



# The Nearest Relative: Your rights and duties under the Mental Health Act 1983



## What information does this factsheet cover?

The purpose of this factsheet is to help you to understand your role as Nearest Relative under the Mental Health Act 1983, when one of your relatives has been detained under the Act. The factsheet provides a summary of the law. Whilst it cannot explain the law in detail, it is designed to provide a helpful overview.

This factsheet outlines your powers and rights as Nearest Relative. Carrying out the Nearest Relative role can be a challenging, complex, and emotional experience. This factsheet sets out what you need to know to help you with the role. It can be used in conjunction with other information and tools available on the Nearest Relative Resources website:

<https://nearestrelativeresources.bristol.ac.uk/>

## I have been identified as a Nearest Relative for one of my relatives - what does it mean?

You may have spoken with a mental health professional, called an Approved Mental Health Professional (often referred to as an AMHP), who has referred to you as someone's Nearest Relative. Or you may have been informed of this by a Mental Health Act Manager at the hospital at which your relative is detained.

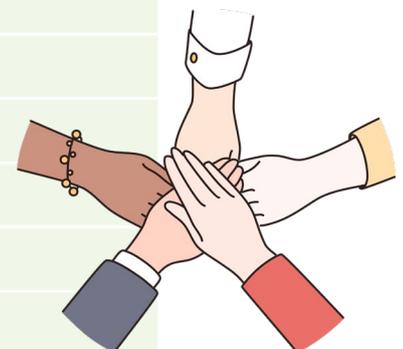
You may not have heard the phrase 'Nearest Relative' or been identified as a Nearest Relative before now. It is different from being someone's 'next-of-kin' or carer. It is an important and distinctive role that gives certain protections to a person who has been detained

for assessment or treatment in a psychiatric hospital, or is subject to powers in the community, under the Mental Health Act 1983.

## How and why was I identified as the Nearest Relative?

The AMHP (because they have now become involved in your relative's care) must decide by law who is the person's Nearest Relative. The Mental Health Act 1983 provides a fixed list of people who can be a Nearest Relative. This list is in order of eligibility as to who should be identified as Nearest Relative. It is up to the AMHP to decide who the Nearest Relative is from the list, and priority is given to the person who is highest on the list, as set out below:

- |                                  |
|----------------------------------|
| Husband or wife or civil partner |
| Daughter or son                  |
| Father or mother                 |
| Daughter or son                  |
| Sister or brother                |
| Grandparent                      |
| Grandchild                       |
| Uncle or aunt                    |
| Niece or nephew                  |



The AMHP may have to ask questions about family members and relationships to help them to establish who the Nearest Relative is.

Co-habiting partners who have lived together for more than six months will count as husband, wife, or civil partner. Non-relatives can be a Nearest Relative where they have lived with the patient for five or more years. If the person who has been detained in hospital lives with a relative listed above or is offered substantial care by a relative on the list, they may be identified as Nearest Relative in preference to another relative who is higher up the list.

If two or more relatives are identified in the same family relationship e.g. siblings or parents, the AMHP will select the eldest person as Nearest Relative. If it would harm the patient to speak to the person identified as Nearest Relative, the AMHP may decide not to contact them.

### What happens if I don't want to be the Nearest Relative?

Neither you, or your relative, can identify or choose a different Nearest Relative to the one identified on the list by the AMHP, without a decision by the County Court to appoint someone else to take on the role instead.

If you have been identified as a Nearest Relative but do not want to take on this role, you can delegate it and choose someone else to perform the role if they are not disqualified from doing so. If you are considering this option and you have a person in mind to delegate to, you should speak to the AMHP. You can delegate the functions of Nearest Relative for a set period, or 'until further notice.'

### What rights and powers does a Nearest Relative have?

#### How to involve an AMHP

A person's Nearest Relative has **a right to ask that an AMHP considers their request for an assessment under the Mental Health Act 1983.** You should get in touch with your Local Authority to contact an AMHP. Where the AMHP decides not to do a mental health assessment, or they carry out an assessment and decide not to admit the person to hospital, they should write to you as Nearest Relative, advising you of this and explain their reasons why.

## Section 2 Mental Health Act

As Nearest Relative, **you have the right to make an application to admit your relative to hospital (for up to 28 days)** for a mental health assessment under section 2 of the Mental Health Act. The application is the paperwork that must be completed for the process of detention under the Act.

If you decide to do this, you need to obtain medical recommendations from two appropriate doctors to support the application. It is also advisable to discuss this with an AMHP, as the guidance (in the Mental Health Act Code of Practice) that supports the use of the Mental Health Act recommends that it is better for an AMHP to complete the application. However, as Nearest Relative, you are also legally entitled to do so.

As Nearest Relative, **you must be informed as soon as possible after an application by an AMHP for your relative's admission to hospital under section 2** of the Mental Health Act.

As Nearest Relative, **you should be informed verbally or in writing of your right to order your relative's discharge from detention in hospital.**

This is because, as Nearest Relative, **you have the power to order the discharge of your relative when held under Section 2 (or Section 3) by giving 72 hours' notice, in writing, to the hospital managers.** If you are unsure who to write to for this, you can discuss it with the ward staff.

They can either provide the contact details for the hospital managers or accept a letter on behalf of the managers from you and forward it on to them.

If you request a discharge in this way, it can be blocked by the Responsible Clinician (usually the Consultant Psychiatrist) in charge of your relative's care, if they think that the patient would be likely, if discharged, to act in a way that's dangerous to themselves or other people.

## Section 3 Mental Health Act

As Nearest Relative, **you can make an application to detain your relative in hospital for treatment** under section 3 of the Mental Health Act. You have the same power as the AMHP to do so.

If an **AMHP decides to make an application to admit your relative to hospital for treatment under section 3, as Nearest Relative, you must be consulted** about it, and your views should be taken into consideration before the AMHP makes the application. As Nearest Relative, **you can object to your relative being detained under section 3 of the Mental Health Act** if the AMHP decides to make an application.

Your views are not binding on the AMHPs decision, and they might decide to apply for you to be displaced as Nearest Relative, if they think you are objecting unreasonably to their decision to admit your relative.

If consultation with you as Nearest Relative is not practicable, or would cause unreasonable delay, you should be informed as soon as possible after the application for admission to hospital is made by the AMHP. You should also be informed as the Nearest Relative of your right to apply for the patient's discharge (see below).

As Nearest Relative, **you have the power to apply for the discharge of your relative** when they are admitted under section 3.

As Nearest Relative of a patient detained under section 3, **you have 28 days from hospital admission to appeal to an independent tribunal against the admission**, as explained below.



## Section 4 Mental Health Act

This is an emergency power that can be used to admit someone to hospital for 72 hours for urgent treatment. It is very rarely used but as Nearest Relative, **you can make an application to detain your relative under section 4**, as you have the same power to do so as the AMHP.

There is no power to apply for the discharge of your relative when held under section 4 as it is a short-term power that is only valid for up to 72 hours. More information about this provision is set out below.

### I have been told that my relative has been detained under section 2 of the Mental Health Act 1983. What does this mean?

A person can be detained in hospital for up to 28 days under section 2 of the Mental Health Act 1983. This is kept under review by the admitting ward and the Responsible Clinician (usually the ward consultant psychiatrist who oversees your relative's care).

The Responsible Clinician may decide to withdraw (terminate) the section, so the period spent in hospital is shorter. This may result in the patient agreeing to remain on the ward as a voluntary or informal patient, or they might be discharged from hospital.

### I have been told that my relative has been detained under section 3 of the Mental Health Act 1983. What does this mean?

Some mental health difficulties require a longer period in hospital than 28 days. Section 3 allows a patient to be detained in hospital for treatment for up to six months.

Most patients detained under section 3 will be discharged within that period. However, where patients need a longer period of care and treatment in hospital it can, if necessary, be renewed. This can initially be for a further period of six months and every 12 months after that.



"Carrying out the Nearest Relative role can be a challenging, complex, and emotional experience. This factsheet sets out what you need to know to help you with the role".



## **I have been told that my relative has been detained under section 4 of the Mental Health Act 1983. What does this mean?**

This is an emergency admission for assessment and is only used when your relative is so disturbed that immediate hospital admission is required. In practice, it is rarely used. It is put into effect by one doctor signing a medical recommendation for admission to hospital for assessment. An AMHP, or you, as the Nearest Relative, must also sign an emergency application for admission for assessment.

Under this section, your relative can be detained in hospital for up to 72 hours. As soon as possible after admission they should be seen by a second doctor, who has the power to complete a second medical recommendation that, if necessary, would allow your relative to be detained under section 2 for a longer period to allow a more in-depth assessment (as above).

The second doctor should complete the recommendation within 72 hours, otherwise the patient would become an informal patient. As an informal patient, they can stay in hospital voluntarily, or discharge themselves, or be discharged by the doctor in charge.

## **I have been told that my relative has been discharged on a Community Treatment Order (CTO) under the Mental Health Act 1983. What does this mean?**

If your relative has been detained under section 3 of the Mental Health Act they may be discharged from hospital on a Community Treatment Order (CTO) with conditions. If your relative breaches the conditions set out in the CTO and their mental health is deteriorating, they can be recalled to hospital by their Responsible Clinician (doctor in charge of their care) under the CTO.

They can be held in hospital for up to 72 hours to receive treatment and, if required, be assessed to decide if they need to be admitted to hospital for a longer period. An AMHP will be involved in this assessment to consider whether to revoke (i.e. withdraw) the CTO. The effect of revoking the CTO is that the person becomes a detained patient under section 3 again and has the same rights as section 3 patients.

A person discharged from hospital on a CTO has a right to appeal against the CTO being in place. A Nearest Relative may also request a person's discharge from a CTO.

## **I have been told that my relative is being held under section 136 of the Mental Health Act 1983. What does this mean?**

Section 136 gives a police constable the power to take someone from a public place to a 'place of safety'. If your relative appears to be suffering from a mental disorder and is in immediate need of care or control, the constable may, if they think it is necessary to do so in the interests of that person or for the protection of other persons, remove them to a place of safety for up to 24 hours (extendable to 36 hours).

The place of safety is usually a designated location such as a hospital, psychiatric unit or sometimes a police station. Once at the place of safety, the person will be assessed by an AMHP and at least one approved doctor, to decide whether they need to be admitted to hospital, or to make appropriate arrangements for their care and treatment.

If hospital admission is being considered, two doctors will then need to assess the person along with the AMHP to decide whether to admit them to hospital under section 2 or 3 of the Mental Health Act.

## **How was Mental Health Act Assessment undertaken?**

For a person to be detained in hospital for compulsory assessment and treatment, two doctors (only one doctor in an emergency under section 4) and an AMHP (or the patient's Nearest Relative) must all agree that there is a need to detain that person to assess their mental health and associated risks, and, if necessary, treat their mental disorder.

To reach this decision, the AMHP and doctor/s must carry out the assessment in person and in a suitable manner. Of the two doctors, at least one must be approved under the Mental Health Act as having specialist expertise to undertake the psychiatric assessment.

The second doctor might also be approved or could be a generalist medical doctor who may have knowledge or prior acquaintance with the person being assessed, for example, the person's GP. The Mental Health Act states that, as far as possible, at least one of the doctors should have prior acquaintance with the patient.

The doctors make written recommendations if they decide to detain the patient under the Mental Health Act, and the AMHP is responsible for making a written application to the admitting hospital if they decide the patient meets the criteria for admission in either section 2 or 3.

## What rights does my relative have when detained in hospital?

Your relative has several rights when they are admitted to hospital under the Mental Health Act. These include:

### Information about rights

Patients detained in hospital under the Mental Health Act should be given information about their legal rights when they are admitted to hospital. Nearest Relatives should also be provided with the same information when their relative is admitted.

### Advocacy

Patients detained under the Mental Health Act have the right to advocacy from an Independent Mental Health Advocate. Advocacy is about getting help to speak up and be heard. Patients should be told by the hospital/ward staff about the advocacy service and Nearest Relatives can contact ward staff to ask for an advocate to meet with their relative in hospital.

### Appeal to a tribunal

Patients have a right to appeal against their detention under the Mental Health Act. They can do this by applying to an independent body called the First Tier (Mental Health) Tribunal.

Patients detained under section 2 must apply to the Tribunal within the first 14 days of their detention (the maximum period for detention under section 2 is 28 days).

The Tribunal should hear appeals from patients detained under section 3 in a timely manner, though hearings can take longer to arrange.

The patient can appeal by informing the nursing staff on the ward who will initiate the process of appealing against the detention. They may be eligible for legal aid to pay for legal representation and will be given a list of specialist solicitors to contact.

The Tribunal has 3 members and usually includes a legal member, a medical member and a lay member who is normally someone from the local community.

For patients detained under section 3, there is an automatic referral to the Tribunal after the first six months, (including any time spent under section 2), even if the patient does not choose to exercise their right to appeal.

As a Section 3 order initially lasts for up to six months, this means, in effect, that patients must be reviewed by the Tribunal if there are plans for the Section 3 to be renewed.

### Appeal to Hospital Managers

The patient has another right of appeal against their detention via the Hospital Managers. The patient should also speak to the ward staff about this process. The managers will arrange a hearing to consider the patient's detention and legal representation should also be available to the patient for this process.

**You should be aware that your relative may ask you to order their discharge from hospital. If you are being put under pressure to do so against your own judgement, you should speak to an AMHP.**

## For more information

Acting as a Nearest Relative can be demanding and emotional. You can find out about other people's experiences of the role and information about sources of support on the Nearest Relative Resources Website.



### Nearest Relative Resources

For further information and more factsheets please visit <https://nearestrelativeresources.bristol.ac.uk/>



**NEAREST RELATIVES**