

Your nearest relative under the Mental Health Act 1983 (Section 26-30 of the Mental Health Act 1983)

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 to 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.

This leaflet can be provided in another format if required.

Other formats

This information is available in alternative formats such as large print or electronically on request. Interpreters can also be booked. Please contact the Patient Advice and Liaison Service (PALS) offices, found in the main reception areas:

Conquest Hospital

Email: esh-tr.palsh@nhs.net - Telephone: **01424 758090**

Eastbourne District General Hospital

Email: esh-tr.palse@nhs.net - Telephone: **01323 435886**

After reading this information are there any questions you would like to ask? Please list below and ask your nurse or doctor.

Reference

Written by: Sussex Partnership Trust

Updated to ESHT requirement by: Brenda Lynes-O'Meara: Assistant Director of Nursing (Safeguarding)

The following clinicians have been consulted and agreed this patient information:

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Updated to ESHT requirement by: Brenda Lynes-O'Meara: Assistant Director of Nursing (Safeguarding)

The following clinicians have been consulted and agreed this patient information:

Sussex Partnership Trust, Adult Safeguarding Service, Children Safeguarding Service, Patient information group, Consent group, Medical Team.

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