the Locality Manager.

The Executive signature is subject to the understanding that the policy owner has followed the organisation process for policy Ratification.

Signed: Director of Professional Practice, Quality and Safety.

Date: 27 November 2014

APPENDIX A

YOUR NEAREST RELATIVE UNDER THE MENTAL HEALTH ACT 1983 (Sections 26-30 of the Mental Health Act 1983)

INTRODUCTION

What is this leaflet about?

This leaflet is about your “nearest relative” under the Mental Health Act.

It is in three parts:

- Part 1 explains the rules about who your nearest relative is;
- Part 2 explains the things that your nearest relative can do under the Mental Health Act (their rights);
- Part 3 explains how the County Court can change your nearest relative, or make someone your nearest relative if you don't have one already.

PART 1 –YOUR NEAREST RELATIVE

What does the Mental Health Act mean by my relatives?

In the Mental Health Act, the following people are treated as your “relatives”:

- your husband, wife or civil partner;
- a partner who has been living with you as if they were your husband, wife or civil partner for more than six months,
- your son or daughter;
- your mother or father;
- your brother or sister;
- your grandmother or grandfather;
- your grandson or granddaughter;
- your aunt or uncle;
- your nephew or niece;
- anyone else you have been living with for at least five years.

If your mother and father were not married when you were born, your father (and his relatives) are only included in this list if he gained parental responsibility for you under the Children Act 1989.

Adoptive relatives are included in the list (for example, your adopted parents or a child you adopted). Step-relatives (for example, your step-parent or step-child) are not included.

Who is my nearest relative?

Your “nearest relative” is normally the person who comes highest in this list of relatives. For example, if you are married and have a child, your husband or wife is the highest person in the list and your child comes second. But if your only relatives are your mother and a niece, your mother comes highest in the list and your niece comes second.

If there is more than one person in the same position in the list, relatives of the “whole blood” come before those of the “half-blood”. For example, if your nearest relative could be either your full brother or your half-sister, it will normally be your full brother.

Otherwise, if more than one person comes in the same position, the oldest one comes first. For example, if your nearest relative is one of your children, it will normally be your oldest child.

But if you usually live with, or are cared for by, someone in the list of relatives, that person goes to the top of list and will normally be your nearest relative. If you are in hospital, this includes people you lived with, or were cared for by, before you went into hospital. If there is more than one person, the one who was already highest in the list will normally be your nearest relative. For example, if your only relatives are your father and your two sisters, and you live with your two sisters, they go to the top of the list above your father, and the older of your two sisters will normally be your nearest relative.

There are several exceptions to these rules:

- someone who is in the list of relatives only because they have been living with you cannot be your nearest relative if you have a husband, wife or civil partner who could be your nearest relative instead;
- your husband, wife or civil partner cannot be your nearest relative if you are permanently separated, if they have deserted you, or you have deserted them;
- someone who is under 18 cannot be your nearest relative, unless they are your husband, wife or civil partner;
- someone who lives abroad cannot be your nearest relative, unless you also normally live abroad. “Abroad” means outside the United Kingdom, the Isle of Man or the Channel Islands.

In these cases, the next person in line will normally be your nearest relative.

Are there different rules if I am under 18?

For most people under 18, the rules are the same. But there are a few exceptions.

If a court has made a care order putting you in the care of a local authority, the local authority will be your nearest relative (unless you have a husband, wife or civil partner could be your nearest relative instead).

If someone is your legal guardian, that person (or all of those people, if there is more than one) will normally be your nearest relative. This does not include a guardian you have because you are on guardianship under the Mental Health Act itself.

If a court has made a residence order saying who you should live with, that person (or all of those people, if there is more than one) will normally be your nearest relative.

Can my nearest relative change?

The rules about who your nearest relative is mean that sometimes your nearest relative might change without you or anyone else doing anything. For example, if you got married, your husband or wife would normally become your nearest relative.

The County Court can also change your nearest relative, or make someone your nearest relative if you don't have one already. This is explained in Part 3 of this leaflet.

PART 2 - YOUR NEAREST RELATIVE'S RIGHTS

The Mental Health Act says that your nearest relative can do various things in connection with your care and treatment. It also says that other people sometimes have to tell your nearest relative things about your care and treatment. These things are called your nearest relative's "rights".

The right to ask for you to be detained or put on guardianship

If you have a mental disorder, your nearest relative can ask for you to be detained (kept) in hospital if they think you need to be in hospital, but you do not agree. This is called making an application for you to be detained.

To make an application, your nearest relative must fill out an official form and give it to the hospital. Two doctors must agree that you should be detained (one doctor if it is an emergency).

Your nearest relative can also make an application for you to be put on guardianship, if two doctors agree that you need a guardian to help you. If this happens, you will be told more about what guardianship means.

The right to ask for an approved mental health professional to see you

Normally, it is an approved mental health professional (AMHP) who makes an application for someone to be detained or be put on guardianship. An AMHP is

someone who has been specially trained to decide whether people need to be detained or put on guardianship.

Your nearest relative can ask your local social services authority to get an AMHP to think about whether you need to be detained or on guardianship. If the AMHP decides you don't need to be detained or on guardianship, they must tell your nearest relative why in writing.

The right to be told about your detention or guardianship

If an AMHP makes an application for you to be detained for assessment, they must normally do all they can to tell your nearest relative about the application and about your nearest relative's rights. "Assessment" means finding out what is wrong with you and starting to give you any treatment you need for up to 28 days. Your nearest relative cannot stop an AMHP making this kind of application.

If an AMHP is thinking about making an application for you to be detained for treatment (for up to six months at first), they must normally do all they can to ask your nearest relative about it first. An AMHP must also do this if they are thinking about making an application for you to be put on guardianship.

If your nearest relative does not want you to be detained for treatment or put on guardianship, they can stop the AMHP making the application, by telling either the AMHP or the social services authority the AMHP is working for.

But if the AMHP thinks your nearest relative's decision is unreasonable, they can ask the County Court to make someone else your nearest relative instead. This is explained in "Can other people change my nearest relative?" in Part 3 of this leaflet. If you have already been detained for assessment, and the staff think you need to stay in hospital, you may be kept there until the court decides what to do.

The right to be given information

If you are detained, the hospital must explain to you why and what your rights are. The hospital must normally give your nearest relative a copy of what they tell you, unless you ask the hospital not to.

The same applies if you go onto supervised community treatment after you have been detained in hospital. Being on supervised community treatment means that your care team will do their best to help you to stay well after you leave hospital, but you can be told to come back to hospital for the treatment you need, if necessary.

If you are put on guardianship, the social services authority must tell you about your rights. The social services authority must normally give your nearest relative a copy of what they tell you, unless you ask them not to.

If you are detained for treatment for more than six months, your detention will have to

be renewed from time to time, if the person in charge of your treatment (your responsible clinician) thinks you need to stay in hospital for longer. The hospital must normally tell your nearest relative if this happens, unless you ask the hospital not to. The same applies if your responsible clinician extends your supervised community treatment, so that you have to stay on supervised community treatment for longer.

If your guardianship is renewed, your social services authority must normally tell your nearest relative, unless you ask them not to.

The right to be told if you are to be discharged

If you have been detained, but are now going to be discharged, the hospital must normally tell your nearest relative, unless you ask the hospital not to. "Discharged" means being allowed to leave hospital. The same applies if you stop being on supervised community treatment. If your nearest relative does not want to be told, they can ask the managers of the hospital not to tell them.

The right to discharge you

If you have been detained because of an application made by your nearest relative or an AMHP, your nearest relative can write to the hospital managers to say that they want you to be discharged.

If your nearest relative does this, the hospital managers must let you leave within 72 hours unless your responsible clinician tells them you might be a danger to yourself or other people if you are discharged.

Your nearest relative may also be able to end your supervised community treatment in the same way.

You will be told more about what your nearest relative can do if you are detained or put on supervised community treatment.

If you are on guardianship, your nearest relative can end your guardianship by writing to your social services authority.

The right to apply to the Tribunal for you to be discharged

Most people who are detained can also ask an independent panel – called a Tribunal - to say they should be discharged. People can also ask the Tribunal to end their supervised community treatment or guardianship.

Normally, your nearest relative will be told if you apply to the Tribunal.

Sometimes, your nearest relative may also be able ask the Tribunal to discharge you. You will be told more about what your nearest relative can do if you are detained or put on supervised community treatment or guardianship.

Can my nearest relative give their rights to someone else?

Your nearest relative can delegate their rights. This means they can say that someone else should do the things which they would normally do as your nearest relative.

If your nearest relative wants to delegate their rights to someone else, they must write to that person saying so. Later on, if your nearest relative wants to take their rights back, they can do that by writing again to the other person.

Your nearest relative must tell you if they have delegated their rights, or taken them back. If you are detained in hospital or on supervised community treatment, they must also write to the managers of your hospital. If you are on guardianship, they must write to your local social services authority (and if your guardian is not a social services authority, they must also write to your guardian).

Your nearest relative can delegate all the rights explained in this leaflet, except for one. If you have been detained in hospital by the courts – or moved from prison to hospital – your nearest relative cannot delegate their right to ask the Tribunal to discharge you.

PART 3 – GETTING A NEW NEAREST RELATIVE

What if I don't have a nearest relative?

If you do not have a nearest relative – or no-one can work out who your nearest relative is – you can ask the County Court to make someone your nearest relative.

Some other people can also ask the court to do this. The other people who can do this are:

- an AMHP;
- anyone in the list of relatives in Part 1 of this leaflet; and
- anyone else who lives with you (or if you are in hospital, lived with you before you went into hospital).

The court can make an order saying who should be your nearest relative. This could be anyone the court thinks is suitable and who agrees to be your nearest relative. It does not have to be someone in the list of relatives in Part 1 of this leaflet.

If you ask the court to make someone your nearest relative, you can tell the court who you think that should be. If someone else asks the court to do it, they can say who they think your nearest relative should be. If that person agrees to be your nearest relative, and the court thinks they are suitable, it will make an order saying they should be your nearest relative. Otherwise, the court will choose someone else it thinks is suitable and who agrees to be your nearest relative.

Can I change my nearest relative?

If you don't think your nearest relative is suitable to be your nearest relative, you can ask the County Court to change your nearest relative.

You can also ask the court to change your nearest relative if your nearest relative is too ill to do the things the Mental Health Act says a nearest relative can do.

Your nearest relative will probably get a chance to tell the court if they think that they should stay as your nearest relative.

If the court agrees that your nearest relative is not suitable, or is too ill, it will make an order saying that someone else should be your nearest relative.

You can tell the court who you think your new nearest relative should be. If that person agrees to be your nearest relative, and the court thinks they are suitable, it will make an order saying they should be your nearest relative. Otherwise, the court will choose someone else it thinks is suitable and who agrees to be your nearest relative.

The new person could be anyone who the court thinks is suitable and who agrees to be your nearest relative. It does not have to be someone in the list of relatives in Part 1 of the leaflet.

Can other people change my nearest relative?

Some other people can also ask the County Court to change your nearest relative. The other people who can do this are:

- an AMHP;
- anyone in the list of relatives in Part 1 of this leaflet; and
- anyone else who lives with you (or if you are in hospital, lived with you before you went into hospital).

Like you, they can ask the court to do this if they think your nearest relative is not suitable, or is too ill to be your nearest relative.

They can also ask the court to change your nearest relative if:

- your nearest relative refuses to allow you to be detained or be put on guardianship and they think your nearest relative is being unreasonable; or
- they think your nearest relative has used their right to discharge you – or is likely to use it – without properly thinking about the effect on you or other people.

(You can also do this yourself, but normally an AMHP or someone else would do it.)

How do I ask the County Court to make someone my nearest relative?

If you want the County Court to say who your nearest relative should be, you have to fill in a form called an “application”. You may also have to pay a fee. It is probably best to ask a solicitor to help you with this. The solicitor will be able to tell you if you can get help free of charge under the Legal Aid scheme.

What happens if the court makes someone my nearest relative?

If the court makes an order changing your nearest relative because it thinks your nearest relative:

- has objected unreasonably to you being detained or going onto guardianship; or
- has used their right to discharge you – or is likely to use it – without properly thinking about the effect on you or other people

the new person will only be your nearest relative for as long as you are detained in hospital, or are on supervised community treatment or guardianship. If you have not been detained in hospital or put on supervised community treatment or guardianship, the new person will only be your nearest relative for three months. After that, the rules in Part 1 of this leaflet about who your nearest relative is will apply again. Normally that means your old nearest relative will become your nearest relative again.

In other cases, if the court makes an order saying who your nearest relative should be, it might decide to say how long they should stay your nearest relative. Once that time is up, the rules in Part 1 of this leaflet will apply again.

Otherwise, once the court has made an order saying who your nearest relative should be, only the court will be able to change your nearest relative (even if your new nearest relative dies or does not want to be your nearest relative anymore).

Can my nearest relative be changed again?

The court can vary (change) its order, to say that someone else should be your new nearest relative instead.

You can ask the court to do this. So can:

- an AMHP;
- the person the court said should be your nearest relative; and

- (if that person has died) anyone in the list at the start of this leaflet.

The court can also discharge (end) its order.

You can ask the court to do this. So can:

- the person who used to be your nearest relative;
- anyone else who would now be your nearest relative if the rules in Part 1 of this leaflet applied;
- the person the court said should be your nearest relative; and
- (if that person has died) anyone in the list at the start of this leaflet.

If the court ends the order, the rules in Part 1 of this leaflet about who your nearest relative is will apply again.

To ask the County Court to change or end its order, you will have to make an application and you may need to pay a fee. It is probably best to ask a solicitor to help you with this. The solicitor will be able to tell you if you can get help free of charge under the Legal Aid scheme.

Further help and information

Please ask the person who gave you this leaflet or another member of staff to explain if there is anything in this leaflet you do not understand or if you have other questions that this leaflet has not answered.

Please ask if you would like another copy of this leaflet for someone else.



NHS No:
Hosp No:

Letter from the Nearest Relative under the Mental Health Act 1983 delegating their functions to another person under Regulation 24 of the Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 2008.

I (full name) _____
of (address) _____

(telephone no.) _____
Being the nearest
relative of _____
as (state relationship
to patient) _____

within the meaning of the Mental Health Act 1983, hereby authorise

(full name) _____
of (address) _____

(telephone no.) _____
(state relationship
to patient) _____

to perform in respect of the patient the functions conferred upon the nearest relative by Part II of the Mental Health Act 1983 or the associated Regulations.

This authorisation is to last: until further notice
(please tick one box) or until _____ (specify date)
 until the end of the current detention/guardianship

I understand that I may revoke this authority at any time (despite whichever box I have ticked above) by giving notice in writing to the person authorised and,

- (a) in the case of hospital detention, the hospital managers, or
- (b) in the case of guardianship, the local authority and private guardian (if any).

I agree to a copy of this letter being passed to the person authorised, the hospital managers and, in the case of guardianship, the local authority and private guardian, to act as a notice of my delegation of nearest relative functions under the Mental Health Act 1983 and associated Regulations.

Signed _____ Date ____/____/_____
(to be signed by donor)

I acknowledge receipt of this authorisation to act as nearest relative as detailed above (to be signed by recipient)

Signed _____ Date ____/____/_____
(to be signed by recipient)

Author: Deputy MHA Manager Delegation of Nearest Relative Form V1 June 2012