

Nearest Relative

Under the Mental Health Act

This factsheet looks at the role of your nearest relative. Such as who your nearest relative would be and what your nearest relative's rights are. You may find this information useful if you live with mental health difficulties, or if you care for someone who does.

Key Points.

- 'Nearest relative' is a legal term used in the Mental Health Act 1983.
- Your nearest relative will have some legal rights. Most of these rights can only be used if you are detained in hospital under the Mental Health Act. This is sometimes called 'being sectioned.'
- Nearest relative is not the same as the next of kin. The next of kin has no rights under the Mental Health Act.
- Your nearest relative can ask for a Mental Health Act assessment. This will decide if you should be detained in hospital.
- Your nearest relative can apply to discharge you from the Mental Health Act.
- An application can be made to the County Court to have your nearest relative removed or changed.
- The nearest relative does not have the right to be told everything about you. This could include information about what treatment you are having.
- Health professionals should not tell your nearest relative, next of kin or carer, information about you. If you would like them to know, this is called giving consent.

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Key words

Some information in this factsheet is quite complicated. This section explains some of the phrases and words used:

Approved mental health professional (AMHP): An AMHP is a mental health professional who is trained to use the Mental Health Act. They can be a psychologist, nurse, social worker, or occupational therapist. They help to decide if you should be detained under the Mental Health Act. The role of the AMHP is to give a social, rather than a medical opinion.¹ Even if they have a medical background. An AMHP can help to bring you to hospital.

Community Treatment Order (CTO): You can get a community treatment order (CTO) if you've been in hospital under certain sections of the Mental Health Act. Your responsible clinician can arrange it. A CTO means you will have supervised treatment when you leave hospital. You will still be under the Mental Health Act.

You will have to follow conditions if you are on a CTO. These conditions should help you stay well. If you break the conditions of your CTO you can be brought back to hospital.

Guardianship: On a guardianship you can get the treatment that you need in the community with the help of a guardian. If you don't have a guardian, it is likely that you would have to remain in hospital to get treatment. Your guardian may be your local authority or someone else approved by the local authority.

Hospital Managers: Hospital Managers make sure that the Mental Health Act is properly used. For example, making sure that information is given to you and your nearest relative. They can also hold a hearing to decide if you should be detained or discharged.

Independent Mental Health Advocate (IMHA): IMHA's are independent of other hospital staff. This means that they do not work for the NHS. An IMHA can explain your rights and help you to make decisions about your care and treatment. You have a legal right to see an IMHA if you are detained under the Mental Health Act.

Section 17 leave: Any leave away from the ward has to be authorised by a doctor. This is known as 'section 17 leave'. When you are detained under the Mental Health Act you are not allowed to leave the ward freely. Leave may be increased gradually over a number of weeks.

Responsible Clinician (RC): The RC is the professional who is responsible for your care and treatment.

Section 2 of the Mental Health Act: Section 2 allows you to be admitted to hospital for an assessment of your mental health. And to get any necessary treatment. It lasts for a maximum of 28 days and can't be renewed. If you need to stay in hospital after 28 days, you will be transferred to a section 3.

Section 3 of the Mental Health Act: Section 3 allows you to be admitted to hospital for treatment. It lasts for up to 6 months, but this can be renewed.

You can find out more information on www.rethink.org about:

- Community Treatment Order
- Mental Health Act
- Advocacy

At www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheets.

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1. What is the Mental Health Act 1983?

The Mental Health Act 1983 is law. It explains when someone with mental health difficulties can be placed in hospital for a mental health assessment and treatment. This is often known as 'being detained' or 'being sectioned.'

The Mental Health Act is only used when someone with mental health difficulties have put their own or someone else's safety at risk.² And they are unwilling to get help for their mental health problems.

You can find out more about the **'Mental Health Act'** at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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2. What is the nearest relative?

The Nearest Relative (NR) is a legal term in the Mental Health Act. The law explains who your NR will be. The NR has certain rights under the Mental Health Act.

The NR will have rights to information that other relatives will not have the right to. These rights are not fixed. There may be reasons when the NR rights are not fully met.

The relative who is not the NR will only be allowed to know information about you with your consent.

All relatives can share any information or concerns they have with the hospital staff.

See [section 6](#) of this factsheet, 'What are the nearest relative's rights?' for more information.

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3. Is the nearest relative the same as next of kin?

Your next of kin has no legal powers under the Mental Health Act.

Your nearest relative (NR) and the 'next of kin' can be 2 different people. Or the same person.

You will choose your next of kin if you are admitted to hospital. Your next of kin can be anyone you want. This would usually be a relative or close friend.

You can't choose your nearest relative. But professionals should aim to identify anyone involved in your care as well as your nearest relative.³

Anyone involved with your care should be included in discussions about you.⁴ As long as you want them to be included.

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4. Who is my nearest relative?

Section 26 of the Mental Health Act explains who can be your nearest relative (NR). You can't choose your NR.

The term 'relative' is defined by the Mental Health Act in a list. The list is below. The general rule is that your NR will be the person who comes

highest on the list. There are other rules that may affect who your NR will be.⁵

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

Men and women are equal. If there are 2 people who could be the NR, the eldest person would be the NR.⁶ For example, if your father is older than your mother, then your father would be your NR.

What else can affect who the NR is?

How does being a carer affect being a NR?

If you're a carer for or you live with a relative on the above list, they are likely to become your NR.⁷

Living arrangements

- If you normally live with a relative on the above list, this relative is likely to become your NR.⁸
- If you've been living together as husband and wife or civil partners for 6 months or more, they'll become your NR. This includes your girlfriend or boyfriend. But if you or your partner are married to someone else, your partner can't be your NR. Unless you or your partner are permanently separated from them.⁹
- Someone who isn't a relative can be treated as a relative. But if they have been living with you for 5 years or more they may become your NR. But only if no-one in the above list is able to act as your NR.¹⁰
- A relative living abroad can't act as your NR if you live in the UK.¹¹ They can still be your NR if they live in the UK but have gone on holiday abroad.
- If you don't live in the UK, you can have an NR who doesn't live in the UK. For example, if you are detained whilst visiting England on holiday.¹²

How does age affect being a NR?

The NR must be 18 or over, unless he or she is your husband, wife, civil partner or parent.¹³

What happens if I am separated from my partner?

- If you are permanently separated from your husband, wife or civil partner they can't be your NR.¹⁴

- If you have deserted, or been deserted by, your husband, wife or civil partner they can't be your NR. Desertion means that one party has left the marriage or partnership without the other's agreement.¹⁵

Can half-blooded relatives be a NR?

Full blooded relatives will be preferred to half-blooded relatives.¹⁶ For example a sister would be preferred to half-sister.

Can stepchildren be a NR?

Stepchildren are not treated as relatives, but can become the NR if:

- There's no other NR and they normally live with the person and have done so for at least 5 years, or
- a court decides that they should be the NR,¹⁷ or
- the current NR asks them to be the NR and they agree, this is known as 'delegating'.¹⁸

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5. What are my nearest relative's rights?

Your nearest relative (NR) has certain rights under the Mental Health Act.

Your NR has the right to:

- [ask for a Mental Health Act assessment](#)
- [apply to the hospital managers for admission to hospital](#)
- [get certain information](#)
- [be consulted by the approved mental health professional \(AMHP\)](#)
- [ask for you to be discharged](#)
- [get notice of your discharge from the hospital](#)
- [delegate their NR rights to someone else](#)
- [be told about renewal of your detention, extension of your CTO, and if you're being transferred from one hospital to another](#)
- [contact the Independent Mental Health Advocacy service \(IMHA\)](#)

Your NR's rights are explained in more detail below.

Right to ask for a Mental Health Act assessment

Your NR can ask social services to assess your mental health. Social services have a duty to consider your mental health if your NR asks them to.¹⁹ Some families have found this right helpful in a crisis.

But anyone can request that your mental health is assessed if they are concerned about you. Social services can ask an approved mental health professional (AMHP) to consider your case.²⁰ This is only if they have reason to think that you may need to be in hospital.

If your NR requests an assessment they have more rights over someone else making the request. If the team decides not to assess you, they have

to tell your NR why. They have to put the reasons for their decision in writing.²¹

Your NR can ask for a mental health assessment through your local social services. They will need to speak to the approved mental health professional (AMHP) team. The AMHP on duty will take your NR's request to assess you and present it to the mental health team.

Your NR can make their request in writing or over the phone. There is a sample letter at the end of this factsheet. Your NR can use the letter to ask for a mental health assessment.

Right to apply to the hospital managers for admission to hospital

Your NR should ask adult social services to assess you before applying to the hospital managers.²² Your NR may be able to apply directly to the hospital managers to have you detained. This is if 2 doctors agree that you should be detained but the AMHP disagrees.²³

Your NR can make an application to the hospital managers to detain you under section 2 or section 3, in an emergency. Or your NR can ask for a guardianship.²⁴ They must have seen you within 14 days of the application.²⁵

Your NR must have seen you in 24 hours to make an emergency application.²⁶

Your NR will need to use specific wording to make an application to admit you to hospital. Follow the link to see the wording:
www.legislation.gov.uk/ukxi/2008/1184/schedules/made.

Right to get certain information

The approved mental health professional (AMHP) must let your NR know if an application is going to be made or has been made to detain you under section 2 of the Mental Health Act.²⁷

Your NR may not be told that you've been detained under section 2 if it would have a negative effect on you.

Negative effect could mean:²⁸

- emotional distress,
- mental health getting worse,
- physical harm,
- financial or other exploitation.

The AMHP should tell your NR what rights they have to discharge you.²⁹

Hospital Managers should give your NR copies of any information given to you in writing about your rights.³⁰

You can block information from being given to your NR.³¹ Even if your judgment or reasoning has been affected by symptoms of mental illness. The duty that healthcare professionals have to tell your NR information is not absolute. This means that in almost all cases, information won't be shared with your NR if you don't want it to be.³² Your NR doesn't have a right to know about your diagnosis, treatment or care.

Your clinicians can involve your carers if you lack mental capacity. They will only do this if they feel it is in your best interest.³³

You can fill out an 'advance statement' saying what you would like to happen if you lack mental capacity. This can include wanting information shared with your NR, or next of kin. This is only when you are in hospital under the Mental health act. An advance statement will help health professionals to understand your wishes. An advance statement is made at a time when you are well.

Right to consultation

The AMHP must consult with your NR before you can be detained for treatment under section 3.³⁴ Or guardianship.³⁵ Consult means that the AMHP must speak to your NR. The only time that an AMHP doesn't have to consult your NR is:³⁶

- if it is not reasonably practical to. For example, your NR can't be found quick enough which could cause your treatment to be delayed,³⁷ or
- your NR is having difficulty with their own health or mental capacity.

Your NR may not be consulted about an application for detention under section 3. This is if they feel it would have a negative effect on you.³⁸ AMHP's should record their reasons if they do not consult with your NR.³⁹

Detention under section 3 or a guardianship can't go ahead if your NR disagrees with the decision.⁴⁰ An AMHP can apply to County Court if they think that your NR is stopping the application on unreasonable grounds.

A County Court can remove your NR and give the NR duty to someone else. This is known as 'displacement'.⁴¹

Your NR can't stop a community treatment order (CTO), or a section 2 from being made.⁴²

Right to discharge

Your NR can discharge you from detention under:⁴³

- section 2,
- section 3,
- a community treatment order (CTO), or
- guardianship.

Your responsible clinician is able to stop the discharge in certain circumstances. But your responsible clinician has no power to stop your NR discharging you from guardianship.⁴⁴

Your NR must be told of your discharge from detention or CTO. But your NR may not be told if:⁴⁵

- it is not practicable to tell your NR, or
- either you or your NR has requested that information about the discharge should not be given.

See [section 12](#), 'Can my nearest relative discharge me from the Mental Health Act?' for more information.

There is a discharge template letter at the end of this factsheet which your NR can use.

Right to get notice of discharge

Your NR should be given 7 days' notice of the end of your section or community treatment order (CTO) order if possible.⁴⁶

Right to be told about:⁴⁷

- the renewal of your detention,
- extension of your community treatment order (CTO), and
- if you are transferred from one hospital to another.

Right to delegate their NR rights to someone else

Your NR can pass their NR rights to someone else.

See [section 6](#), 'What happens if someone doesn't want to be my NR?' for more information.

Right to contact the Independent Mental Health Advocacy service (IMHA)

You are entitled to get support from an IMHA when you're detained under certain sections of the Mental Health Act. Such as section 2, section 3, section 37 or community treatment order (CTO). You do not have to have help from an IMHA if you don't want it.⁴⁸

You can ask for an IMHA yourself or your NR has the right to ask for an IMHA for you.

An IMHA should visit and talk to you if your NR asks them to.⁴⁹

An IMHA can:

- help you to understand what your rights are whilst under the Mental Health Act,
- talk to staff on your behalf if you want them to, and

- help healthcare professionals to understand any concerns that you have.

You can get help from an IMHA and solicitor at the same time.

You can find out more about:

- Advocacy
- Planning your care - Advance statements.

at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

Where can I get further information?

The Equality and Human Rights Commission have published guides on your rights when detained under the Mental Health Act in England. They explain your rights and some of your Nearest Relative's rights too.

You can download free copies of the guides here:

www.equalityhumanrights.com/en/publication-download/your-rights-when-detained-under-mental-health-act-england

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6. What happens if someone doesn't want to be my nearest relative?

Your nearest relative (NR) can pass their rights to another person. This person doesn't have to be a relative. But they need to agree to be your NR. This is known as 'delegating'. Your NR can't delegate their rights to you.

If your NR decides to delegate, they would need to tell the following people in writing:⁵⁰

- you,
- the hospital managers if you are under section or a community treatment order. Or where you are most likely to be detained and if you are currently in the community, and
- the local authority, and private guardian, if you have one. You will have a guardian if you are under a guardianship or guardianship order.

Your NR can use the sample letter at the end of the factsheet to delegate their NR rights to someone else.

NR's can delegate their functions at any time, even if they have made a request. Such as an admission to hospital. Your NR can change their mind at any time and take back the delegation.⁵¹ This means that they will be your NR again.

Your NR could contact an approved mental health professional from the local authority for help. If they are thinking of delegating their NR rights to someone else.

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7. How is my nearest relative appointed?

The appointment of your nearest relative (NR) won't usually involve a court, even though your NR has legal rights. Look at [section 4](#) 'Who is my nearest relative' for more information.

The approved mental health professional (AMHP) should try to identify who your NR is during your mental health assessment.⁵² It can sometimes be difficult to work out who your NR is. The legislation recognises these difficulties. Usually professionals will inform, notify and consult the person who they think is your NR.⁵³

The County Court can appoint an NR if you don't have one.⁵⁴ You can say who you would like to be your NR. But the court will decide who the most suitable person is.

The AMHP can apply to County Court if:⁵⁵

- it is not clear who your NR should be,
- your NR is incapable of being your NR,
- the AMHP has a good reason to think that your NR is unsuitable, or
- it is not reasonable for you or anyone else to apply to court.

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8. Does everyone have a nearest relative?

Not everyone detained under the Mental Health Act will have a NR. This may be the case if you are on a Forensic section. If you've been in contact with the police or courts before you were detained you may be on a forensic section. These sections of the Mental Health Act are called forensic sections.

The following people will not have an NR as defined by the Mental Health Act:⁵⁶

- patients remanded to hospital by the courts under sections 35 or 36, and
- patients subject to interim hospital orders under section 38, and
- restricted patients.

What is a restricted patient?

If you have a section 41 or 49 after your section, this means that you are a restricted patient. Restricted patients are monitored by The Mental Health Casework Section on behalf of the Justice Secretary.⁵⁷ They will be offenders, or people awaiting trial, and who are in hospital because of their mental health.

Restricted patients have extra restrictions given to them because they may be a risk to the public. These restrictions include:⁵⁸

- permission for community leave,
- transfer to another hospital,
- discharge, and
- recall to hospital.

You can find out more about forensic sections at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet. You can see a list of our forensic section factsheets at the end of this factsheet.

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9. Can my nearest relative be removed?

If your nearest relative (NR) is not a suitable person an application can be made to the County Court to remove them.⁵⁹ This is known as 'displacement'.

You can suggest a more suitable person to the court. But the court could decide to keep your original NR in place. The court will decide to appoint the most suitable person as the NR.⁶⁰

An application to displace your NR can be made by any of these people:⁶¹

- you,
- your advocate or carer if you lack mental capacity,
- any of your relatives,
- anyone who you are living with,
- anyone you were living with before going into hospital, or
- an approved mental health professional (AMHP).

Will people stop assessing me for detention in hospital if I displace my NR?

Probably not. If you apply to change your NR, they can still report their concerns about your mental health to your local authority or to your mental health team.

The mental health team will assess you if they think that you may need to be detained in hospital.

See [section 6](#), 'Right to ask for an assessment' for more information.

I want to change my NR. How do I do this?

If you are in hospital, you will have to make an application to County Court where the hospital is.⁶² You will need to fill in a N208 form to apply to remove your nearest relative.

The form can be found on the link below:

www.gov.uk/government/publications/form-n208-claim-form-cpr-part-8

There may be a court cost to submit your application.

You will only be able to apply to have your NR removed for the following reasons:⁶³

- your NR isn't fit to be your NR because they have a mental illness or other illness,
- your NR has stopped an application being made for you to be in hospital without good reason,
- your NR has stopped a guardianship application without good reason,
- your NR has used their right to discharge you without thinking about your welfare and other people's welfare, or
- your NR is not a suitable person to act as your NR. This may be because that they are not acting in your best interests.

But remember the court can keep your current NR in place if they think they are the right person for the role.

Should I get legal advice?

If you would like to displace your own NR we advise you to get legal advice from a mental health solicitor.

You don't need a solicitor to represent you in County Court, you can represent yourself. If you would like legal representation you may qualify for legal aid. Legal aid may not cover all of the court costs.

Follow this link to find out if you qualify for legal aid:

www.gov.uk/legal-aid/eligibility

When will an approved mental health professional apply to remove my nearest relative?

An approved mental health professional (AMHP) can apply to the County Court to 'displace' or remove your NR. The county court will decide if your NR should be removed. An AMHP will only make an application if they believe that:⁶⁴

- it is not reasonable for you or anyone else to apply to court,
- you should be detained in hospital under section 3, or should become a guardianship patient, but your NR disagrees without good reason,
- the NR is likely to discharge you from detention, or guardianship without thought for your welfare or other people's welfare,
- your NR is not able to act because of themselves having a mental disorder or other illness, or
- your NR is not a suitable person.

It is the AMHP's decision to apply to the County Court to displace your NR.⁶⁵

You can find out more about 'Legal advice' at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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10. What happens if my nearest relative is removed?

If your NR is removed, the County Court can choose who will act as your NR.⁶⁶

Displacement of your NR usually lasts for a certain length of time. This can depend on what section you are under.⁶⁷

Your NR can apply to the First Tier Tribunal if they have been displaced by the County Court. An application can be made once in the first year following displacement. And once in each following year.⁶⁸

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11. Can my nearest relative discharge me from the Mental Health Act?

Your nearest relative (NR) can make an order to discharge you from hospital.⁶⁹

Your NR must give the hospital managers 72 hours written notice if they want to discharge you from a section of the Mental Health Act.⁷⁰ This includes discharge from a community treatment order (CTO) and guardianship.⁷¹

There is not a specific form that your NR needs to fill in to discharge you. But there is a template letter at the end of this factsheet.

If your responsible clinician (RC) thinks that you should not be discharged they can issue a 'barring report' within 72 hours. This will stop the discharge.⁷² Your RC should not stop you being discharged unless you are likely to be at risk to yourself or other people.⁷³

Your NR will not be able to discharge you from detention at any time in the 6 months that follow the barring report.⁷⁴

But your NR will have the right to apply to the Mental Health Tribunal for discharge if you're detained under section 3 or CTO.⁷⁵

Your NR does not have a right to discharge you if you are detained in hospital under a forensic section. A forensic section is a section that you may be put under if you have been involved with the police, court or prison.

A guardianship order is different to a guardianship.⁷⁶ Your NR can't apply to the hospital managers to discharge you from a guardianship order. A guardianship order is used by a court as an alternative to a hospital order for offenders with mental disorders⁷⁷ But your NR can apply to the First Tier Tribunal instead.⁷⁸

You can find out more about forensic sections at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheets. There is a list of forensic sections at the end of this factsheet.

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12. What is the First Tier Tribunal?

The First Tier Tribunal is an independent panel that can discharge you from the Mental Health Act.⁷⁹ It can also be called a Mental Health Tribunal. The tribunal hearings take place at the hospital.⁸⁰ The tribunal has to decide if you meet the criteria for being sectioned.

The tribunal is an independent panel made up of a judge, tribunal doctor and a mental health expert.⁸¹

The tribunal can recommend that decisions that have been made about you, or your Nearest Relative (NR), are changed. They can also make recommendations about your care. Including if you should be discharged from hospital, given leave from hospital or be placed on a CTO. But they can't make recommendations about your treatment.⁸²

You can make your own application to apply to a tribunal. Your NR can make their own application too in some situations.

An independent mental health advocate (IMHA) and solicitor will be able to help you apply for a hearing. They can also help you during the hearing.

When can my nearest relative apply to a tribunal?

Your nearest relative (NR) can apply to a tribunal for different reasons.

They are outlined below.

Your NR can apply to a tribunal:

- if they ordered your discharge, but it has been stopped by the responsible clinician (RC), and
- you are on section 3 or a community treatment order (CTO).⁸³

The NR must appeal to the tribunal within 28 days of the RC stopping discharge.⁸⁴

Your NR can apply to a tribunal:

- If your CTO is extended.⁸⁵

You can also appeal to the tribunal to change this decision.

Your NR can apply to a tribunal:

- to get your guardianship order removed.⁸⁶

Your NR can apply within the first 12 months of the order and in any 12-month period that follows.⁸⁷

You can also apply to the tribunal to appeal this decision.

Your NR can apply to a tribunal:

- if they are displaced as your NR by a County Court on either grounds that they:⁸⁸
 - have made an unreasonable objection to your detention or guardianship, or
 - ordered your discharge from detention or a CTO without thinking about your welfare or other people's welfare.

An application can be made once in the first year following displacement and once in each following year.⁸⁹

Your NR can apply to a tribunal:

- to discharge you from section 37.⁹⁰

They can only apply between 6 and 12 months after the making of your hospital order. They can also apply once in every following year.⁹¹

They can't apply to discharge you if you are on a section 37/41.

If I apply to a tribunal, can my nearest relative represent me?

You have the right to appoint someone to represent you at your tribunal. This can be a legal representative or a non-legal representative.⁹²

You are entitled to have free legal representation at a tribunal, regardless of your savings or capital.⁹³

If the tribunal agrees you may be able to have a legal representative and someone else with you. The second person could be your NR. This person can represent you and assist with the hearing.⁹⁴

If my NR applies to the tribunal, can they get representation?

They have the same right to appoint someone to represent them at their tribunal. This can be a legal representative or a non-legal representative.⁹⁵

They are also entitled to get free legal aid when applying to a Mental Health Act tribunal.⁹⁶ They may be entitled to get legal aid when applying to a County Court.

You can find out more about ‘**Discharge from the Mental Health Act**’ at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy.

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13. Nearest relative key points to remember

Information sharing

Information is unlikely to be shared with your nearest relative (NR) if you don’t give your consent.

Your NR doesn’t have any extra rights to be given information about your mental health care or treatment. The hospital will still have a duty of confidentiality to you and will need your permission to share this information.

The Mental Health Act Code of Practice says that your carers should be involved with your care if you agree.

The hospital can involve your carers if you lack mental capacity. They will only do this if they feel it is in your best interest.

Patient decisions

Your NR doesn’t have any right to make decisions on your behalf. This includes both financial decisions and welfare decisions.

A non-professional person can make a decision on your behalf. Only if you have been assessed as lacking mental capacity to make the decision. And either:

- you have made a Lasting Power of Attorney (LPA) for welfare, or
- the Court of Protection has made someone your deputy.

Compulsory medication

You can be treated without your consent if you are under certain sections of the Mental Health Act. Your NR has no rights to stop this. For example, you may be given your medication by injection, even if you don’t want it.

Community Treatment Order

Your NR can’t stop a community treatment order (CTO) from being made.

If you don’t want your NR to know that you are on CTO they may still be told.

Your NR can order the discharge of a CTO by giving 72 hours' notice in writing. The Responsible Clinician can stop the discharge by issuing a 'barring notice'.

Hospital leave, under section 17

Your NR doesn't have a right to get hospital leave for you.

Nearest relative removal

Your NR can be displaced if they:

- stop you from being detained under section 3 without good reason, or
- use their power to discharge you without thinking about your welfare and the welfare of others.

Complaints

You, or your NR, can make a complaint about treatment and care through the NHS complaints procedure.

You, or your NR, can make a complaint to the Care Quality Commission (CQC). This is if you are concerned that the Mental Health Act has not been used correctly.

Their details can be found in the '**useful contacts**' section of this factsheet.

Carers support and advocacy

Your nearest relative or carer may be able to get support from a carers' advocacy or support service. A member of ward staff will know if there is a carers' advocacy or support service that covers their area. But unfortunately, carers' advocacy only exists in a few areas.

To search for services, they could try the following.

- Use an internet search engine to search terms like 'carers advocacy Leicestershire' or 'mental health carers advocacy Devon'
- Ask the local council if they have a list.
- Ask the local NHS Patient Advice and Liaison Service (PALS) if they have a list of local advocacy services.
- Get in touch with organisations that offer advocacy such as Rethink Mental Illness, Mind, SEAP, Voiceability and POhWER.

You can find out more information about:

- Confidentiality and information sharing
- Mental capacity and mental illness
- Complaints
- Supporting someone with a mental illness

at www.rethink.org. Or call our General Enquiries Team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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Further Reading

Forensic section factsheets:

- Section 35
- Section 36
- Section 37
- Section 37/41
- Section 38
- Section 48/49

Our factsheets are available at www.rethink.org. Or call our General Enquiries Team on 0121 522 7007 and ask them to send you a copy of the factsheet. For advice, call 0808 801 0525.

Useful Contacts

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.

Telephone: 03000 616161

Email: enquiries@cqg.org.uk

Website: www.cqg.org.uk

Sample Letter: Your nearest relative can use this letter to ask for a mental health assessment from adult social services.

Your name
Your address
Your telephone number (optional)
Your email address (optional)
Date

Approved Mental Health Professional

Dear Sir/Madam

Re: [add your relative's name here]
of [add you relative's address here]

Admission to hospital request

I am writing to ask the AMHP to make an application for my relative's admission to hospital. I am using my right as the nearest relative to ask that an approved mental health professional (AMHP) considers my relative's case.

I am concerned about [his/her] behaviour because [write here what is causing you concern]. [He/she] is a risk to [himself/herself] or others because [write here what is causing you concern]

[You could think about information such as.

- *How and when did their behaviour changed?*
- *Are they aggressive? If so, how?*
- *Have they tried to harm themselves or others? If so, how and when did it happen?*
- *Have they stopped eating, drinking or bathing?*
- *Have you got any evidence to show the changes in their behaviour?]*

If the AMHP makes the decision not to assess my relative's mental health, I would like to be told why this decision has been made in writing. This request is made under Section 13 (4) of the Mental Health Act 1983 (as amended in 2007). I would also like a meeting with the AMHP to discuss alternative care and treatment for my relative.

Yours faithfully,

Signed
Nearest relative

Date

Sample letter: Your nearest relative can use this letter to delegate their duties to someone else.

Your name
Your address
Your telephone number
(optional)
Your email address (optional)
Date

Hospital address or
Local authority address

Dear [Hospital Managers or Local Authority],

[Look at section 6 of this factsheet to find out who you need to tell that you are no longer the nearest relative.]

Delegation of nearest relative rights.

I, [nearest relative name], of [full address] am the [relationship to patient] of [name of patient]. I am their nearest relative within the meaning of the Mental Health Act 1983.

I would like to delegate my nearest relative duties for [name of patient] to [name of person to delegate to] of [full address]. They have agreed to take on the nearest relative duties for [name of patient].

In line with my duty I have told [name of patient] that I am no longer the nearest relative and told them who their nearest relative will be.

The Mental Health Act and Regulation 24 of the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, gives me the right to delegate my nearest relative rights.

Yours faithfully,

Signed
Nearest relative

Date

[You could also add the following paragraph, however you don't need to, as long as the delegate has agreed to take on the nearest relative duties.]

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

Signed
Delegate

Date

Sample Letter: Your nearest relative can use this letter to discharge you from the Mental Health Act.⁹⁷

Your name
Your address
Your telephone number
(optional)
Your email address (optional)
Date

Hospital address

Dear [Hospital Managers],

Order for discharge

This letter is to inform you that I plan to discharge [name of patient] from [detention under the Mental Health Act, guardianship or community treatment order] on [write the date that you plan to discharge your relative].

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

Section 23 of the Mental Health Act 1983 gives me the right to discharge my relative.

[Remember that your relative will not be discharged straight away and the request may be stopped by a barring report. Your relative will be able to leave the hospital 72 hours from when the hospital managers get your letter, if your discharge request is not barred.]

Signed
Nearest relative

Date

- ¹ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015. Para 14.52.
- ² s2(2) Mental Health Act 1983 c20.
- ³ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015. para 5.2.
- ⁴ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015. Para 4.40 & 4.43.
- ⁵ s26(1) Mental Health Act 1983 c20.
- ⁶ s26(3) Mental Health Act 1983 c20.
- ⁷ s26(4) Mental Health Act 1983 c20.
- ⁸ (MHA 1983), s26(4) Mental Health Act 1983 c20.
- ⁹ (MHA 1983), s26(6) Mental Health Act 1983 c20.
- ¹⁰ (MHA 1983), s26(7) Mental Health Act 1983 c20.
- ¹¹ (MHA 1983) s26(5)(a) Mental Health Act 1983 c20.
- ¹² Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015. Page 26. Para 2.16.
- ¹³ s26(5)(c) Mental Health Act 1983 c20.
- ¹⁴ (MHA 1983) s26(5)(b) Mental Health Act 1983 c20
- ¹⁵ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015. Page 26. para 2.15.
- ¹⁶ (MHA 1983), s26(3) Mental Health Act 1983 c20.
- ¹⁷ s29 Mental Health Act 1983 c20.
- ¹⁸ Reg 24, *Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008*. SI 2008/1184. London: TSO; 2008.
- ¹⁹ s13(4) Mental Health Act 1983 c20.
- ²⁰ (MHA 1983), s 13(1) Mental Health Act 1983 c20.
- ²¹ (MHA 1983), s13(4) Mental Health Act 1983 c20.
- ²² Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 Page 21. Para 2.2.
- ²³ MHA 1983 s11(1) to (7).
- ²⁴ s11(1) Mental Health Act 1983 c20
- ²⁵, Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 page 21. Para 2.2.
- ²⁶ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 page 21. Para 2.2.
- ²⁷, Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015. para 14.58.
- ²⁸ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015. para 4.36.
- ²⁹, Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015. para 14.58.
- ³⁰ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015. para 4.48.
- ³¹ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015. para 4.35.
- ³², Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015. para 4.35.
- ³³ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015. para 4.43.
- ³⁴ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015. para 14.59.
- ³⁵ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 page 22. Para 2.2
- ³⁶, Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015. para 14.60.
- ³⁷ s11(4)(b) Mental Health Act 1983 c20.
- ³⁸, Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015. para 14.61

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- ³⁹, Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015. para 14.63
- ⁴⁰ s11(4)(a) Mental Health Act 1983 c20.
- ⁴¹, Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015. para 14.65
- ⁴², Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 page 22. Para 2.2.
- ⁴³ s23(2) Mental Health Act 1983 c20.
- ⁴⁴ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 page 22, para 2.2, figure 5.
- ⁴⁵ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015 para 4.33.
- ⁴⁶ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015 para 4.33.
- ⁴⁷ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015 para 4.34.
- ⁴⁸ s130B (6) Mental Health Act 1983 c20.
- ⁴⁹ s130B(5) Mental Health Act 1983 c20.
- ⁵⁰ Reg 24(7). 4 *Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008*. SI 2008/1184. London: TSO; 2008
- ⁵¹ Department of Health. *Reference guide to The Mental Health Act 1983*: London TSO; 2015 para 2.29.
- ⁵² Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015 para 14.57.
- ⁵³ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 para 1.24
- ⁵⁴ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015 para 5.6.
- ⁵⁵ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015 para 5.12.
- ⁵⁶ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 para 1.25.
- ⁵⁷ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015 para 22.53
- ⁵⁸ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015 para 22.55
- ⁵⁹ s29(3)(e) Mental Health Act 1983 c20.
- ⁶⁰ s29(1A) Mental Health Act 1983 c20
- ⁶¹ s29(2) Mental Health Act 1983 c20.
- ⁶² Ministry of Justice. *Practice Direction 8A – Alternative procedure for claims*. 18.1 (3) www.justice.gov.uk/courts/procedure-rules/civil/rules/part08/pd_part08a (accessed 20th August 2021)
- ⁶³ s29(3) Mental Health Act 1983 c20.
- ⁶⁴ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015 para 5.11 – 5.13.
- ⁶⁵ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015 para 5.15.
- ⁶⁶ Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015 para 5.14.
- ⁶⁷ s29(5) Mental Health Act 1983 c20
- ⁶⁸ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 Page 23. para 2.2, figure 5
- ⁶⁹) 23(2) Mental Health Act 1983 c20.
- ⁷⁰ s25(1) Mental Health Act 1983 c20.
- ⁷¹ s25(1A) Mental Health Act 1983 c20.
- ⁷² s25 (1) (a) Mental Health Act 1983 c20.
- ⁷³ s25 (1) Mental Health Act 1983 c20
- ⁷⁴ s25 (1) (b) Mental Health Act 1983 c20.
- ⁷⁵ s66 (1)(h)(ii) Mental Health Act 1983 c20.

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- ⁷⁶ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 figure 24 page 70.
- ⁷⁷ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 para 22.21.
- ⁷⁸, Department of Health. *Code of Practice Mental Health Act 1983*. Norwich: TSO; 2015 para 30.39.
- ⁷⁹, Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 para 27.25.
- ⁸⁰ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 para 6.5.
- ⁸¹ Government. *Apply to the Mental Health Tribunal*. www.gov.uk/mental-health-tribunal/what-happens-at-the-hearing (accessed 20th September 2021).
- ⁸² Government. *Apply to the Mental Health Tribunal*. www.gov.uk/mental-health-tribunal/what-happens-at-the-hearing (accessed 20th September 2021)
- ⁸³ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 figure 25, page 71.
- ⁸⁴ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 para 2.2, figure 5, page 22.
- ⁸⁵ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 page 67.
- ⁸⁶ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 23.
- ⁸⁷ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 page 23.
- ⁸⁸, Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 page 23.
- ⁸⁹ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 page 23.
- ⁹⁰ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 page 23.
- ⁹¹ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015 Page 23.
- ⁹² Reg 11(1), *Tribunal Procedure (First Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008*. SI 2008/2699. London: TSO; 2008.
- ⁹³ Reg 5(1)(f), *The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013*. SI 2013/480. London: TSO; 2013.
- ⁹⁴ Reg 11(5), *Tribunal Procedure (First Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008*. SI 2008/2699. London: TSO; 2008. (SI 2008/2699) Reg 11(5).
- ⁹⁵ Reg 11(1), *Tribunal Procedure (First Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008*. SI 2008/2699. London: TSO; 2008. (SI 2008/2699) Reg 11(1).
- ⁹⁶ Reg 5(1)(f), *The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013*. SI 2013/480. London: TSO; 2013. (SI 2013/480) Reg 5(1)(f)
- ⁹⁷ Department of Health. *Code of Practice Mental Health Act 1983*. Norwich: TSO; 2015 para 32.25.

This factsheet is available in large print.

Rethink Mental Illness Advice Service

Phone 0808 801 0525
Monday to Friday, 9:30am to 4pm
(excluding bank holidays)

Email advice@rethink.org

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:

RAIS
PO Box 18252
Solihull
B91 9BA

or call us on 0808 801 0525

We're open 9:30am to 4pm

Monday to Friday (excluding bank holidays)



Equality, rights, fair treatment, and the maximum quality of life for all those severely affected by mental illness.

For further information on Rethink Mental Illness Phone 0121 522 7007
Email info@rethink.org



rethink.org



Patient Information Forum

Need more help?

Go to rethink.org for information on symptoms, treatments, money and benefits and your rights.

Don't have access to the web?

Call us on 0121 522 7007. We are open Monday to Friday, 9am to 5pm, 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 on: 0808 801 0525 between 9:30am to 4pm, 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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