

## **Mental Health Act 1983**

### **Section 26-30: Your Nearest Relative under the Mental Health Act 1983**

#### **Nearest Relative**

This leaflet sets out who your "nearest relative" is and their functions under the Mental Health Act 1983.

It is in five 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 about how someone else can become your nearest relative instead
- Part 4 describes exceptions to the usual rules
- Part 5 has general information.

# PART I

## Nearest Relative

In the Mental Health Act, the following people are treated as your “relatives”. Your “nearest relative” is normally the person who comes highest on the list:

- 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

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
- if your only relatives are your mother and a niece, your mother comes highest in the list and your niece comes second.

Please note 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.

Please also note that if you normally live with, or are cared for by, someone in the list of relatives above, 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 you 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.

For exceptions to these rules or if you are under 18 please see PART 4 of this booklet.

# **PART 2**

## **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 are called your nearest relative's "rights".

### **The right to ask for you to be detained or placed on guardianship**

If you have a mental disorder, your nearest relative can ask for you to be detained in hospital or placed on guardianship to help you live in the community. This is called making an application for you to be detained.

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

An Approved Mental Health Professional (AMHP) is someone who has been specially trained to decide whether people need to be detained or on guardianship. Your nearest relative can ask your local social services authority to ask an AMHP to think about whether you need to be detained or placed on guardianship. If the AMHP decides you don't need to be detained or placed on guardianship, they must tell the 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. 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 or put on guardianship, they would usually do all they can to ask your nearest relative what they think about it first.

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 local 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. 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, or go onto supervised community treatment, the hospital must explain to you why you are being detained and what your rights are. The hospital will give your nearest relative a copy of the written information given to you, unless you ask the hospital not to.

The same applies if your responsible clinician thinks you should stay in hospital or extends your community treatment order.

If you are put on guardianship, (or if guardianship is renewed) the local social services authority must tell you about your rights. The social services authority will give your nearest relative a copy of the written information given to you, unless you ask them not to.

## **The right to be told if you are to be discharged**

If you have been detained or are on supervised community treatment, but are now going to be discharged, the hospital must normally tell your nearest relative, unless you ask the hospital not to tell them.

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**

Your nearest relative can write to the hospital managers to say that they want you to be discharged and allowed to leave hospital or taken off supervised community treatment. 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 allowed to leave.

If you are on guardianship, your nearest relative can end your guardianship by writing to your social services authority. The responsible clinician cannot stop this.

## **The right to apply to the Mental Health Review Tribunal for Wales 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 and allowed to leave hospital. You can also apply to the Tribunal if you are on supervised community treatment or guardianship

Normally, your nearest relative will be told if you apply to the Tribunal. In some cases, your nearest relative can ask the Tribunal to discharge you themselves unless you do not want them to be told.

# **PART 3**

## **Changing Your Nearest Relative**

### **Can my nearest relative change?**

The normal rules about who your nearest relative is are explained in Part 1 of this leaflet. They mean that sometimes your nearest relative might change without you or anyone else doing anything. For example, an eldest child reaching the age of 18 years would replace your eldest parent as your nearest relative.

### **Can my nearest relative make someone else my nearest relative?**

Your nearest relative cannot make someone else your nearest relative instead. But they can say that someone else should do the things which they would normally do as your nearest relative. This is called delegating their rights.

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 Part 2 of this leaflet, except for one. If you have been detained in hospital by the courts – or been transferred to hospital from prison – your nearest relative cannot delegate their right to ask the Tribunal to allow you to leave hospital.

### **What if I don't have a nearest relative?**

If you do not have a nearest relative, or no-one can identify 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 approved mental health professional
- anyone in the list of relatives in Part 1 of this leaflet
- 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 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 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.

## **How can I change my nearest relative?**

If you do not think your nearest relative is suitable to be your nearest relative, you can ask the county court to change your nearest relative. Your nearest relative will get a chance to tell the court if they think that they should stay as your nearest relative.

If the county court agrees that your nearest relative is not suitable, 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 and they will consider this when they make their decision.

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 I of the leaflet.

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

## **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 approved mental health professional
- anyone in the list of relatives in Part I of this leaflet
- 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 go onto guardianship and they think your nearest relative is being unreasonable
- 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.)

## **What happens if the court makes someone my nearest relative?**

If the court makes an order changing your nearest relative 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 explained in Part I of this leaflet about who is your nearest relative will apply 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 explained in Part I 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.

## **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 approved mental health professional
- the person the court said should be your nearest relative
- (if that person dies) 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 explained in Part I of this leaflet applied
- the person the court said should be your nearest relative
- (if that person dies) anyone in the list at the start of this leaflet.

If the court ends the order, the rules explained in Part I of this leaflet will apply again. That might mean that your old nearest relative becomes your nearest relative again, or that someone new becomes your nearest relative.

# PART 4

## Exceptions

### Nearest Relative

- 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). Steprelatives (for example, your step-parent, step-child) are not included.
- 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.
- Someone who is included 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, or 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, or your mother or father.
- 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 any of the Channel Islands.

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

### Under 18

For most people under 18, there are a few exceptions to the main rules:

- 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 who could be your nearest relative instead).
- If someone is your 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 put 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.



# **PART 5**

## **General Information**

### **Code of Practice for Wales**

The Code of Practice for Wales gives advice to staff about the Mental Health Act 1983. They have to think about what the Code says when they take decisions about your care. You can ask to look at a copy of the Code or you can ask for a copy of the 'Peace of Mind' booklet on the Code of Practice for Wales.

### **Further information and help**

The independent mental health advocacy service is also there to provide help and support to you.

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

If there is anything you do not understand about your care and treatment, a member of staff will try to help you. Please ask a member of staff to explain if there is anything in this leaflet you do not understand or if you have other questions that this has not answered.